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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

**Public Redacted Document
with
Public Annex A**

Public redacted version of Prosecution's Sentencing Submissions, 11 April 2016, ICC-01/05-01/08-3363-Conf

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I. INTRODUCTION

1. On 21 March 2016, Trial Chamber III (“Chamber”) issued its Judgment pursuant to article 74 of the Rome Statute (“Statute”), finding Jean-Pierre Bemba Gombo (“convicted person”) guilty under article 28(a) of the Statute of the crimes of murder as a crime against humanity under article 7(1)(a) of the Statute; murder as a war crime under article 8(2)(c)(i) of the Statute; rape as a crime against humanity under article 7(1)(g) of the Statute; rape as a war crime under article 8(2)(e)(vi) of the Statute; and pillaging as a war crime under article 8(2)(e)(v) of the Statute.¹

2. On the same day, the Chamber² instructed the Parties and the Legal Representative to file written requests to submit further evidence or to call witnesses (“Sentencing Requests”) and submissions on the principles to be applied for sentencing, and their views on the appropriate sentence, taking into consideration any aggravating and mitigating factors (“Sentencing Submissions”).³ In accordance with the Chamber’s orders,⁴ the Office of the Prosecutor (“Prosecution”) hereby files its Sentencing Submissions.

3. On 4 April 2016, the Prosecution filed a request for extension of page limit of its Sentencing Submissions to 40 pages⁵ that was granted by the Chamber on 7 April 2016.⁶

4. The Prosecution requests that a sentence of not less than 25 years of imprisonment be imposed on Bemba for the reasons stated below.

II. PRINCIPLES TO BE APPLIED WHEN CONSIDERING THE APPROPRIATE SENTENCE TO BE IMPOSED

A. Applicable penalties

5. Pursuant to article 77(1) of the Statute and rule 145(3) of the Rules of Procedure and Evidence (“Rules”), the Chamber may impose a sentence of imprisonment that does not exceed 30 years, unless “the extreme gravity of the crime and the individual circumstances of

¹ ICC-01/05-01/08-3343 (“Bemba Judgment”).

² ICC-01/05-01/08-3344.

³ *Ibid.*

⁴ *Ibid.*, paras. 1, 8, 9, 11; and ICC-01/05-01/08-3357.

⁵ ICC-01/05-01/08-3349.

⁶ ICC-01/05-01/08-3357.

the convicted person" warrant a term of life imprisonment. In addition, the Chamber may order a fine or the forfeiture of proceeds, property and assets derived directly or indirectly from the crime, or both, pursuant to article 77(2) of the Statute.

B. Provisions applicable to the determination of the sentence

6. Article 78 of the Statute and rule 145 of the Rules govern the Chamber's determination of the sentence, providing that the Chamber must take into account such factors as the gravity of the crime and the individual circumstances of the convicted person, as well as any mitigating and aggravating circumstances.

7. Rules 145(1)(a) and (b) require that the sentence must reflect the culpability of the convicted person. Finally, pursuant to article 81(2)(a) of the Statute, the Chamber must ensure that the sentence is proportionate to the crime and, under rule 145(1)(a), reflect the culpability of the convicted person.

C. Factors and circumstances relevant to the determination of the sentence and their scope

8. Article 78(1) of the Statute indicates the gravity of the crime and individual circumstances of the convicted person as parameters to determine the sentence, whereas rule 145(1)(c) lists a number of specific factors, in addition to those mentioned in article 78(1), namely: the extent of the damage caused, in particular the harm caused to the victims and their families; the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

9. The Appeals Chamber has observed that the factors of "the gravity of the crimes" and "the individual circumstances of the convicted person" set out in article 78(1) of the Statute may be seen as separate from those listed in rule 145(1)(c) of the Rules. Alternatively, the factors listed in rule 145(1)(c) could be seen as part of, and taken into account for the purpose of assessing, the factors of article 78(1). The Appeals Chamber, however, concluded that it is

not necessary to determine which approach is correct. What matters is that all the relevant factors have to be considered.⁷

10. Rule 145(2)(b) then lists as aggravating circumstances, potentially leading to a harsher sentence: any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature; abuse of power or official capacity; the commission of the crime where the victim is particularly defenceless; the commission of the crime with particular cruelty or where there were multiple victims; the commission of the crime for any motive involving discrimination; other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned. The factors considered in relation to the gravity of the crimes cannot be taken into account as aggravating circumstances and vice versa.⁸

11. As to mitigating circumstances, in addition to those relating to the commission of the crimes and the individual circumstances of the convicted person, rule 145(2)(a) lists circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress; the convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court.

12. None of the provisions applicable to the sentencing stage of the proceedings limit the factors to be considered to the facts and circumstances described in the Confirmation Decision. Instead, article 76(1) of the Statute establishes that when considering the "appropriate" sentence, the Trial Chamber "shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence".⁹ And pursuant to article 76(2) of the Statute, the Chamber may hold a further hearing to hear additional evidence or submissions relevant to the sentence. Accordingly, the evidence admitted at the stage of sentencing can exceed the facts and circumstances set out in the Confirmation Decision, provided that the defence has had a reasonable opportunity to address them.¹⁰

⁷ ICC-01/04-01/06-3122, ("Lubanga Appeals Judgment on Sentence"), paras. 61, 62, 64, 66.

⁸ ICC-01/04-01/06-2901, ("Lubanga decision on sentence"), para. 35.

⁹ *Ibid.*, para. 29.

¹⁰ *Ibid.*, para. 29.

D. Standard of proof

13. According to the jurisprudence of the Court, aggravating factors are established to the criminal standard of proof, namely "beyond a reasonable doubt".¹¹ As to the mitigating circumstances, in application of the *in dubio pro reo* principle, any mitigating circumstances are to be established on a balance of probabilities.¹²

E. The purposes of sentencing

14. For sentencing purposes, having regard to the Preamble of the Statute, consideration should be given to the heinous nature of the crimes prosecuted by the Court and to the objectives of ensuring deterrence and ending impunity for these crimes that threaten the peace, security and well-being of the world, in the interests of present and future generations.¹³

15. Trial Chamber II considered that the purpose of sentencing is two-fold: on the one hand, punishment, or the expression of society's condemnation of the criminal act and of the person who committed it, and, on the other hand, deterrence.¹⁴

16. Objectives considered by the *ad hoc* Tribunals are also potentially relevant before this Court. International Criminal Tribunal for the former Yugoslavia ("ICTY") and International Criminal Tribunal for Rwanda ("ICTR") Chambers have given primary attention to the objectives of deterrence¹⁵ and retribution.¹⁶ The principles of reconciliation,¹⁷ restoration of peace and rehabilitation¹⁸ have also been considered.

¹¹ *Ibid.*, para. 33; ICC-01/04-01/07-3484 ("Katanga Decision on Sentence"), para. 34.

¹² Lubanga Decision on Sentence, para. 34; Katanga Decision on Sentence, para. 34.

¹³ Preamble of the Statute, paras. 2-5, 9. *See also* Lubanga Decision on Sentence, para. 16; Katanga Decision on Sentence, para. 37.

¹⁴ *Ibid.*, para. 38.

¹⁵ *Prosecutor v. Delalic et al*, IT-96-21-T, Judgment, 16 November 1998, ("*Delalic* Trial Judgment") para. 1234; *Prosecutor v. Serushago*, ICTR-98-39-S, Sentence, 2 February 1999, para. 20.

¹⁶ *Prosecutor v. Aleksovski*, IT-95-14/1-A, 24 March 2000, para. 185.

¹⁷ *Delalic* Trial Judgment, para. 1233.

¹⁸ *Prosecutor v. Nikolic*, IT-02-60/I-T, 2 December 2003, paras. 58-60.

F. Multiple convictions

17. Article 78(3) regulates the determination of sentences in cases where a person is convicted of more than one crime. It requires that a separate sentence be pronounced for each crime, but a single sentence be imposed which shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment.

III. THE APPROPRIATE SENTENCE IN LIGHT OF APPLICABLE AGGRAVATING AND MITIGATING FACTORS

A. Factors for determination of the sentence (article 78 and rule 145(1)(c))

1) The gravity of the crimes of which Bemba was convicted

18. Bemba was convicted of some of the most serious and heinous crimes of concern to the international community as a whole, committed by the troops of the *Mouvement de Libération du Congo* (“MLC”) in the territory of the Central African Republic (“CAR”) during the 2002-2003 military operation,¹⁹ pursuant to the mode of liability enshrined in article 28(a) of the Statute.

19. As stated above, the gravity of the crime is one of the principal factors to be considered in the determination of the sentence.²⁰ The crime of rape is one of the most horrific crimes that a human being can inflict upon another. It is a heinous crime of domination: of the powerful over the powerless. It is a crime that continues to endure long after the physical act has stopped. It is a crime that deeply shocks the conscience of humanity.

20. Murder, the unlawful taking of the life of another person, is considered a most serious crime worthy of the harshest of punishment, as the commission of a murder deprives the victim of his or her existence and the loss of a human being inflicts enormous grief upon the individuals close to the victim.

¹⁹ See para. 1 above.

²⁰ Lubanga Decision on Sentence, para. 36.

21. The war crime of pillaging is also a serious crime, especially when considered in the specific socio-economic context of the CAR. Systematic pillaging from house to house, which leaves families with nothing, brings extreme poverty and forces those families to struggle for survival for the years to come.

2) The gravity of “command responsibility” as a form of liability

22. Command responsibility is an intrinsically very serious form of criminal liability. Military commanders exercising effective authority over their subordinate forces are in a uniquely powerful and influential position. They exercise control over the deployment of lethal military firepower and they issue orders to those under their command who carry the means of death and destruction. Strict military discipline is essential to deter any members of the force from acting outside the law. Parties to an armed conflict are obliged to respect and to ensure respect for international humanitarian law (“IHL”) and military commanders are central to the effective implementation of those obligations by maintaining discipline and control over the troops.

