

BRIEFING PAPER

The Trial of Jean-Pierre Bemba at the ICC: Judgment

EXECUTIVE SUMMARY

On March 21, 2016, the International Criminal Court (ICC) in The Hague will deliver the verdict in the trial of Jean-Pierre Bemba Gombo, marking the fourth case to reach this stage at the ICC. This background paper, produced by the Open Society Justice Initiative, summarizes the main issues in the case, with hyperlinks to relevant portions of our trial monitoring website www.IJMonitor.org.

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The Charges

Jean-Pierre Bemba, a former vice president, businessman, and militia leader in the Democratic Republic of Congo (DRC), is charged with two counts of crimes against humanity: murder and rape; and three counts of war crimes: murder, rape, and pillaging. These crimes were allegedly committed during an armed conflict in the Central African Republic (CAR) between October 26, 2002 and March 15, 2003. This conflict led to a referral by the CAR government to the ICC, which launched its investigation in May 2007. (In 2014, the ICC Office of the Prosecutor (OTP) opened a second investigation in CAR relating to crimes since 2012.)

The charges of rape are significant. This is the first case at the ICC to heavily focus on sex crimes: rape as a war crime and a crime against humanity. Sex crimes against women, men, and children were reportedly used as a “tool” to terrorize the civilian population in CAR.

The Legal Issues

The trial of Mr. Bemba, which started in November 2010, examines what happened in the CAR during armed conflict between October 26, 2002 and March 15, 2003. To find Mr. Bemba guilty, the prosecution must prove that victims of the alleged crimes were civilians or other protected persons, and that the crimes can be attributed to him as the commander of the forces that directly committed the alleged crimes in the CAR.

Throughout the trial, the prosecution has sought to prove that Mr. Bemba had “command responsibility” for these crimes. Command responsibility is the legal liability of a commander or civilian superior for crimes committed by subordinate members of armed forces or other persons under their control. A commander can be held criminally responsible even if he or she did not order crimes to be committed. It is enough for the commander to fail to prevent, repress, or punish crimes committed by subordinates. An essential element is that the commander knew or should have known that the crimes were being committed.

The Prosecution

The prosecution claims that during the period the crimes were allegedly committed in the CAR, Mr. Bemba was the president and commander in chief of the Movement for the Liberation of Congo (MLC), a rebel group turned political party, and had effective command and control over the MLC. During the trial, the prosecution presented evidence that while MLC forces were in CAR, Mr. Bemba issued direct orders, which his soldiers followed. Prosecution evidence also showed that Bemba directed and disciplined MLC commanders, and he had the power to prevent and repress the commission of crimes.

The prosecution asserted that evidence shows beyond a reasonable doubt that Mr. Bemba knew, or at least should have known, that his soldiers were committing crimes. The prosecution claimed that Mr. Bemba visited the CAR during the military campaign, mentioned reports of war

crimes in private conversation and in speeches to his troops, and suspended two commanders suspected of pillaging.

The prosecution also argued that Mr. Bemba's response to reports of MLC crimes was not sufficient, that MLC training was not effective, and its code of conduct was not widely available to its soldiers. Presentation of the prosecution's evidence closed in March 2012.

The Defense

Bemba has pleaded not guilty to all charges. The defense did not argue that crimes were not committed; rather it contended that Mr. Bemba did not have effective command and control over MLC forces during their intervention in the CAR. The defense said that it was then-CAR President Ange Félix Patassé who invited the MLC into the country. It argued that the MLC worked closely with the CAR army and that President Patassé had command and control over MLC forces, not Mr. Bemba.

The defense claimed that Mr. Bemba was in the Democratic Republic of Congo during the military campaign and neither received concrete information from his chain of command regarding alleged crimes nor possessed the means to issue direct orders to his troops deployed in the CAR.

