

**Summary of Trial Chamber III's Decision of 21 June 2016,
pursuant to Article 76 of the Statute in the case of
*The Prosecutor v. Jean-Pierre Bemba Gombo***

1. Trial Chamber III of the International Criminal Court hereby provides the following summary of its Decision on Sentence pursuant to Article 76 of the Rome Statute. The Chamber notes that only the written decision, to be filed after this hearing, is authoritative.

I. BACKGROUND

2. On 21 March 2016 the Chamber convicted Mr Jean-Pierre Bemba Gombo under Article 28(a), of the following crimes committed by the soldiers of the *Mouvement de libération du Congo* in the Central African Republic between 26 October 2002 and 15 March 2003: murder as a crime against humanity under Article 7(1)(a); murder as a war crime under Article 8(2)(c)(i); rape as a crime against humanity under Article 7(1)(g); rape as a war crime under Article 8(2)(e)(vi); and pillaging as a war crime under Article 8(2)(e)(v).
3. Between 11 and 25 April 2016, the Prosecution, Legal Representative of Victims and Defence filed written submissions concerning the appropriate sentence. Between 16 and 18 May 2016, the Chamber heard the testimonies of a character witness called by the Defence and an expert witness called by the Prosecution; the views and concerns of two protected victims; and the final oral submissions of the Prosecution, Legal Representative, and Defence.

II. ANALYSIS

4. In order to determine the appropriate sentence, in accordance with Articles 76 to 78 and Rules 145 to 147, the Chamber considered the gravity of the crimes; the

gravity of Mr Bemba's culpable conduct; and Mr Bemba's individual circumstances. The Chamber took into account all relevant evidence and submissions presented throughout the trial, in order to decide on the proportionate sentence in relation to each crime, and all factors relevant to the finding on the existence of aggravating and mitigating circumstances.

A. CRIMES

5. Over the course of approximately four and a half months, beginning with their arrival on 26 October 2002, the MLC troops advanced through Bangui, to PK12 and PK22, and along the Damara-Sibut and Bossembélé-Bossangoa axes, attacked Mongoumba, and, on 15 March 2003, withdrew from the CAR. MLC soldiers committed crimes pursuant to a consistent *modus operandi*, in each of the locations that fell under their control. As noted in the Judgment, there is consistent and corroborated evidence that MLC soldiers committed many acts of murder, rape, and pillaging against civilians over a large geographical area, including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke and Mongoumba. The Chamber based Mr Bemba's conviction on specific underlying acts that it found beyond reasonable doubt were committed by the MLC soldiers. It further found that these underlying acts were only a portion of the total number of crimes committed by MLC forces during the 2002-2003 CAR Operation.
6. Below, the Chamber details its findings relevant to Mr Bemba's sentence in relation each of the crimes for which it entered a conviction as to their gravity, and when applicable, aggravating circumstances.

1. Murder

7. The murders identified in the Judgment were committed when the victims were resisting acts of pillaging. All acts of murder were committed in the presence of

other civilians, including some victims' family members, were accompanied by acts of pillaging, rape, and/or physical and verbal abuse. MLC soldiers shot P69's sister in the head when she resisted pillaging. Likewise, MLC soldiers, who had entered his home at night, shot P87's brother twice in the chest when he tried to protect a motorbike. It was the third group to come to his compound that day, during which his family's belongings were pillaged and P87 was raped. Finally, as witnessed by V1, MLC soldiers shot and mutilated an unidentified Muslim man in his home, after he refused to hand over a sheep.

8. Murder deprives the direct victim of his or her life, the ultimate harm. Relatives and dependants left behind are not only deprived of the direct victim but may also be directly injured – physically and/or psychologically – as a result of the murder. Further, persons who rely on the direct victim for support, whether financial, physical, emotional, psychological, moral, or otherwise are also affected.
9. The impact of the victims' deaths rippled through the relevant communities. Due to the prevailing chaotic and traumatic circumstances, family members and others with special bonds of affection to those murdered were deprived of the closure that funeral services and burial rituals may provide in periods of grief. For some victims, the impact of the murders was chronic and severe.
10. Accordingly, in light of the circumstances of time, manner, and location, in particular, the geographical and temporal scope of the underlying acts of murder, the nature of the unlawful behaviour, the means employed to execute the crime, and the extent of damage caused, the Chamber finds that, in this case, the crime of murder is of serious gravity.
11. The Chamber notes that, in exercise of its discretion, it considered all relevant factors above in its assessment of the gravity of the crime of murder. The Chamber is not convinced that any aggravating circumstances apply in this case in relation to the crime of murder.

