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الغدرالية الدولية لحقوق الانسان

BEMBA TRIAL Questions and Answers

1. Who is Jean-Pierre Bemba?

Jean-Pierre Bemba, a national of the Democratic Republic of Congo (DRC), is the leader and Commander-in-Chief of the *Mouvement de Libération du Congo* (MLC). Prior to his arrest, Jean-Pierre Bemba served as Vice-President in the transitional government in DRC (2003-2006), was a candidate at the second run of the Presidential Elections in 2006 and was elected senator in 2007. He is the first political personality to be tried by the International Criminal Court (ICC).

2. What is Jean-Pierre Bemba charged with?

Jean-Pierre Bemba, President and Commander-in-Chief of the MLC, is charged with three counts of war crimes (murder, rape and pillage) and two counts of crimes against humanity (murder and rape).

The ICC Pre-Trial Chamber, when confirming the charges, considered that he should be prosecuted in his capacity as military commander. This entails that Jean-Pierre Bemba had effective authority and control over the troops committing these crimes, knew that they were being committed and did not take all necessary action to prevent them and/or to punish those responsible.

These crimes were allegedly committed during an armed conflict not of an international character which took place in the Central African Republic (CAR) in 2002-2003, when the MLC troops supported the Central African armed forces (*Forces Armées Centrafricaines* - FACA) of then President Ange Felix Patassé against the coup attempt of François Bozizé (current CAR President).

3. Why have the charges changed from individual responsibility to command responsibility, and what are the consequences of this development?

During the confirmation of charges hearing (January 2009), the Prosecutor presented his evidence for the case against Jean-Pierre Bemba. The Prosecutor submitted that Jean-Pierre Bemba was personally responsible as co-perpetrator, together with former CAR President, Ange-Felix Patassé. However, the Pre-Trial Chamber requested the Prosecutor to amend the charges, since it considered that the evidence

submitted appeared to correspond to a different mode of liability, namely criminal responsibility as a military commander or superior. The Prosecutor then amended his document containing the charges. Subsequently, the Pre-Trial Chamber decided that there were substantial grounds to believe that Jean-Pierre Bemba was criminally responsible in his capacity as military commander for three counts of war crimes (murder, rape and pillage) and two counts of crimes against humanity (murder and rape).

The Rome Statute provides for both individual criminal responsibility (Article 25) and command responsibility (Article 28). It is important to note that the Rome Statute does not establish a hierarchy among the different modes of liability. Therefore, the fact that Jean-Pierre Bemba is charged with command responsibility rather than individual criminal responsibility does not mean that the charges against him are less serious. On the contrary, the Prosecutor noted that the fact that Jean-Pierre Bemba acted as a commander could be considered as an aggravating factor in this case.

4. Why is this case so important?

This case is very important because, for the first time, the ICC focuses primarily on the prosecution of crimes of sexual violence, thus acknowledging that such crimes were widespread and systematic in CAR, that they were used as a weapon of war, and that they severely stigmatised the victims. The case against Jean-Pierre Bemba is the first ICC trial of a major political and military leader. It is also the first time that a national leader is prosecuted for the crimes committed in a neighbouring country.

5. How did the case against Jean-Pierre Bemba develop before the ICC? At what stage is the case now?

The Central African Republic referred the situation to the ICC Office of the Prosecutor in December 2004.

On April 2006, the Central African *Cour de cassation* confirmed the inability of national tribunals to prosecute those bearing the greatest responsibility for international crimes and concluded that the ICC had jurisdiction over those crimes.

The Prosecutor opened his investigation on 22 May 2007. Following the arrest warrant issued by the Court at the request of the Prosecutor, Jean-Pierre Bemba was arrested in Belgium on 24 May 2008 and surrendered to the ICC on 3 July 2008. The charges against him were confirmed on 15 June 2009.

Initially, the trial was due to start in April 2010 but the opening was postponed several times to allow the Prosecution and Defence teams to adequately prepare for trial, and in order to solve procedural matters that had to be decided upon before the beginning of the trial.

The opening of the trial is set for 22 November 2010.

6. Why is Jean-Pierre Bemba not prosecuted for crimes committed in the Democratic Republic of Congo?

The situation in the Democratic Republic of Congo has been under investigation by the ICC Prosecutor since 23 June 2004. So far, five persons have been indicted and two trials are ongoing in relation to international crimes perpetrated in the DRC since July 2002. However, to date the ICC Prosecutor has not brought any action against Jean-Pierre Bemba for crimes allegedly committed by the MLC forces in the Democratic Republic of Congo, especially in Ituri in 2002.

On 28 June 2010, a legal representative of Congolese victims participating in proceedings before the ICC in the DRC situation, lawyer who is member of the FIDH Legal Action Group, filed a submission on behalf of victims of the MLC in Ituri. In this filing, the victims requested the Court to demand clarification from the Prosecutor on the reasons why Jean-Pierre Bemba has not been prosecuted for crimes committed in DRC in his capacity as MLC Commander-in-Chief.