The defense also argued that Mr. Bemba took all the necessary and reasonable steps within his power to prevent or repress crimes by MLC troops. They claimed that MLC troops received comprehensive military training, including on the importance of human rights law, and pointed to a published code of conduct for the MLC.

Furthermore, the defense submitted that any of the numerous armed groups that were active in the conflict could have committed the crimes for which Bemba was on trial.

Victim Participation

The trial granted 5,229 victims the right to participate in the proceedings against Mr. Bemba at the ICC. This is the highest number of victim participants to-date allowed in any trial conducted by the court. Two victims provided testimony during the trial, describing crimes, including gang-rapes, allegedly committed by MLC soldiers during the armed conflict. Three other victims appeared before the judges to express their views and concerns to the chamber. These three victims were not questioned under oath and their testimony did not form part of the evidence.

Possible Changes to Charges

Regulation 55 of the Regulations of the Court is a provision that permits trial chamber judges to base a conviction on a different mode of liability than originally charged, as long as the change does not exceed the facts and circumstances described in the charges. Regulation 55 can also be applied to convict an accused of a crime other than that with which he was originally charged. To change the mode of liability or amend the charges, the trial chamber must give a notice to the parties.

In Bemba's case, Trial Chamber III invoked Regulation 55 one month into the defense's presentation of the evidence. The potential change in the legal characterization of the charges focuses on the issue of knowledge. In the original charges, the prosecutor alleged that Mr. Bemba knew that MLC troops were committing atrocities in the CAR. Subsequently, judges stated they may consider that Mr. Bemba either knew or—owing to the circumstances at the time of the commission of the crimes—should have known that MLC forces were committing or about to commit crimes.

Allegations of Witness Tampering

On November 20, 2013, the Court [issued five arrest warrants](#) against Mr. Bemba, two senior members of his defense team, a Congolese Member of Parliament, and a defense witness. The prosecution sought arrest warrants based on a court authorized interception of communications (including emails and phone calls) between Mr. Bemba and his defense team. The arrest warrants alleged that Mr. Bemba and his four co-accused conspired for the purposes of presenting false or forged documents and bribing persons to give false testimony in the case against Mr. Bemba. Those crimes are offences against the administration of justice and punishable under the ICC Statute. Pursuant to the arrest warrants, the four individuals were arrested and transferred to the Court (they were later released on the condition that they are present in The Hague for the trial). The arrest of members of Mr. Bemba's defense team occurred at a critical moment when the presentation of evidence had ended and the defense team was preparing for final arguments.

[Following a decision confirming the charges](#) against all five co-accused, the witness tampering [trial began](#) on September 29, 2015. The prosecution has concluded presentation of its cases and the defense presentation of evidence is [currently ongoing](#).

Article 70 of the Rome Statute grants the court jurisdiction to investigate and prosecute anyone for offenses against the administration of justice. Crimes within Article 70 include knowingly presenting false or forged evidence, corruptly influencing a witness, and obstructing or interfering with the attendance or testimony of the witness. A person convicted could face up to five years imprisonment, a fine, or both.

The evidence in the witness tampering case against Bemba *et al.* may have implications for the credibility of witnesses in the main Bemba trial. However, judges in the main trial [did not allow](#)

[evidence](#) from this case into the record, citing potential fair trial issues and ongoing litigation in the Bemba *et al.* trial. Defense lawyers petitioned judges to stay proceedings in the main trial because, it argued, in exercising its powers under Article 70, the prosecution did not comply with its duty under Article 54 to ensure that its investigative and prosecutorial actions were consistent with Mr. Bemba's right to a fair trial. Judges ultimately [declined this request](#).

The defense claimed that the arrests of Mr. Bemba's lawyers [compromised the defense strategy](#) and argued that legitimate reasons exist for payments to witnesses, such as reimbursement for travel expenses. It stated that such payments are an [accepted practice](#) within the court.