23. The International Committee of the Red Cross (“ICRC”) Commentary to Additional Protocol I articulates the rationale for imposing an international legal duty on military commanders:

“In fact the role of commanders is decisive. Whether they are concerned with the theatre of military operations, occupied territories or places of internment, the necessary measures for the proper application of the Conventions and the Protocol must be taken at the level of the troops, so that a fatal gap between the undertakings entered into by Parties to the conflict and the conduct of individuals is avoided. At this level, everything depends on commanders, and without their conscientious supervision, general legal requirements are unlikely to be effective.”²¹

24. The ever-present potential for a ‘fatal gap’ between international legal obligations, on one hand, and the perpetration of egregious violations of the law on the other is precisely the reason why article 28(a) of the Statute exists as a mode of criminal liability. Military commanders have the authority to stop atrocities occurring, or at least to sanction those

²¹ Sandoz, Y. et al. (eds), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (International Committee of the Red Cross, 1987), para. 3550 (emphasis added).

subordinates who commit them. Those commanders who choose not to act, not to utilise the authority they have to intervene and to prevent crimes from being committed should be held criminally responsible for the crimes they could have prevented and should have punished.²²

25. Far from being a form of strict liability or criminal negligence, command responsibility,²³ like individual criminal responsibility, engages a volitional element.²⁴ At the heart of command responsibility is the fact that a commander refuses to intervene in his subordinates' crimes. By refusing to intervene in the crimes of his subordinates, despite his possession of the requisite knowledge and material ability to prevent or repress such crimes, the commander thereby allows the subordinates to perpetrate the crimes.

26. In determining the sentence, the Court's legal regime, like that of the *ad hoc* Tribunals, generally accords command responsibility parity with individual criminal responsibility. In fact, it enshrines a single sentencing framework that applies to all crimes mentioned in article 5 of the Statute and irrespective of the modes of liability.

27. In a number of cases, the Appeals Chambers of the ICTR and the ICTY have rejected defence submissions claiming that command responsibility is a lower form of culpability that must attract, in the *abstract*, lower sentences than direct participation.²⁵

28. Rule 145(2) of the Rules provides for a non-exhaustive list of "aggravating" and "mitigating factors." Neither article 28 command/superior responsibility, nor any other form of criminal responsibility under article 25 is specifically singled out as constituting an aggravating or a mitigating factor. The ICC's jurisprudence thus far includes no proposition

²² Bemba Judgment, para. 173: "the language of Article 28 expressly links the responsibility of the commander to the crimes committed by subordinates – "shall be criminally responsible *for* crimes within the jurisdiction of the Court committed by forces under his or her effective command and control [...]" (emphasis added)".

²³ *Ibid.*, fn. 384: Command responsibility under article 28 "is in contrast to, for example, a distinct crime of pure omission, where the superior's failure of duty would itself constitute the offence."

²⁴ See *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Judgement (Reasons), 3 July 2002, ("Bagilishema Appeal Judgement"), para. 35.

²⁵ For the ICTR, see *The Prosecutor v. Théoneste Bagosora and Anatole Nsengiyumva*, ICTR-98-41A-A, Appeal Judgment, 14 December 2011, ("Bagosora and Nsengiyumva Appeal Judgment"), para. 740; *The Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-98-41-A, Appeal Judgement, 8 May 2012 ("Ntabakuze Appeal Judgment"), paras. 282, 299, 302-303; *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-A, Judgement, 14 December 2011, para. 236. For the ICTY, see *Prosecutor v. Zejnir Delalic, Zdravko Mucic a.k.a. "Pavo," Hazim Delic and Esad Landzo, a.k.a. "Zenga,"* Case No. IT-96-21-A, Judgement ("Celebici Appeal Judgement"), para. 737; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008 ("Strugar Appeal Judgment"), para. 381.

that any mode of criminal responsibility, whether under article 25 or article 28 of the Statute, constitutes an individual circumstance in sentencing.²⁶

29. The Appeals Chamber of the ICTR has specifically rejected that any form of liability is an individual circumstance in sentencing.²⁷ Command responsibility, as underscored by the *ad hoc* Tribunals, does not reduce a convict's culpability, and is never an individual circumstance of the convicted person to mitigate the sentence.²⁸

30. For these reasons, the criminal responsibility of the commander who failed to take all necessary and reasonable measures to prevent crimes and to repress crimes already committed must be taken just as seriously, and in some cases, more seriously than the responsibility of each individual perpetrator of atrocities. Such responsibility must be sanctioned with harsh punishment where the facts of the case, including the nature of the crimes, so justify.

3) The gravity of the crimes *in concreto*

31. In determining the gravity of the convicted person's culpability, a Chamber's assessment is not limited to the intrinsic gravity of forms of responsibility in the abstract. Rather, its assessment must be *in concreto*.²⁹

a) The circumstances of manner, time and location of the crimes

32. In the context of "circumstances of manner, time and location of the crimes", the extent and widespread nature of the crimes committed by the MLC forces in the CAR is to be considered in setting the sentence.³⁰

²⁶ While the Appeals Chamber did not single out any mode of liability as an aggravating or mitigating circumstance, it held that under the mode of liability of "committing" pursuant to article 25(3)(a) "all other things being equal, a person who is found to commit a crime him- or herself bears more blameworthiness than a person who contributes to the crime of another person or persons" (ICC-01/04-01/06-3121-Conf, para. 462).

²⁷ *Ntabakuze* Appeal Judgement, para. 282; *Celebici* Appeal Judgement, para. 737; *Strugar* Appeal Judgement, para. 381.

²⁸ *Ntabakuze* Appeal Judgement, para. 282.

²⁹ According to the jurisprudence of the *ad hoc* Tribunals, there are two aspects to assessing, *in concreto*, the gravity of the crimes committed under command/superior responsibility: (i) the gravity of the underlying crimes committed by the convicted person's subordinates and (ii) the gravity of the convicted person's own conduct in failing to prevent or punish the underlying crimes. See *Celebici* Appeal Judgement, paras. 732-742.

³⁰ See Lubanga decision on sentence, paras. 44-45. Trial Chamber I, while assessing the gravity of the crimes in the circumstances of the case, had regard, *inter alia*, to the circumstances of manner, time and location.

33. The Chamber found that MLC soldiers perpetrated the underlying acts of rape, pillaging and murder³¹ repeatedly during a four and a half month period and over a broad geographic area, encompassing each location under their control.³² The MLC troops targeted civilians without regard to age, gender, profession or social status.³³

34. The MLC troops raped their victims at gun-point. They raped women, girls, and men with authority. They raped at night and in broad daylight; in homes, compounds and private spaces; they raped on the streets, in the fields, and in public. The MLC soldiers committed rape in various localities within the capital city of Bangui, such as PK12 and the Port Beach naval base. The MLC troops raped at PK22, while they moved towards the northern provincial towns of CAR. As they retreated to the Democratic Republic of Congo (“DRC”), MLC troops also committed rape in the southern town of Mongoumba.

35. Prosecution Witness 23 (“P23”) is a victim of one of the specific underlying acts of rape committed by MLC soldiers. Members of his family were victimised as well.³⁴ He testified that nobody could stop the repeated rapes perpetrated by MLC troops in the area of Bangui where he lived.³⁵

36. MLC troops also committed widespread pillaging. The Chamber found beyond reasonable doubt that pillaging by MLC troops occurred on a large scale. The Chamber noted that MLC soldiers appropriated property from, *inter alia*, individual victims, their families, a church, nuns’ and priests’ residences, and a gendarmerie. Items appropriated by the perpetrators include administrative documents, clothing, furniture, tools, radios, televisions, items of personal value, money, livestock, food, vehicles and fuel.³⁶

³¹ Bemba Judgment, sections VI(A), VI(B) and VI(C).

³² *Ibid.*, para. 677.

³³ *Ibid.* para. 563.

³⁴ *Ibid.* para. 633.

³⁵ [P23-T51-ENG-CT2-p37-L4-and- p37-L16]/[P23-T51-FRA-ET-p39-L11-and- p39-L24].

³⁶ Bemba Judgment, para. 646.

37. The underlying acts of rape, murder and pillaging committed by the MLC troops³⁷ followed a recurrent pattern of violence.³⁸ The Chamber also established that the MLC troops acted upon orders to exercise vigilance towards civilians, including the use of force against civilians,³⁹ which by consequence became a consistent feature of the MLC crimes. The Chamber's findings to this effect are relevant to the factor of "circumstances of manner of the crimes".

38. The MLC troops' established "*modus operandi*" also clearly indicates the degree of violence of the MLC crimes. After taking control of a given area and confirming that Bozize's rebels had departed, the MLC soldiers conducted house-to-house operations during which they searched for remaining rebels, pillaged goods, raped civilians and killed those who resisted.⁴⁰

39. These facts and circumstances point to increased gravity of the crimes and should be taken into account in determining the sentence.

b) The extent of damage and harm to the victims and their families

40. The extent of damage caused, in particular the harm caused to the victims and their families is another indicator of the gravity of the crimes.⁴¹ Findings in the judgment and evidence presented at trial show that the victims of crimes committed by Bemba's troops suffered enormously.

- Damage and harm to victims of rape

41. Rape victims experienced significant medical, psychiatric, psychological, and social consequences, including post-traumatic stress disorder ("PTSD"), HIV, social rejection, stigmatisation, and feelings of humiliation, anxiety, and guilt.⁴²

³⁷ *Ibid.*, sections VI(A), VI(B) and VI(C).