2. Rape

a) Gravity

12. The number of victims of underlying acts of rape is substantial. The underlying acts of rape were committed throughout the geographical and temporal scope of the 2002-2003 CAR Operation, as part of an attack targeting many civilians throughout the CAR between 26 October 2002 and 15 March 2003. The degree of damage caused to the victims, their families, and communities was severe and lasting.
13. The victims of rape in this case faced many physical problems, such as vaginal and anal illnesses, abdominal pains, skin disorders, pelvic pain, high blood pressure, gastric problems, hypertension, miscarriage, infertility, and HIV. They also suffered psychological, psychiatric, and social consequences, such as PTSD, depression, humiliation, anxiety, guilt, and nightmares. P22 testified that, after her rape, she became suicidal, no longer desired any sexual relationship, and presented with severe PTSD, including sadness, an overall sense of pessimism, and inhibition. P79 was unable to tell anyone her daughter was raped, as the rape of a Muslim girl inhibits her from finding a husband in future. In this regard, the Chamber notes that some of the victims lost their virginity as a result of their rape, a harm that cannot be underestimated, particularly in the cultural context in which they occurred.
14. When their rapes were known within their communities, victims were ostracised, socially rejected, and stigmatised. For example, V1 felt like she was no longer treated as a human being, that she “lost [her] dignity”, was mocked, and called a “Banyamulengué wife”.
15. Accordingly, in light of the special status ascribed to sexual crimes in the Statute and Rules, the circumstances of time, manner, and location, in particular, the vast geographical and temporal scope of the underlying acts of rape, and the extent of

damage caused, the Chamber finds that, in this case, the crime of rape is of serious gravity.

b) Aggravating circumstance: particularly defenceless victims

16. Before committing the crime of rape, MLC soldiers first confirmed that General Bozizé's rebels had departed, and were thereafter the only armed force in an area. Armed MLC soldiers then targeted the unarmed victims in their homes, on temporary MLC bases, or in isolated locations, such as the bush. Many victims had already fled their homes or were seeking refuge when they were targeted. The MLC soldiers, always acting in groups to avoid any resistance, beat, restrained, threatened, and held under gunpoint the victims and others present, especially any who attempted to resist.
17. The young age of at least eight of the known rape victims, who were between 10 and 17 years old at the time of the attacks, rendered them especially vulnerable and defenceless. During the attacks, some of these children expressed their vulnerability. P82 testified, "I wanted to flee [...] I cried out. That alerted my father. My father tried to intervene and they put their weapons against him [...] and they deflowered me". P42, who was restrained at the time of his 10-year-old daughter's rape, recalled that his daughter shouted "Papa, they are undressing me. They are undressing me", but he could do nothing. After the attacks, some parents found their daughters lying on the ground, crying, and bleeding from their vaginas.
18. Accordingly, the Chamber finds beyond reasonable doubt that MLC soldiers committed the crime of rape against particularly defenceless victims, constituting an aggravating circumstance under Rule 145(2)(b)(iii).

c) Aggravating circumstance: particular cruelty

19. Dr André Tabo testified that MLC soldiers used sexual violence as a weapon of war. As found in the Judgment, the MLC troops did not receive adequate financial compensation and, in turn, self-compensated through acts of rape. Moreover, MLC soldiers committed acts of rape in order to punish civilians who were suspected rebels or rebel sympathisers and targeted their victims without regard for age, gender, or social status, including local officials. All acts of rape were committed together with, or during the course of, acts of murder and pillaging and in the presence or within earshot of other soldiers and/or civilians, including their children, parents, siblings, other family members, and/or neighbours. Acts of rape were also accompanied by physical and verbal abuse and threats of death and rape to the victims and their families.
20. No perpetrator acted alone: all of the underlying acts of rape were committed by at least two, often multiple, and in some cases more than 20, MLC soldiers, against the same victim. The vast majority of rape victims were raped by multiple perpetrators; some being orally, vaginally, and anally penetrated during the same attack. V1 was gang-raped on two separate occasions during the one-day attack on Mongoumba. First, two soldiers took turns raping her, while others looked on, “shouting with joy”, and then four soldiers raped V1 until she lost consciousness. When she regained consciousness, the rapes continued. Twelve soldiers in total penetrated her vagina, anus, and mouth with their penises during the second incident.
21. The Chamber notes that some of the underlying acts of rape were especially sadistic. Entire families – the elderly, men, women, and children – were victimised in turns during the same attacks and by the same MLC soldiers or soldiers of the same group that raped and murdered other family members and pillaged their belongings. For example, P23, three of his daughters, his granddaughter, and his wife were raped in turn during one attack.

