

**Statement by the Women's Initiatives for Gender Justice on the Opening of the ICC Trial of
Jean-Pierre Bemba Gombo**

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The trial of Jean-Pierre Bemba Gombo breaks new ground for the ICC, with evidence of sexual violence and charges for gender based crimes comprising a significant part of the Prosecution's case. This trial will involve the largest number of witnesses for sexual violence in any case before the ICC to date, with 14 out of 40 prosecution witnesses set to testify about rape and other forms of sexual violence committed by the *Mouvement de libération du Congo* (MLC) militia.

This is also the first ICC trial to charge an accused with command responsibility for acts of rape committed by members of the militia group over which he exercised control. In this case, Mr Bemba is accused of failing to prevent, repress and punish crimes including widespread acts of rape, committed by the MLC, of which the accused was the President and Commander-in-Chief at the time the incidents are alleged to have occurred.

Mr Bemba is a Congolese national and former Vice President of the DRC in its transitional government from 2003-2006. He faces charges of rape, murder and pillaging, for alleged crimes committed by the MLC between 25 October 2002 and 15 March 2003 on the territory of the Central African Republic (CAR).

Rape and other forms of sexual violence in CAR

The Women's Initiatives for Gender Justice visited CAR in 2006 where we met with many women's rights organisations who described the brutality of the violence committed in the 2002-2003 period. Many of these organisations were formed in response to the large numbers of women who were raped during the attempted *coup d'état* and the following period of instability and violence. We interviewed women victims/ survivors of sexual violence committed by 'Bemba's men' and the repercussions they, and others, faced. Many were rejected by their families, ostracised by their communities, contracted HIV, gave birth to children as a result of

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rape and continue to experience medical and psychological complications and high levels of violence-related trauma.

Rape and other forms of sexual violence committed in CAR are not uncommon in armed conflicts, they are a familiar occurrence in each of the conflict situations under investigation by the ICC. What is unusual about the CAR situation, is the quantity of material available documenting these crimes. Local women's rights organisations and victims/survivor groups documented hundreds of incidents of rape. This provided the ICC with a significant volume of information to consider and follow up on during their investigations.

Charges for Gender-based crimes

In the request for Bemba's arrest warrant, the Prosecution sought a broad range of charges of gender-based crimes. Charges were originally sought for rape as a crime against humanity and war crime; rape as torture as a crime against humanity and war crime; outrages upon personal dignity as a war crime; other forms of sexual violence as a war crime and crime against humanity; murder; and pillaging.

Unfortunately, in the Bemba case we have seen a narrowing of the charges by the Pre-Trial Chamber at both the Arrest Warrant and Confirmation of Charges stages. The charges of 'other forms of sexual violence', related to forcing women to undress in order to publicly humiliate them, were not included in the Arrest Warrant, on the grounds that the Chamber did not consider the facts presented were of comparable gravity to other enumerated acts. Existing jurisprudence from the ICTR contradicts this finding.¹

We were also disappointed by the decision of Pre-Trial Chamber II to send Mr Bemba to trial facing only charges of rape, and declining to have Mr Bemba tried on charges of rape as torture and outrages upon personal dignity.

The Chamber decided not to confirm the two additional charges because, it reasoned, these counts did not possess a distinct legal element to the crime of rape, and because the Prosecutor relied on the same evidence pertaining to acts of rape to support all of the charges. The Chamber saw these charges as therefore 'cumulative' to the charge of rape, and prejudicial to the rights of the accused.

¹ *Prosecutor v. Akayesu*, Trial Judgement, ICTR-96-4, 2 September 1998, para 688. 'Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. The incident described by Witness KK in which the Accused ordered the Interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constitutes sexual violence.'



***Amicus Curiae* Brief**

In July 2009 the Women’s Initiatives for Gender Justice requested and was granted leave to prepare an *amicus curiae* brief for the Judges on the dismissal of charges for gender based crimes. We are the first and to date only international women’s human rights organisation to have been recognised with *amicus curiae* status. Working with the eminent scholar and practitioner Patricia Viseur Sellers as our legal counsel, we argued that charging multiple crimes of sexual violence based on the same or similar acts of violence and evidence, a practice known as cumulative charging, is widely exercised in other international criminal tribunals and by national courts of many countries around the world. International jurisprudence on this issue has found it appropriate and necessary to charge each crime contained within specific acts of sexual violence in order to capture the extent of the harm suffered by victims and the multiple purposes of this type of violence in armed conflicts.²

In addition, the Elements of Crimes of the Rome Statute of the ICC clearly states that a particular conduct may constitute more than one crime.³

In our view, by dismissing charges of rape as torture, the Chamber overlooked the purpose of the rapes committed by Jean-Pierre Bemba’s militia group and it overlooked the extent of the pain and suffering experienced by victims in this case who were raped as well as tortured. The decision also failed to take into account the torture experienced by family members who were forced to watch their loved ones being raped in front of them.

The decision by the Pre-Trial Chamber does not create a binding precedent on other Chambers but it does represent a worrying misstep by the ICC regarding the development of international jurisprudence in relation to the prosecution of gender-based crimes.

We hope that during the trial of Jean-Pierre Bemba, the Judges will allow the witnesses for sexual violence to testify about their experience of rape in its totality, which will inevitably include evidence about the torture, suffering and humiliation they endured.

² For more information, please see the Women’s Initiatives for Gender Justice *amicus curiae* brief, ICC-01/05-01/08-466, available at <<http://www.iccwomen.org/publications/briefs/index.php>>, and special issue of Legal Eye on the ICC, available at <http://www.iccwomen.org/news/docs/LegalEye_Aug09/index.html>.

³ General Introduction, Elements of Crimes, para 9 (“A particular conduct may constitute one or more crimes”).



Participation of Victims

The Bemba case is expected to have an unprecedented number of victims participating in the trial with over 1500 victims' applications having been received by the ICC. To date, 759 have been formally recognised as victims.⁴ As of 2 September 2010, of the 135 victims recognised in the Bemba case at that time, 47% were women.

According to a decision of the Trial Chamber on 10 November, victims who have been recognised by the ICC to participate in the Bemba case will be organised into two groups according to the geographical location of the crimes. Although the assignment of a common legal representative to participating victims is a power granted to the Judges by the Rules of Procedure and Evidence, we note that the Chamber and the Registry in the appointment of common legal representatives are also required to take all reasonable steps to ensure that the distinct interest of the victims, as set out in Rule 90 (4), particularly those who are victims of sexual violence, are represented and that any conflict of interest is avoided.

Organising the legal representation into only two groups may not be in the best interests of victims given the large number of individuals the two legal representatives will have responsibility for during the trial. In addition, arranging the two groups on the basis of geography, rather than the nature of the crimes committed against them, may not serve the victims' interests in relation to the high number of victims of sexual violence expected to participate in the Bemba case.

⁴ The decisions recognising applicants as victim participants are as follows: ICC-01/05-01/08-320, 12 December 2008, recognising 54 participants; ICC-01/05-01/08-807, 30 June 2010, recognising 81 participants and ICC-01/05-01/08-1017, 18 November 2010, recognising 624 participants.

