

WOMEN'S INITIATIVES FOR GENDER JUSTICE

Anna Paulownastraat 103
2518 BC The Hague
the Netherlands

Tel: +31 (0)70 302 9911
Fax: +31 (0)70 392 5270
www.iccwomen.org
info@iccwomen.org

Board & Staff

Chat Garcia Ramilo, Philippines
Chair

Geetanjali Misra, India
Treasurer

Maria Solis Garcia, Guatemala
Secretary

Brigid Inder, New Zealand
Executive Director

Advisory Council

Hilary Charlesworth, Australia
Christine Chinkin, UK
Rhonda Copelon, USA
Tina Dolgopol, Australia
Paula Escarameia, Portugal
Lorena Fries, Chile
Sara Hossain, Bangladesh
Rashida Manjoo, South Africa
Cecilia Medina, Chile
Mary Robinson, Ireland
Nazhat Shameem, Fiji
Heisoo Shin, South Korea
Pam Spees, USA
Dubravka Zarkov, the Netherlands
Eleonora Zielińska, Poland

Statement on the ICC decision to omit charges for gender-based crimes against Jean-Pierre Bemba Gombo

The Women's Initiatives for Gender Justice is disappointed by the 18 September decision of Pre-Trial Chamber II to reject the Prosecutor's application to appeal the decision on the confirmation of charges against Jean-Pierre Bemba Gombo. While this decision sends Mr. Bemba to trial facing charges of rape, it declines to have Mr. Bemba tried on the full range of sexual violence charges sought by the Prosecutor, which included torture and outrages upon personal dignity.

Mr. Bemba, alleged President and Commander in Chief of the Mouvement de libération du Congo (MLC), was originally charged with eight counts of war crimes and crimes against humanity committed by the MLC in the Central African Republic between 25 October 2002 and 15 March 2003.

In the 18 September decision, the Pre-Trial Chamber confirms its reasoning in its 15 June confirmation of charges decision, explaining that the "essence" of the charges of torture and outrages upon personal dignity are fully subsumed by the charge of rape. The Chamber had decided not to confirm the two 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.

The Pre-Trial Chamber's interpretation of the Rome Statute appears to ignore the distinct crimes articulated in the Statute under which an accused can be charged for sexual violence, and also appears to contradict the Elements of Crimes, which states in its general introduction that "a particular conduct may constitute one or more crimes."

As the Women's Initiatives for Gender Justice argued in an *amicus curiae* brief on 31 July, by excluding the full range of charges for sexual violence in the Bemba case, the Chamber has failed to address the extent of the harm suffered by those raped and those forced to watch family members being raped. The combined charges of rape, torture and outrages upon personal

dignity as originally charged by the Prosecutor more accurately reflect the intention of the acts of rape and the harm suffered by the victims.

“The Chamber’s decision to only confirm charges of rape does not sufficiently address the range of sexual violence crimes committed and excludes the suffering experienced by these victims,” said Brigid Inder, Executive Director of the Women’s Initiatives for Gender Justice. “This decision minimises the harm, impact and purpose of the acts of rape,” said Ms. Inder.

According to Women’s Initiatives’ Legal Counsel for the Bemba case, Patricia Viseur Sellers, “Other international tribunals such as the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda, as well as many national jurisdictions, accept that cumulative charging is appropriate – and necessary – to capture the different and multiple harms experienced by victims/survivors, in particular those who have suffered from sexual violence.”

“The Pre-Trial Chamber construed the cumulative charging test too narrowly, and thereby excluded evidence of sexual violence, including sexual torture inflicted upon relatives constrained to watch family members being raped,” said Ms. Viseur Sellers.

With this decision, the extent of the crimes committed against these victims, specifically crimes of torture and outrages upon personal dignity, as charged by the Prosecutor, will now not be included in the charges against Jean-Pierre Bemba Gombo. The decision creates no binding precedent on other pre-trial chambers but represents a worrying development in the ICC’s jurisprudence on gender-based crimes.

“Despite this decision, witnesses must be given the opportunity to testify in court about the full range of harm they have suffered. Whether this is done through an amendment to the charges requested by the Office of the Prosecutor, or through testimony substantiating the existing charge of rape, victims/survivors should be allowed to testify to the humiliation, torment and torture they endured,” said Ms. Inder.

The Pre-Trial Chamber’s decision to deny the Prosecutor’s request for appeal can be found here: <http://www.icc-cpi.int/iccdocs/doc/doc745391.pdf>.

For more information about the case and the *amicus curiae* filing by the Women’s Initiatives for Gender Justice: http://www.iccwomen.org/news/docs/LegalEye_Aug09/index.html.