



Mr. Luis Moreno-Ocampo
Prosecutor of the International Criminal Court

*The Case of the Prosecutor v. Jean-Pierre Bemba
Gombo*

ICC-01/05-01/08

Opening Statement

The Hague

22 November 2010

Madam President,

Your Honours,

The Prosecution will prove beyond reasonable doubt that Jean Pierre Bemba is criminally responsible for crimes against humanity and war crimes committed against civilians of the Central African Republic by forces under his effective authority and control between October 2002 and March 2003.

The evidence will show that the crimes against Central African Republic citizens were not isolated incidents; they were committed by Bemba's troops in a widespread and organised manner. Small platoons were organised; groups of three or four soldiers invaded houses, one-by-one. They stole all the possessions that could be carried off and raped the women, girls and elders, regardless of their age. When the civilians resisted being raped or pillaged they were killed. As we say there were not isolated incidents. These were some of the main tactics of Jean-Pierre Bemba's troops in the Central African Republic campaign during 2002/2003. The goal was to eliminate any chance of a new rebellion by destroying communities they perceived as the enemy.

In accordance with Article 54(1)(b), the Prosecution has to take into account the nature of the crimes, in particular where it involves sexual violence, gender violence or violence against children. All these dimensions are at the heart of the crimes committed by Jean-Pierre Bemba's troops.

The nature of the crimes committed by Jean-Pierre Bemba's troops was unspeakable. Bemba's troops stole from the poorest people of one of the poorest countries in the world. The massive rapes were not just sexually

motivated. As gender crimes, they were crimes of domination and humiliation, directed against women but also directed against men with authority. These crimes spread terror and devastated communities by means of the cheapest weapons and most available ammunition. Women were raped systematically to assert dominance and to shatter resistance. Men were raped in public to destroy their authority, their capacity to lead.

The Prosecution is not alleging that Jean-Pierre Bemba ordered his troops to commit these crimes. The Prosecution submits that Jean-Pierre Bemba is responsible for these crimes as a result of his knowing failure to control the troops he commanded. Jean-Pierre Bemba, the top commander of the MLC troops, gave license to his troops to attack the civilians. He decided not to prevent, not to repress, not to punish the massive rape, pillage and murder campaign implemented by his subordinates.

The Prosecution will submit that as their superior, Jean-Pierre Bemba is even more responsible than the direct perpetrators, his subordinates. A commander that lets his troops carry out such criminal tactics is a hundred times more dangerous than any single rapist. Jean-Pierre Bemba knowingly let the 1500 armed men he commanded and controlled commit hundreds of rapes, hundreds of pillages. Command responsibility means that the commander owns the actions of his troops. Bemba's weapon was not a gun, it was his army; Jean-Pierre Bemba's body was his army. The result of his knowing lack of control was the rape of hundreds of civilians.

Madam President,

Your Honours,

This trial is an opportunity. This is the first trial before the International Criminal Court that concerns command responsibility.

Like any other criminal court, this Chamber will decide Jean-Pierre Bemba's individual criminal responsibility. But the preventative aspect of this trial - its forward-looking aspect - has no precedent. Unlike any other Court, the International Criminal Court's decision will influence the behaviour of thousands of military commanders from the 114 States Parties. The International Criminal Court's decision will enforce a law adopted by States Parties and make a difference. The difference between a military commander and a criminal is respect for the law.

The responsibility of the superiors and the subordinates in a hierarchical organisation such as an army has been discussed all over the world since ancient times. It was referred to in the famous Sun Tzu Chinese army manual dating back 500 years BC. It was discussed in the Islamic law, and Hugo Grotius in 1625 referred to it in his famous "On The Law of War and Peace".

During the 20th century the concept acquired legal *gravitas*. It was developed as a basis of criminal liability by the Military Tribunals after the Second World War. Additional Protocol I of 1977 to the Geneva Convention referred to the responsibility of the superior. National jurisdictions also began to recognise it and the jurisprudence of the ICTY and ICTR further refined and specified it.

