

Annex 2

Confidential

INTERNATIONAL CRIMINAL COURT

THE APPEALS CHAMBER

IN THE CASE OF: *THE PROSECUTOR v. Jean Pierre BEMBA GOMBO*

(ICC-01/05-01/08)

**Brief by the State of the Central African Republic in Response to the
Document in Support of the Defence Appeal Against the Decision of Trial
Chamber III of 24 June 2010 on the Admissibility and Abuse of Process
Challenge**

Mr Emile BIZON

I: INTRODUCTION

1. On 24 June 2010, Trial Chamber III rendered its Decision dismissing the challenge to admissibility submitted by the Defence for Jean Pierre Bemba Gombo.
2. On 28 June 2010, the Defence felt itself obliged to appeal against the said Decision under the provisions of article 82(1)(a) of the Rome Statute and rule 154(1) of the Rules.
3. The Defence filed the document in support of its appeal on 26 July 2010.
4. The Prosecution's response to the Defence's document in support of its appeal was filed on 17 August 2010 and notified to the State of the Central African Republic on 26 August 2010.
5. The State of the Central African Republic was given a time limit of ten (10) days from notification of the Prosecution's response to submit its observations; this time limit expired on 6 September 2010.
6. Trial Chamber III's *Decision on the Admissibility and Abuse of Process Challenge* of 24 June 2010 was notified to the State of the Central African Republic in English, and, since the latter considered that it required notification of the French translation in order to be in a better position to formulate its observations, the State of the Central African Republic submitted a request to this Honourable Chamber for the said notification and for the time limit to be extended to 2 September 2010.

7. By decision of 8 September 2010, the Honourable Appeals Chamber granted the Central African Republic an extension of the time limit to 13 September at 12 p.m.

8. These observations, having been filed within the abovementioned time limits, are fully admissible.

II: SUMMARY OF THE DEFENCE ARGUMENTS

9. The purpose of the Defence appeal is to ask this Honourable Chamber to set aside Trial Chamber III's Decision of 24 June 2010 and to find and declare that the case against the Accused Jean Pierre Bemba Gombo is inadmissible, or, in the alternative, to refer the case back to Trial Chamber III for reconsideration of the issue of admissibility, after the Defence has been given the opportunity to present the evidence and oral testimony of an expert on the law of criminal procedure in the Central African Republic.

10. In support of its appeal, the Defence contends:

- a) that Trial Chamber III committed an error of 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;
- b) that 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;

- c) that Trial Chamber III committed a procedural error and an error of law in admitting into evidence and accepting the testimony of the representative of the Central African Republic with regard to the inability to prosecute the accused;
- d) that Trial Chamber III committed a procedural error and an error of law in holding that the application [*pourvoi*] lodged by the Defence with the Court of Cassation of the Central African Republic in April 2010 was an abuse of process.

11. As will be demonstrated below, the arguments put forward by the Defence do not stand up to close examination, and cannot prevail. This Honourable Chamber is therefore bound to dismiss those arguments as being without merit and to confirm in its entirety the decision of Trial Chamber III of 24 June 2010 which is before it here.

III: DISCUSSION

12. Before beginning any discussion, it should be noted that the issue of the admissibility of the case against the Accused has already been examined on three occasions.

First, in the decision of 10 June 2008, which accompanied the arrest warrant for the Accused, Pre-Trial Chamber III, *proprio motu*, carried out an initial assessment of the admissibility of the case and deemed that it was admissible because “the CAR judicial authorities gave up prosecuting Mr Jean-Pierre Bemba for the

crimes referred to in the Prosecutor's Application, on the ground that he enjoyed immunity by virtue of his status as Vice-President of the DRC".¹

Secondly, Pre-Trial Chamber II, in its decision of 15 June 2009 on the confirmation of charges, also carried out an assessment of the admissibility the case and endorsed the grounds of the decision of 10 June 2008.²

Finally, by its Decision of 24 June 2010, which is now before this Honourable Appeals Chamber, Trial Chamber III examined the challenge to admissibility submitted by the Accused's Defence team and concluded once again that the case is admissible.