³⁸ *Ibid.*, para. 677.

³⁹ *Ibid.* para. 573.

⁴⁰ *Ibid.* para. 564.

⁴¹ See Lubanga Decision on Sentence, para. 44.

⁴² Bemba Judgment, para. 567.

42. Prosecution Witness 229 (“P229”), the Prosecution expert Witness who conducted interviews of sexual violence victims in the CAR, explained that the medical consequences suffered by victims of rape may include: lesions to organs, HIV seroconversion, syphilis serology, lesions to vagina and unwanted pregnancies.⁴³

43. Prosecution Witness 81 (“P81”), for instance, had abdominal pains and problems conceiving, due to her rape.⁴⁴ Following the events, Prosecution Witness 80 (“P80”) had physical injuries to her vagina, back, pelvis, kidneys, and eyes.⁴⁵ Prosecution Witness 79 (“P79”), as a result of her rape, developed physical symptoms including high blood pressure, gastric problems, hypertension.⁴⁶ Prosecution Witness 82 (“P82”) was aged between 10 and 13 years old. Following her rape, she had physical injuries to her vagina and suffered pain.⁴⁷ After the events, P23 could not walk, as his anus was swollen.⁴⁸ Legal Representative Victim 1 (“V1”), after being raped by 12 MLC soldiers, had pain in her vagina and lungs.⁴⁹

44. Some victims became HIV positive. For instance Prosecution Witness 29 (“P29”), after being raped by the MLC soldiers, discovered that she had contracted HIV/AIDS.⁵⁰ Prosecution Witness 68 (“P68”) also became HIV positive after being raped by two MLC soldiers.⁵¹

45. Prosecution Witness 221 (“P221”), another Prosecution expert Witness, explained that an act of sexual violence is a deliberate act meant to dominate and control the victim and to devastate their families and communities. The consequences of sexual violence during armed conflicts are profound and far-reaching and can continue to impact the physical and mental health of the survivor long after the atrocities were committed.⁵²

⁴³ [P229-T100-ENG-CT2-p23-L23-p27-L21]/[P229-T100-FRA-CT-p24-L10-p28-L9].

⁴⁴ Bemba Judgment, para. 492.

⁴⁵ *Ibid.*, para. 488.

⁴⁶ *Ibid.*, para.510.

⁴⁷ *Ibid.*, para.489.

⁴⁸ *Ibid.*, para. 494.

⁴⁹ *Ibid.*, para. 551.

⁵⁰ *Ibid.*, para. 545.

⁵¹ *Ibid.*, para. 464.

⁵² [P221-T39-ENG-ET-p8-L14-p9-L1]/[P221-T39-FRA-ET-p8-L10-L23].

46. The deterioration of many victims' mental health is reflected in the Chamber's findings. After being raped by MLC troops, Prosecution Witness 87 ("P87") suffered psychological consequences, including depression.⁵³ She testified that she did not want to live anymore and started having nightmares.⁵⁴ After the events, P29 felt constant sadness.⁵⁵ The psychological consequences of P68's rape included depression and a fear of armed soldiers.⁵⁶ P79 started having nightmares, after being raped by two MLC soldiers, with one holding her at gunpoint.⁵⁷ As a result of being raped by many MLC soldiers, V1 had psychological problems. She felt like she was no longer treated as a human being.⁵⁸ After the rape, Prosecution Witness 22 ("P22") was suicidal, reluctant to engage in any sexual relationship, and exhibited symptoms consistent with PTSD.⁵⁹

47. P221 shed light on the nature and the consequences of PTSD. It is a diagnostic mental health disorder and comes from experiencing or witnessing an actual, threatened or perceived incident that involves a reaction of intense fear, horror or helplessness. P221 testified that survivors of sexual violence continue to experience the devastating negative, psychological and social consequences of their experience. Individuals with PTSD usually have persistent frightening thoughts and memories of their suffering and feel emotionally numb. Many of them repeatedly re-live the trauma in the form of nightmares and disturbing recollections during the day. These symptoms can last for months or remain continuous depending on the type of support system and treatment available.⁶⁰

48. In the context of the Central African Republic society, the feeling of shame and guilt is also a major component of the psychological problems suffered by female victims of rape.⁶¹ Women were hugely fearful that people would find out that they had been raped and there would be repercussions for them as well as their families.⁶²

⁵³ Bemba Judgment, para. 472.

⁵⁴ [P87-T44-ENG-CT-p45-L12-and-p47-L19-p48-L22]/[P87-T44-FRA-CT-p47-L12-and-p49-L25-p51-L3].

⁵⁵ Bemba Judgment, para. 545.

⁵⁶ *Ibid.* para. 464.

⁵⁷ *Ibid.* para. 510.

⁵⁸ *Ibid.*, para. 551.

⁵⁹ *Ibid.*, para. 508.

⁶⁰ [P221-T38-ENG-ET-p27-L12]/[P221-T38-FRA-ET-p26-L12].

⁶¹ [P229-T99-ENG-CT3-p22-L6-L16]/[P229-T99-FRA-CT-p21-L21-p22-L5].

⁶² [P221-T39-ENG-ET-p13-L8]/[P221-T39-FRA-ET-p12-L13].

49. Additionally, psychological disorders affected the rape victims to the extent that they lost self-confidence. Prosecution Witness 69 (“P69”), a man who was raped by MLC troops,⁶³ stated before the Chamber: “I see myself as a dead man ...”⁶⁴ His wife was raped as well.⁶⁵ The Witness told the Chamber that after their rape, they are both wondering what they are going to do in order to recover their dignity.⁶⁶

50. P221 added that the younger the victim is when he/she is subjected to trauma, the more severe are the consequences.⁶⁷ Young people do not have the practical, physical, emotional and cognitive resources to handle overwhelming challenges, such as those created by extensive sexual violence.⁶⁸

51. As regards the social consequences of rape, P229 explained that the impact of rape in the CAR was multi-fold. First, there is the personal impact, whereby the woman who was raped was stigmatised and marginalised. There was also the impact on the children, who bear stigma, who were taunted at school and in their own area. Entire families were affected, as the husband was shown up as a well-known individual because of the rape.⁶⁹

52. The stigma of rape led to broken marriages or families; in some instances a male spouse would break marital ties with a woman who had been raped, as he was of the opinion that she was no longer worthy of being his spouse.⁷⁰

53. In the Central African Republic culture the disruption caused by rape goes far beyond the individual. Not only it destroys a person’s identity and erases his/ her points of reference. It attacks the foundations of society as a whole.⁷¹

54. V1’s partner abandoned her after she was raped by MLC troops.⁷² P22 [REDACTED] at the time she was raped by MLC troops. [REDACTED] asked her to undergo medical tests. [REDACTED].⁷³

⁶³ Bemba Judgment, para. 498.

⁶⁴ [P69-T194-ENG-ET-p14-L10-L14]/[P69-T194-FRA-ET-p14-L25-and-p15-L1].

⁶⁵ Bemba Judgment, para. 498.

⁶⁶ [P69-T194-ENG-ET-p13-L2]/[P69-T194-FRA-ET-p13-L15].

⁶⁷ Some victims were aged from 10 to 13 years old. *See* Bemba Judgment, paras. 467-469, 489, 511, 516.

⁶⁸ [P221-T39-ENG-ET-p11-L20-p12-L5]/[P221-T39-FRA-ET-p11-L2-L13].

⁶⁹ [P229-T100-ENG-CT2-p20-L15-p21-L3]/[P229-T100-FRA-CT-p20-L22-p21-L7].

⁷⁰ [P229-T100-ENG-CT2-p35-L3-L12]/[P229-T100-FRA-CT-p35-L23-p36-L5].

⁷¹ [P229-T99-ENG-CT3-p22-L1]/[P229-T99-FRA-CT-p21-L15].

55. In some instances children were taken away from mothers who were rape victims.⁷⁴ This happened to P81. The day after she was raped, her husband left with her children and never returned. She has not seen her children again.⁷⁵

56. Stigmatisation involves taunting, talking about a victim with the goal of rejecting this person from the normal social structure.⁷⁶ Female rape victims were blamed for the crime they suffered and referred to as “women of the Banyamulengue”. P81 was one of those victims. Because of her rape, she was socially stigmatised, mocked and called a “Banyamulengue’s wife”.⁷⁷ V1 was also called a “Banyamulengue’s wife”. Such stigmatisation in her community left her unemployed and unable to provide for her children.⁷⁸ V1 testified that after she was raped, whenever she meets a man people begin to talk about it and rumours begin to spread. So the man also gets stigmatised.⁷⁹ P79 explained several times that revealing a Muslim girl’s alleged rape would prevent her from being able to find a husband.⁸⁰

57. P82 was socially excluded by other girls of her age, as she was sexually assaulted.⁸¹ Everybody made fun of her.⁸² Prosecution Witness 42 (“P42”)’s daughter was stigmatised at school. The other pupils were making fun of her. She dropped out of school for that reason.⁸³

58. P221 stated that HIV/AIDS as a result of rape is associated with stigma. Victims infected with the virus are therefore often rejected from their communities.⁸⁴ P229 explained that the rape of a man, which is closely linked to punishment, is designed first and foremost to humiliate him as well as his family.⁸⁵ P23 was abandoned by his second wife. As he had been

⁷² [V1-T221-ENG-ET-p28-L19]/[V1-T221-FRA-ET-p31-L2].

⁷³ [P22-T41-ENG-CT2-p39-L1]/[P22-T41-FRA-ET-p42-L10]; [P22-T43-ENG-ET-p18-L22-p19-L7]/[P22-T43-FRA-ET-p20-L16].