Finally, the Rome Statute consolidated customary international law on the topic and specified its dimensions. It does not introduce a new and separate liability of the superior into international law.

Rather, the Rome Statute carefully defines superior responsibility as an alternative mode of liability for international offences. The Rome Statute ensures a basic principle of criminal law: individual responsibility of the superior should be established, no one can be punished for a wrongful act unless the act is attributable to him or her.

Article 28 carefully defines when a military commander, or a superior who has effective authority and control, can be criminally accountable for acts and omissions in exercising his powers. Article 28 only permits a finding of liability by a superior for an act of a subordinate if that act can be attributed to the superior under specific conditions.

In accordance with this principle and the Pre-Trial Chamber III's decision confirming the charges for trial, the Prosecution will prove the elements required by the law in this specific case.

The evidence will show that the charged crimes were committed by the MLC troops and that Mr Jean-Pierre Bemba was their military commander with effective authority and control over the troops who committed these crimes.

Mr. Jean-Pierre Bemba does not only command the militia called the MLC, he owns it. He is the owner of the militia. He created it to gain political and economic power. He financed it and deployed it. Mr. Jean-Pierre Bemba

retained his effective authority and control over the MLC troops throughout the 2002-2003 intervention in the Central African Republic. He ordered the deployment of the troops and he ordered their withdrawal; he issued orders that were complied with, to appoint, promote, demote, dismiss as well as arrest, detain and release MLC commanders.

The evidence will show that Mr. Jean-Pierre Bemba had the power to prevent and repress the commission of crimes by his troops.

The first way to prevent and repress crimes is by providing clear orders not to commit them, in this case widespread crimes against civilians. Jean-Pierre Bemba did not do such thing. The Chamber will hear a witness who will testify how Bemba briefed his MLC forces immediately before their deployment into the CAR, telling them, and I quote Mr. Jean-Pierre Bemba said to his troops:

“You are going to the Central African Republic which is not your country. In that country, there are no parents or big brothers or little brothers or any of your family. When you get there, do the job that I am asking you to do. Anyone you encounter in the combat zones will be an enemy .”

Mr. Jean-Pierre Bemba said: *“Anyone you encounter in the combat zones will be enemy because I received information that the enemy is wearing civilian clothing”*. This was the instruction provided by Mr. Jean-Pierre Bemba and the troops followed this idea.

Another witness will explain to you how the soldiers believed Mr. Jean-Pierre Bemba gave them *carte blanche*. These orders clearly show a commander who knowingly decides not to prevent the commission of crimes against civilians.

Indeed, Bemba gave license to his troops to treat as enemy combatants extended families in their homes, children, women, the elderly.

The case which is the failure to prevent and punish is integral to, and confirms, the license he gave his troops to attack the civilians.

Through the evidence presented, the Court will be able to view Bemba's failure to educate or punish his troops in the context of his choice not to keep his troops in line, and in this way failed to guarantee that the law of war will be followed.

The evidence will show that Mr. Jean-Pierre Bemba was well aware that MLC troops were committing and were about to commit crimes. The evidence will show that Jean-Pierre Bemba was in communication with his commanders. He received civilians' complaints about his soldiers when he visited the Central African Republic. In early November, and in a public speech in the Central African Republic, Bemba recognised the existence of reports of widespread criminal activity committed by the MLC. Jean-Pierre Bemba also knew because the international media put him on notice. Journalists directly informed him of these abuses. And, as the evidence will establish, Jean-Pierre Bemba never claimed ignorance. Instead, he dismissed the reports as untrue, denying them and claiming innocence on behalf of himself and his troops. Another evidence of Mr Bemba's knowledge is his request to the UN to investigate the abuses that he never followed up. Instead, after the UN agreed to help him investigate, he never followed up but he organised sham trials against a few soldiers for petty crimes unrelated with the offences described, aiming to cover up the crimes committed.

Madam President,

Your Honours,

Deputy Prosecutor Fatou Bensouda will now present with more detail the context in which the crimes were committed.