

PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Case No. ICC-01/05-01/08

International Criminal Court

Trial Chamber Decision on Sentence

June 21, 2016

Judges:

Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki

Prosecution:

Ms. Fatou Bensouda

Mr. Jean-Jacques Badibanga

Defense:

Mr. Peter Haynes

Ms. Kate Gibson

Ms. Melinda Taylor

Gender Keyword(s): Rape

Procedural History: On May 23, 2008, the Pre-Trial Chamber of the International Criminal Court (ICC) issued a warrant for the arrest of Mr. Jean-Pierre Bemba Gombo (“Bemba”).¹ On May 24, 2008, the authorities in the Kingdom of Belgium arrested Bemba and on July 3, 2008, Bemba was transferred to detention in The Hague.² On October 1, 2008, the Prosecution filed the document containing the charges (DCC) which was subsequently amended several times.³ On June 15, 2009, the Pre-Trial Chamber confirmed the charges against Bemba under command responsibility pursuant to Article 28(a) for the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging.⁴ On November 22, 2010, the Trial Chamber commenced the trial, which closed on November 13, 2014.⁵ On March 21, 2016, the Trial Chamber released its judgment (¶ 2). The Trial Chamber held that, based on his actions in his role as a military commander of the *Mouvement de libération du Congo* (MLC), Bemba was guilty under command responsibility for murder and rape as crimes against humanity, and

¹ *Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber Judgment, March 21, 2016, ¶ 5.

² *Id.*

³ *Id.* ¶¶ 6-9.

⁴ *Id.* ¶ 7

⁵ *Id.* ¶ 10.

murder, rape and pillaging as war crimes (*id.*). On June 21, 2016, the Trial Chamber issued its decision regarding Bemba's sentence for these crimes, which is digested here with a focus on the Trial Chamber's sentencing for the rape charges.

Disposition: The Trial Chamber sentences Bemba to 16 years of imprisonment for murder as a war crime; 16 years of imprisonment for murder as a crime against humanity; 18 years of imprisonment for rape as a war crime; 18 years of imprisonment for rape as a crime against humanity; and 16 years of imprisonment for pillaging as a war crime (¶ 94). The Chamber decides that Bemba shall serve these sentences concurrently and thus sentences Mr. Bemba to 18 years of imprisonment with credit given for time served (¶¶ 95-96).

RAPE

- The Trial Chamber convicted Bemba of rape as both a war crime and a crime against humanity (¶ 21). Before assessing Bemba's sentence for these crimes, the Trial Chamber recalls the acts of which the Chamber found Bemba guilty and the "lasting damage to the victims and affected communities" (¶ 23). Prior to explicitly enumerating aggravating circumstances as discussed below, the Trial Chamber speaks in general terms about the effects of the crimes on the victims, recalling one victim's testimony at trial that "There have been divorces, because the Banyamulengu[és] raped women, and given [the] state of affairs, the husband preferred to divorce" (*id.*).
- In determining a sentence for these crimes, the Trial Chamber considers various factors, including the gravity and individual circumstances of the convicted person, pursuant to Article 78(1) of the Rome Statute (¶ 12).⁶ Additionally, the Trial Chamber considers—pursuant to Rule 145 of the Rules of Procedure and Evidence (RPE)—both the mitigating and aggravating circumstances, including the harm caused to the victims and their families (¶¶ 12-13).⁷

⁶ Rome Statute, Article 78(1), which provides that "In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person."

⁷ ICC Rules of Procedure and Evidence Rule 145(1)(c). Rule 145 provides that aggravating circumstances include:

- (i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;
- (ii) Abuse of power or official capacity;
- (iii) Commission of the crime where the victim is particularly defenceless;
- (iv) Commission of the crime with particular cruelty or where there were multiple victims;
- (v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3 [which includes gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status];