⁷⁴ [P229-T100-ENG-CT2-p35-L3-L12]/[P229-T100-FRA-CT-p35-L23-p36-L5].

⁷⁵ [P81-T55-ENG-CT-p16-L8]/[P81-T55-FRA-CT-p16-L3]; [P169-T137-ENG-ET-p56-L8]/[P169-T137-FRA-ET-p56-L20-p57-L5].

⁷⁶ [P229-T99-ENG-CT3-p21-L18-p22-L6]/[P229-T99-FRA-CT-p21-L5-L22].

⁷⁷ Bemba Judgment, para. 492.

⁷⁸ *Ibid.*, para. 551.

⁷⁹ [V1-T221-ENG-ET-p29-L13]/[V1-T221-FRA-ET-p31-L19].

⁸⁰ Bemba Judgment, para. 512.

⁸¹ *Ibid.*, para. 489.

⁸² [P82-T58-ENG-CT-p27-L1-and-p28-L20]/[P82-T58-FRA-CT-p29-L18-and-p31-L18].

⁸³ [P42-T64-ENG-ET-p21-L7]/[P42-T64-FRA-ET-p21-L1].

⁸⁴ [P221-T39-ENG-ET-p5-L6]/[P221-T39-FRA-ET-p5-L3].

⁸⁵ [P229-T100-ENG-CT2-p11-L21-p12-L1]/[P229-T100-FRA-CT-p11-L23-L27]; [P69-T193-ENG-ET-p26-L1-and-p25-L20]/[P69-T193-FRA-ET-p28-L14-and-p28-L6]; [P23-T51-ENG-CT2-p35-L2]/[P23-T51-FRA-ET-p37-L8].

sodomised by MLC soldiers, she told him that he was no longer a man; therefore she could not live with him.⁸⁶ People in his community disrespected him. He considered himself a “dead man”.⁸⁷

- Damage and harm to victims of pillaging

59. The victims also suffered enormously because of the massive pillaging perpetrated by the MLC forces.⁸⁸ The Chamber established that MLC soldiers pillaged on a large-scale with grave consequences for the victims.⁸⁹ In P42’s words, the MLC soldiers took “everything” and some victims were left with nothing.⁹⁰ P23, referring to the MLC troops, also testified that “... They took everything from us, and that meant I had nothing. I was somebody who had a lot, but they took everything from me and I was left with nothing.”⁹¹

60. The Chamber has found that pillaged goods were traded by the MLC troops for other items; pillaged goods were also sent to the DRC where they were, *inter alia*, kept by the soldiers who had pillaged them, distributed to other soldiers or commanders, placed at the disposal of the MLC, or sold.⁹² The stolen property was never returned.⁹³

61. The consequences were far-reaching. Some victims could no longer provide for their basic needs. For example, Prosecution Witness 73 (“P73”) was unable to pay for medical treatment, Legal Representative Victim 2 (“V2”)’s business has never recovered from the loss of necessary equipment, and many victims were left without, *inter alia*, their savings, foam mattresses and clothes, which they had worked hard to obtain.⁹⁴

62. In the CAR, one of the poorest countries in the world, this condition of extreme poverty for the victims and their families is meant to last for many years to come.

⁸⁶ [P23-T51-ENG-CT2-p41-L23-p42-L2-and-p32-L9]/[P23-T51-FRA-ET-p44-L11-L16-and-p34-L9] ; [P23-T52-ENG-CT2-p35-L5-and-p44-L2]/[P23-T52-FRA-CT-p37-L13-and-p47-L17].

⁸⁷ Bemba Judgment, para. 494.

⁸⁸ Bemba Judgment, section VI (C).

⁸⁹ *Ibid.*, para. 646.

⁹⁰ *Ibid.*, para. 646.

⁹¹ [P23-T52-ENG-CT2-p3-L20-L22]/[P23-T52-FRA-CT-p4-L2-L4].

⁹² Bemba Judgment, para. 643.

⁹³ See, for instance, Bemba Judgment para. 495. The items pillaged from P23’s and his family members were not returned.

⁹⁴ *Ibid.*, para. 566.

c) Bemba's degree of participation and degree of intent

63. The degree of participation and intent of the convicted person is also relevant under rule 145(1)(c) of the Rules. This factor must be assessed *in concreto*, in light of the Chamber's findings regarding the convicted person's criminal responsibility.⁹⁵

64. As Bemba has been convicted of the crimes of rape, pillaging and murder under article 28(a), the following factors have to be assessed: the degree of Bemba's authority and control over the perpetrators of the crimes; the degree of Bemba's knowledge of the crimes committed by his subordinate troops; and the degree of Bemba's failure to take all necessary and reasonable measures to prevent or repress the commission of crimes or to submit the matter to the competent authorities.

- The degree of Bemba's authority and control

65. As the Chamber has established, Bemba was the "authority" within the MLC. He was the President, the leader of the political branch and the Commander-in-Chief of the *Armée de Liberation du Congo* ("ALC"). Bemba's military rank was the highest rank in the MLC. He held the military rank of Divisional General.⁹⁶ It is noteworthy that the MLC Statute does not even provide for any mechanism to elect or replace its President. Article 30, which names Bemba as the MLC President, provides no possibility for his removal or for the election of a different president.⁹⁷

66. The Chamber's findings illustrate the extent of Bemba's authority. He "ensured a clear division between the political and the military wings. Political members of the MLC had no involvement or authority in military decisions, rendering him the primary authority covering both spheres."⁹⁸ Bemba made the most important decisions. Once a decision was taken by him, it was not debatable.⁹⁹ The Political and Military Council of the MLC discussed political or military issues with Bemba, but did not take any decisions: they merely endorsed and "rubber-stamped" the decisions taken by Bemba.¹⁰⁰

⁹⁵ See Lubanga decision on sentence, para. 52, in which Trial Chamber I assessed the contributions given by Thomas Lubanga to a common plan that resulted in the commission of the crimes of which the latter was convicted. See also Katanga decision on sentence, paras. 64-65. Trial Chamber II analysed the importance of the contribution given by Germain Katanga in the relation to his criminal responsibility.

⁹⁶ Bemba Judgment, para. 384.

⁹⁷ EVD-T-OTP-00808/CAR-OTP-0069-0363.

⁹⁸ Bemba Judgment, para. 385.

⁹⁹ *Ibid.*, para. 385.

¹⁰⁰ *Ibid.*, para. 386.

67. The convicted person also had “authority over strategic military decisions, such as commencing military operations”. He commanded military operations and to that effect issued operational orders to his troops, including orders to attack or progress to a certain location.¹⁰¹ Bemba often bypassed the MLC hierarchy and communicated orders or instructions directly to commanders in the field.¹⁰²

68. As to the 2002-2003 CAR military operation, Bemba maintained authority and control over the MLC troops deployed to the CAR. He alone made the decision to send his troops to the CAR.¹⁰³ He even controlled the selection of the units and commanders to be sent.¹⁰⁴ Bemba retained authority over his troops throughout the CAR operation.¹⁰⁵ He finally ordered the withdrawal of the MLC troops from the CAR.¹⁰⁶ His decision was complied with.¹⁰⁷

69. The degree of Bemba’s authority and control is especially demonstrated by the fact that he even retained operational command over his troops in the CAR. In line with his usual *modus operandi*, Bemba took decisions on troop movements and military operations and sometimes issued orders or instructions directly to the commanders in the field and received reports from them.¹⁰⁸

70. Bemba’s operational control was made possible by the detailed information that he had available about the events in the CAR. During a meeting with the FACA Chief of General Staff and other FACA officials, which took place in Gbadolite in January 2003, Bemba provided detailed information about the positions of his troops in the CAR, demonstrating greater knowledge than the FACA officials about the situation on the ground.¹⁰⁹

71. As to communications, the Chamber established that Bemba and Colonel Moustapha, the MLC field commander, regularly communicated by Thuraya satellite phones and a high frequency long-range radio or “phonie”.¹¹⁰ Authenticated Thuraya records show that Bemba

¹⁰¹ *Ibid.*, paras. 399, 700.

¹⁰² *Ibid.*, para. 399.

¹⁰³ *Ibid.*, para. 454.

¹⁰⁴ *Ibid.*, para. 455.

¹⁰⁵ *Ibid.*, para. 427.

¹⁰⁶ *Ibid.*, para. 559.

¹⁰⁷ *Ibid.*, para. 704.

¹⁰⁸ *Ibid.*, paras. 427, 701.

¹⁰⁹ *Ibid.*, para. 529.

¹¹⁰ *Ibid.*, para. 423.

called Colonel Moustapha's number 126 times between 4 February and 15 March 2003. Colonel Moustapha reported the status of operations and the situation at the front.¹¹¹ Some MLC officials in the CAR were also in direct contact with Bemba via radio or Thuraya. Between 4 February and 15 March 2003, Bemba also made 129 calls to other Thuraya numbers and 137 calls to CAR numbers.¹¹² This both explains how Bemba possessed so detailed information about the situation on the ground, and further indicates the degree of command that he exercised during the CAR operation.

72. The Chamber found that Bemba's effective control over his troops in the CAR was "extensive".¹¹³ The above-mentioned findings indicate a very high degree of responsibility by Bemba, as they establish that he could have prevented or repressed the commission of crimes by his MLC troops at any point in time and in many ways during the CAR operation.