22. Accordingly, the Chamber finds beyond reasonable doubt that MLC soldiers committed the crime of rape with particular cruelty, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iv).

3. Pillaging

a) Gravity

23. The number of victims of underlying acts of pillaging is substantial. The underlying acts of pillaging were committed throughout the geographical and temporal scope of the 2002-2003 CAR Operation.

24. The Chamber found that MLC soldiers pillaged property from CAR civilians on a large scale and with grave consequences for the victims. As described by P9 “looting took place in practically every town where MLC troops were to be found ... MLC soldiers just went through every single house and took whatever they wanted”. The consequences for the victims, particularly in light of the economic context, were far-reaching, impacting various aspects of their personal and professional lives, often leaving victims with nothing. For example, when Mr Flavien Mbata, the Senior Investigative Judge of the *Tribunal de Grande Instance* in Bangui, returned to his home, which had been occupied by MLC soldiers for several months, he found it “was pretty much empty”. Likewise, P23, P80, and P81 all testified that the MLC soldiers took everything from their compound in PK12.

25. Accordingly, the Chamber finds that, in this case, the crime of pillaging is of serious gravity.

b) Aggravating circumstance: particular cruelty

26. The Chamber notes that many of the same factors relevant to the aggravating circumstances provided in Rule 145(2)(b)(iii) and (iv) and recognised above as

applicable to the crime of rape are also relevant to the aggravating circumstance applicable to the crime of pillaging.

27. Armed MLC soldiers targeted unarmed victims in their homes; places of sanctuary, such as churches; temporary MLC bases; or in isolated locations, such as the bush. Many victims had already fled their homes or were seeking refuge at the time of the acts. All underlying acts of pillaging were committed by or otherwise involved at least two, and often multiple, MLC soldiers. Because the MLC troops did not receive adequate financial compensation, they self-compensated through their acts of pillaging. The acts of pillaging were often accompanied by acts of murder and rape, and always by physical and verbal abuse, and threats of death and rape to the victims and their families.
28. Many victims were subject to repeated acts of pillaging and other violence. Generally, the MLC soldiers pillaged without concern for the victims' livelihood or well-being, or even feed their families. For example, groups of MLC soldiers pillaged P87's compound on three different occasions in a single day, while also committing acts of rape, murder, and other violence and abuse. Approximately three weeks after one group of MLC soldiers pillaged his sister's belongings and murdered her in cold blood in his home, P69 found that MLC soldiers had again come to his home to pillage his belongings. They came yet again some days later to pillage, when this time six MLC soldiers gang-raped him and his wife.
29. Accordingly, the Majority of the Chamber finds beyond reasonable doubt that MLC soldiers committed the crime of pillaging with particular cruelty, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iv). Judge Steiner, however, considers that the same factors considered by the Majority establish that the crime of pillaging was committed against particularly defenceless victims, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iii).

B. MR BEMBA'S CULPABLE CONDUCT

30. The Chamber convicted Mr Bemba under Article 28(a), as a person effectively acting as a military commander, who knew that the MLC forces under his effective authority and control were committing or about to commit the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging. The Chamber further found that these crimes were a result of Mr Bemba's failure to exercise control properly.
31. Over the course of approximately four and a half months, Mr Bemba had consistent information of crimes committed by MLC soldiers in the CAR, over which he had ultimate, effective authority and control. Such authority extended to logistics, communications, military operations and strategy, and discipline. Although not physically present, Mr Bemba maintained a constant, remote presence, requiring and receiving regular, if not daily, reports and affirmatively exercising his authority, including by taking the most important decisions, such as committing MLC troops to the CAR and withdrawing them. Mr Bemba also visited the CAR on a number of occasions, including in November 2002 when he met with the MLC troops. He provided arms, ammunition, and reinforcements to his troops and the forces aligned with President Patassé.
32. Mr Bemba took some measures in reaction to public allegations of crimes by MLC soldiers, including two missions to the CAR, but failed to take any measures in reaction to allegations of crimes reported internally within the MLC. The Chamber found that Mr Bemba did not genuinely intend to take all necessary and reasonable measures within his material ability to prevent or repress the commission of crimes, as was his duty. Rather his key intention was to counter public allegations and rehabilitate the public image of the MLC. Despite his ongoing knowledge of the crimes, ultimate authority over the MLC contingent in the CAR, and the means to exercise such authority, Mr Bemba repeatedly failed to

take genuine and adequate measures to prevent and repress the crimes, and submit the matter to the competent authorities.

