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## ANNEX 16

## ICC - Africa Update



### Democratic Republic of Congo

#### Bemba Arrest Sets Key Precedent

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ICC has so far only indicted mid-level commanders, not those alleged to bear overall responsibility for crimes.

By IWPR staff in The Hague (AR No. 172, 28-May-08)

The arrest this past weekend of former militia leader Jean-Pierre Bemba, a prominent political figure and businessman in the Democratic Republic of Congo, DRC, was lauded by human rights groups, but condemned by his supporters as politically motivated.

Bemba, arrested in the suburbs of Brussels, where he had been living, has been indicted by the International Criminal Court, ICC, for crimes committed in DRC's neighbour, the Central African Republic, CAR.

As chairman of the notorious Movement for the Liberation of the Congo, MLC, and former presidential candidate, he is the highest-ranking political figure to be nabbed by the ICC for prosecution.

Bemba's MLC was an armed group in the 2002-2003 conflict in CAR, eventually becoming a political party in DRC. Bemba was also runner-up in the 2006 DRC presidential election which was won in a run-off election by President Joseph Kabila.

According to the charges unsealed by the ICC on May 24, the day he was arrested, Bemba's forces terrorised and brutalised innocent civilians and carried out a campaign of rape and looting when in CAR.

The ICC indictment focuses on the high number of particularly brutal rapes carried out by Bemba's forces. "He had done it before in CAR, he had done it before in the DRC. He had to be stopped," said ICC prosecutor Luis Moreno-Ocampo.

"Mr Bemba's arrest is a warning to all those who commit, who encourage, or who tolerate sexual crimes. There is a new law called the Rome Statute. Under this new law, they will be prosecuted," said Moreno-Ocampo.

Marceau Sivieude, Africa Desk Director of the Fédération Internationale des Droits de l'Homme, welcomed Bemba's arrest, saying that victims of crimes committed by militias in the region have gone too long without justice.

"The victims were always put aside and never had the chance to get justice or reparation," he said. "We feel the absence of justice is one of the reasons for the continuing wars and conflict in CAR.

"We are pleased the ICC started with Bemba, who is not a small fish. We hope it will have an impact, not only in the CAR but across Africa."

Sivieude said crimes committed by other CAR leaders should also be investigated.

"We hope the court will target all those responsible for crimes", because, he said, the militia of former CAR president Ange Felix Patassé, with whom Bemba was aligned, also committed atrocities.

"We want the court to be very objective, and to indict the perpetrators of the most serious international crimes committed," he said, "wherever they come from and whatever side they were on in this conflict."

Because it addressed crimes by a force from one country committed in a separate country, continued Sivieude, Bemba's arrest indicated the court was broadening its reach.

The arrest of Bemba, a former DRC vice president, he said, may blunt the criticism that the ICC has so far only indicted mid-level commanders, and not those who allegedly bear overall responsibility for crimes, "He is a big fish, which will have an impact on the ground and internationally."

Fatou Bensouda, ICC deputy prosecutor, said the court conducts investigations and seeks culprits regardless of national borders.

"It doesn't matter where the suspects are, as long as they are involved in the crimes we are investigating, and they are most responsible for the crimes," she told IWPR.

"This is what we are driven by – the evidence, and a commitment to punish the most senior people responsible for the crimes. This can lead us to anybody, and their current location or position, or past position, is not a factor and not relevant to the decisions we make."

Reaction in the DRC, particularly from Bemba's supporters, was critical.

The United Nation's Radio Okapi reported that thousands of MLC members marched in the DRC capital of Kinshasa to demand Bemba's release. Protests were also reported in Mbandaka, the capital city of Bemba's native Equateur province.

Despite the protests, observers do not expect a repeat of the March 2007 violence between fighters loyal to Bemba and the government, a clash that forced him to leave Congo. Although a senator and therefore immune from prosecution in the DRC, he was charged with treason and fled to Portugal.

François Mwamba, the MLC's secretary-general, suggested that Bemba's arrest was politically motivated because it came shortly before his rumoured return to Congo. Bemba recently was elected opposition party spokesman in DRC, which would have made him the chief critic of President Kabila.

"The arrest of Senator Jean-Pierre Bemba, a few days [after] his election as a spokesman of the opposition, cannot be [a coincidence], especially since neither Ange Felix Patasse, nor the heads of his army who enjoyed the support of the MLC troops, have been subjected to any procedure," said Mwamba told Radio Okapi.

Andrew Philip, a Congo researcher for Amnesty International, said he was surprised that such a high-ranking political figure was arrested. "The indictments are now reaching a level of quite senior people," said Philip.

But the arrest concerned some observers because it did not focus on crimes committed in DRC.

"There is a certain amount of surprise, or dismay, that he is not being brought to trial for crimes committed in the Congo," said Philip. While he praised the fact that the case "deals in a major

way with sexual violence", he said some people were concerned because that violence occurred in CAR, not in the Congo, which has suffered an epidemic of rape.

Bemba's political party now faces a decision, said Philip, as to how it will deal with the arrest, "There is now a challenge for the MLC to turn the page and find a new leader around which they can derive support."

Elsewhere in Africa, the arrest was welcomed.

Nganatouwa Wanfiyo Goungaye, a judge and president of the Central African League for Human Rights, said it could deter other militia leaders from committing such crimes in the future.

"The fact that the prosecutor took such a big fish and threw him in prison, acts in a dissuasive manner," he said. "This is what will stop criminals."

Bemba's arrest, he said, was a victory,

"This is really a great satisfaction, even if it was a long process. I also say it on behalf of the victims that I have worked with. There is really a big reaction of satisfaction.

"I think that in addition to Bemba ... other arrests will have to follow," said Goungaye, mentioning Patasse and the mercenary aide, Abdoullah Miskine, as likely suspects. In addition, he said, "the responsibility of the current head of state (President François Bozizé) could be questioned."

Those still sought by the ICC include Bosco Ntaganda, who is accused of crimes in the Ituri region of DRC, and who continues to be chief of staff for rebel commander Laurent Nkunda, the leader of a Tutsi militia in eastern Congo.

In addition, the ICC has arrest warrants for Joseph Kony, leader of the Lord's Resistance Army which is currently based in Garamba Park in northeastern DRC, but whose force has recently been reported to have been attacking villages in the area.

In Sudan, the ICC seeks Ahmed Harun, minister of humanitarian affairs for the Sudan; and a janjaweed militia leader, Ali Kushayb. The two Sudanese are charged with 51 counts of crimes against humanity and war crimes.

Bensouda said she hoped other countries would follow Belgium's actions and arrest the suspects.

"The arrest of Bemba was only made possible through the excellent cooperation of Belgium, and we are hoping that the surrender of Bemba from Belgium to the court will be soon and without delay," said Bensouda.

"We are counting on similar cooperation from other states to help execute the courts arrest warrants, like Sudan, Uganda and the DRC. We are counting on other countries to follow the example of Belgium."

Katy Glassborow, Lisa Clifford, and Stephanie Wolters in The Hague, along with Eugène Bakama Bope in Brussels, contributed to this article.