

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: French

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

Date: 26 July 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

**Corrigendum to Document in Support of the Defence Appeal Against the Decision
of Trial Chamber III of 24 June 2010 Entitled *Decision on the Admissibility and
Abuse of Process Challenge***

Source: Mr Jean-Pierre Bemba Gombo's Defence Team

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

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**Victims Participation and Reparations
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Other

1. In accordance with regulation 64(2) of the Regulations of the Court, the Defence for Mr Jean-Pierre Bemba Gombo ("the Accused") hereby files the document in support of its appeal ("Appeal") against the *Decision on the Admissibility and Abuse of Process Challenge* issued on 24 June 2010¹ ("the Impugned Decision").
2. The Appeal is brought in accordance with article 82(1)(a) of the Rome Statute and rule 154(1) of the Rules of Procedure and Evidence, pursuant to which an appeal to the Appeals Chamber following a decision on admissibility may be filed within five days and without the prior leave of the Trial Chamber.
3. The Defence submitted its notice of appeal on 2 June 2010,² followed by a request for an extension of time, which was subsequently granted, the deadline being extended to 26 July 2010.³
4. Under article 83(2) of the Rome Statute, the Appeals Chamber is called upon to verify the reliability of the proceedings insofar as it may affect the reliability of the proceedings of the Decision. The Appeals Chamber is then called upon to rule on the substance of the impugned Decision and to determine whether it is flawed because it was materially affected by an error of fact or law or procedural error.
5. It is in these circumstances that the Defence submits four grounds of appeal against the Impugned Decision:
 - (a) Trial Chamber III erred in law in finding that the decision of the Senior Investigating Judge of Bangui dated 16 September 2004 was not a final decision **not** to prosecute the Accused ("**First Ground of Appeal**");

¹ ICC-01/05-01/08-802.

² ICC-01/05-01/08-804-tENG.

³ ICC-01/05-01/08-827.

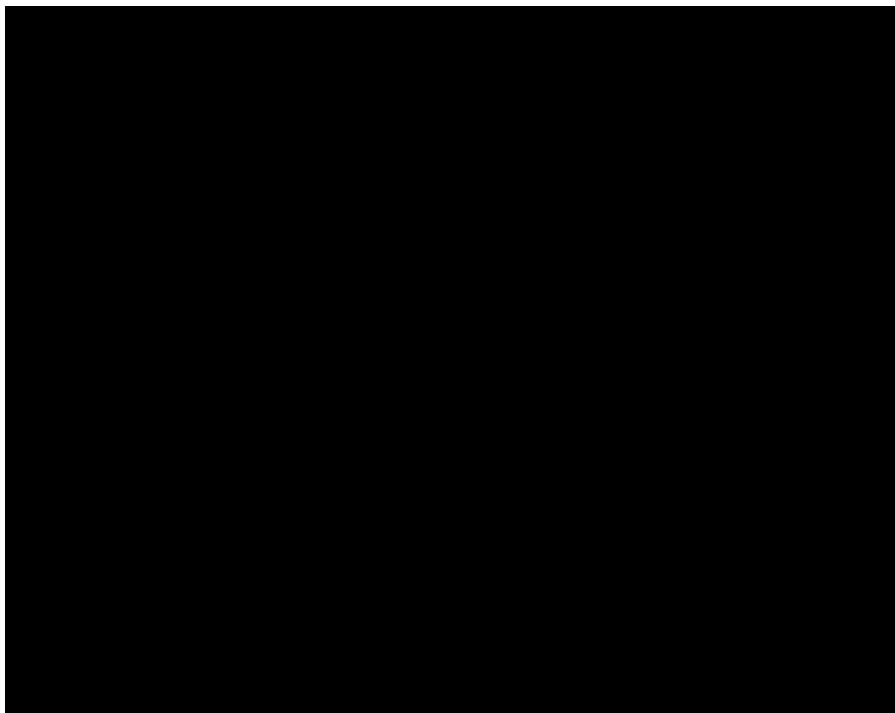
- (b) Trial Chamber III committed a procedural error in dismissing the Defence application to bring evidence from an expert in the law of the Central African Republic ("**Second Ground of Appeal**"), and;
 - (c) Trial Chamber III committed a procedural error and an error of law by admitting into evidence and accepting the testimony of the representative of the Central African Republic with regard to the "inability" to prosecute the Accused ("**Third Ground of Appeal**").
 - (d) Trial Chamber III committed a procedural error and an error of law in finding that the application [*pourvoi*] lodged by the Defence with the Court of Cassation in accordance with the forms and time-limits prescribed by the applicable procedural law in the Central African Republic was an abuse of process ("**Fourth Ground of Appeal**").
6. In accordance with article 83(2)(a) of the Rome Statute, the Defence will endeavour to satisfy the Appeals Chamber that the Impugned Decision should be reversed, and that the case against the Accused should be found to be inadmissible. In the alternative, the Defence requests that the Appeals Chamber rule that the case must be referred back to the Trial Chamber for a reconsideration of the admissibility issue after hearing the submissions of the Defence expert on the law of the Central African Republic.

