



The Jurisdiction of the International Criminal Court in Trying War Crimes: A Case Study of Jean-Pierre Bemba Gombo

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Abstract

One thing that makes the Jean-Pierre Bemba case interesting to study is the defeat of the ICC Prosecutor, which led to the release of Jean-Pierre on June 8 2018. The basis of the ICC Prosecutor's indictment regarding the responsibility of superiors for failure to prevent crime can be rebutted by Jean-Pierre through an attorney of the law. This study uses a normative juridical method with a case approach and a qualitative descriptive analysis method. According to the research results, the case of Jean-Pierre Bemba Gombo is an international criminal case that falls under the jurisdiction of the International Criminal Court. The jurisdiction of the International Criminal Court in trying this case was based on the ratification of the Rome Statute on October 3, 2001, of the Central African Republic. The final decision of the International Criminal Court was to acquit Jean-Pierre from his sentence. Regarding the elements of special responsibility for international crimes committed by military forces, the International Criminal Court must emphasize this again. This is necessary so that there are no loopholes that the accused can exploit to escape punishment.

Keywords: *International Criminal Court; War Crimes; Jurisdiction*

Introduction

The International Criminal Court's (hence referred to as the ICC) ruling against Jean-Pierre Bemba Gombo is the topic of this article. The ruling is identified as ICC-01/0501/08. This ruling concerns a case involving Jean-Pierre, a politician, a former vice president of the Democratic Republic of the Congo (RDC), and the head of the Congo Liberation Movement or MLC, a rebel organization with political party affiliation (Kaban, 2018).

The ICC gave Jean-Pierre Bemba Gombo an 18-year jail term (Makarim, 2021). This sentence was given to Jean-Pierre as a result of his legal and persuasive conviction for his participation in war crimes and crimes against humanity in the Central African Republic (CAR) between October 2002 and March 2003. According to the ICC's ruling, Jean-Pierre is culpable and accountable for war crimes, including murder, rape, and pillage, which were perpetrated by soldiers under their direction in the years 2002 to 2003, as well as crimes against humanity, including murder and rape.

Given a 16-year jail term for crimes against humanity, Jean-Pierre. Additionally, he will serve an additional 16 years in jail for war crimes perpetrated by the militia group he commands, the Movement for the Liberation of Congo (MLC). In addition, the International Criminal Court (ICC) panel of judges, which included Sylvia Steiner (Brazil), Joyce Aluoch (Kenya), and Kuniko Ozaki (Japan), read out their ruling on March 21, 2016, thereby sentencing Jean-Pierre to 18 years in jail. This choice was made in accordance with Article 28, letter a, of the Rome Statute, which addresses the responsibility of commanders (superiors) for war crimes and crimes against humanity perpetrated by Jean-forces Pierre's in the Central African Republic (*Summary of Trial Chamber III's Decision of June 2016, Pursuant to Article 76 of the Statute in the case of The Prosecutor v. Jean-Pierre Bemba Gombo Case No. ICC-01/05-01/08*, 2016). The court determined that an 18-year jail term was adequate to demonstrate the seriousness of Jean-actions Pierre's.

Jean-Piere had been imprisoned prior to this choice since May 24, 2008. As a result, the length of time he has already spent in custody will be subtracted from his overall jail term. Jean-Pierre has the right to appeal this ruling to the ICC. The recovery (restoration) of victims of war crimes and crimes against humanity in this case will also be examined later in accordance with the rules of Article 75 of the Rome Statute. This case started during the Congo's transitional period of rule, which lasted from 1998 to 2003 and was marked by conflict and bloodshed, particularly in the South and North of the country (Meutia, 2018). Four million Tutsi and Hutu tribe members are said to have perished as a consequence of this terrible battle. Following the election, which Jean-Pierre Bemba Gombo won, the competition resumed to heat up. According to radio reports from South Africa, soldiers had taken over Kinshasa's city and were fighting with Joseph Kabila's presidential guard. Due to this circumstance, UN troops and EU peacekeepers moved swiftly to protect foreign dignitaries near war zones. Forces allied with Joseph Kabila assaulted the Jean-Piere House while diplomats and a conference were taking place inside.

