

ANNEX 1

Confidential

MINISTRY OF JUSTICE

OFFICE OF THE HEAD OF
CABINET

No. 148 /MJ/DIRCAB.10.

CENTRAL AFRICAN REPUBLIC
Unity – Dignity – Labour

Bangui, 07 May 2010

MINISTER OF JUSTICE
KEEPER OF THE SEALS

To

Ms Silvana ARBIA
Registrar of the International Criminal Court
THE HAGUE (HOLLAND)

RE: Transmission [of] observations for purposes of deliberation

Dear Madam Registrar,

At the hearing of 27 April 2010 before Trial Chamber III of the International Criminal Court on the challenge to admissibility raised by the accused, Jean Pierre BEMBA GOMBO, the Court requested the Central African Republic to respond to certain issues raised by the accused, namely:

- the appeal by the Public Prosecutor of the Bangui *Tribunal de Grande Instance*.
- the obligation to notify decisions of the Investigating Judge, the Indictments Chamber of the Appeals Court and the Court of Cassation;
- the suspensive effect of an appeal to the Court of Cassation in criminal cases.

In this regard, I have the honour to submit to you, for purposes of deliberation, the observations of the Central African Republic, which I respectfully request you to transmit to the Court.

Yours truly,

[stamped: Ministry of Justice of the Central African Republic]

[signed]

Laurent NGON BABA.-

**INTERNATIONAL CRIMINAL COURT
TRIAL CHAMBER III**

**CASE: PROSECUTOR v. Jean Pierre BEMBA GOMBO
(ICC-01/05 – 01/08)**

OBSERVATIONS FOR PURPOSES OF DELIBERATION

ON BEHALF OF: The Central African Republic

Mr BIZON

VERSUS: Jean Pierre BEMBA GOMBO **Mr KILOLO and Mr NKWEBE**

MAY IT PLEASE THE COURT

I: Introduction

1. On 27 April 2010, a hearing was held before Trial Chamber III of the International Criminal Court on the challenge to admissibility raised by the accused, Jean Pierre Bemba Gombo.
2. The Central African Republic, the victims and the Office of the Prosecutor made oral observations in support of their written observations.
3. Following the accused's oral observations, that honourable Chamber requested the Central African Republic to respond to certain issues raised by the accused concerning:
 4. The obligation to notify decisions issued in respect of pre-trial investigation taken by the investigating judge, the Indictments Chamber and the Court of Cassation.
 5. The suspensive effect of an appeal to the Court of Cassation in criminal cases.
 6. The Central African Republic considers that it is also necessary to begin by addressing the issue of the appeal of 17 September 2004 brought by the Public Prosecutor of the Bangui *Tribunal de Grande Instance* against the order of the Senior Investigating Judge of that same court dated 16 September 2004.
 7. Together with the observations by the Central African Republic of 16 April 2010, of which they form an integral part, the present observations will sufficiently demonstrate that the arguments put forward by the accused in his submissions and oral pleadings fail to establish that the proceedings brought by the Prosecutor before this Court are inadmissible.

II. THE APPEAL BY THE PUBLIC PROSECUTOR OF THE BANGUI TRIBUNAL DE GRANDE INSTANCE

8. In his oral observations, the accused, Jean Pierre Bemba Gombo, argued:
 - that in his submissions to the Senior Investigating Judge, the Public Prosecutor of the Bangui *Tribunal de Grande Instance* had sought the dismissal of the charges against him;

- that the Senior Investigating Judge had concurred with those submissions, issuing an order to dismiss the charges and committing the other defendants for trial before the *Cour Criminelle*;
- that the same Public Prosecutor had appealed the order of the Senior Investigating Judge;
- that, under the Code of Procedure of the Central African Republic, appeals are entered by means of a simple statement of appeal to the Registry and the scope of the appeal may only be determined on the basis of a submission that the Public Prosecutor is required to file in support of his appeal.
- that in the instant case the Public Prosecutor did not file a submission in support of his appeal.

The accused accordingly concludes that the Public Prosecutor's appeal did not encompass the decision to dismiss the charges against him, since that decision accorded with his submissions.