First Ground of Appeal

7. The essence of the first ground of appeal is that the decision ("order for the dismissal of the charges" [*ordonnance de non lieu*]) of the Senior Investigating Judge of the *Tribunal de Grande Instance* of Bangui⁴ ("the Senior Investigating Judge") to halt the proceedings against the Accused was a final decision pertaining to the merits of the case which was not subsequently amended by a valid appeal.

⁴ EVD-P-01319, CAR-OTP-0019-0137 to 0164, Order for Partial Dismissal of Charges and Committal for Trial Before the *Cour Criminelle*.

8. The Defence submits that the order for the dismissal of the charges issued by the Senior Investigating Judge on 16 September 2004 cannot be viewed in isolation from the submission by the Public Prosecutor of the *Tribunal de Grande Instance* (“the Bangui Public Prosecutor”) dated 28 August 2004, requesting partial dismissal of the charges [*réquisitoire de non-lieu partiel*].⁵ In the circumstances, the Senior Investigating Judge was in fact under an obligation to concur with the submission of the Bangui Public Prosecutor, which cited a lack of evidence as the fundamental reason for ending the proceedings, and not diplomatic immunity:



9. It is submitted that the Bangui Public Prosecutor’s finding that there was insufficient evidence against the Accused was not made without proper consideration. In this respect, it should be taken into account that the Bangui Public Prosecutor’s submission was the result of a meticulous investigation, during which the crimes alleged to have been committed by the MLC troops and other fellow suspects of the Accused were questioned and mutually

⁵ EVD-P-00006, CAR-OTP-0019-0065 to 0112.

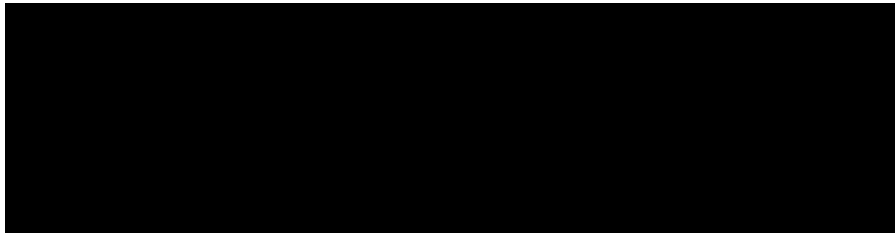
⁶ EVD-P-00006, CAR-OTP-0004-0084.

⁷ EVD-P-00006, CAR-OTP-0004-0107.