Reopening of the Presentation of Evidence

The defense for the accused has also contended that witness tampering took place on the prosecution's side. On October 2, 2014, six months after the evidence phase of the trial had closed, Trial Chamber III [reopened the presentation of evidence](#) in Mr. Bemba's case in order to recall a prosecution witness. The chamber recalled Witness 169, who initially testified in July 2011, to testify about alleged collusion between prosecution witnesses and promises or benefits provided by the prosecution in exchange for witness testimony. These allegations arose from a series of letters the witness sent to the prosecution and Victims and Witnesses Unit, which were also disclosed to the defense, and have bearing on issues of witness credibility. The most recent letter, from August 5, 2014, alleges Witness 169 has "evidence of corruption and ill-treatment of prosecution witness."

The Rome Statute does not expressly provide for the reopening of a case in order to submit additional evidence. However, judges found that "exceptional circumstances" existed that permitted the reopening of the presentation of evidence because of the new allegations on ill-treatment of witnesses raised in the August 5 letter. Witness 169 [reappeared in court](#) on October 22, 2014, but all of his testimony was given in closed session.

Evidence Presented by the Prosecution

The prosecution presented 40 witnesses against Jean-Pierre Bemba.

Selected Testimony Describing the Crimes

Witness 68 testified that [two MLC soldiers raped her](#) while a third soldier held her arms to ensure she remained on the ground. She said that after her rape she was diagnosed with HIV/AIDS. Witness 68 testified that the soldiers who raped her spoke Lingala, a language spoken in the DRC and known to have been the language used by MLC soldiers.

Witness 22 described how [MLC soldiers stormed her house](#), gang-raped her, looted her home, and shot the family dog. She testified that her attackers spoke Lingala and French.

Selected Testimony Linking Bemba to the Crimes

Witness 213 was an insider witness and former member of the MLC who testified that [Mr. Bemba had a satellite phone at his residence](#) that he used to communicate orders to his commanders. He said Mr. Bemba also had a communication center a few meters from his residence, from which operators received daily reports via radio about operations in the CAR during 2002 and 2003. He said he heard Mr. Bemba issue orders about the CAR operations.

Evidence Presented by the Defense

The defense for Jean-Pierre Bemba called a total of 34 witnesses.

Selected Testimony Disconnecting Bemba from Crimes

Witness Do4-49 is a former member of the MLC, who testified that [troops in the group were well trained](#). He said military discipline, as set out in the group's code of conduct, was emphasized during training and was popularized among soldiers by being published in the Congolese language Lingala and in French. He said the MLC's operations in Congo were coordinated through a communications center located two or three meters from the residence of Colonel Dieudonné Amuli, the MLC chief of staff.

Witness Do4-64 is a former official in the government of President Patassé of the Central African Republic. He testified that the [MLC were not under the command of Mr. Bemba](#), but rather that of Central African Republic generals. He stated that CAR authorities provided MLC troops with uniforms, communications equipment, vehicles, weapons, and monetary allowances for food and other necessities. He also said that Mr. Bemba's troops did not arrive in the CAR until October 30, 2002, contrary to prosecution claims that they started committing crimes in the country on October 26, 2012.

Evidence Presented by Victim Participants

The court received live statements from five participating victims at the end of the prosecution's presentation of evidence. Two were heard as witnesses, and their testimony formed part of the trial record. The other three victims presented their views and concerns, but their testimony did not form part of the evidence.

Victims' testimony can only form part of the evidence provided that certain criteria are met, including: whether the proposed evidence is consistent with the rights of the accused, whether it is necessary to establish the truth, whether it will help the chamber in understanding the facts, and whether the evidence is not duplicative of something that has already been presented by the OTP.

Pulchérie Makiandakama (Victim a/0866/10) testified that she was [twice gang-raped](#) by soldiers belonging to the accused's militia. She described pillaging and murder in the Mongoumba locality.

Judes Mbetingou (Victim a/1317/10) testified about [indiscriminate pillaging and rape](#) by Mr. Bemba's MLC fighters upon their arrival in Sibut on February 24, 2003.