- With respect to gravity, the Trial Chamber emphasizes that “the [Rome] Statute and Rules [of Procedure and Evidence] accord a special status to sexual crimes, crimes against children, and the victims thereof” and recalls that when drafting these provisions, States Parties “recognised the especially grave nature and consequences of sexual crimes, in particular, against children” (¶ 35).
- With respect to aggravating circumstances, the Trial Chamber identifies as relevant the following factors: “whether the victims were armed; the location of a crime, for example, whether it was committed in places of civilian sanctuary, such as churches and hospitals, or the victims’ homes; the victims’ ages, particularly in cases of sexual violence; the duration and repeated nature of the acts; the perpetrators’ motives; and the violent and humiliating nature of the acts, including their public nature, and any verbal, physical, or other abuse or threats accompanying the crime” (¶ 25).
- The Trial Chamber individually assesses the gravity and aggravating circumstances of each of the crimes of which Bemba was convicted, including rape (¶¶ 34-47).
 - *Gravity*: First, In determining the gravity of the crime of rape, the Trial Chamber referenced testimony by expert witnesses who described the effects of this crime including “four types of consequences: (i) medical (including lesions to organs, human immunodeficiency virus (“HIV”), loss of virginity, and unwanted pregnancies); (ii) psychological (fear, anxiety, anger, aggression, guilt, isolation, embarrassment and shame, loss of confidence, and washing rituals); (iii) psychiatric (PTSD, reactive depression, melancholia, neuroses, addictive behaviour, and psychosomatic disorders); and (iv) social (stigmatisation and repudiation)”(¶ 36). The Trial Chamber cites another expert who explained the particularly grave and humiliating effects of victims who experienced gang rape, being raped in front of family members, or being raped as a child (¶ 37). The Trial Chamber recalls expert testimony regarding the cultural factors exacerbating the effects of rape in CAR, noting that because of the fear of social rejection, victims fear coming forward to seek necessary medical attention (¶¶ 37-39). If victims do come forward, they face obstacles to social reintegration, especially because in CAR rape is “considered to be tantamount to adultery,” which causes many men to abandon their wives and take their children away and results in victims being ostracized and stigmatized (*id.*). The Trial Chamber recalls one witness (P79) who testified that she could not tell anyone her young daughter was raped because Muslim girls who have been raped may not be able to find a husband in the future and notes the particular damage girls who lost their virginity as a result of rape experience due to the cultural context (¶ 38). The Trial Chamber notes that the expert witness also stated that anal rape carries connotations that leads to “extreme humiliation” for its victims, particularly for men (¶ 37). The Trial

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

Chamber recalled testimony from several rape victims demonstrating the physical and psychological harms the expert witnesses described above as well miscarriage, infertility, a lack of interest in sexual relationships, and suicidal thoughts (¶ 38). Witnesses testified that the social stigmatization leads to other obstacles: the Trial Chamber recalls one witness who testified that her 10-year-old daughter, who had been raped, was stigmatized at school and stopped attending as a result, leading her mother to remark “If she had continued with her studies, maybe she could have become an authority. Maybe she could have become someone important today” (¶ 39). Other victims—both women and men—reported similar loss of dignity, stigmatization, and the experience of being socially ostracized, no longer treated as a “human being” (*id.*). The Trial Chamber notes the large number of victims of rape “committed throughout the geographical and temporal scope of the 2002-2003 CAR Operation” as part of an attack targeting civilians (¶ 40). Noting the degree of damage that these rapes caused to the victims, their families, and their communities “was severe and lasting” and given the circumstances including the “time, manner, and location” of these crimes, the Trial Chamber finds that the crimes of rape were “of utmost, serious gravity” (*id.*). The Trial Chamber also notes in its findings regarding the gravity of the crime of murder as a crime against humanity that the fact that victims were often raped before being murdered added to the gravity of the crime (¶ 32).

- *Aggravating Circumstances*: The Trial Chamber next considers the aggravating circumstances under which the rapes were committed, including the particularly defenseless witnesses and the particular cruelty with which the crime were committed. The Chamber notes first that the Defense argued that Bemba was unaware of these aggravating circumstances but the Trial Chamber finds beyond a reasonable doubt that Bemba was made aware of these circumstances because it heard evidence at trial that “various sources put Mr Bemba on consistent notice of the factors relevant to proof of the alleged aggravating circumstances” (¶ 26). The Chamber also “notes the special nature of the crimes of rape and pillaging in the Bemba case,” and due to this special nature, the Chamber “exercises its discretion to consider the relevant Rule 145(1)(c) factors...in its assessment of the alleged aggravating circumstances” (¶ 24). Rule 145(c) directs the Chamber to consider “the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.”⁸

⁸ ICC Rules of Procedure and Evidence, Rule 145(1)(c).