13. In these circumstances, this Honourable Chamber will not be taken in by the Defence's fallacious grounds of appeal.

A: The first ground of appeal regarding the nature of the order of the Bangui Senior Investigating Judge of 16 September 2010.

14. In support of its argument that Trial Chamber III's Decision of 24 June 2010 should be set aside, the Defence contends that the order of 16 December 2004 of the Senior Investigating Judge of the Bangui *Tribunal de Grande Instance* was a final decision on the merits of the case, which was not challenged by a valid appeal.

15. In support of this contention, the Defence maintains that the Public Prosecutor [*Procureur de la République*] of the Bangui *Tribunal de Grande Instance*,

¹ ICC-01/05-01/08-14.

² ICC-01/05-01/08-424.

following “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 confronted,” had concluded that there was insufficient evidence against the Accused and submitted that the proceedings against him should be terminated.

16. That it was in these circumstances that the Senior Investigating Judge of the Bangui *Tribunal de Grande Instance*, who was bound, under the law of the Central African Republic governing criminal procedure, to comply with the submissions of the Public Prosecutor, decided to discontinue the proceedings against the Accused for lack of evidence, and not because of his diplomatic immunity.

17. That it would be illogical for the Public Prosecutor to lodge an appeal with a view to having the Accused re-included in the criminal proceedings, contrary to an order of the Senior Investigating Judge which accorded with his submissions seeking that the charges against this same Accused be dismissed for lack of evidence.

18. The Defence, the Prosecution, the State of the Central African Republic and all the participants in the current proceedings are in agreement that the criminal law of the Central African Republic is based on French criminal law, so that the perspectives of French legal doctrine and jurisprudence are relevant for the purposes of interpreting the criminal law of the Central African Republic.

19. On this basis, it should first be noted that no provision of the Code of Criminal Procedure of the Central African Republic applicable in this case³ requires an investigating judge to comply with the Public Prosecutor's submissions. On the contrary, the relevant doctrine and jurisprudence indicate that it is an established principle that the investigating authorities (investigating judge and indictments chamber) are independent of the public prosecution service (Public Prosecutor's Office [*Parquet*] and Principal Public Prosecutor's Office [*Parquet Général*]). Thus, Professors Roger Merle and André Vitu state that the investigating judge is not bound to comply with the submissions of the Public Prosecutor. In their view, "[TRANSLATION] this independence is also found at the level of the indictments chamber itself, which rules on the cases of which it is seized **completely independently of the submissions of the Principal Public Prosecutor's Office [*Parquet Général*]**".⁴ Professor Bernard Bouloc likewise states "that the **investigating judge must, completely independently, determine whether or not the proceedings should be continued**".⁵ Professors Philippe Conte and Patrick Maistre Du Chambon are likewise of the opinion that the submissions of the Public Prosecutor do not bind the investigating judge.⁶

20. The principle of the independence of the investigating judge is expressly laid down in **article 43(a) of the Code of Criminal Procedure of the Central African Republic**, which provides that "[TRANSLATION] [t]he Investigating Judge

³ Code of Criminal Procedure of 15 January 1962.

⁴ R. MERLE and A. VITU, *Traité de droit criminel*, Ed. Cujas, Paris 1967, pp. 802-803, No. 829.

⁵ B. BOULOC, *Procédure pénale*, Ed. Précis Dalloz, 21st Ed. 2008, pp. 754-755, No. 792.