Another fight took place in around March 2007 close to Jean-home. Pierre's Difficult deaths of scores of people and troops were reported by the local media. Then Jean-Piere fled to the South African Embassy and suggested talks and a cease-fire. The MLC, an army led by Jean-Pierre, makes civilians their targets in order to stop a coup against Angel-Felix Patase, the president of South Africa. This was merely a mode, however. Jean-Pierre was found to have mismanaged the mercenaries he headed, according to the ruling of the ICC panel of judges. The mercenary also committed additional horrific crimes including robbery, rape, and murder around the end of October 2002 (Indonesia, 2016).

Jean-Pierre Bemba, the top commander of the MLC, is the key player in charge of making all military and political decisions in the Central African Republic on the conduct of his forces. The Rome Statute was approved by the Central African Republic on October 3, 2001, hence the ICC's ruling in this matter is valid. The ICC was given the authority to look into international crimes that took place on its soil as of July 1, 2002 (ICC, n.d.). Following the investigative process in the combat zone, the ICC issued a warrant for Jean-Pierre Bemba's arrest on May 23, 2008. Finally, Jean-Pierre was taken into custody in Brussels on May 24, 2008. Jean-Pierre was then sent to the ICC custody facility in The Hague, Netherlands, on July 3, 2008 (*International Criminal Court Pre-Trial Chamber II, The Prosecutor V. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08*, 2009). The ICC presented Jean-Pierre at a hearing and confirmation procedure from January 12 to January 15, 2009.

Aside from the review mentioned above, one aspect that makes the case of Jean-Pierre Bemba interesting to research is the ICC Prosecutor's loss, which resulted in Jean-release Pierre's on June 8, 2018. Through his counsel, Jean-Pierre is able to contest the premise of the ICC Prosecutor's accusation about the accountability of superiors for failing to prevent crime (VoA, 2018). Based on the explanation above, the issues to be discussed include three aspects: what is the jurisdiction of the international criminal court in trying Jean Pierre Bemba Gombo? and What is the final verdict that has permanent legal force against Jean Pierre Bemba Gombo?

Methods

The researcher employs a normative juridical study type with a case method to address the issues in this article. Library law research, which investigates library resources or even secondary data, is the normative approach of legal research. This study was done to gather information on the subject topic in the form of ideas, concepts, legal principles, and regulations (Mamudji, 2001). The method of gathering data via literature research included reading, citing, and assessing if the information was sufficient to be prepared for data categorization, which was done carefully and in accordance with the subject matter. Use of descriptive qualitative data analysis. This research draws on secondary, qualitative data from laws and regulations, court rulings or jurisprudence, legal theory, and expert legal views. To discover solutions to the posed difficulties, the data is qualitatively collected, categorized, and systematized before being evaluated and drawn conclusions.

Result and Discussion

1. The Jurisdiction of the International Criminal Court in Trialing Jean Pierre Bemba Gombo

It is important to stress that the Jean-Pierre case is an international crime within the jurisdiction of the ICC before going any farther with this. The Central African Republic's acceptance of the Rome Statute on October 3, 2001 served as the foundation for this case's power to prosecute the ICC. On July 1, 2002, the ICC received authorization to undertake investigations into suspected international crimes covered by the Rome Statute in the Central African Republic as a result of its ratification. At pre-trial II, Jean-case Pierre's was heard by a jury. Antoine Kesia-Mbe Mindua (Republic of the Congo), Tomoko Akane (Japan), and Rosario Salvatore Aitala make up the ICC panel of judges (Italy). Additionally, the appeal chamber's trial stage.