- The degree of Bemba's knowledge of the crimes

73. Bemba's actual knowledge of the crimes committed by his MLC troops dates from the initial days of the CAR operation, when he established an investigative commission that was sent to Bangui, further to the allegations of crimes.¹¹⁴

74. Bemba ordered the arrest of MLC soldiers as early as 30 October 2002.¹¹⁵ The investigation, led by Colonel Mondonga, produced a report that was sent to Bemba and the MLC Chief of General Staff on 27 November 2002.¹¹⁶ The report confirmed that members of the MLC had engaged in pillaging. The arrested soldiers were sent to the Court Martial in Gbadolite to stand trial.¹¹⁷ During his interrogation, Lieutenant Bomengo, one of them, made reference to massive pillaging committed by MLC members in the CAR. He added that Colonel Moustapha instructed him to collect all the items looted by the 28th Battalion of the MLC. Three vehicles full of stolen objects were delivered to Colonel Mustapha.¹¹⁸ Another soldier referred to a rape allegedly committed by someone belonging to the Poudrier Battalion of the MLC.¹¹⁹ Another arrestee reported systematic pillaging and rapes by the Poudrier

¹¹¹ *Ibid.*, para. 420.

¹¹² *Ibid.*, para. 423.

¹¹³ *Ibid.*, para. 729.

¹¹⁴ *Ibid.*, para. 582.

¹¹⁵ *Ibid.*, para. 583.

¹¹⁶ *Ibid.*, para. 586.

¹¹⁷ *Ibid.*, paras. 589, 597.

¹¹⁸ *Ibid.*, para. 587.

¹¹⁹ *Ibid.*, para. 589.

Battalion against the CAR civilian population.¹²⁰ All this information was conveyed to Bemba through the report signed by Colonel Mondonga.¹²¹

75. During the CAR military operation, Bemba was further informed of the MLC crimes by sources that he could trust: his close collaborators. For instance, the intelligence reports that he received mentioned various acts committed by his troops, including theft, pillaging, rape, the killing of civilians, harassment of persons, and the transportation of looted goods to Gbadolite.¹²²

76. International media covered extensively the conflict in the CAR between October 2002 and March 2003, particularly Radio France International (“RFI”), the British Broadcasting Corporation (“BBC”), the Associated Press, the Integrated Regional Information Networks and the Voice of America. They consistently reported allegations of rapes, pillaging and murders perpetrated by MLC troops.¹²³ Again, it was detailed information. Many media reports contained accounts from alleged victims of the terrible events they went through.¹²⁴ Bemba followed these international reports.¹²⁵ Local CAR media outlets also regularly reported allegations of crimes committed by the MLC troops.¹²⁶ Bemba was aware of the seriousness of the accusations made against his MLC troops in the CAR.¹²⁷

77. A letter sent by Bemba to the President of the *Fédération Internationale des droits de l’Homme* (“FIDH”) on 20 February 2003, when the military operation in the CAR was still ongoing, precisely clarifies the scope of Bemba’s knowledge of the crimes.¹²⁸ In that letter Bemba acknowledged his awareness of a report issued by FIDH on 13 February 2003 (“FIDH report”), just days before.¹²⁹

¹²⁰ *Ibid.*, para. 589.

¹²¹ *Ibid.*, para. 586.

¹²² *Ibid.*, para. 425.

¹²³ *Ibid.*, para. 576.

¹²⁴ *Ibid.*, para. 578.

¹²⁵ *Ibid.*, para. 576.

¹²⁶ *Ibid.*, para. 577.

¹²⁷ *Ibid.*, para. 604.

¹²⁸ *Ibid.*, para. 610.

¹²⁹ *Ibid.*, paras. 607, 714.

78. The FIDH report described the events in the CAR following the MLC intervention and was based on interviews with CAR authorities, representatives of intergovernmental organizations and a non-governmental organization's ("NGO"), medical personnel and victims.¹³⁰ It included a section dedicated to analysing the crimes of rape, pillaging and murder allegedly committed by the MLC troops. Detailed accounts of victims in, *inter alia*, PK12, PK22 and Boy-Rabé, were published.¹³¹ Initials and age of victims were given, the first name of a little girl victim of rape was mentioned; dates and locations of crimes were indicated. The information was sometimes so specific that even the residence of the victims could be easily identified.¹³² By his own admission, Bemba had knowledge of the accusations published in that report. So deep, so detailed was his knowledge of the crimes committed by his troops in the CAR. The FIDH report also analysed his criminal responsibility for the alleged crimes.¹³³

79. The degree of Bemba's knowledge is further illustrated by the Chamber's findings about the attack on Mongoumba which occurred on 5 March 2003 when the MLC forces ransacked that town and committed acts of pillaging, rape and murder against the civilians.¹³⁴ Thuraya records show that Bemba talked to Colonel Moustapha for approximately 13 minutes on 4 March 2003. On the day of the attack Bemba called Colonel Moustapha 16 times for a total of, at least, 17 minutes. The Chamber concluded that Bemba knew of the attack on Mongoumba.¹³⁵

80. The Chamber summarized the factors upon which Bemba's actual knowledge of MLC crimes was based: the notoriety of the crimes, Bemba's position, the available channels of communication, his regular contacts with his officials in the CAR, sources of information such as media, NGO and MLC intelligence reports, and his direct knowledge of allegations of MLC crimes at specific times throughout the CAR 2002-2003 operation.¹³⁶ These factors point to extremely detailed knowledge by Bemba, which in turn indicates a very high degree of participation and intent.

¹³⁰ *Ibid.*, para. 607.

¹³¹ *Ibid.*, para. 608.

¹³² EVD-T-OTP-00395/CAR-OTP-0001-0034 at 0049 to 0052

¹³³ Bemba Judgment, para. 608.

¹³⁴ *Ibid.*, para. 543.

¹³⁵ *Ibid.*, para. 541.

¹³⁶ *Ibid.*, para. 717.

- *The extent to which Bemba failed to take all necessary and reasonable measures*

81. The Chamber stated that “the duty of the commander to take all necessary and reasonable measures to prevent or repress the crimes committed by his forces, or to submit the matter to the competent authorities for investigation and prosecution, rests upon his possession of effective authority and control.” What is determinative is the military commander’s material ability to act. Therefore, the assessment as to whether that commander has discharged his/ her duties has to be made on the basis of his/ her *de jure* and/ or *de facto* power.¹³⁷

82. The Chamber concluded that Bemba’s material ability to prevent and repress the crimes was “extensive” and identified a number of measures that Bemba could have implemented accordingly.¹³⁸ Bemba could have, *inter alia*: ensured that his MLC troops in the CAR were properly trained in IHL; adequately supervised them during the 2002-2003 CAR operation; issued clear orders to the troops’ commanders in the CAR to prevent the commission of crimes; initiated full and genuine investigations and properly tried and sanctioned those responsible for crimes; removed, replaced or dismissed officers and soldiers found to have committed or condoned crimes in the CAR; shared relevant information with the CAR authorities or others and supported them in any effort to conduct investigations;¹³⁹ withdrawn his MLC troops from the CAR.¹⁴⁰

83. Against these parameters, the Chamber found beyond reasonable doubt that Bemba failed to take all necessary and reasonable measures within his power.¹⁴¹

84. In light of the same parameters, the extent of Bemba’s failure to discharge his duties as a commander must be assessed. Given his extensive authority and material ability to prevent, Bemba could have taken significant preventive measures. Training soldiers is crucial in this respect. Nevertheless, prior to deployment, most MLC soldiers merely received rapid military training. Others soldiers received no or minimal training.¹⁴² No proper training on the obligations and the rules of IHL for members of armed forces was provided.¹⁴³

¹³⁷ *Ibid.*, para. 199.

¹³⁸ *Ibid.*, para. 729.

¹³⁹ *Ibid.*, para. 729.

¹⁴⁰ *Ibid.*, para. 730.

¹⁴¹ *Ibid.*, para. 734.

¹⁴² *Ibid.*, paras. 391, 737.

¹⁴³ *Ibid.*, para. 729.

85. The MLC had a Code of Conduct that set out some basic disciplinary rules. The Code, however, was not properly disseminated. As observed by the Chamber, it was written in French – a language that most MLC soldiers did not understand – and the commanders were responsible for translating it orally into Lingala. By consequence, some MLC troops were not familiar with the Code.¹⁴⁴ In any event, the Code was a completely inadequate document that could not ensure any compliance with IHL. The Code failed to set the distinction between civilians and combatants, or the concept of protected persons. The Code did not contain any provision prohibiting the crimes of pillaging and contained no definition of what may be taken as “spoils of war”.¹⁴⁵ It is emblematic that this Code even permitted the execution of detainees. Simply, the execution had to be “authorized”.¹⁴⁶

86. Another key aspect of crime prevention is the issuance of clear orders to subordinates calculated to obtain compliance with IHL. By virtue of his extensive authority,¹⁴⁷ Bemba could have issued orders to his troops prior to their deployment to the CAR. Given all means of communications that Bemba had available,¹⁴⁸ it would have been easy for him to issue orders from Gbadolite to his commanders and troops in the CAR, imposing respect for IHL and putting an end to the commission of the crimes. Bemba failed to take these preventive measures.¹⁴⁹

87. The circumstances of the attack on Mongoumba in March 2003 are emblematic as regards Bemba’s attitude about prevention of crimes. Colonel Mustapha transmitted an order to his troops for a punitive operation against Mongoumba.¹⁵⁰ Bemba knew of the attack through his phone conversations with Colonel Mustapha on the day prior to, and on that of, the attack.¹⁵¹ This incident occurred at the end of CAR military operation, when Bemba had received reports of MLC crimes for months. On 5 March 2003, MLC forces surrounded and attacked Mongoumba. The town was ransacked and the MLC troops committed acts of

¹⁴⁴ *Ibid.*, para. 393.

¹⁴⁵ *Ibid.*, para. 392.

¹⁴⁶ EVD-T-OTP-00700/CAR-DEF-0001-0161-at-0163.