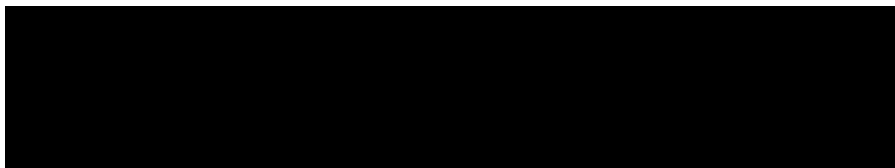
confronted. Such a detailed examination includes a comprehensive consideration of the case against the Accused.

10. Furthermore, Trial Chamber III erred in failing to comprehend the import of the Bangui Public Prosecutor's submission, the purpose of which was, as stated above, to terminate the proceedings against the Accused in a decisive manner. The Defence emphasises that it was this same Bangui Public Prosecutor who filed the notice of appeal of 17 September 2004,⁸ and it would be entirely illogical for him to seek, by that appeal, to have the Accused re-included in the same criminal proceedings for which he had sought, barely one day previously, the dismissal of the charges against the same Accused for lack of evidence.

11. The fact that the Bangui Public Prosecutor never intended to appeal against that part of the order for the dismissal of the charges pertaining to the Accused is in his statement to the OTP which is filed in the record of the case and on which the Prosecution will rely at trial:

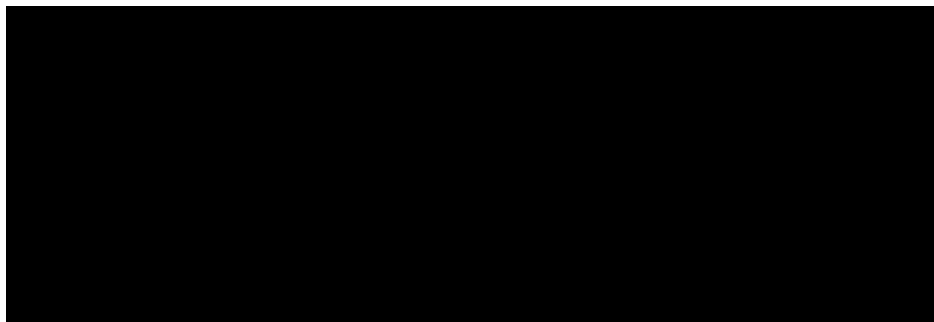


12. The Prosecution witness's assertion that the reason for the appeal was that the Investigating Judge had not pursued proceedings against certain high-ranking CAR figures, including Martin Ziguèle and [REDACTED] is confirmed by the **Initial** Appeal Submission [*Réquisitoire introductif d'Appel*] of 22 October 2004.



⁸ ICC-01/05-01/08-770-Anx2, page 3: The appeal was filed by the Deputy Public Prosecutor on behalf of the Bangui Public Prosecutor.

⁹ EVD-P-00098, CAR-OTP-0005-0116, paragraph 89.



13. Furthermore, the Defence submits that Trial Chamber III erred in failing to accord sufficient weight to the Office of the Prosecutor's observation, in which it frankly admitted that the Accused was not referred to in the notice of appeal.¹¹ In such circumstances, the finding of Trial Chamber III in paragraph 222 of the Impugned Decision that a *prima facie* valid appeal was entered "as regards all accused" should be considered erroneous.
14. Lastly, there is reason to believe that Trial Chamber III made an error in failing to consider a vital document¹² that was validly entered into the Electronic Court system (e-Court),¹³ albeit less than 24 hours before the Impugned Decision was rendered, and the late disclosure of which was not due to the Accused but to the Office of the Prosecutor. That document provides additional support for the Defence assertion that, on 24 November 2004, the CAR authorities had made a conscious decision not to prosecute the Accused.
15. In that regard, the Appeals Chamber is respectfully asked to refer to an e-mail sent by the Office of the Prosecutor at 6.43 p.m. on 23 June 2010¹⁴ notifying

¹⁰ ICC-01/05-01/08-770-Conf-Anx2 10-05-2010 5/12 RH T.