In the Jean-Pierre case, there are three (three) public prosecutors: Fatou Bensouda (Gambia), James Stewart (Canada), and Helen Brady (Australia). Jean-Pierre was joined by three (three) legal counsel throughout the trial, including Peter Haynes (United Kingdom), Kate Gibson (Australia), and Kai Ambos (Germany). In this case, there were at least 5229 victims who took part in the legal proceedings from different civil organisations. Marie Edith Douzima-Lawson, a lawyer from the Central African Republic, defended the victims.

By the detention warrant, Jean-Pierre was held accountable for the following allegations against him that were made under the provisions of Article 25, paragraph 3, letter an of the Rome Statute:

a. Murder

In this instance, victims who resisted being looted by the MLC gang commanded by Jean-Pierre were killed. The MLC gang carried out the killings, which were followed by looting, rape, and brutality, in front of the victim's family members and other members of civic society. Anyone who opposed plundering was shot without hesitation, including women and men, by MLC forces. A Muslim who resisted having his sheep stolen was also mutilated by MLC forces in the sight of other victims. Following this event, the ICC judges concluded that the MLC forces under Jean-direction Pierre's had acted in a way that satisfied both letter (c) and letter I of Article 8 of the Rome Statute (*International Criminal Court Pre-Trial Chamber II, The Prosecutor V. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, 2009*).

The most serious kind of international crime is murder. This is true because a murderous act revokes the intrinsic right to life that every individual has had from birth (Andrew P. Langelo, Erwin G. Kristanto, 2021). The murder of Jean-Pierre was deemed a severe crime by the ICC due to the extremely sadistic nature of the killing's location, timing, circumstances, and conduct (*Summary of Trial Chamber III's Decision of June 2016, Pursuant to Article 76 of the Statute in the case of The Prosecutor v. Jean-*

Pierre Bemba Gombo Case No. ICC-01/05-01/08, 2016). The ICC records also disclosed a number of other elements that contributed to the murder by MLC qualifying as a serious international crime.

b. Rape

In this situation, there have been a sizable number of rape victims. The rape of civilians in the Central African Republic took place in several sites, almost all throughout the country, between October 26, 2002, and March 15, 2003. The victims of this catastrophe, particularly vulnerable populations like girls, experienced immense hardship and harm.

Even mental illness (some victims desire to kill themselves) and communicable physical conditions affect rape victims. Muslim women who have been raped may be prevented from finding their spouses as a consequence of the sexual abuse they have undergone, according to local norms. At least 8 (eight) minor females, aged 10 to 17, were raped. The youngsters were raped when they were defenseless, according to witness accounts. While this was going on, MLC soldiers kept their parents at gunpoint, preventing them from intervening.

The MLC forces used sexual abuse as one of their tools to win the battle. The ICC decision states that the rape was committed as a kind of restitution since the MLC soldiers were underpaid. Civilians accused of sympathizing with their enemy were also subjected to rapes by MLC soldiers of all ages and all classes. The rapes were committed concurrently with episodes of looting and murders in front of people, as well as violence against the victims and their relatives (*Summary of Trial Chamber III's Decision of June 2016, Pursuant to Article 76 of the Statute in the case of The Prosecutor v. Jean-Pierre Bemba Gombo Case No. ICC-01/05-01/08*, 2016). At least two persons and more than 20 MLC soldiers participated in this event as all the actors.

c. Torture

In the pre-trial hearing, the ICC public prosecutor revealed that the perpetrators of the war crimes included in Article 8 point 2 letters (c) and I of the Rome Statute tormented the victim via sexual abuse. The victims, who were mostly civilians, were also subjected to intimidation and prejudice in addition to the torture. Regarding this allegation of torture, Jean-Pierre questioned whether or not the act of persecution satisfied the requirements of an international crime outlined in Article 8 Point 2, Letters (c) and I of the Rome Statute, which deals with war crimes including torture.