¹⁴⁷ *Ibid.*, para. 399.

¹⁴⁸ *Ibid.*, paras. 394, 419, 420.

¹⁴⁹ *Ibid.*, para. 729.

¹⁵⁰ *Ibid.*, para. 542.

¹⁵¹ *Ibid.*, para.541.

pillaging, rape and murder against civilians.¹⁵² Despite knowing of the attack, Bemba had taken no preventive or remedial action.¹⁵³

88. Turning to measures to repress the crimes, Bemba had the ability to implement several of them, including disciplinary and investigatory measures. The Chamber established that he held ultimate authority over sanctioning, arresting and dismissing senior political leaders and military officers, as well as soldiers, in the MLC and the ALC.¹⁵⁴ Bemba had the power to set up courts-martial and other judicial organs within the MLC. Bemba also appointed officials to the courts-martial, such as judges, and had the ability to influence cases before the courts-martial.¹⁵⁵ Specifically with regard to the MLC forces in the CAR, Bemba held primary and ultimate disciplinary authority over them.¹⁵⁶

89. Nevertheless, Bemba failed to take all necessary and reasonable measures within his power to repress the commission of the MLC crimes.¹⁵⁷ The Chamber further concluded that his failure to take action was deliberately aimed at encouraging the attack against the CAR civilian population.¹⁵⁸ This ongoing failure, over an extended period of more than four months, must be regarded as significantly more serious than a single failure to prevent or punish an isolated crime by a subordinate.¹⁵⁹

90. In reaction to the allegations of MLC crimes, Bemba rather used his authority and power to take a few measures¹⁶⁰ that – according to the Chamber’s findings - not only were a grossly inadequate response to the allegations of widespread MLC crimes; those measures were not genuine and not properly and sincerely executed.¹⁶¹

¹⁵² *Ibid.*, para. 543.

¹⁵³ *Ibid.*, para. 541.

¹⁵⁴ *Ibid.*, para. 403.

¹⁵⁵ *Ibid.*, para. 402.

¹⁵⁶ *Ibid.*, paras. 447-448.

¹⁵⁷ *Ibid.*, para. 734.

¹⁵⁸ *Ibid.*, para. 685.

¹⁵⁹ ICTY, *Celebici* Appeal Judgment, IT-96-21-A, para. 739.

¹⁶⁰ Bemba Judgment, para. 719 in which the Chamber listed: the Mondonga Inquiry; a November 2002 visit to the CAR, during which Bemba met with the UN representative in the CAR, General Cissé, and President Patassé; a speech given at PK12 in November 2002; the trial of Lieutenant Willy Bomengo and others at the Gbadolite court-martial; the Zongo Commission; correspondence with General Cissé; correspondence in response to the FIDH report; and the Sibut mission.

¹⁶¹ *Ibid.*, para. 727.

91. For instance, Bemba launched the investigation led by Colonel Mondonga.¹⁶² However, the only result of that investigation was the arrest and trial of seven low-ranking soldiers in relation to pillaging of a few minor items and small sums of money.¹⁶³ All seven soldiers were convicted and sentenced to low terms of imprisonment merely on the basis of their own statements. No other witnesses or victims were interviewed, no physical evidence was collected.¹⁶⁴ Despite the allegations of crimes contained in the report that Bemba received,¹⁶⁵ neither the responsibility of commanders, nor allegations of rape were investigated.¹⁶⁶

92. Another measure undertaken by Bemba was an investigation into pillage in Zongo (DRC) in December 2002.¹⁶⁷ The scope of the investigation was extremely limited. Investigators did not go beyond the area of Zongo;¹⁶⁸ eight officials belonging or linked to the MLC were interviewed; no MLC soldiers were interviewed.¹⁶⁹ The investigation had such a limited scope that it could not establish the truth. But the investigative commission concluded not only that it was unable to establish pillage committed by MLC soldiers; it also concluded that “France and the political opponents of the CAR had developed a campaign of ‘demonization’ to tarnish President Patassé’s regime”.¹⁷⁰

93. A further step taken by Bemba is the so called “Sibut mission”. Bemba dispatched a delegation of MLC soldiers and officials, accompanied by reporters, to the town of Sibut in February 2003.¹⁷¹ A video was recorded on that occasion. It shows some persons being interviewed by the reporters that accompanied the delegation. The interviewees essentially reported that the MLC forces had liberated Sibut, had not committed crimes and the population was thankful towards them.¹⁷² The intent of the video to exonerate the MLC and blame Bozizé’s forces for the crimes is evident. The video shows armed soldiers circulating

¹⁶² *Ibid.*, paras. 582-589.

¹⁶³ *Ibid.*, paras. 589, 720.

¹⁶⁴ *Ibid.*, para. 599.

¹⁶⁵ See para. 74 above in the section dealing with the degree of Bemba’s knowledge of the crimes committed by the MLC troops.

¹⁶⁶ *Ibid.*, para. 589.

¹⁶⁷ *Ibid.*, para. 601.

¹⁶⁸ *Ibid.*, para. 602.

¹⁶⁹ *Ibid.*, para. 603.

¹⁷⁰ *Ibid.*, para. 603.

¹⁷¹ *Ibid.*, para. 614.

¹⁷² *Ibid.*, para. 616.

close to the population and armed guards near the persons being interviewed.¹⁷³ The Sibut mission is among the measures that the Chamber considered as “not genuine”.

94. These minimal and inadequate measures, in the Chamber’s findings, illustrate that Bemba’s primary intention was not to genuinely take all necessary and reasonable measures within his powers; his key intention was to counter public allegations and rehabilitate and protect the image of the MLC.¹⁷⁴ The Chamber’s findings related to Bemba’s failure to take all necessary and reasonable measures also indicate a very high degree of participation and intent.

95. In addition, the Chamber’s factual findings on the nexus between Bemba’s omissions and the crimes committed by his troops strongly impact on Bemba’s degree of participation and intent. In fact, it has been established that the crimes of rape, murder and pillaging perpetrated by the MLC forces were a result of Bemba’s failure to exercise control properly, to the extent that, had Bemba taken measures to prevent and repress, the crimes would have been prevented, or would not have been committed in the circumstances in which they were.¹⁷⁵

96. In reaching this conclusion, the Chamber considered that, by virtue of his authority, Bemba had the ability to take measures that would have deterred the commission of crimes and diminished, if not eliminated, the climate of acquiescence that surrounded and facilitated the crimes committed during the 2002-2003 CAR operation.¹⁷⁶ The Chamber further recognized the consequences of Bemba’s conduct and omissions by observing that if soldiers had received adequate payment and rations, the risk that they would pillage or rape for self-compensation, and murder those who resisted, would have been reduced, if not eliminated.¹⁷⁷

¹⁷³ *Ibid.*, para. 616.

¹⁷⁴ *Ibid.*, para. 728.

¹⁷⁵ *Ibid.*, para.741. In this case, the Chamber found that had Bemba taken measures specified in the Judgment, “the crimes would have been prevented or would not have been committed in the circumstances in which they were” (Bemba Judgment, para.741). As such, the Chamber’s factual findings go beyond the legal minimum standard of causation which the Chamber believed to be required (Bemba Judgment, para. 213). It is therefore appropriate to take these factual findings into consideration, regardless of the existence of such a legal requirement.

¹⁷⁶ *Ibid.*, para. 738.

¹⁷⁷ *Ibid.*, para. 739.

d) Bemba's character

97. The general opinion of former MLC members who testified at trial is that Bemba is an authoritarian individual, with a tendency to tyranny and despotism.¹⁷⁸

98. Prosecution Witness 45 (“P45”) provided the most accurate description of Bemba’s character when he described him as a courageous and intelligent man with lack of humanity as his greatest drawback.¹⁷⁹ P45 also noted that Bemba was quite insensitive towards human suffering.¹⁸⁰ Several Prosecution witnesses, former collaborators and friends of Bemba testified about mistreatments he could inflict to his closest when he considered that his personal interests were at stake. For instance, [REDACTED] Prosecution Witness 33 (“P33”) [REDACTED];¹⁸¹ [REDACTED] described by Prosecution Witness 44 (“P44”) when [REDACTED];¹⁸² [REDACTED] under which Prosecution Witness 15 [REDACTED]¹⁸³ are all symptomatic of how Bemba pursues his interest to the detriment of the people around him.

99. [REDACTED] also reflects that Bemba is prepared to knowingly violate the law for his own ambition.¹⁸⁴ The same happened in the CAR military operation, in which Bemba knowingly violated the rules of IHL for his own political ambition.

100. Bemba’s lack of humanity¹⁸⁵ and his insensitivity towards human suffering¹⁸⁶ are confirmed through accounts provided by P33 and Prosecution Witness 213 (“P213”). P33 testified that [REDACTED].¹⁸⁷ P213 reported several instances where Bemba ordered the murder of prisoners of war using expressions like “I don’t need these people” or “I don’t have

¹⁷⁸ [P45-T202-ENG-ET-p18-L7-L10-and-p18-L24-p19-L8]/[P45-T202-FRA-ET-p20-L12-L15-and-p21-L7-L20]; [P33-T163-ENG-ET-p9-L22-p11-L3]/[P33-T163-FRA-ET p10-L16-p11-L18]; [P15-T210-ENG-CT-p3-L6-L12]/[P15-T210-FRA-ET-p3-L14-L20]; [P44-T206-ENG-ET-p4-L14-L24]/[P44-T206-FRA-CT-p5-L4-L17]. See also [P32-T165-ENG-CT-p22-L6-L10]/[P32-T165-FRA-ET-p22-L18-L21] who describing what he experienced at Gbadolite, compared it to the system under President Mobutu, and called it a dictatorship.