¹¹ ICC-01/05-01/08-T-22-ENG at page 63, line 12: "Ms Kneuer, there's a question for which we need a very careful answer. Paragraph 15 of your principal submissions on 29 March - and this, perhaps unsurprisingly, has been referred to by Mr Liriss more than once in his submissions - addressed the appeal and the missing -- what is certainly for me the missing document of 17 December 2004. Now, what you have set out in the last sentence is this: The appeal, namely the appeal from the investigating judge, did not cover the part of his ruling whereby no charges against Bemba would be filed."

¹² Impugned Decision, paragraph 10.

¹³ EVD-P-04250, CAR-OTP-0062-0203.

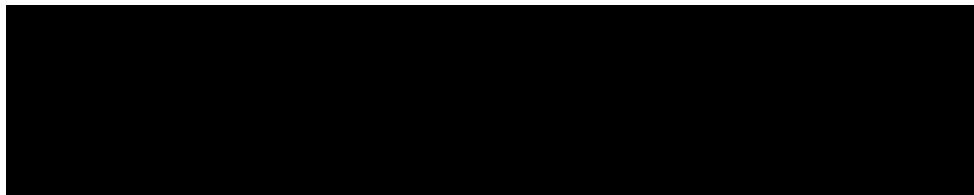
¹⁴ E-mail from [REDACTED] to [REDACTED]

"Dear [REDACTED] Please note that the Office of The Prosecutor ("OTP") in the Bemba Case has provided the Court Management Service with a CD containing a copy of the complete version of the document requested by the Chamber (CAR-OTP-0019-0189). This document was received from the authorities of the Central African Republic pursuant to the OTP's request. The document will be

Trial Chamber III ~~and indicating~~ that it had previously disclosed in full a document which in its view was incomplete.¹⁵ In its present respectful submission, the Defence suggests that the fact that the disclosure had been specifically requested by the Trial Chamber on 27 May 2010¹⁶ is proof of the obvious importance which Trial Chamber III itself attached to the document and, consequently, provides proof of the damage caused to the Defence by the failure to take this into account.

16. The above-mentioned document is in fact an official extract from the record of all the oral hearings held during the appeals proceedings before the Indictments Chamber of the Bangui Appeals Court.¹⁷

17. The Defence is particularly conscious of the fact that an additional appeal submission by the Public Prosecutor on 23 November 2004¹⁸ purported inexplicably, with no legal basis and in the absence of any appeal, to reverse the findings of the order dismissing the charges insofar as it related to the sufficiency of evidence against the Accused:



available to the Chamber, OTP, Defence, OPCV and Legal Representative in the Ecourt. A courtesy copy is attached for your convenience.

Kind regards, [REDACTED].

¹⁵ The previously incomplete document EVD-P-04119, CAR-OTP-0019-0189 (deemed inadmissible by Trial Chamber III at paragraph 10) of the Challenged Decision was replaced by a document with the following reference: EVD-P-04250ERN: CAR-OTP-0062-0203.

¹⁶ E-mail from [REDACTED] to [REDACTED] "Dear [REDACTED] It has come to the attention of the Chamber that one document disclosed in the context of admissibility issues and relied upon by the defence (see 776-Conf, para 62) appears to be incomplete. It is document CAR-OTP-0019-0189 which seems to be missing one or several pages as the ERN numbers are continuous but the text on page 2 does not follow from page 1. Could you provide the complete document as soon as possible? Best regards, St".

¹⁷ Court Record from the official record of hearings of the Indictments Chamber of the Bangui Appeals Court. EVD-P-04250ERN: CAR-OTP-0062-0203 and EVD-P-04119, CAR-OTP-0019-0189.

¹⁸ ICC-01/05-01/08-770-Anx2, page 8.

¹⁹ ICC-01/05-01/08-770-Conf-Anx2 10-05-2010 9/12 RH T.