⁶ Ph. CONTE and P. MAISTRE DU CHAMBON, *Procédure pénale*, Ed. Armand Colin, 4th Ed., 2002, pp. 307-308, No. 438.

undertakes, in accordance with the law, any investigative measure which he or she considers necessary for the discovery of the truth”.⁷

21. With regard to the Public Prosecutor’s submissions at the close of the investigation, this principle of the freedom and independence of the investigating judge is expressed in the provisions of **article 91 of the same Code of Criminal Procedure, which provides:** “[TRANSLATION] **If the Investigating Judge is of the view** that the act constitutes neither a serious criminal offence [*crime*], a lesser offence [*délit*], or a petty offence [*contravention*], or that there is insufficient evidence against the person charged, the Judge shall make an order that there is no cause to prosecute, and if the person charged is under arrest, he or she shall be released.”

22. It is therefore completely incorrect and mistaken to maintain, as the Defence has done, that under the law of criminal procedure of the Central African Republic “[TRANSLATION] the Senior Investigating Judge was under an obligation to comply with the submissions of the Public Prosecutor...”.

23. The Defence is also incorrect and mistaken in its argument that, in light of the Public Prosecutor’s submissions, it must be concluded that the order of 16 September 2004 rendered by the Senior Investigating Judge of Bangui had acquired the force of *res judicata* and was thus final. It should be pointed out that the Public Prosecutor’s submissions, like those of the civil complainant and the defendant, are simply proposals submitted to the investigating judge’s power of determination and have no judicial authority.

⁷ Code of Criminal Procedure of 15 January 1962.

24. To argue that the Senior Investigating Judge's order of 16 September 2004 is final, it must be assumed that the said order was not appealed within the legal time limits, or that it was confirmed by the superior judicial authorities. However, in the instant case, it is undeniable that the Senior Investigating Judge's order of 16 September 2004 was appealed by the Deputy Public Prosecutor within the prescribed time limit.

25. The Defence contends that the said appeal did not concern the Accused, since it would be illogical for the Prosecutor to appeal against a decision which accorded with his own submissions.

26. This therefore raises the question of whether, under the criminal law procedure of the Central African Republic, the Public Prosecutor can lodge an appeal against a decision which accords with his or her submissions.

27. 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".

28. Again referring here to French legal doctrine and jurisprudence, we would point out that Professor Bernard Bouloc considers that the prosecution **may enter an appeal in respect of any order of an investigating judge, even where the impugned order accords with the Office's submissions.**⁸ In this regard, he cites two decisions of the Criminal Division of the French Court of Cassation.⁹

⁸ Bernard Bouloc, *Procédure pénale*, 21st Ed, Dalloz 2008, No. 800, p. 764.

⁹ Crim. 15 Nov. 1956, Bull. No. 753; Crim. 18 Jan. 1983, Bull. No. 22.

29. From the foregoing, it is self-evident 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 his or her submissions.**

30. 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.

31. The accused does not dispute the fact that the prosecution lodged a statement of appeal with the Registry of the Bangui *Tribunal de Grande Instance*.

32. 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 Prosecution Service, 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 to the Indictments Chamber of the Bangui Appeals Court”.

33. What is clear is that it is apparent from the notice of appeal prepared by the Registrar that the prosecution 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 prosecution appeal related to the order of the Senior Investigating Judge in its entirety, including the order for the dismissal of the charges against the accused, Jean Pierre Bemba.

34. 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, who shall append his or her submissions thereto”.

35. It follows that, once the appeal has been filed, it is for the Principal Public Prosecutor [*Procureur Général*] of the Appeals Court to make written submissions on the appeal brought by the Public Prosecutor. At this stage, the proceedings are no longer the concern of the Public Prosecutor. It is for the prosecutor at the hierarchically superior level to determine how the proceedings should continue, which he or she does by filing submissions with the Indictments Chamber. It is thus erroneous to seek to rely on the submissions of the Public Prosecutor before the Senior Investigating Judge in order to determine the scope of the appeal lodged against the latter’s ruling. Furthermore, as clearly demonstrated above, the Public Prosecutor is entitled to lodge an appeal against an order which accords with his own submissions.