- Particularly defenseless victims: The Trial Chamber recalls that the MLC soldiers who committed the rapes were the only armed force in the area and targeted unarmed victims in their homes, on temporary MLC bases, or in isolated locations including the bush (¶ 41). Victims fleeing their homes or seeking refuge were targeted by the soldiers (*id.*). The Trial Chamber notes that the soldiers held the victims at gunpoint and also emphasized the young ages of many of the victims, eight of whom were between 10 and 17 years of age, who were particularly vulnerable and defenseless, many of whom were raped in front of parents who tried and failed to protect them (¶ 42). The Trial Chamber concludes that because the rape victims and other civilians present were “(i) unarmed; (ii) targeted by multiple armed MLC soldiers in their homes, on MLC bases, in isolated locations, such as the bush, and/or while seeking refuge; (iii) forcefully restrained; and/or (iv) children” the MLC soldiers committed the crimes of rape against particularly defenseless victims, which constitutes an aggravating circumstance under Rule 145(2)(b)(iii).⁹
- Particular cruelty: The Trial Chamber also finds that the MLC perpetrators, acting in groups, “committed the underlying acts of rape (i) for self-compensation; (ii) to punish suspected enemies and their sympathisers; (iii) without regard to age, gender, or social status, including against multiple members of the same family and local officials; (iv) in the presence of the victims’ family members, neighbours, and/or other civilians or soldiers, thereby heightening the victims’ humiliation; (v) in conjunction with acts of murder, pillaging, and other violence and abuse during the same events and against the same direct and indirect victims; and/or (vi) repeatedly against the same victims, sometimes penetrating the same victim orally, vaginally, and anally” (¶ 47). Based on these reasons, the Trial Chamber finds beyond reasonable doubt that “MLC soldiers committed the crimes of rape with particular cruelty, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iv)”¹⁰ (*id.*). The majority of the Trial Chamber, Judge Steiner dissenting, also finds in assessing the crime of pillaging as a war crime that several factors amounted to particular cruelty as an aggravating circumstance, including the fact that pillaging often occurred in “conjunction with acts of murder,

⁹ ICC Rules of Procedure and Evidence Adopted by the Assembly of States Parties First session, New York, 3-10 September 2002, Official Records ICC-ASP/1/3. Rule 145(2)(b)(iii) provides that in determining the sentence of an accused “the Court shall take into account, as appropriate...as aggravating circumstances... Commission of the crime where the victim is particularly defenceless.”

¹⁰ *Id.* Rule Rule 145(2)(b)(iv) provides that in determining the sentence of an accused “the Court shall take into account, as appropriate...as aggravating circumstances... Commission of the crime with particular cruelty or where there were multiple victims.”

rape, and other violence and abuse during the same events and against the same victims” (¶¶ 56-57).

- *Mitigating Circumstances*: Finally, the Chamber considers the mitigating circumstances submitted by the Defense and rejects all mitigating circumstances.¹¹ Among other findings, the Chamber denies the Defense’s proposition that one such mitigating circumstance included “the measures Mr Bemba took in producing a Code of Conduct, training his troops, [and] establishing a judicial and disciplinary system” in order to prevent and punish the commission of war crimes and crimes against humanity (¶ 65). The Chamber finds that these these measures do not constitute mitigating circumstances, finding that such efforts were “minimal and inadequate” and “demonstrate the means at Mr Bemba’s disposal to take measures to prevent and repress crimes” (*id.*).

¹¹ The Chamber rejects mitigating circumstances submitted by the Defense including Bemba’s alleged contribution to peacebuilding in the DRC, finding it is not a mitigating circumstance as it is not proven and does not relate to CAR (¶¶ 71-76); Bemba’s family situation, including a wife and minor children, because this not exceptional and not a mitigating circumstance (¶¶ 77-78); Bemba’s good behavior and cooperation in detention and in the courtroom, as these are “expected of any accused or convicted person and therefore do not constitute mitigating circumstances,” because his behavior was not exceptional (¶ 81); the fact that Bemba’s assets were seized and frozen as a protective measure imposed for the ultimate benefit of the victims, because this should be examined during the reparations phase and there is no indication that Mr Bemba has taken any initiative for the purpose of reparations to the victims “ (¶ 84); the fact that no others besides Bemba have so far faced accountability for crimes committed during the conflict in CAR, because is not relevant and not a mitigating circumstance (¶¶ 85-86); and alleged violations of Bemba’s rights during the course of the proceedings, as these were not substantiated and are not mitigating circumstances (¶¶ 87-89).