The public prosecutor, on the other hand, allegedly neglected to submit the facts supporting the accused crime of torture, in the opinion of the ICC. The ICC public prosecutor only provided details about the war crime of rape with pain throughout the trial. The public prosecutor did not, however, provide a thorough justification of the MLC soldiers' purpose (men's rea) when they committed the act of torture. Therefore, the ICC judges believed that the public prosecutor erred in demonstrating the suffering claim, and that the allegation of war crimes committed by torture was not legitimately and clearly established. Judges of the ICC rejected it.

d. Crimes Against Human Dignity

Crimes against human dignity are included in the indictment that the ICC public prosecutor filed to the ICC court. According to the ICC public prosecutor's accusation, MLC soldiers subjected women, men, children, and other people in the Central African Republic to humiliating treatment. The Rome Statute's Article 8 Point 2 Letters (c) (ii) accusations, however, were dismissed by the ICC court. This rejection was made because there were parallels between the allegations of crimes against human dignity and those of war crimes committed via torture. According to a number of facts, the MLC forces forcedfully tore their garments off of them while gang-raping them. These data support the continued accusation of crimes against human dignity by the MLC forces under Jean-Pierre by the ICC public prosecutor. The ICC judge ultimately determined that the charge of crimes against a person's dignity would be merged with the number of war crimes in the form of rape as the prior charges after hearing the public prosecutor's testimony.

e. Looting

The ICC judge determined after reviewing the evidence that it showed an assault on the Central African Republic's territory by MLC troops between October 26, 2002, and March 15, 2003. They pillaged citizens' possessions including food, clothes, automobiles, electronic equipment, money and gold, and home goods that were utilized for the MLC forces' own needs. Additionally, MLC forces plagiarized areas of the Central African Republic to steal money and goods. Clearly, the looting was not justifiable. The MLC soldiers also didn't think twice to injure anybody who got in the path of their plundering. Evidence of the theft was submitted at trial by the ICC public prosecutor (*Summary of Trial Chamber III's Decision of June 2016, Pursuant to Article 76 of the Statute in the case of The Prosecutor v. Jean-Pierre Bemba Gombo Case No. ICC-01/05-01/08, 2016*).

The public prosecutor indicated in their requests that Jean-punishment Pierre's could not be less than 25 years in jail based on these claims. Regarding this case, Jean-lawyer Pierre's said in his defense that Jean-Pierre ought to have gotten a lesser punishment than the requests of the public prosecutor. A sentence of 12 to 14 years in jail, according to Jean-defense Pierre's counsel, would be in violation of his human rights (*Summary of Trial Chamber III's Decision of June 2016, Pursuant to Article 76 of the Statute in the case of The Prosecutor v. Jean-Pierre Bemba Gombo Case No. ICC-01/05-01/08, 2016*).

2. The Final Decision That Has Permanent Legal Force Against Jean Pierre Bemba Gombo

The criminal liability of supervisors for offenses committed by their subordinates is examined in this research. Managers and helpers should abide by the laws of war. Therefore, it is crucial to enforce the legislation governing Jean-accountability Pierre's as commander of the MLC troops in order to stop additional breaches of the laws of war. According to Article 15 Point 1 Letter (a) Rules of Procedure and Evidence, the ICC must balance the aggravating and mitigating circumstances for the accused fairly, taking into consideration both his personal circumstances and the effects of his conduct that the victims have had to endure. Based on the provisions of Article 77 point 1 of the Rome Statute, it explains that the Court can impose penalties on a person convicted of a crime based on article 5 of the Rome Statute, namely:

- a) Imprisonment for a specific time, up to 30 years; or
- b) Life imprisonment is deemed fair to the accused and the victim.

Based on the facts, the public prosecutor's indictment described above, as well as based on the provisions of Article 28 point (a) of the Rome Statute, the ICC finally found Jean-Pierre guilty and sentenced brother Jean-Pierre Bemba Gombo for the crimes he had committed. as follows:

- a) War crime in the form of murder: imprisonment for 16 years;
- b) Crimes against humanity in the form of murder: imprisonment for 16 years;
- c) War crime of rape: imprisonment for 18 years;
- d) Crime against humanity in the form of rape: imprisonment for 18 years; and
- e) War crime of looting: imprisonment for 16 years (Yulia Fitriliani, 2020).