Chamber's Witnesses

Judges also called two individuals to testify in Mr. Bemba's trial pursuant to Articles 64 and 69 of the Rome Statute. Article 64 of the Rome Statute states that a trial chamber may "order the production of evidence in addition to that already collected prior to the trial or presented during the trial to the parties" while Article 69 provides the court with authority to request the submission of all evidence necessary "for the determination of the truth."

Witness CHM-01 [testified through video link](#), but all evidence was heard in closed session. According to the judges, the name of this individual was "repeatedly mentioned" by prosecution and defense witnesses, yet none of the parties in the trial had called him to testify. A second individual, who was also repeatedly mentioned by the parties throughout the trial, declined to give evidence for reasons not made public.

What Happens after the Judgment?

To reach its judgment in the case of Mr. Bemba, judges will have reviewed transcripts from the testimony of 77 witnesses and 704 items of documentary evidence. Article 74 of the Rome Statute states that the decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges and must be based only on evidence submitted and discussed before the trial.

Judges' decisions do not have to be unanimous, but in order to find the accused guilty, a majority of the judges must find that the evidence proved beyond reasonable doubt the guilt of the defendant. Judges can reach various conclusions. Judges can find the accused guilty of all charges. They can find the accused not guilty if the prosecution fails to meet the burden to prove the defendant's guilt beyond a reasonable doubt. Judges can also find the accused guilty of some charges but acquit the defendant of others. It is also possible that judges find sufficient evidence that the crimes were committed but insufficient evidence (that is, evidence not beyond reasonable doubt) about the accused's responsibility for the crimes.

If Mr. Bemba is found guilty on any or all of the charges, he will remain in detention at the ICC and await a decision on sentencing. If he is acquitted of the charges, he will be released as a free man. However, in this case, in the event of an acquittal, the prosecution may request that Mr. Bemba remains detained until the completion of his second trial for witness tampering.

The defense and the prosecution both have the right to appeal the decision in accordance with the ICC's Rules of Procedure and Evidence.

If the accused is convicted, the Court will initiate proceedings on reparations for the victims of the crimes. Unlike previous cases at the ICC, Bemba is the first accused who is not indigent and could be found liable to pay for reparations from his own funds.

Timeline of Significant Events

October 3, 2001: The Central African Republic (CAR) ratifies the Rome Statute.

December 21, 2004: The CAR government refers crimes under the Rome Statute to the ICC.

June 2005: The CAR government provides documents to the ICC Office of the Prosecutor regarding alleged crimes on its territory during 2002-2003. The prosecutor begins an analysis of the situation.

May 10, 2007: The prosecutor informs the CAR government, the Pre-Trial Chamber, and the ICC president that he is opening of a full investigation of the CAR situation.

May 22, 2007: The prosecutor publicly announces the launch of his investigation.

May 9, 2008: The prosecutor requests that Pre-Trial Chamber III issue a warrant of arrest for Jean-Pierre Bemba.

May 23, 2008: Pre-Trial Chamber III issues a warrant of arrest and a request to the government of Belgium to arrest Bemba. Both documents are under seal.

May 24, 2008: Belgian police arrest Bemba near Brussels. The Pre-Trial Chamber unseals the arrest warrant.

June 10, 2008: Pre-Trial Chamber III issues a new warrant of arrest to replace the warrant of May 23, 2008. The chamber adds two counts of murder, one as a war crime, and the other as a crime against humanity. The chamber also issues a request to Belgium for the surrender of Bemba to the ICC.

July 3, 2008: Belgium transfers and surrenders Mr. Bemba to the ICC.

July 4, 2008: Bemba makes his first appearance in court. Pre-Trial Chamber III explains the charges against him.

January 12-15, 2009: Pre-Trial Chamber III holds hearings to determine whether the prosecutor has sufficient evidence against Bemba to proceed to trial.