¹⁷⁹ [P45-T202-ENG-ET-p45-L9-L16]/[P45-T202-FRA-ET-p52-L12-L22].

¹⁸⁰ [P45-T202-ENG-ET-p18-L7-L10]/[P45-T202-FRA-ET-p20-L12-L15].

¹⁸¹ [P33-T163-ENG-ET-p9-L22-p11-L3]/[P33-T163-FRA-ET-p10-L16-p11-L18].

¹⁸² [P44-T205-ENG-ET-p63-L21-p64-L08]/[P44-T205-FRA-ET-p71-L5-23] and [P44-T206-ENG-ET-p3-L5-L9]/[P44-T206-FRA-ET-p3-L19-24].

¹⁸³ [P15-T209-ENG-CT-p49-L11-p50-L15]/[P15-T209-FRA-ET-p51-L17-p52-L21].

¹⁸⁴ [P44-T205-ENG-ET-p63-L21-p64-L08]/[P44-T205-FRA-CT-p71-L5-L23]; [P44-T206-ENG-ET-p3-L5-L9]/[P44-T206-FRA-CT-p3-L19-L24].

¹⁸⁵ [P45-T202-ENG-ET-p45-L9-L16]/[P45-T202-FRA-ET-p52-L12-L22].

¹⁸⁶ [P45-T202-ENG-ET-p18-L7-L10]/[P45-T202-FRA-ET-p20-L12-L15].

¹⁸⁷ [P33-T159-ENG-ET-p57-L22-p60-L21]/[P33-T159-FRA-ET-p59-L6-p62-L5].

rice to feed them” or “*enlevez les godjos*”. By these expressions used within the MLC in the DRC, he meant execute those people. This type of orders had to be executed.¹⁸⁸

101. P45 testified that at some point, both in the DRC and in the CAR, Bemba was more focused on the results that he pursued on the ground than on anything else, including discipline.¹⁸⁹ P45 expressed his concern that as long as Bemba will not integrate the human dimension, his action may turn out to be catastrophic for the DRC.¹⁹⁰ The CAR victims in this case experienced tragically this trait of Bemba.

102. Bemba’s character shows someone that had disregard for human life and bodily integrity. During the CAR military operation, despite his full knowledge of the crimes committed by his troops and the full set of available measures to prevent or stop the crimes, , Bemba pursued his objectives at any cost, no matter what the consequences were.

B. Aggravating circumstances (rule 145(2)(b))

a) Victims of crimes were particularly defenceless

103. Bemba’s MLC troops committed rape, murder, and pillaging against defenceless civilians. They victimised many individuals and entire families, including particularly defenceless victims such as children and the elderly.¹⁹¹¹⁹² P221 underscored the profoundly detrimental effect that rape has on children.¹⁹³ The MLC troops raped girls as young as eight or nine years old, including gang rapes at the Begoua School.¹⁹⁴ P29 testified that MLC troops committed multiple rapes - “everyone in Mongoumba was aware that young girls had been raped.”¹⁹⁵ P42 was “powerless” in his home even as his 10 year old daughter screamed,

¹⁸⁸ [P213-T188-ENG-ET-p8-L5-p8-L22-and- p9-L4-p11-L16]/[P213-T188-FRA-ET-p7-L1-p8-L26-and-p9-L23-p12-L8].

¹⁸⁹ [P45-T201-ENG-ET-p51-L9-L25]/[P45-T20-FRA-ET-p57-L4-L22].

¹⁹⁰ [P45-T202-ENG-ET-p45-L9]/[P-45-T202-FRA-ET-p52-L12].

¹⁹¹ Bemba Judgment, para. 673.

¹⁹² *Ibid.*, para. 673.

¹⁹³ [P221-T39-ENG-ET-p11-L20-p12-L5]/[P221-T39-FRA-ET-p11-L2-L13].

¹⁹⁴ [P38-T34-ENG-ET-p40-L17]/[P38-T34-FRA-ET-p46-L4] ; [P178-T151-ENG-CT-p7-L10-L19]/[P178-T151-FRA-ET-p7-L25-p8-L9] ; EVD-T-OTP-00442/CAR-OTP-00110503-at-0511 ; EVD-T-OTP-00847/CAR-OTP-0013-0012; [P63-T110-ENG-CT2-p5-L16-p6-L18]/[P63-T110-FRA-ET-p5-L25-p6-L26]; AFRC Bemba Judgment, para. 22; RUF Bemba Judgment, para. 25.

¹⁹⁵ [P29-T80-ENG-ET-p56-L4]/[P29-T80-FRA-ET-p62-L12]; [P29-T81-ENG-ET-p15-L11-p18-L17]/[P29-T81-FRA-ET-p15-L13-p28-L23]; [V1-T220-ENG-CT-p12-L13-p13-L6-and-p14-L2]/[V1-T220-FRA-CT-p13-L14-p14-L6-and-p15-L2]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114].

“Papa, they are taking me away” and “Papa, they are undressing me”.¹⁹⁶ The Chamber found that this child was raped by two MLC soldiers - one with his finger and the other with his penis.¹⁹⁷ After the rape, she was bleeding from her vagina and had blood on her dress.¹⁹⁸

104. Prosecution Witness 119 (“P119”) witnessed two MLC troops raping two young girls, aged 12 and 13 years, while a column of other armed soldiers stood outside the shallow canal awaiting their turn.¹⁹⁹ The girls were struggling and screaming at the same time, “[m]other, I’m dead. I’m dead. They’ve killed me. I’m dead.”²⁰⁰ Both girls were bleeding from their vaginas.²⁰¹

105. The Chamber found that P79’s 11 year old daughter was raped by an MLC soldier in the presence of other children.²⁰² When these children tried to cry out, the MLC soldiers told them, “Don’t make a noise or we will shoot you”.²⁰³ P79’s daughter was bleeding from her vagina.²⁰⁴ P79’s daughter was subsequently hospitalised.²⁰⁵

106. The Chamber found that MLC soldiers raped six members of the same family, including mother and father, during the same incident.²⁰⁶ They raped two of P23’s daughter who were aged 14 and 16 years old, as well as P82, who was between 10 and 13 years old at the time.²⁰⁷ Regarding P82, P23 testified that, “[t]hey didn’t even feel any pity for that small girl”.²⁰⁸ P82 suffered pain and injuries to her vagina.²⁰⁹

¹⁹⁶ [P42-T64-ENG-ET-p18-L5-and-p41-L24-and-p48-L10-and-p48-L24]/[P42-T64-FRA-ET-p20-L16-and-p46-L10-and-p53-L19-p54-L9].

¹⁹⁷ Bemba Judgment, paras. 516-519.

¹⁹⁸ *Ibid.*, para. 516.

¹⁹⁹ [P119-T82-ENG-CT-p40-L8]/[P119-T82-FRA-CT-p40-L4] ; Bemba Judgment, paras. 467-469.

²⁰⁰ [P119-T82-ENG-CT-p41-L15-and-p42-L24-p43-L1]/[P119-T82-FRA-CT-p41-L12-and-p42-L20-L24].

²⁰¹ [P119-T82-ENG-CT-p42-L11]/[P119-T82-FRA-CT-p42-L5].

²⁰² Bemba Judgment, para. 511.

²⁰³ *Ibid.*, para. 511. [P79-T77-ENG-CT-p8-L25-p9-L13-and-p17-L14]/[P79-T77-FRA-ET-p9-L6-L20-and-p18-L3]; [P79-T78-ENG-ET-p50-L10]/[P79-T78-FRA-ET-p51-L20].

²⁰⁴ Bemba Judgment, para. 511.

²⁰⁵ [P79-T77-ENG-CT-p34-L9]/[P79-T77-FRA-ET-p35-L9].

²⁰⁶ Bemba Judgment, paras. 487-495 and 633(e).

²⁰⁷ *Ibid.*, paras. 489 and 493.

²⁰⁸ [P23-T51-ENG-CT2-p43-L7]/[P23-T51-FRA-ET-p45-L22].

²⁰⁹ Bemba Judgment, para. 489.

107. The MLC troops also raped older men and women, such as P69 who was over 50 years old at the time.²¹⁰ P69 was raped by two MLC soldiers when he protested against the rape of his wife.²¹¹

108. The MLC troops also committed crimes in places of civilian sanctuary, such as pillaging at hospitals, churches, monastery, and nunnery. In Mongoumba, they pillaged civilians properties at the hospital as well as from the bishop at a church – at gunpoint and under threat of death – where they took a cassock, clothes, a cross, and money.²¹² They also pillaged items such as vehicles and other household items at the priests’ residence as well as the nuns’ residence.²¹³

b) Commission of the crimes with particular cruelty

109. Bemba’s MLC troops committed widespread crimes with particular cruelty and against multiple victims. In determining the widespread nature of the attack against the civilian population, the Chamber held that the specific underlying acts of rape, murder, and pillaging are only a portion of the total number of crimes committed by MLC forces during the 2002-2003 CAR operation.²¹⁴ The Chamber found that the MLC troops did not receive adequate payment and rations from their superiors and therefore applied “Article 15” – which meant to make ends meet – by exacting compensation, in cash and kind, from the civilian population through acts of murder, rape, and pillaging.²¹⁵

110. The evidence on record demonstrates that MLC troops committed rapes with particular cruelty. In addition to the coercive environment,²¹⁶ the MLC troops committed rapes with additional brutality as they slapped, kicked, punched, forcibly restrained, and raped victims at gun-point.²¹⁷ It is striking that throughout the course of this trial, rarely was a victim raped by

²¹⁰ [P-69-T192-ENG-ET-p11-L3]/[P-69-T192-FRA-ET-p12-L16].

