

FACT SHEET: ICC BEMBA APPEAL

Jean-Pierre Bemba Gombo is a 55-year old former vice president, businessman, and militia leader in the Democratic Republic of Congo (DRC), who was convicted of crimes related to the 2002-2003 conflict in the Central African Republic (CAR).

- In March 2016, [Bemba was convicted](#) of committing, as a military commander, two counts of crimes against humanity (murder and rape); and three counts of war crimes (murder, rape, and pillaging).
- The [18-year prison sentence](#) handed down to him is the longest issued by the ICC. He appealed both the conviction and the sentence. The prosecutor also appealed to raise his prison sentence to 25 years.
- Prior to his sentencing in June 2016, Bemba had been in ICC detention for nearly eight years. He was originally transferred to the court on July 3, 2008, and his [trial opened](#) in November 2010.
- This is the first ICC case to heavily focus on [sexual and gender-based crimes](#): rape as a war crime and a crime against humanity. Sex crimes against women, men, and children were reportedly used at a “tool” to terrorize the civilian population in Central African Republic during the conflict.
- This is the first case in which an accused was charged and convicted with [command responsibility](#) under Article 28 of the Rome Statute. This is the legal liability of a commander or civilian supervisor for crimes committed by subordinate members of armed forces or other persons under their control.
- Besides Bemba, the ICC has convicted and sentenced three other individuals: Thomas Lubanga, Germain Katanga, and Ahmad Al Faqi Al Mahdi. Lubanga’s appeal against conviction was rejected; Katanga did not appeal, nor did Al Mahdi, who was convicted on his own guilty plea.

The Conviction

This case concerns crimes committed from October 26, 2002 to March 15, 2003 during an armed conflict in the CAR. During the conflict, the national armed forces under then president Ange-Félix Patassé joined forces with the Movement for the Liberation of Congo (MLC), led by Bemba, to fight against the forces of François Bozizé, who led a successful coup against Patassé in 2003. (Bozizé remained the President of the CAR until March 2013 when he was overthrown in another violent coup that is subject to a different ICC investigation.)

The trial chamber found that MLC forces carried out widespread and systematic attacks against the civilian population in CAR, including rape, murder, and pillaging. The judges unanimously determined that Bemba knew that his forces were committing or about to commit crimes, but he failed to take reasonable measures within his power to deter or to punish these crimes. They stated that while Bemba was not in the CAR, he was able to issue operational orders directly via

radios and satellite phones to commanders in that country and that at all times he maintained effective control over his troops deployed in that conflict.

According to the [judgement](#), Bemba's actions, which included general public statements to troops not to mistreat civilians, the formation of two investigative commissions, and the trial of seven low-ranking MLC soldiers on charges of pillaging goods of limited value, were "a grossly inadequate response to the consistent information of widespread crimes committed by MLC soldiers in the CAR of which Mr. Bemba had knowledge."

Appeal against Conviction

Appeal [submissions](#) heavily focused on the interpretation of what constitutes a military commander's responsibility for crimes committed by their subordinates and the level of knowledge a commander needs to have about subordinates' crimes in order to bear criminal liability.

Defense lawyers argued that Bemba did not maintain effective control over his troops accused of attacking civilians because there was no physical evidence of any orders given by him or evidence of him on the ground commanding the troops. They challenged findings by the trial chamber that the MLC had an organizational policy to attack civilians. Bemba's lawyers also argued that judges [denied him a fair trial](#) and unjustifiably dismissed exculpatory evidence, leading to his conviction. The defense faulted trial chamber judges for allowing the prosecution to [access privileged communication](#) between Bemba and his lawyers and for receiving submission from the prosecution *ex parte*.

The prosecution countered that while some MLC members may have made some "minor efforts" to halt criminality, this did not contradict the existence of a policy to attack civilians. The prosecution agreed with the trial chamber that the limited measures taken by the MLC concerning crimes against civilians were grossly inadequate and insincere.

Appeals against the Sentence

During the appeal hearing in January, the defense contended that the trial chamber gave Bemba a sentence [disproportionate to his conviction](#) and that the time Bemba has spent in ICC detention since his arrest (10 years to-date) is sufficient time served. Moreover, the defense claims that, unlike most commanders convicted in international courts, Bemba did not encourage his troops or personally participate as they committed rape and murder.

The prosecution argued that the gravity of the crimes warrants a 25-year sentence. Victims' lawyers also agreed that 18 years is too low. Both parties have also appealed against the sentence.

Bemba's Other Conviction at the ICC for Witness Tampering

Bemba has already been tried for interfering with witnesses in the course of his trial at the ICC. In October 2016, he was [convicted](#) of tampering with 14 witnesses who testified for him, for which he received a [one-year prison sentence](#) and a €300,000 fine. Following an appeal, his convictions for giving false testimony and corruptly influencing witnesses were [upheld](#), but the conviction for presenting false oral testimony was overturned. Appeals Chamber judges ordered the trial chamber to determine new sentences for Bemba and his two former lawyers.

CONTACT INFO

For more information on this and other trials at the ICC, visit www.ijmonitor.org. Follow us on Twitter: @ijmonitor and @OSFjustice.

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