The ICC judges determined that Jean-Pierre merited the worst penalty 18 years in prison based on their legal analysis. This phrase encapsulates all of brother Jean-Pierre Bemba Gombo's harsh and sadistic deeds. The ICC judges thus determined that imprisonment was the most suitable sentence in this instance.

Through his counsel, Jean-Pierre appealed the judgment that was rendered against him to the ICC. On June 8, 2018, the ICC Appeals Chamber declared that the sentence imposed on brother Jean-Pierre was incorrect based on this appeal. The difficulty arises when attempting to clarify that, in accordance with Article 28 Point (a) of the Statute, a superior should have taken the required steps to prevent or suppress the crime or to refer the issue to the appropriate authority for investigation and prosecution. Rome. The evidence put up by the public prosecutor was judged insufficient by the ICC

appeal court to support his allegations (*The Prosecutor V. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08*, 2018). Thus, after a 10-year trial that lasted from 2008 to 2018, Jean-Pierre Bemba Gombo was released from prison.

Because of this error, the ICC Appellate Judge believed that Jean-Pierre Bemba Gombo had lost out as a result of the previous ruling. In his ruling, the ICC appeal judge identified multiple mistakes in the brother of Jean-Pierre Bemba Gombo's sentence, including:

- a) The ICC made a mistake because it needed to examine the limits of brother Jean-Pierre's authority as a superior who sent troops to other countries.
- b) The ICC made the mistake of failing to understand brother Jean-Pierre's plea that he had sent a letter to high-ranking officials in the Central African Republic to investigate the crimes that occurred at that time.
- c) The ICC's next mistake was in considering that Jean-Pierre Bemba Gombo's intentions indicated insincerity in taking steps to prevent the crimes committed by the forces under his leadership.
- d) The ICC also made the mistake of failing to estimate the number of crimes committed and examining the impact of the crimes committed by Jean-Pierre to determine whether or not brother Jean-Pierre had taken the steps he needed to take as head of the MLC.

In addition, on September 17, 2018, the VII Court of Justice convicted Jean-Pierre for offenses against the administration of justice to a year in jail and a fine of EUR 300,000. Detention time is cut short, and the jail term is regarded to have been completed. Attorneys for Jean-Pierre submitted a request for compensation in accordance with Article 85 of the Rome Statute in March 2019. To make a swift conclusion, the Pre-Trial II judge that the ICC designated will take into account the application.

The ICC appeals chamber has the authority to overturn or modify the judgment that is the subject of an appeal, as was done in the instance of Jean-Pierre above, in accordance with the terms of Article 83 Point 2 of the Rome Statute. In the end, the ICC appeal court ruled that the ICC erred in prosecuting brother Jean-Pierre Bemba Gombo for failing to take action to stop international crimes committed by his MLC soldiers between 2002 and 2003. In the meanwhile, the ICC appeals court overturned the conviction and release of Jean-Pierre Bemba Gombo's brother.

Conclusion

If the national courts are unable to adjudicate the cases of international crimes sent to them, the International Criminal Court comes into being. In other words, invoking the International Criminal Court's power to resolve matters involving international crimes is a last option and an extension of the authority of national courts. The Personal, Territorial, Temporal, and Material Jurisdiction of the International Criminal Court. The International Criminal Court has jurisdiction over the Jean-Pierre Bemba Gombo case because it is a matter of international crime. The Central African Republic's acceptance of the Rome Statute on October 3, 2001, established the International Criminal Court's authority to hear this case. the ratification of this.

In light of the debate above, the International Criminal Court ultimately decided to relieve Jean-Pierre of his punishment. The International Criminal Court must reiterate this in relation to the components of exceptional responsibility for international crimes perpetrated by armed forces. This is required to ensure that the accused cannot utilize any loopholes to avoid punishment. The author argues that brother Jean-Pierre was a responsible commando who should have received an 18-year jail term since all requirements for command responsibility were met. The specifics of command responsibility that have been carried out include a command structure between Jean-Pierre and his criminally inclined soldiers.

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