18. However, at the hearing on the following day, 24 November 2004, the extract from the official record of the hearing, which Trial Chamber III failed to take into account, reflects the fact that the CAR judicial authorities (through their representative, Public Prosecutor [REDACTED] requested once again that the Accused not be prosecuted:

[TRANSLATION] As regards these proceedings, the Court should comply with the terms of our submission, and commit all the other accused persons for trial before the *Cour Criminelle*, **except for Mr Bemba** [emphasis added], given his status as Vice-President of the DRC;²⁰

19. The language used by the Public Prosecutor [REDACTED] in the quotation above shows that the CAR judicial authorities were diverging from their previous statement (which they had completely abandoned in their submission of 23 November 2004) by declaring that the Accused enjoyed diplomatic immunity and could not therefore be prosecuted before the *Cour Criminelle*.²¹

20. Subsequently, and all the Parties acknowledge this, counsel for the President of the Central African Republic – Mr Goungaye Wanfiyo – sent a request to the President of the Indictments Chamber of the Appeals Court on 11 December 2004 with the instruction to halt the proceedings²² and to transfer the Accused and the others to the International Criminal Court. The Defence submits that it was this inappropriate interference by the President of the Central African Republic that allowed the Accused to be re-included, *ultra vires*, in the Bangui Appeals Court's judgment of 16 December 2004.

²⁰ EVD-P-04250ERN: CAR-OTP-0062-0203 and EVD-P-04119, CAR-OTP-0019-0189.

²¹ As provided by the dispositive part of the additional appeal submission of 23 November 2004 concerning the other accused persons cited in the appeal proceedings, ICC-01/05-01/08-770-Conf-Anx2.

²² Impugned Decision ICC-01/05-01/08-802, paragraph 11.

The Second Ground of Appeal

21. At the beginning of the status conference of 27 April 2010, Trial Chamber III rejected the Defence request for leave to provide evidence from an expert in Central African law, stating the following:

*Counsel, in submissions for the accused, argue that it is necessary that there is an independent expert with appropriate understanding of the judicial system of the Central African Republic to identify what is suggested to be an objective and impartial position that is to be discovered between the two contradictory positions which it is suggested exists. In our judgment, this is, at most, a factual issue which is not susceptible to expert legal opinion. This is an issue which can and should be addressed by counsel in their submissions, if they wish to deal with the point during the course of today's arguments.*²³

22. The Defence submits that that preliminary decision was a procedural error which substantially affected the soundness of the deliberations and vitiated the subsequent conclusions of Trial Chamber III – particularly on the issue of whether there was an obligation to notify the Accused of the Bangui appeal notices and decisions and the consequences of the failure to thus notify. Whilst clearly stating that it would not attempt to provide a definitive interpretation of Central African criminal law, Trial Chamber III nevertheless accepted, definitively, and purely on a presumption of truth, all the erroneous legal interpretations of the CAR legal representatives, according to which, under the old code of criminal procedure applicable at the time of the facts, the failure to notify the Accused of the relevant appeal notices and decisions does not invalidate those notices and decisions.²⁴

23. Trial Chamber III's analysis at paragraph 233 of the Impugned Decision rejecting the various Defence submissions was not based solely on elements of fact, however. When it stated, inter alia, that "no provision similar to Article 95(b) has been cited that indicates that appellate proceedings are nullified if

²³ Decision on the Observations on legal representation of unrepresented applicants, 9 December 2009, ICC-01/05-01/08-651.

²⁴ Impugned Decision ICC-01/05-01/08-802, paragraph 233: "The refusal to accept expert evidence on the issue of notification is compounded by the contradictory views presented to Trial Chamber III by the CAR authorities."

the accused is not notified of a relevant decision”, Trial Chamber III was criticising the Defence for not having applied an appropriate **legal** submission.