9. **Accordingly, the issue arises as to whether, under the law of the Central African Republic, the Public Prosecutor may enter an appeal against an order of an investigating judge which accords with the former's submissions.**

10. Under article 99(a) of the Code of Criminal Procedure of the Central African Republic, "[TRANSLATION] the Public Prosecutor may, **in all cases**, appeal an order of the investigating judge".

11. In his oral observations, the accused argued that the French influence on the law of the Central African Republic is such that both French doctrinal opinion and French jurisprudence apply thereto.

12. Taking that as our premise, we would point out that Professor Bernard Bouloc considers that the Public Prosecutor's Office may enter an appeal in respect of any order of an investigating judge, even where the impugned order accords with the Office's submissions.¹ In this regard, he cites two decisions of the Criminal Division of the French Court of Cassation.²

¹ Bernard Bouloc, "*Procédure Pénale*", 21st Edition, Dalloz, No. 800, p. 764.

² *Crim.* 15 November, 1956 *Bull.* No. 753; *Crim.* 18 January, 1983, *Bull.* No. 22.

13. From the foregoing, it clearly follows that, under Central African law, the Public Prosecutor is entitled to enter an appeal against any order of the investigating judge even where that order accords with the former's submissions.

14. The issue then arises as to whether the Public Prosecutor of the Bangui *Tribunal de Grande Instance* did bring an appeal against the order for the dismissal of the charges issued in respect of the accused, Jean Pierre Bemba.

15. The accused does not dispute the fact that the Prosecutor's Office lodged a statement of appeal with the Registry of the Bangui *Tribunal de Grande Instance*.

16. The notice of appeal prepared by the Chief Registrar for that purpose reads as follows:

[TRANSLATION]

In the year two thousand and four, on the seventeenth day of September,

At the Criminal Registry of the Bangui *Tribunal de Grande Instance*;

Before us, Mr Jean Paul MAMENE ZOUKOYASSON, the undersigned Registrar;

THERE APPEARED:

The Public Prosecutor's Office represented by the First Deputy Public Prosecutor of the Bangui *Tribunal de Grande Instance*;

Who has formally entered a statement of appeal against the Order for Partial Dismissal of Charges and Committal for Trial before the *Cour Criminelle*, rendered by the Senior Investigating Judge of the Bangui *Tribunal de Grande Instance* on 16 September 2004 and notified on 17 September 2004, in the proceedings instituted against Ange Félix Patassé *et al*;

On grounds to be submitted by the Prosecutor's Office to the Indictments Chamber of the Bangui Appeals Court.³

17. It must be emphasised that it is apparent from the notice of appeal prepared by the Registrar that the Prosecutor appealed against both **the order for the partial dismissal of charges and the order for committal for trial before the *Cour Criminelle*: in other words, the Prosecutor's appeal related to the order of the Investigating Judge in its entirety, including the order for the dismissal of the charges against the accused, Jean Pierre Bemba.**

³ Annex 1.

18. No provision of the Code of Criminal Procedure of the Central African Republic imposes on the Public Prosecutor the obligation to file a submission specifying the grounds and/or scope of his appeal.

19. Under article 103 of the Code of Criminal Procedure, which is applicable in the present case:

[TRANSLATION]

- (a) The Indictments Chamber is seized directly upon appeal by the Public Prosecutor's Office, the civil complainant or the person charged.
- (b) The case file shall forthwith be transmitted to the Indictments Chamber by the Principal Public Prosecutor [*Procureur Général*], who shall append his or her submissions thereto.

20. Accordingly, it is for the Principal Public Prosecutor of the Appeals Court to file written submissions on the appeal brought by the Public Prosecutor.

21. In the present case, contrary to what the accused incorrectly contends, the Office of the Principal Public Prosecutor of the Appeals Court filed its written submissions on 22 October 2004,⁴ and 23⁵ and 24 November 2004⁶ in support of the Public Prosecutor's appeal against the order of the Senior Investigating Judge of the Bangui *Tribunal de Grande Instance* rendered on 16 September 2004.

22. From these submissions, it is clearly apparent that the Public Prosecutor's Office had referred the order of the Investigating Judge to the Indictments Chamber in its entirety, including the order to dismiss the charges against the accused, Jean Pierre Bemba Gombo.

