

Situation in the Central African Republic

ICC-PIOS-Q&A-CAR-01-01-18

The Prosecutor v. Jean-Pierre Bemba Gombo

Update: 8 June 2018

ICC-01/05-01/08

Questions and Answers on the Appeals Judgment in the Bemba case

8 June 2018

WHAT DID THE ICC APPEALS CHAMBER DECIDE TODAY IN THE BEMBA CASE?

Today, 8 June 2018, the Appeals Chamber of the International Criminal Court (“ICC” or “Court”) found errors that have affected the decision of Trial Chamber III convicting Mr Bemba.

The Appeals Chamber concluded, by majority, that Trial Chamber III had erroneously convicted Mr Bemba for specific criminal acts that were outside the scope of the case and that the proceedings in relation to these acts must be discontinued. The Appeals Chamber also found that Mr Bemba cannot be held criminally liable under article 28 of the ICC Rome Statute for the remaining crimes committed by *Mouvement de libération du Congo* (“MLC”) troops during the Central African Republic (“CAR”) operation and that he must be acquitted thereof because the Trial Chamber had made serious errors in its finding that Mr Bemba had failed to take all necessary and reasonable measures to prevent or repress the crimes of the MLC troops.

Therefore, the Appeals Chamber, by majority, considered it was appropriate to reverse his conviction and enter an acquittal.

The Appeals Chamber also dismissed as moot the appeals that Mr Bemba and the Prosecutor had brought against the sentence Trial Chamber III had imposed.

CAN THIS DECISION BE APPEALED?

No. The Judgment of the Appeals Chamber cannot be appealed. The acquittal is final.

WHY DID THE JUDGES DECIDE TO ACQUIT MR BEMBA?

After considering the written and oral arguments of the parties and participants, the Appeals Chamber found, by majority, that Trial Chamber III made errors on two important issues:

First, it had erroneously convicted Mr Bemba for specific criminal acts that were outside the scope of the charges as confirmed;

Second, the Trial Chamber made serious errors in its assessment of whether Mr Bemba took all necessary and reasonable measures to prevent, repress commission of the other crimes by his subordinates, or to submit the matter to the competent authorities.

More specifically, the Trial Chamber erred in its evaluation of Mr Bemba’s motivation and the measures that he could have taken in light of the limitations he faced in investigating and prosecuting crimes as a remote commander sending troops to a foreign country; in whether he made efforts to refer the allegations of crimes to CAR’s authorities; and in whether he intentionally limited the mandate of commissions and inquiries that he established.

Furthermore, in the view of the Appeals Chamber majority, the Trial Chamber erred in basing its assessment of the reasonableness of the measures Mr Bemba took on the totality of crimes allegedly committed by the MLC, whereas only a limited number of these crimes were proved beyond reasonable doubt.

As a result, the Appeals Chamber decided, by majority, to acquit Mr Bemba from the charges of war crimes and crimes against humanity.

WHY WAS THERE A DISSENTING OPINION AND WHAT DID IT SAY?

There are five judges in the Appeals Chamber. If they cannot agree on the outcome of an appeal, decisions are taken by majority. This is a common feature in both international and domestic trials.

In this case, two judges of the Appeals Chamber, Judge Monageng and Judge Hofmański, did not share the view of the other three judges that Mr Bemba should be acquitted. In their opinion, the Trial Chamber did not convict him of crimes that were outside the scope of the case because the Prosecutor had brought a broadly formulated case against Mr Bemba.

The two judges also disagreed with the majority that the Trial Chamber erred when it found that Mr Bemba had failed to take all necessary and reasonable measures to prevent or repress MLC crimes. In their view, the majority reached this conclusion based on an incorrect standard of appellate review.

Judge Monageng and Judge Hofmański would have confirmed Mr Bemba's conviction.

WHY ARE THERE SEPARATE OPINIONS?

The dispositive reasons for this appeal that led the Appeals Chamber to conclude, by majority, that Mr Bemba's conviction should be reversed are set out in the Judgment. Nevertheless, the judges forming the majority, Judge Eboe-Osuji, Judge Van den Wyngaert and Judge Morrison, also wished to address additional issues that have arisen in the context of this appeal and that were not addressed in the Judgment. This is done in Judge Eboe-Osuji's separate opinion, which will be filed in due course, as well as in Judge Van den Wyngaert and Judge Morrison's joint separate opinion.

WILL MR BEMBA REMAIN IN ICC DETENTION?

The Appeals Chamber decided that there is no reason to continue Mr Bemba's detention on the basis of the case related to alleged crimes in the Central African Republic. However, Mr Bemba is also being detained in connection with a conviction for offences against the administration of justice, which was recently confirmed by the Appeals Chamber. This conviction related to corruptly influencing Defence witnesses and soliciting their false testimonies. Trial Chamber VII is currently deciding on Mr Bemba's sentence for that conviction.

As a result, Mr Bemba is not being released immediately, despite today's acquittal. It is for Trial Chamber VII to decide whether Mr Bemba's continued detention is warranted in relation to the case concerning offences against the administration of justice.

WHEN WILL TRIAL CHAMBER VII MAKE A DECISION ON NEXT STEPS IN THE OTHER CASE AGAINST MR BEMBA BEFORE THE ICC?

Trial Chamber VII is tasked with deciding on the sentence in the case against Mr Bemba and four other individuals for offences against the administration of justice. In addition, it is for Trial Chamber VII to decide, as a matter of urgency, whether Mr Bemba's continued detention is warranted in relation to this case.

There are no indications at this moment on when Trial Chamber VII will issue its decisions on these two points. As soon as any of these decisions is issued or scheduled for delivery, they will be announced publicly.

CAN MR BEMBA REQUEST PROVISIONAL RELEASE?

Yes. Mr Bemba may request provisional or interim release to Trial Chamber VII. It would be for this Chamber to eventually decide on such a request.

WHAT WILL HAPPEN TO THE VICTIMS WHO WERE PARTICIPATING OR EXPECTING REPARATIONS IN THIS CASE?

According to the Court's jurisprudence the Court can order reparations when accused persons are convicted.

However, Mr Bemba's acquittal does not prevent the Trust Fund for Victims, which is a separate and independent institution within the Rome Statute system, from considering providing support to the victims under its assistance mandate even in the absence of judicially ordered reparations.

CAN MR BEMBA REQUEST COMPENSATION FOR THE TIME SPENT IN DETENTION?

According to article 85(3) of the Rome Statute, in exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may, in its discretion, award compensation to an acquitted person who has been in detention.

Should a request to that effect be submitted, it will be for the Court to verify these criteria and to decide, at its discretion, whether or not to order compensation for the time spent in detention.