24. Trial Chamber III also reached **legal** conclusions when it stated, in the same paragraph of the Impugned Decision, that articles 111(e) and 193(f) of the former Criminal Code of the CAR were inapplicable and irrelevant respectively. Trial Chamber III further managed to draw **legal** conclusions when it (the Chamber) determined that article 103 of the Central African Code of Criminal Procedure was not applicable to the Indictments Chamber when it rendered its decision ordering the severance of the proceedings and committal for trial before the International Criminal Court.

25. In light of the above, the Defence was seriously discomfited at finding itself denied the rebutting evidence of its proposed expert and of thus being put in a situation of inequality of arms vis-à-vis the CAR legal representatives, whose statements were given greater weight solely on the basis of a presumption of their expertise in local law.

Third Ground of Appeal

26. The Defence concurs with the findings of Trial Chamber III that the “unwillingness” to prosecute the Accused referred to by the CAR representative does not satisfy the “unwillingness” test under article 17(1)(b) of the Rome Statute.²⁵

27. However, the Defence submits that Trial Chamber III made an error of law in holding that the factors described at paragraph 245 of the Impugned Decision met the “inability” test, and, in addition, committed a procedural error in accepting these factors as decisive, given that they were not adequately supported by the evidence. In view of the fact that Trial Chamber III expected the Defence to justify its factual submissions with validly produced evidence, the CAR representative should have been similarly required to demonstrate

²⁵ Impugned Decision ICC-01/05-01/08-802 at paragraph 243.

with statistics filed in the appropriate manner that the budget of the Ministry of Justice was “ridiculously insignificant” and that there were human resource problems.

28. Moreover, the Defence submits that none of the factors identified at paragraph 245 reflect the State’s inability as conceived by the drafters of article 17(1)(b) of the Rome Statute. The Defence further maintains that, at paragraph 246 of the Impugned Decision, the Trial Chamber erred in relying on its own assumptions as regards the complexity of a trial, justifying such assertions entirely on the basis of the Accused’s “history and affiliations” when evaluating the current capacity of the CAR judicial system.
29. The Accused submits that for the requirements of inability to prosecute to be met, article 17(3) of the Statute requires proof of a “total or substantial collapse or unavailability” of the national judicial system and a causal link with the inability of the relevant State to obtain the Accused or the necessary evidence or to otherwise carry out its proceedings.
30. Article 17(3) of the Statute is articulated in such precise terms as to leave no room for alternative definitions of “inability”. Furthermore, as an issue of interpretation of the Statute, the Defence vigorously argues that the concept of “collapse” of the national judicial system should also include a notion akin to the disintegration of domestic judicial institutions. Difficulties related to budgetary and human resources do not meet this standard.
31. The plethora of hearings, and the fact that the Office of the Prosecutor was awaiting the decision of the Court of Cassation before initiating an investigation into the situation confirms that the CAR judicial system was far from collapse, and that it was operating in a perfectly sound manner. In this regard, the observations of eminent international jurist Prof. William Schabas should be noted:

As for the Central African Republic, perhaps less is known about this situation, and there has not yet been any meaningful judicial activity of the [International Criminal] Court. It is curious, to say the least, that the Prosecutor would rely upon the decision of the Court de cassation as authority for the inability of the country's judicial system to proceed with the prosecutions. After all, if the Court de cassation is a source of reliable judicial determination, doesn't that tend to prove the opposite, that is, that the courts of the country are functional? ²⁶

32. In any event, the Defence reiterates its previous submission that, even if this inability existed (which is not the case), it in no sense constituted a causal link with inadequacy on the part of the national judicial authorities. The profusion of measures and documents from the proceedings in Bangui at first instance, on appeal and up to cassation, proves that the proceedings against the Accused were not halted on account of the "inability" or "unavailability" of the national judicial system, but on account of diplomatic immunity and fear that the proceedings in the CAR against the Accused might harm delicate diplomatic relations between the CAR and the DRC. In view of such a procedural history, Trial Chamber III was therefore wrong to take into consideration the unsubstantiated and fanciful assertions of the CAR Legal Representative during the status conference of 27 April 2010 as indicative of the current inability of the CAR national judicial system.

