

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08 OA3

Date: **16 September 2010**

APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Confidential

**Prosecution's Response to the Observations of the Central African Republic on
the appeal proceedings against Trial Chamber III's "Decision on the
Admissibility and Abuse of Process Challenges"**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. On 24 June 2010, Trial Chamber III issued a written decision finding the case against Jean-Pierre Bemba ("the Appellant") admissible,¹ which was appealed by the Appellant.² The Prosecution responded to the Appellant's Brief on 17 August 2010.³ On 13 September 2010 authorities of the Central African Republic ("CAR") provided observations to both documents ("the Observations").⁴ The Prosecution hereby responds to the Observations.⁵
2. The Observations explain procedural matters under CAR law and shed additional light on the facts surrounding its domestic proceedings. They confirm the Trial Chamber's findings that the domestic decisions that halted the proceedings against the Appellant did not constitute "decision[s] not to prosecute" within the terms of Article 17(1)(b). They reiterate that the CAR authorities affirmatively sought to have the Appellant prosecuted before the ICC when they referred the case. The Observations further confirm that the recent appeal lodged by the Appellant before the CAR judiciary does not have any impact (including by means of suspensive effect) on the referral of the Appellant's case to this Court. In sum, they support entirely the Trial Chamber's conclusion that the case is admissible before this Court.⁶

¹ ICC-01/05-01/08-802.

² ICC-01/05-01/08-841-Conf-CorrOA3. The same day it filed a public redacted version (ICC-01/05-01/08-841-Corr-RedOA3). ("Appeal Brief").

³ ICC-01/05-01/08-855-Red OA3 ("Prosecution's Response").

⁴ ICC-01/05-01/08-881-Anx2-Conf, OA 3. On 13 September 2010, the Registrar communicated the observations submitted by the CAR authorities that same day "at 12h38". The Prosecution notes that the submissions were filed slightly over the time limit established by the Appeals Chamber (noon). ICC-01/05-01/08-878 OA3.

⁵ ICC-01/05-01/08-812 OA3.

⁶ Pursuant to Regulation 23bis(2) of the Regulations of the Court, the Prosecution files this document confidentially as the CAR Observations have been communicated as confidential. There are no additional reasons for maintaining this classification.

Submissions

3. The Observations present different submissions related to each of the four grounds of appeal raised by the Appellant. The Prosecution will address below the most relevant submissions dealing with the factual aspects of the case and the applicable provisions of the CAR legislation.

The appeal proceedings against the Order of 16 September 2004 included the dismissal of charges against the Appellant

4. In relation to the Appellant's First Ground of Appeal, the CAR authorities corroborate the Prosecution's submissions that the Senior Investigating Judge was independent and not bound by the terms of the Request for Partial Dismissal of 28 August 2004 filed by the *Procureur de la République* or Bangui Public Prosecutor.⁷ The Observations refer to relevant jurisprudence from France (whose criminal legal system informs the CAR's) and quote provisions of the CAR's Code of Criminal Procedure which confirm that the *juge d'instruction* (the Senior Investigating Judge in this case) is independent from the prosecuting authorities (the *Procureur de la République* or Bangui Public Prosecutor in the instant case) and is not required to follow the applications or *réquisitions* of the latter.⁸ Indeed, under the CAR law, requests by the prosecutor (and civil parties) are subject to the discretion of the *juge d'instruction* and have no equivalent value to that of a "judicial decision".⁹
5. The Observations also confirm that, as held by the Trial Chamber, the appeal lodged against the Order of 16 September 2004 was valid and referred to the

⁷ Prosecution's Response, para. 50.

⁸ CAR Observations, paras.18-22. See Prosecution's Response, para.50 which also refers to Article 90 of the 1962 CAR Code on Criminal Procedure.

⁹ CAR Observations, para.23.

entire Order and all the accused - thus including the dismissal of charges against the Appellant.¹⁰

6. Finally, the Observations confirm that the Appellant's contention - that the appeal against the Order of 16 September, as elucidated by the oral hearing of 24 November 2004, did not include the dismissal of the charges against him¹¹ - is erroneous. The CAR authorities state that the Appellant takes this hearing out of context as it has to be read together with the three *Réquisitoires* of 22, 23 and 24 November "that complement each other and constitute a single body".¹² The "single body" of the documents confirms that the Bangui prosecutor had appealed the Order in its entirety - including the dismissal of charges against the Appellant - and requested the severance of the blood crimes from the financial crimes, indicating that while the former should be referred to the ICC the latter should be tried before the CAR *Cour criminelle*.¹³ The Observations indicate that the 24 November oral hearing referred only to the financial crimes, which did not involve the Appellant.¹⁴ Hence, confirming the point argued by the Prosecution, had the Trial Chamber considered this document in its 24 June 2010 Decision, it would not have changed its final determination on the admissibility of the case.¹⁵

The Appellant's filings before the CAR judiciary have no impact on the referral of the case to the ICC

7. On the Fourth Ground, the Observations further clarify erroneous submissions advanced by the Appellant.¹⁶ In particular, the CAR authorities state that they have never conceded that the Appellant's *Pourvoi en Cassation* (lodged in April 2010 against the Judgment of 16 December 2004) had suspensive effect on the 16 December decision that severed the crimes against persons from the economic or

¹⁰ CAR Observations, paras.24-37; Prosecution's Response, paras.53,60; Decision, para.222.

¹¹ Appeal Brief, paras.17-20.

¹² CAR Observations, paras.44-47; Prosecution's Response, paras.56-60. The Trial Chamber had indicated that it had not considered the extract that reproduced this hearing, Decision, para.10.

¹³ CAR Observations, paras.44-47.

¹⁴ Ibid., para.48; Prosecution's Response, para.59.

¹⁵ Prosecution's Response, para.59.

¹⁶ Appeal Brief, para.37.

financial crimes and referred the former to the ICC.¹⁷ Although appeals in criminal matters would generally have suspensive effect, this scenario does not apply to the instant case because the Judgment of 16 December 2004 was a decision on matters of judicial administration against which the Appellant lacks legal standing to appeal it.¹⁸

Conclusion

8. The Prosecution concurs generally with the Observations, which support the critical findings from the Trial Chamber in this case, as well as the Prosecution's submissions on appeal.



Luis Moreno-Ocampo, Prosecutor

Dated this 16th day of September 2010

At The Hague, The Netherlands

¹⁷ CAR Observations, para.79; Prosecution's Response, para.89.

¹⁸ Ibid.