On 25 October 2010, the Pre-Trial Chamber dismissed the request considering that the Prosecutor has not officially announced that he will not prosecute these crimes, and that, therefore, it is possible to affirm that investigations are ongoing. Following the decision, FIDH and its member organisations in the Democratic Republic of Congo stated: “The Chamber’s ruling fails to take into consideration situations in which the Prosecutor takes no explicit decision not to prosecute. Can it be considered that those investigations are still ongoing even in the face of indications that the Prosecutor does not intend to prosecute? Also taking into account the principle of a reasonable time that should guide all judicial proceedings, the fact that the charges against Jean-Pierre Bemba have not been extended more than two years after his arrest gives reason to believe that the Prosecutor does not intend to prosecute [him for those crimes].”¹

7. Why has Jean-Pierre Bemba been kept in detention before trial?

The Rome Statute provides that detention shall be reviewed periodically by the Pre-Trial Chamber according to Article 60(3). Detention is deemed necessary “to ensure the person’s appearance at trial, to ensure that the person does not obstruct or endanger the investigation or the court proceedings, or, where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.”

In the case of Jean-Pierre Bemba, the Chamber has conducted multiple reviews of his detention. The following factors have supported his continued detention: severity of the charges and the length of a possible sentence in case of conviction, Jean-Pierre Bemba's political standing and profession, his international contacts and financial situation.

8. What sentence could be imposed if Jean-Pierre Bemba were to be found guilty?

The Rome Statute provides for the following penalties: imprisonment up to a maximum of 30 years, life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, a fine, and forfeiture of assets derived from the crime in question (Article 77). In addition, the Court can also make an order for reparations to victims, which includes restitution, compensation and rehabilitation (Article 75(2)). Reparations awards may be implemented through the ICC Trust Fund for Victims.

9. What about national proceedings within the Central African Republic against Jean-Pierre Bemba and the principle of complementarity?

An important aspect of the Rome Statute system is that it is first and foremost the States Parties that have an obligation to investigate and prosecute crimes within the jurisdiction of the Court. The ICC can only investigate and prosecute when States are unable or unwilling to do so themselves.

1 See Press Statement by FIDH and member organisations in the Democratic Republic of Congo, “[Victims question the ICC about lack of proceedings against Jean-Pierre Bemba for crimes committed in the DRC: Judges dismissed the request considering that investigation is still open](#)”, 3 November 2010

The Defence for Jean-Pierre Bemba filed an application on the admissibility of the case, raising *inter alia* the issue of complementarity and arguing that its client had already been prosecuted in CAR.

On 24 June 2010, the Trial Chamber ruled the case was admissible before the ICC. It considered that national proceedings regarding Jean-Pierre Bemba had been closed and that no trial had taken place, that consequently no final decision on the substance of the case had been taken, that the situation had been referred to the ICC by CAR, and finally, that the national judiciary was unable to genuinely investigate or prosecute international crimes committed in CAR.

The Defence immediately appealed the decision, but on 19 October 2010, the Appeals Chamber upheld the Pre-Trial Chamber ruling and reasoning, thus confirming that the ICC has jurisdiction over the case.

10. Is Jean-Pierre Bemba the only person to be tried in relation to the situation in the Central African Republic?

The Prosecutor opened an investigation into the situation in the CAR on 22 May 2007. So far, Jean-Pierre Bemba is the only person to be prosecuted and tried with regard to this situation. FIDH has repeatedly called on the Prosecutor to bring action against other persons bearing the greatest responsibility for the crimes committed by all parties to the 2002-2003 conflict in CAR. In particular, FIDH's fact-finding reports have highlighted the alleged involvement of Ange-Félix Patassé, former CAR President. His involvement has also been referred to in the arrest warrants for Jean-Pierre Bemba. However, it seems unlikely that the Office of the Prosecutor will indict other persons. Should it remain unchanged, this way of proceeding would be against the principle applied in other situations before the ICC in which more prosecutions were initiated. It would also disregard the rights of all victims of the conflict to seek justice and redress.

It must be recalled also that the Office of the Prosecutor announced that it continued to analyse information in relation to crimes allegedly committed in the north of the country since late 2005. Despite the scale and gravity of crimes, as revealed by FIDH's inquiries, no decision to open an investigation into these acts has been taken to date.

11. Why is the Bemba case so significant in terms of victim participation?

The courage and persistence of Central African Victims and the NGOs which have supported them, largely contributed to the opening of an investigation in the Central African Republic and the proceedings in Jean-Pierre Bemba. The number of victims who have applied for participation in the Bemba case is considerably larger than the figures for victims who came forward in other ICC cases. 135 applications for participation have been accepted and the Trial Chamber must rule soon on further 1200 applications. These figures demonstrate the great interest of Central African victims in proceedings before the ICC. It must be recalled that only 105 victims participate in the Lubanga trial (first ICC case, concerning the situation in the DRC) and 356 in the Katanga & Ngudjolo trial (second case).

These victims will be represented by two Central African lawyers. The Trial Chamber found that it was important to respect local traditions, and that it was advisable that common legal representatives speak the victims' language, share their culture and know their realities.

12. What has been the role of FIDH in the ICC proceedings against Jean-Pierre Bemba ?

Since 2003, FIDH and its member organisations in CAR submitted regular communications to the ICC Office of the Prosecutor. This information focused on all crimes committed by all the parties to the conflict. FIDH considered that the gravity of the crimes and the State's unwillingness and inability to investigate and prosecute those crimes justified the opening of an investigation. FIDH repeatedly called for the prosecution of other persons alleged responsible for the crimes.