23. Accordingly, contrary to what the accused contends, the Indictments Chamber correctly ruled on the order to dismiss the charges against him.

III: THE OBLIGATION TO NOTIFY DECISIONS RENDERED BY INVESTIGATING JUDGES AND THE INDICTMENTS CHAMBER

24. In his oral observations, the accused claimed that the applicable provisions were those of article 85 of the Code of Criminal Procedure in force at that time.

⁴ Annex 2.

⁵ Annex 3.

⁶ Annex 4.

25. In actual fact, the applicable provisions are those of article 95(a) and (b), which state:

*"[TRANSLATION] a) If the Investigating Judge considers that the act is punishable as a serious crime and that there is sufficient evidence to support the charges, **he or she shall commit the person charged [inculpé] for trial before the Cour Criminelle** and issue a custody order against that person.*

*b) **Notification of that committal order** shall, on penalty of nullity, be given as soon as possible to the accused [accusé] and his or her counsel, as well as the right to appeal the order within 48 hours of notification. A copy of the order shall be given to the accused."*

26. It will be readily apparent to the honourable Chamber on reading the provisions cited above and referred to by the accused that the obligation to notify in question here relates to the order for committal for trial before the *Cour Criminelle*.

27. However, in the instant case, neither the investigating judge nor the Indictments Chamber committed the accused for trial before the *Cour Criminelle*. The Indictments Chamber simply severed the economic crimes from the blood crimes and found that the Central African courts were unable to investigate and try them.

28. The accused also cites article 99(b) of the Code of Criminal Procedure, which provides that *"[TRANSLATION] [n]otification of any order which is subject to appeal by the defendant [prévenu] or by the civil complainant must, within 48 hours, be notified to those persons, and a copy thereof must be sent by registered post by the registrar to their counsel"*.

29. It should be noted that, according to article 99(e), *"[TRANSLATION] [t]he defendant or his or her counsel may appeal only orders issued pursuant to articles 83(a), 84, 85 and those ruling on the jurisdiction of the investigating judge."*

30. It is clear from the combined provisions of paragraphs (b) and (c) of article 99 of the Central African Code of Criminal Procedure that the defendant has no right of appeal in respect of all decisions of the investigating authorities, and that there is an obligation to notify the defendant only of those decisions in respect of which he or she has a right of appeal.

31. Article 83(a) provides: *"[TRANSLATION] If the investigating judge considers it necessary, for the purpose of discovering the truth and pursuing the investigation, to keep the person charged in detention, he or she shall issue an order*

dismissing the application [for interim release]. That order shall forthwith be notified to the person concerned".

32. **Neither the order of the Senior Investigating Judge of the Bangui Tribunal de Grande Instance nor the judgment of the Indictments Chamber of the Bangui Appeals Court related to the detention of the accused Jean Pierre Bemba Gombo. Accordingly, there was no obligation to notify him of those decisions.**

33. Articles 84 and 85 provide as follows:

Article 84: "[TRANSLATION] (a) *Interim release may, where there is no automatic legal entitlement thereto, be subject to an obligation to provide security in the form of a sum of money belonging to a third party or to the person charged.*

(b) Such security shall be paid to the administrative department responsible for collecting payment of legal costs.

(c) It shall cover:

1. legal representation of the person charged;

2. payment, in the following order, of:

- the costs claimed by the civil complainant;*
- those incurred by the public prosecutor;*
- restitution and damages;*
- fines.*

(d) The order for interim release shall state the amount allocated to each of the two parts of the security".

34. Article 85: "[TRANSLATION] (a) *If the person charged appears at every step in the proceedings and for the execution of the judgment, the obligations in respect of the security shall cease.*

(b) The first part of the security shall accrue to the State if the person charged, for no legitimate reason, fails to appear at one or more steps in the proceedings or for the execution of the judgment.

(c) However, in the event of an acquittal, the decision or judgment may order the return of that part of the security.