36. In the present case, the Office of the Principal Public Prosecutor of the Bangui Appeals Court filed written submissions on 22 October 2004 and 23 and 24 November 2004 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.

37. Reading those submissions, it is quite clearly apparent that the prosecution 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.

38. What should also be noted, moreover, is that, under the criminal law system of the Central African Republic, public prosecutors (Principal Public Prosecutors and Public Prosecutors) are subject to the hierarchical principle.

39. That principle derives from the provisions of article 16(b) of the Code of Criminal Procedure of 1962, as follows:

“[TRANSLATION] Public prosecutors shall file written submissions in accordance with the instructions received by them as provided in articles 19 and 20. They shall be free to make such oral observations as they believe to be appropriate in the interests of justice”.

40. “[TRANSLATION] Article 19: The Minister of Justice may lodge an information with the Principal Public Prosecutor in respect of criminal offences of which he has knowledge, instructing him or her to institute proceedings, or to have proceedings instituted, or to file with the competent judicial authority such written submissions as the Minister considers appropriate.

41. “[TRANSLATION] Article 20

a) – The Principal Public Prosecutor has authority over all the prosecutors of the Appeals Court.

b) – With regard to those prosecutors, he has the same prerogatives as those accorded to the Minister for Justice under the preceding article (Article 19)”.

42. Hierarchical obedience requires the Public Prosecutor to comply with the instructions of the Principal Public Prosecutor. Thus, any action, of whatever kind, taken by the Public Prosecutor in the course of proceedings before the Indictments Chamber could not be contrary to the position of the Principal Public Prosecutor’s Office, his hierarchical superior.

43. It is clear that it has always been the wish of the State of the Central African Republic to see the Accused answer for his responsibility for the serious large-scale human rights violations suffered by so many on the territory of the Central African Republic as a result of his actions.

44. The Defence demonstrates particular bad faith in travesty what the Advocate General said at the hearing of 24 November 2004 in order to support its claim that he recommended that the Accused should not be prosecuted.

45. The Defence’s arguments on this matter contain the seeds of their own destruction. Thus, they cite the following alleged statement by the Advocate General:

[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;

46. We would recall here that there have been three sets of submissions from the Bangui Principal Public Prosecutor's Office:

1) The submissions of 22 October 2004, in which the Principal Public Prosecutor of the Bangui Appeals Court "[TRANSLATION] requests that the Indictments Chamber refer BOMBAYEKE Ferdinand to the *Cour Criminelle*, to be tried there in accordance with the law" for complicity in the crimes of "[TRANSLATION] premeditated murder, fatal wounding, arbitrary detention and false imprisonment, concealment of bodies, theft, pillaging, malicious wounding [*coups et blessures volontaires*], destruction of property, violation of State security, collusion with a foreign power, complicity in premeditated murder, fatal wounding, misappropriation of public funds, complicity in the misappropriation of public funds, forgery and making use of forged documents in relation to authentic public or private documents, complicity in forgery and making use of forged documents", offences for which former President Ange Félix PATASSE and several other individuals, including the Accused, Jean-Pierre BEMBA GOMBO, were being prosecuted.

2) The additional submissions of 23 November 2004 in which the First Advocate-General of the Bangui Appeals Court contended "[TRANSLATION] that, in respect of Jean Pierre BEMBA, who supplied the former President Ange-Félix PATASSÉ with large numbers of human resources – the Congolese rebels also called BANYAMULENGUES, who spread devastation over Central African soil during those sad times – complicity in these crimes has been indisputably established in

accordance with article 37 of the Criminal Code; considering that it is not possible to permit the charges against him to be dismissed”.

3) The submissions of 24 November 2004, in which the Principal Public Prosecutor stated “[TRANSLATION] that it is apparent from the case materials that, in addition to the misappropriation of public funds, Ange Félix PATASSE et al. [including the Accused, Jean-Pierre BEMBA] are accused of serious violence to life and person; that the majority of these crimes fall within the jurisdiction of the International Criminal Court” and “requests the Indictments Chamber to hold that the offences affecting persons, otherwise known as blood crimes, shall be tried by the International Criminal Court, and the misappropriation of public funds by the *Cour Criminelle* of the Central African Republic”.