June 15, 2009: Pre-Trial Chamber III decides that there is enough evidence to proceed to trial on three counts of war crimes (murder, rape, and pillaging) and two counts of crimes against humanity (murder and rape). The chamber rejects the prosecution request for three other counts.

November 5, 2009: Trial Chamber III announces that the trial will begin on April 27, 2010.

February 25, 2010: The defense for Bemba submits an application to the trial chamber arguing that the case is inadmissible before the ICC. They cite three grounds for the challenge. They argue that the case could be properly conducted in the CAR, so it is improper for the ICC—a court of last resort—to step in. They argue that the crimes alleged to have been committed are not serious enough to trigger ICC jurisdiction. They also argue that Bemba has suffered an abuse of the judicial process.

March 8, 2010: Trial Chamber III decides to postpone the start of the trial until July 5, 2010. It cites a need to consider the defense application arguing that the Bemba case is not admissible before the ICC before any trial can begin.

June 24, 2010: Trial Chamber III rejects the defense challenge on admissibility of the case before the ICC. It finds that CAR is unable to conduct the trial domestically, that the gravity of the alleged crimes is sufficient, and that the defense complaint about abuse of process “is without foundation.”

June 28, 2010: Bemba files a notice of appeal against Trial Chamber III’s decision on the defense challenge on admissibility of the case before the ICC.

July 26, 2010: Defense lawyers file documents before the Appeals Chamber of the ICC in support of Bemba’s appeal, raising four grounds of appeal.

October 19, 2010: The Appeals Chamber delivers its decision in which it upholds the Trial Chamber’s earlier decision to dismiss Bemba’s admissibility challenge, thus paving the way for Bemba’s trial to commence.

November 22, 2010: Bemba’s case officially opens before Trial Chamber III of the ICC.

November 23, 2010: First witness for the prosecution begins testimony.

March 20, 2012: The 40th and final witness for the prosecution completes testimony before the ICC.

May 1, 2012: The first victim participating in the trial begins testimony. Two out of 5,229 victims who were participating in the trial at the time were selected to provide evidence to the court. Three other victims presented their views and concerns to the court.

August 14, 2012: The defense begins its case.

November 14, 2013: The 34th witness for the defense completes testimony before the ICC.

November 19, 2013: Trial Chamber III refuses to grant an extension to the defense to present its final two witnesses, ending the presentation of evidence by Mr. Bemba’s defense.

November 20, 2013: Single Judge Cuno Tarfusser issues a warrant of arrest for Bemba; Bemba’s lead counsel, Aimé Kilolo-Musamba; case manager Jean-Jacques Mangenda Kabongo; former aide Fidèle Babala Wandu; and defense witness Narcisse Arido for allegedly forging evidence and bribing witness.

November 23-24, 2013: Bemba's lead counsel and three others are arrested for crimes against the administration of justice. All are subsequently ordered to be released on October 21, 2014.

April 7, 2014: Trial Chamber III officially closes the presentation of the evidence phase of the trial.

October 2, 2014: Trial Chamber III reopens the presentation of the evidence in the case against Jean-Pierre Bemba to hear testimony on issues of witness credibility. The judges also reschedule final oral submissions, which were originally planned to begin on October 13, 2014.

November 12-13, 2014: Closing arguments take place at the ICC before Trial Chamber III.

November 11, 2014: Pre-Trial Chamber II confirms some charges against Bemba and four co-accused for crimes against the administration of justice. Judges reject charges of intentionally submitting forged or false documents.

September 29, 2015: Opening statements in the Bemba *et al.* case are held before Trial Chamber VII.

February 29, 2016: Defense in the Bemba *et al.* case begins.

March 21, 2016: Judgment will be delivered at the ICC by Trial Chamber III in Bemba's main case.

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Daily monitoring reports on the trial can be found at our IJMonitor.org website.

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