(d) *The second part of the security shall always be returned in the event of an acquittal or dismissal of the charges.*

(e) *In the event of a conviction, it shall be allocated to cover costs, restitution and damages and fines, in the order given in article 84. Any surplus amount shall be returned. The return of such surplus shall be subject to the issue of a certificate by the Prosecutor or the competent Judge stating that the person charged has met his or her obligations. In the event of a dispute, the Court sitting in chambers shall be competent to decide the matter".*

35. **Neither the order of the Senior Investigating Judge of the Bangui Tribunal de Grande Instance nor the judgment of the Indictments Chamber of the Bangui Appeals Court related to any security paid by the accused, Jean Pierre Bemba Gombo. Accordingly, there was no obligation to notify him of those decisions.**

36. **Neither the order of the Senior Investigating Judge of the Tribunal de Grande Instance of Bangui nor the judgment of the Indictments Chamber of the Bangui Appeals Court related to the jurisdiction of the investigating judge. Accordingly, there was no obligation to notify him of those decisions.**

37. According to the accused, the Central African judicial authorities were under an obligation to apply the provisions of article 193(f) of the former Code of Criminal Procedure and therefore to notify him of the decisions issued by them.

38. Article 193(f) in question provides: "[TRANSLATION] *A summons to appear concerning a person residing abroad shall be addressed to the competent authorities through the Public Prosecutor, the Principal Public Prosecutor, the Minister of Justice and the Minister of Foreign Affairs*".

39. According to the dictionary of legal terms, a summons to appear is a "[TRANSLATION] *method of directly seizing the Police Court [Tribunal de Police] or the Lower Criminal Court [Tribunal Correctionnel], by means of which the victim or the Public Prosecutor's Office sets a prosecution in motion in order that the perpetrator of an offence may be brought for trial, without any prior investigation*".

40. In the instant case, neither the order of the Senior Investigating Judge of the Bangui Tribunal de Grande Instance nor the judgment of the Indictments Chamber of the Bangui Appeals Court committed Mr Jean Pierre Bemba Gombo for trial before any form of trial court. Therefore, no summons could be served on him pursuant to article 193(f).

41. No legal text requires that persons against whom proceedings have been brought be notified of decisions to join or sever proceedings; such decisions are measures relating solely to judicial administration. There was accordingly no obligation to notify the accused of the Indictments Chamber's judgment severing the proceedings after it had found that the courts of the Central African Republic were unable to try the crimes falling under article 5 of the Rome Statute. Likewise, there was no ground of any kind for invalidating the said judgment for an alleged lack of notification.

IV: THE SUSPENSIVE EFFECT OF THE APPEAL TO THE COURT OF CASSATION

42. The accused maintains that he has entered an appeal against the judgment of the Indictments Chamber of the Bangui Appeals Court.

43. He contends that the appeal has suspensive effect, and that accordingly the current proceedings instituted against him before the International Criminal Court must be stayed.

44. Under article 21 of the Organic Law on the Organisation and Functioning of the Court of Cassation of the Central African Republic, "[TRANSLATION] the time limit for an appeal to the Court of Cassation and the appeal itself are suspensive only in the following cases:

- in matters of personal status;
- where there is a challenge to the authenticity of a document;
- in property registration matters;
- in criminal matters".

45. The appeal which the accused claims to have lodged against the Indictments Chamber's judgment is an appeal in a criminal matter.

46. The question arises as to whether the accused had the right to appeal that judgment.

47. It has been amply demonstrated above that the judgment of the Indictments Chamber of the Bangui Appeals Court ordering the severance of the proceedings was a measure relating solely to judicial administration, which did not in any way concern the accused directly and is not a decision against which he was entitled to enter an appeal.

FOR THESE REASONS,

These observations being an integral part of the observations of the Central African Republic as filed in the case record, as well as of its oral observations made at the hearings of 27 April 2010,

To admit the observations of the Central African Republic,

And, upholding them,

To adjudge and declare that the challenge to admissibility submitted by the Accused Jean Pierre Bemba is without merit,

And accordingly to dismiss all of his requests, applications and submissions.

WITH ALL DUE RESERVATIONS AND WITHOUT PREJUDICE.

IN WITNESS WHEREOF.

Bangui, 7 May 2010,

For the Central African Republic

[signed and stamped]

Mr Emile Bizon
Advocate at the Central African Bar