

## Confronting Past Crimes at the National Level

The International Criminal Court (ICC) is preparing to prosecute Jean-Pierre Bemba of the Democratic Republic of Congo (DRC) for alleged rapes, torture and murders that his militia committed in the Central African Republic (CAR). The case against him demonstrates that the ICC is targeting senior leaders responsible for the most heinous crimes and is taking into account the regional dimensions of African conflicts. But the Bemba case also underscores that international prosecutions are just one element of a holistic approach for countries to take as they come to terms with past human rights abuses.

### CENTRAL AFRICAN REPUBLIC

ICTJ monitors the situation in the CAR to analyze the transitional justice dynamics in central Africa. Since the CAR declared its independence from France in 1960, the country has suffered successive rebellions fomented by interventions from its former colonial ruler and various neighboring African countries.

François Bozizé came to power in the CAR through a military coup on March 15, 2003, capping two years of armed violence between his forces and those of then-President Ange-Félix Patassé. The conflict involved a complex web of regional and international supporters; Patassé received reinforcements from Jean-Pierre Bemba's mostly Congolese Movement for the Liberation of Congo (MLC) troops and Libyan forces, while Bozizé benefited from the support of Chadian troops, and weapons, financial support and political acquiescence from France and the DRC.

Although democratic elections in 2005 affirmed Bozizé's rise to power in the CAR, his tenure has been marred by armed rebellions challenging his rule in the northwestern region bordering Chad and instability reigns due to the spillover from Darfur in northeastern CAR. Despite the presence of the United Nations peace-building office in the CAR since 2000 and the deployment of international peacekeepers, Bozizé's army and rival rebel groups have continued to commit massive human rights violations with impunity.

Peace talks between Bozizé and his challengers have yielded compromises toward an inclusive political transition and several initiatives for transitional justice measures. However when the international community decides whether to offer political or financial support for the measures, it should exercise extreme caution to be sure that these steps actually

benefit victims and are not manipulated for political gain. Recent initiatives taken to promote transitional justice that are subject to manipulation include the following:

**CAR amnesty law:** On Oct. 13, 2008, President Bozizé promulgated an amnesty law that parliament had adopted in September 2008. Although the law excludes international crimes as defined by the ICC, it grants broad amnesty for serious crimes committed since March 15, 2003, by Bozizé's army and presidential guard, by CAR rebel groups, and for a more limited scope of potential crimes committed by Ange-Félix Patassé and several of his associates. One result of this amnesty law is that Bemba is the lone suspect targeted for prosecution of international crimes at an international court at this time.

**National prosecutions in the CAR:** After the ICC issued a warrant for Bemba and secured his arrest in 2008, Bozizé wrote to the UN Secretary General insisting that the CAR's justice system is capable of pursuing national prosecutions for international crimes, which would pre-empt the ICC from pursuing prosecutions in the international system. Bozizé's position is a veiled attempt to block the ICC from investigating crimes against CAR nationals that would fall within the amnesty law—in particular crimes committed by Bozizé's troops since the coup of March 15, 2003.

**Truth and reconciliation commission:** In December 2008, the CAR government, rebel groups, political opposition and civil society held peace talks in which they agreed to establish a transitional government leading to national elections. They also ratified a resolution to create a Truth and Reconciliation Commission (TRC). The contours of a potential TRC in the CAR are yet to be defined.

## DEMOCRATIC REPUBLIC OF CONGO

Like the CAR, the DRC has struggled to bring closure to an era of protracted international armed conflict that began with Laurent Desire Kabila's 1996-97 campaign to liberate then-Zaire from the repressive rule of Mobutu Sese Seko. Over four years of peace negotiations between the government, armed rebel factions, political opposition, and civil society actors yielded a peace accord in 2003. The agreement established a transitional government according to a power-sharing agreement involving all factions present at the peace talks. This created a tenuous political balance subject to manipulation by partisan interests.

Since the Congolese transition, several transitional justice initiatives have been undertaken but have been unsuccessful at establishing accountability for past crimes. The poor results of two of these mechanisms – prosecutions and the DRC's truth and reconciliation commission – serve as a potential lesson for what might happen in the CAR.

**Prosecutions:** The Congolese government referred the situation of the DRC to the ICC in 2004. Since then, the ICC has issued four arrest warrants for suspected Congolese war criminals and three have been arrested and transferred to The Hague with ongoing proceedings. At the national level, several trials for serious international crimes have been brought before the military justice system, resulting in convictions and orders to pay damages to the victims. However, most of those convicted have escaped from jail, and no victim has received payment. This record demonstrates a lack of real political will to hold suspects accountable.

**Truth and Reconciliation Commission:** The work of the Congolese Truth and Reconciliation Commission (TRC) is largely discredited. According to its mandate, commissioners were drawn from all four factions to the power-sharing agreement, including former armed belligerents. Not only did the commissioners lack integrity and independence, the TRC's mandate was too vast, and appropriate rules were not adopted

for legitimate truth-seeking proceedings. The Congolese TRC experience makes clear that if the CAR were to establish a TRC during the transition and with membership representing former belligerents, such a commission would unlikely meet the needs and desires of victims for effective non-judicial truth-seeking measures.

**National Dialogue:** ICTJ is leading a capacity-building program in the DRC to raise awareness of transitional justice mechanisms among civil society, community-based organizations and DRC authorities. ICTJ promotes a national dialogue on adopting a holistic approach to transitional justice to address the DRC's legacy of large-scale human rights abuses. In addition to analyzing prosecutions and truth-seeking options, ICTJ supports greater understanding of the potential role of additional transitional justice measures, including institutional reform, reparations and memorialization, and ensuring that the special needs and concerns of women and girl victims are addressed.

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