33. Mr Bemba's failures were ongoing throughout the 2002-2003 CAR Operation. The reasonable and necessary measures at his disposal, which he did not take, would have deterred the commission of crimes, and generally diminished, if not eliminated, the climate of acquiescence surrounding and facilitating the crimes. Accordingly, he did more than tolerate the crimes as a commander. Mr Bemba's failure to take action was deliberately aimed at encouraging the attack directed against the civilian population of which the crimes formed part, and directly contributed to the continuation and further commission of crimes. Finally, the Chamber emphasises that Mr Bemba's position as the highest-ranking MLC official, with authority over both political and military wings, as well as his education and experience, increase the gravity of his culpable conduct. Such circumstances enabled him to fully appreciate the consequences of his conduct as well as the alternative and remedial measures at his disposal to prevent and repress the crimes. Mr Bemba's knowing and willing impact on the crimes is therefore unquestionable.

34. Accordingly, the Chamber finds that Mr Bemba's culpable conduct was of serious gravity.

C. MITIGATING CIRCUMSTANCES

35. Having considered the mitigating circumstances alleged by the Defence, the Chamber, for the detailed reasons given in its written Decision, has not found any mitigating circumstances in this case.

III. DETERMINATION OF SENTENCE

36. The Prosecution submits that Mr Bemba's sentence should be no less than 25 years of imprisonment. The Legal Representative submits that Mr Bemba

deserves a sentence beyond the maximum threshold. The Defence submits that Mr Bemba should receive a joint sentence in the lower range of sentences previously passed on commanders at the international criminal courts. It stresses that a sentence outside the range of 12 to 14 years of imprisonment would infringe Mr Bemba's rights.

37. Pursuant to Rule 145(1)(a) and (b), the Chamber must balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and the crime. In order to sufficiently and adequately acknowledge the harm to the victims and fulfil the objectives of sentencing – in particular, retribution and deterrence – the sentence must be proportionate to the gravity of the crimes, and the individual circumstances and culpability of the convicted person. Pursuant to Article 77(1), the Chamber may sentence a person convicted of any crime referred to in Article 5 to a term of imprisonment of up to 30 years or, when justified by the extreme gravity of the crime and the convicted person's individual circumstances, a term of life imprisonment.

38. Taking into account all factors mentioned above, the Chamber sentences Mr Bemba, who was convicted for the following crimes under Article 28(a) as a person effectively acting as a military commander, to the following terms of imprisonment:

- Murder as a war crime: 16 years of imprisonment;
- Murder as a crime against humanity: 16 years of imprisonment;
- Rape as a war crime: 18 years of imprisonment;
- Rape as a crime against humanity: 18 years of imprisonment; and
- Pillaging as a war crime: 16 years of imprisonment.

39. The Chamber considers that the highest sentence imposed, namely, 18 years for rape, reflects the totality of Mr Bemba's culpability. The Chamber decides that the

sentences imposed for the war crimes and crimes against humanity of murder and rape and the war crime of pillaging shall run concurrently. Finally, the Chamber decides that, in the circumstances of this case, imprisonment is a sufficient penalty.

40. Pursuant to Article 78(2), Mr Bemba is entitled to credit against his sentence for the time he has spent in detention in accordance with an order of this Court, namely since his arrest, pursuant to a warrant issued by Pre-Trial Chamber II, on 24 May 2008.

IV. CONCLUSION

41. For the foregoing reasons, the Chamber:

- **SENTENCES** Mr Jean-Pierre Bemba Gombo to a total of 18 years of imprisonment;
- **ORDERS** the deduction of the time Mr Bemba has spent in detention pursuant to an order of this Court from his sentence; and
- **INFORMS** the parties and participants that reparations to victims pursuant to Article 75 of the Statute shall be addressed in due course.