47. It should be noted that these three (3) sets of submissions complement one another, and that they combine to form a single whole. Taken together, they show that the Bangui Principal Prosecutor’s Office of Bangui asked that:

- 1) the Accused’s dismissal from the case at first instance by the Senior Investigating Judge be challenged;
- 2) that the blood crimes be severed from the financial offences, the latter to be tried before the *Cour Criminelle* of the Central African Republic and the former by the International Court.

48. Thus it was for the financial offences that, at the Indictments Chamber hearing, the Advocate-General requested that “[TRANSLATION] all the other

accused persons be referred to the *Cour Criminelle*, except for Mr BEMBA, given his status as Vice-President of the DRC”.

49. Trial Chamber III was thus correct in ruling as it did, holding that there had not been any decision in the Central African Republic which definitively put an end to the proceedings against the Accused, Jean-Pierre BEMBA GOMBO.

50. Accordingly, the State of the Central African Republic respectfully requests that this Honourable Chamber dismiss the grounds submitted by the Defence on this head as being without merit.

B: The second ground of appeal concerning the request for the submission of evidence by an expert in the law of the Central African Republic

51. The Defence challenges Trial Chamber III for having dismissed its request for the submission of evidence from an expert in the law of the Central African Republic on the issue of whether there was an obligation to notify the Accused of the Bangui appeal documents and decisions and on the consequences of the lack of such notification.

52. The Defence alleges that Trial Chamber III committed a procedural error which substantially affected the correctness of its findings: it argues that, in the present case, Trial Chamber III made a definitive interpretation of the law of the Central African Republic solely based on the evidence presented by the representatives of the Central African Republic, without seeking a second expert opinion, which a Defence expert would have been able to provide. The Defence contends that the Chamber placed it in a situation of inequality of arms vis-à-vis the CAR representatives, whose

statements were given greater weight solely on the basis of a presumption of their expertise in local law.

53. It should first be noted that the Defence does not specify which procedural rule the Chamber allegedly violated in dismissing its request to have an expert present his or her views, and for the said alleged expert to give testimony.
54. It must further be noted that the Defence submitted its request on 24 April 2010, just three days before the hearing of 27 April 2010, where the participants were due to make their observations on the challenge to admissibility submitted by the Defence.
55. There is a principle of law which governs all judicial proceedings, and which is generally recognized in all legal systems: the adversarial principle. This principle requires the participants in the proceedings to inform each other, in a timely fashion, of the factual grounds on which their claims are based, the evidence that they are presenting and the legal grounds on which they are relying, in order to enable each party to organise itself more effectively and adequately to prepare its arguments.¹⁰
56. If there has been any violation of a procedural rule, it has only been by the Defence, who sought to submit to the Chamber evidence which had not been produced in a timely manner such that each of the participants was in a position to organise its arguments in that regard.

¹⁰ In the sense of article 64(3)(c) of the Rome Statute.

57. Furthermore, the issue on which the alleged expert was to report and testify concerned whether there was an obligation to notify the Accused of the Bangui appeal documents and decisions and on the consequences flowing from the failure to effect such notification. However, in its oral observations, the Defence had highlighted the issue and put forward arguments in support of its view. It may readily be suspected that the views and arguments thus presented were those that the expert would have presented and submitted.
58. The representatives of the Central African Republic, who, like the other participants, were faced with this issue at the oral hearings, were granted leave to submit their responses in writing. The Defence was granted leave to reply to these responses, so that it had the opportunity to address the issue twice. The Defence thus had two opportunities to present the views of its expert; if it failed to do so, it cannot rely on its own misconduct.
59. It should also be noted that the Defence had two opportunities to present its views on whether there was an obligation to notify the Accused of the Bangui appeal documents and decisions and on the consequences flowing from the failure to effect such notification, while the representatives of the Republic could only submit their views once. It is therefore incorrect to allege that the Defence finds itself in a situation of inequality of arms vis-à-vis the representatives of the CAR, notwithstanding the fact that the CAR is not a party to the proceedings.
60. Under article 64(9)(a) of the Rome Statute, “[t]he Trial Chamber shall have, inter alia, the power on application of a party or on its own motion