Fourth ground of appeal

33. After being informed of the application to the Court of Cassation [*Pourvoi en cassation*] entered by the Defence, Trial Chamber III promptly sought to ascertain from it (the Defence) whether it had requested suspensive effect of the Decision to refer the Accused to the ICC.²⁷

²⁶ "'Complementarity in Practice': Some Uncomplimentary Thoughts", by William A. Schabas* for presentation at the 20th Anniversary Conference of the International Society for the Reform of Criminal Law, Vancouver, 23 June 2007, page 14, www.isrcl.org/Papers/2007/Schabas.pdf.

²⁷ E-mail from [REDACTED] dated 23 April 2010:

Dear Counsel, Dear Registry,

On behalf of the Chamber, please find attached a list of questions (in English and a translation into French) which the Chamber instructs the Registry to transmit to the CAR representatives forthwith in order to assist them in their preparation for the hearing on the defence's challenge to admissibility scheduled for 27 and 28 April 2010. In addition, the Chamber also requests the prosecution and the defence to reflect on the following questions

34. Subsequently, at the status conference, the Chamber again emphasised the issue of whether the application to the Court of Cassation had suspensive effect.²⁸
35. Lastly, the honourable Presiding Judge, yet again, emphasised the question of the impact of such suspension as a result of the proceedings before the Bangui Court of Cassation.²⁹
36. It follows that the repercussions of the cassation proceedings on the decision to transfer the case against the Accused to the ICC were seen as fundamental by the Chamber, which revisited the issue on three occasions.
37. The Defence and the CAR representatives have unanimously accepted that, in CAR law, the filing of the application had suspensive effect on the Decision by the Indictments Chamber of the Bangui Appeals Court to refer the Accused to the ICC.³⁰

in order to be able to provide answers to the Chamber at the hearing.a) to the Prosecution: -

The defence asserts that in his "*réquisitoire*" on 28 August 2004 (CAR-OTP-0004-0065), the Public Prosecutor requested the Investigative Judge not to prosecute Mr Bemba. The Public prosecutor further lodged on 17 September 2004 an appeal against the Order by the investigative issued on 16 September 2004. Has the "act of appeal" been disclosed? if yes, what is its ERN number? If not, can it be disclosed? - The Chamber notes in the procedural history of the Bangui Appeals Chamber decision (CAR-OTP-0061-0030) that there was first a *réquisitoire* by the General Prosecutor before the Appeals Chamber on 24 October 2004 and then an amendment to this initial "*réquisitoire*" ("*réquisitoire supplétif*") on 24 November 2004. While the "*réquisitoire supplétif*" has been disclosed, the Chamber could not find in confidential Annex B of filing ICC-01/05-01/08-739, any reference to the initial *réquisitoire* of 24 October 2004. Is it available? b) to the Defence: - Although the defence filed a corrigendum to its initial application, some references to ERN numbers of judicial documents from CAR seem to remain incorrect and so could not be found in the ecourt system: footnotes 80 and 81, the ERN numbers CAR-OTP-0004-0112 and CAR-OTP-0005-0115 do not correspond to any evidence to be found in ecourt. Can you provide the Chamber with the correct ERN numbers for these documents? **Considering paragraph 18 of the Defence's Second request of 19 April 2010 (ICC-01/05-01/08-757) : has the Defence filed before the Cour de Cassation a request for suspensive effect of the Decision on 16 December 2004 when it lodged its "pourvoi" on 16 April 2010 (ICC-01/05-01/08-757-AnxA)?**

Regards,



²⁸ English Transcript ICC-01-05-01-08-T-22-ENG ET WT p.60 lines 21 et seq.