to rule on the admissibility or relevance of evidence”. Similarly, article 69(4) of the Statute provides that “the Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence”.

61. It follows that the issue of the relevance and admissibility of evidence falls under the discretionary power of the judges. Thus, in ruling on the relevance and admissibility of evidence from the purported expert in the law of the Central African Republic, Trial Chamber III was simply exercising the discretionary powers granted to it by the Statute.
62. For this reason, this Chamber is bound to dismiss as without merit the grounds put forward by the Defence under this head.

C: The third ground of appeal concerning the inability of the Central African Republic to investigate and try the case against the Accused

63. In arguing that Trial Chamber III’s decision should be set aside on this ground, the Defence contends that the Chamber committed an error of law concerning the matters relied on by it in order to conclude that the CAR was unable to prosecute and try Mr Jean Pierre Bemba, and a procedural error in accepting these matters as decisive, although they were not sufficiently supported by evidence.
64. According to the Defence, none of the criteria relied on by the Trial Chamber corresponded to those laid down by article 17(1)(b) of the

Statute regarding a State's inability to investigate and try offences falling under the jurisdiction of the International Criminal Court. For the Defence, a State's inability to prosecute means the total collapse of its national judicial system, the disintegration of domestic judicial institutions; this was said not to be the case for the Central African Republic, given the plethora of hearings and the fact that the Office of the Prosecutor was awaiting the decision of the Court of Cassation before opening an investigation into the facts of the present case.

65. Under article 17(3), "[i]n order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse **or** unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings".
66. It is apparent from this provision that the notion of a State's inability is composed of two alternatives: either the "total or substantial collapse of its national judicial system", or its "unavailability", so that the State "is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings". It is not the case that both elements need to be present at the same time, but rather that there is a choice between two possibilities. A State's inability can thus result from just one of these two possibilities.
67. Having analysed the evidence and arguments presented by the participants, the Chamber held that one of the alternative criteria required for inability was present: "the CAR national judicial system is

- ‘unavailable’, to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings”. The Chamber thus applied the law correctly, and its decision cannot be characterised as an error of law.
68. On the contrary, it is the Defence’s argument criticising this Decision that is totally misconceived, because it views the matter through the prism of a definition which deliberately ignores the second of the possible criteria for demonstrating the inability of a State to investigate and try, as understood by the Rome Statute.
69. With regard to the criteria characterising the unavailability of the State of the Central African Republic to investigate and try the Accused, the Defence submits that the Trial Chamber should have required Counsel for the Central African Republic to provide proof of his statements that the justice budget is “[TRANSLATION] ridiculously insignificant” and that the country lacks the human resources to prosecute a case of the magnitude of the instant case.
70. It is common knowledge that the Central African Republic is among the poorest countries on the globe, and the information concerning its budget is not secret. As a result of its extreme poverty, it is indisputable that the Central Republic does not have the financial or technical means, or the appropriate human resources, to investigate and prosecute a case of the magnitude of the instant case. It would not be misplaced to make a comparison with Senegal, which, although better equipped than the CAR both financially and in terms of human resources, is experiencing

difficulties in investigating and prosecuting the case against the former President of Chad, Hissen Habré.

71. The other matters relied on by the Central African Republic concerning the instability in the subregion are also common knowledge. To appreciate this, it would suffice to refer to the various reports of the United Nations Security Council on each country of the subregion.
72. Pursuant to article 69(6) of the Statute, “[t]he Court shall not require proof of facts of common knowledge but may take judicial notice of them”.
73. The Trial Chamber therefore did not need to make specific requests of Counsel for the Central African Republic to establish facts of such common knowledge.
74. Furthermore, to reach the conclusion that it did, the Chamber held that the statement of Counsel for the Central African Republic was supported by the findings of the Court of Cassation.
75. Finally, it should be noted that, even if the Trial Chamber was mistaken on this point, which was not the case, that error would not have had any impact on its decision. Thus, as the Chamber judiciously noted, it was not obliged to consider this issue, once it had held that the case was admissible by virtue of the fact that there had not been any decision not to prosecute, and that the authorities of the Central African Republic had decided to refer the case to the jurisdiction of the International Criminal Court.

76. From the foregoing, it is self-evident that the Defence's criticisms of the Decision rendered by Trial Chamber III are without basis. May it therefore please this Honourable Chamber purely and simply to dismiss them,

D: The fourth ground of appeal concerning the abusive nature of the appeals submitted by the Accused to the Courts of the Central African Republic in April 2010

77. According to the Defence, in ruling that the appeals submitted by the Accused to the courts of the Central Republic in April 2010 were an abuse of process, Trial Chamber III "significantly affected the fair and expeditious conduct of the current proceedings".
78. The Defence submits that the representatives of the CAR admitted that, under the law of the Central African Republic, the application submitted by the Accused to the Court of Cassation in April 2010 has a suspensive effect on the decision of the Indictments Chamber of the Bangui Appeals Court referring him for trial before the ICC. It is the Defence's view that the Trial Chamber avoided answering the question regarding the impact of that effect on the present proceedings.
79. First, the representatives of the CAR have never admitted that the application lodged by the Accused has a suspensive effect on the decision of the Bangui Indictments Chamber severing the prosecution of the financial and economic offences from that on account of the crimes against humanity. On the contrary, the Central African Republic quite expressly stated that the suspensive effect, as established by law, of an appeal in a criminal matter does not apply to the application lodged by the Accused,

since the decision in question was purely a matter of judicial administration, and one in respect of which the Accused had no legal right of appeal.

80. Furthermore, it should be emphasised that the referral of the case to the ICC was not the result of a decision by the Indictments Chamber of the Bangui Appeals Court, but of action taken by the State of the CAR. Therefore, whether or not the decision of the Indictments Chamber was suspended had no bearing on the seisin of the ICC.
81. Moreover, to justify his abnormal delay in appealing to the courts of the Central African Republic, alleges that his Counsel in the Central African Republic have been subject to harassment.
82. In reply to that, it should simply be noted that, until the date of the first of the appeals submitted by the Accused in April 2010, he had never engaged any Counsel whatever to defend him in the Central African Republic. It is significant in this regard that, in the Senior Investigating Judge's order of 16 September 2004, it is stated that the Accused was not represented by Counsel, nor did he file a written brief. The Accused's allegations in this regard are pure fabrication on the part of an individual convinced that he is the victim of attacks and hostility from persons real or imaginary.
83. This ground submitted by the Defence is once again proved to be without merit, and this Chamber will dismiss it.

84. From all of the foregoing, and on the strength of these observations before Trial Chamber III, and of any other grounds to be inferred, substituted or additionally provided of the Court's own motion, including at the public hearing,

85. The State of the Central African Republic respectfully requests this Honourable Chamber to admit the present submissions,

And, upholding them,

To dismiss the appeal lodged by the Accused Jean-Pierre Bemba as being without merit,

To confirm the Decision of the Trial Chamber in all of its terms.

WITH ALL DUE RESERVATIONS AND WITHOUT PREJUDICE.

IN WITNESS WHEREOF.

Bangui, 13 September 2010

For the Central African Republic

[signed]

Mr Emile BIZON

Advocate at the Bar of the Central African Republic