²⁹ English Transcript ICC-01-05-01-08-T-22-ENG ET WT, p.64 lines 20 et seq.

³⁰ ICC-01/05-01/08-770-Conf-Anx1-tENG para. IV

ICC-01/05-01/08-776-Conf-tENG paras. 38 to 40.

38. However, instead of acting on these assumptions to which it had previously attached crucial importance, Trial Chamber III evaded the issue, finding that this was an abuse of process on the part of the Defence because it had submitted its application at such a late date.³¹

39. In this regard, the Defence would stress all the difficulties that it had had to overcome to obtain full disclosure of the evidence relating to admissibility ever since the Pre-Trial phase,³² the last piece of evidence only being provided to it on 13 April 2010, the day before it filed its Reply.³³

40. The Defence emphasises the great financial difficulties with which it has had to contend, which prevented it, as the Chamber was fully aware, from conducting an expert legal investigation in the CAR into the proceedings there.³⁴

41. The Defence wishes to recall the acts of persecution and harassment to which Counsel for the Accused in the CAR are being subjected.³⁵

Furthermore, the Accused was not time-barred from entering his application to the Court of Cassation, since he was never notified of the decision at issue.

42. In finding that the Accused's pursuit of a remedy before his natural judge in respect of a decision to refer him to the International Criminal Court in violation of the fundamental rights of the Defence – a remedy which, moreover, was pursued in accordance with the prescribed forms and time-limits – constitutes an abuse of process, instead of finding that it has suspensive effect on the decision at issue, Trial Chamber III, has, in the

³¹ Impugned Decision ICC-01/05-01/08-802 para. 231.

³² "Corrigendum to Application Challenging the Admissibility of the Case (...)", paragraphs 7 to 13, ICC-01/05-01/08-704-Conf-tENG.

³³ Corrigendum of 14 April 2010, para. 98, ICC-01/05-01/08-752-Corr-tENG.

³⁴ ICC-01/05-01/08-596-Red.

³⁵ ICC-01/05-01/08-799-tENG + Anxs A and B – "Second Defence Submission to Inform Trial Chamber III of the Status of the Proceedings in the Central African Republic".

opinion of the Defence, significantly affected the fair and expeditious conduct of the current proceedings.³⁶

Request for confidentiality

43. Since the present document contains references to the positions held by certain Prosecution witnesses and the content of certain documents which have been classified as confidential, the Defence asks for it to be classified as confidential. A public version will be provided at a later date.

Conclusion

44. In light of the foregoing, the Defence for the Accused Bemba respectfully requests the honourable Appeals Chamber to convene an oral hearing to allow it to expand on the submissions contained in this document.
45. The honourable Appeals Chamber will then be requested to declare the first and third grounds well-founded, thereby setting aside the Impugned Decision and accordingly finding that the case against the Accused is inadmissible.
46. In the alternative, it (the Defence) will respectfully request the honourable Appeals Chamber to declare the Second and Fourth grounds of appeal well-founded, and to refer the case back to Trial Chamber III for reconsideration of the issue of admissibility, after an opportunity has been given to present the evidence and oral testimony of an expert on criminal procedure in the Central African Republic.

³⁶ In the view of the Chamber, fairness of the proceedings includes respect for the procedural rights of the Prosecutor, the Defence, and the Victims as guaranteed by the relevant statutes (in systems which provide for victim participation in criminal proceedings). Breach of or deviation from the rules of a fair trial at the pre-trial stage of the proceedings may have implications on the proceedings and may affect the outcome of the trial. Purging the pre-trial process of errors consequential in the above sense is designed as a safeguard for the integrity of the proceedings. This is at the core of article 82(1)(d) of the Statute. (ICC-01/04-168).

[signed]

[signed]

Aimé Kilolo Musamba
Associate Counsel

Nkwebe Liriss
Lead Counsel

Done this 26 July 2010

At The Hague, The Netherlands