²¹¹ Bemba Judgment, para. 498.

²¹² *Ibid.*, para. 547.

²¹³ *Ibid.*, para. 547.

²¹⁴ *Ibid.*, para. 688.

²¹⁵ *Ibid.*, para. 565.

²¹⁶ *Ibid.*, paras. 103-104.

²¹⁷ [P75-T92-ENG-CT-p25-L9-p26-L2]/[P75-T92-FRA-CT-p25-L28-p26-L15]; [P82-T58-ENG-CT-p19-L2]/[P82-T58-FRA-CT-p21-L4]; [P80-T61-ENG-CT-p8-L3-and-p14-L1-and-p14-L15]/[P80-T61-FRA-ET-p8-L5-and-p14-L6-and-p14-L22]; [V1-T220-ENG-CT-p30-L3]/[V1-T220-FRA-CT-p30-L8]; [P79-T77-ENG-CT-p8-L25-p9-L13-and-p17-L14]/[P79-T77-FRA-ET-p9-L6-L20-and-p18-L3]; [P68-T48-ENG-ET-p26-L11]/[P68-T48-FRA-ET-p28-L15]; [P87-T44-ENG-CT-p42-L5]/[P87-T44-FRA-CT-p43-L25].

only one MLC perpetrator, which would have been cruel enough. The common pattern was for two or three perpetrators to rape the same victim during the same incident. Yet, there were also victims who were raped by more than two or three MLC perpetrators during the same incident.²¹⁸ Additionally, MLC troops raped victims in front of their family members. They raped children in front of their parents.

111. The Chamber found that MLC soldiers sought to punish civilians in the CAR, for example, for MLC losses or as suspected enemies or enemy sympathisers.²¹⁹ The Chamber held that some MLC soldiers considered victims to be “war booty” and/or sought to destabilise, humiliate, and punish suspected rebels and rebel sympathisers.²²⁰ The Chamber found that such objectives were often realised as rape victims experienced significant medical, psychiatric, psychological, and social consequences, including PTSD, HIV, social rejection, stigmatisation, and feelings of humiliation, anxiety, and guilt.²²¹

112. Three MLC troops raped P23 in order to “punish” him.²²² The Chamber found that P-23 was raped by three MLC soldiers as his family members and his neighbour looked on, while his wife, daughters, and granddaughter were also raped on the same day.²²³ When MLC troops arrived at P81’s home, her husband told them that his wife had just given birth.²²⁴ The MLC soldiers threatened to kill P81’s husband and so he decided to take the baby outside while they raped his wife. P81 was raped by four MLC soldiers but the fifth man did not rape her because she was bleeding.²²⁵ P81, P80 and P69’s wives were all raped in their homes and their husbands were powerless to prevent the crimes. P229 explained that when rape is committed in the presence of family members or third parties, it is a means to punish the rape victim and humiliate the person who is present.²²⁶ P69 explained that when his wife was raped in his presence, it was unbearable because there was nothing that he could do.²²⁷

²¹⁸ For example, [P87-T44-ENG-CT-p28-L6-and-p39-L5-and-p40-L19-and-p41-L7]/[P87-T44-FRA-CT-p29-L14-and-p40-L22-and-p42-L14-and-p42-L24]; [P23-T51-ENG-CT2-p36-L4]/[P23-T51-FRA-ET-p38-L11]; [P22-T40-ENG-ET-p19-L13]/[P22-T40-FRA-ET-p20-L26].

²¹⁹ Bemba Judgment, para. 565.

²²⁰ *Ibid.*, para. 567.

²²¹ *Ibid.*, para. 567.

²²² [P23-T51-ENG-CT2-p31-L20]/[P23-T51-FRA-ET-p33-L18].

²²³ Bemba Judgment, para. 494.

²²⁴ [P81-T55-ENG-CT-p10-L11-and-p12-L11-and-p12-L22]/[P81-T55-FRA-CT-p10-L15-and-p12-L11-and-L22]; [P81-T56-ENG-CT2-p36-L8]/[P81-T56-FRA-ET-p39-L3].

²²⁵ [P81-T55-ENG-CT-p6-L7-and-p11-L9-and-p11-L13]/[P81-T55-FRA-CT-p3-L13-and-p11-L10-and-p11-L17].

²²⁶ [P229-T100-ENG-CT2-p6-L17-p7-L3]/[P229-T100-FRA-CT-p6-L17-p7-L3].

²²⁷ [P69-T192-ENG-ET-p56-L13]/[P69-T192-FRA-ET-p60-L19].

113. The MLC troops attacked the town of Mongoumba purely as a punitive measure to retaliate against the population. V1 was first raped outside the CAR military camp, next to the river bank, by two MLC soldiers.²²⁸ While she was being raped, other soldiers looked on, cheering and shooting their weapons in the air.²²⁹ After the rape, the MLC troops used V1 to carry stolen items as they pillaged from one place to another. Subsequently that same day, V1 was raped a second time by a gang of about 12 MLC troops. She was raped in her vagina, anus, and mouth; she started vomiting, bleeding in her vagina, and lost consciousness.²³⁰

114. In addition to rape, MLC troops also committed murder with particular cruelty. When P69's sister tried to resist pillaging by MLC troops, they threw her to the ground. She continued to resist and so they shot her right in front of P69. P69 testified that he "saw the brain of [his] sister [...] as if an animal's skull had been hit."²³¹

115. The Chamber found that MLC troops killed an unidentified Muslim man by shooting and mutilating him at his house.²³² V1 testified that this Muslim man had resisted the pillaging of his sheep by MLC troops. They fired several shots at him and then killed him by mutilating his body – they cut off his penis and stuffed it into his mouth.²³³

C. The sentence recommended by the Prosecution

116. A Trial Chamber enjoys broad discretion in determining a sentence. The sentence must be determined by weighing and balancing all the relevant factors.²³⁴ The Prosecution, however, is drawing the Chamber's attention to the following submissions.

²²⁸ Bemba Judgment, paras. 548 and 553.

²²⁹ *Ibid.*, para. 548.

²³⁰ *Ibid.*, para. 551.

²³¹ *Ibid.*, para. 496.

²³² *Ibid.*, para. 554.

²³³ *Ibid.*, para. 549.

²³⁴ Lubanga Appeal Judgment on Sentence, para. 1.

117. In determining the sentence, the military commander's culpability must be measured to a relevant degree by the gravity of the subordinates' crimes. Additionally, the gravity of the convicted person's conduct in failing to prevent or repress the subordinates' crimes and the totality of the convicted person's individual circumstances is to be taken into account.²³⁵

118. The gravity of the crimes of rape, pillaging and murder of which Bemba was convicted has been discussed above.²³⁶ These are among the most serious and heinous crimes of concern to the international community.

119. Bemba was convicted of those crimes under article 28(a) of the Statute. As stated above,²³⁷ command responsibility is an intrinsically very serious form of criminal liability and, as such, must be sanctioned with harsh punishment.

120. Each individual soldier who commits a war crime is criminally liable for the acts he or she has committed. But the military commander who fails to exercise his or her authority to stop these atrocities is responsible for the cumulative whole of the criminal acts of all his or her subordinate forces. A failure to stop atrocities has the tragic consequence of an exacerbation of the devastation to civilian communities.

121. As submitted above, command responsibility is accorded parity with individual criminal responsibility both by the Court's legal regime and the *ad hoc* Tribunals jurisprudence.²³⁸ Therefore, under article 77 of the Statute, a Chamber may impose any of the sentences prescribed, including a life imprisonment, for any form responsibility underpinning the conviction, including command responsibility.

122. It is noteworthy that the *ad hoc* Tribunals, particularly the ICTR, have imposed life sentences for convictions based solely on command/superior responsibility. They have also similarly imposed long imprisonment terms.

²³⁵ For the ICTY, see *Prosecutor v. Enver Hadzihasanovic and Amir Kubura*, Case No.IT-01-47-A, Judgement, 22 April 2008, ("*Hadzihasanovic* Appeal Judgement"), para. 313; *Celebici* Appeal Judgement, para. 741. For the ICTR, see *Ntabakuze* Appeal Judgement, para. 302.

²³⁶ See paras. 18 to 21, and 32 to 62 above.

²³⁷ See paras. 22 to 30 above.

²³⁸ See para. 26 above .

123. In the case of *Bagosora et al.*, an ICTR Trial Chamber sentenced the accused *Ntabakuze* to life imprisonment for convictions of genocide, crimes against humanity and war crimes based solely on command responsibility.²³⁹ The Appeals Chamber reduced the life sentence to a 35 years' imprisonment term only because it had quashed some convictions that involved many victims, regardless of the mode of liability underpinning them. The Appeals Chamber found no abuse of discretion in the Trial Chamber's holding that the gravity of the crimes committed by *Ntabakuze* warranted similar treatment to those who planned or ordered the atrocities.²⁴⁰

124. Likewise, the Appeals Chamber reduced the life sentence imposed to the accused *Bagosora* to a 35 years' imprisonment term for the same reason, because it had reversed convictions that involved many victims. The Appeals Chamber considered that the fact that *Bagosora* was no longer found guilty of certain crimes on the basis of *direct participation* did not reduce his culpability. Command/superior responsibility is not to be seen as less grave than criminal responsibility.²⁴¹

125. The Chamber's findings reflect the gravity of Bemba's conduct in failing to prevent and repress his subordinates' crimes. Bemba had extensive authority and control over his MLC forces. A military commander exercising more authority and control is hardly conceivable. Bemba had actual knowledge of the crimes committed by his MLC troops in the CAR. His knowledge was detailed and constant throughout the CAR operation. Despite this detailed knowledge of the crimes and the measures available to him, he failed to take any meaningful action. Had he properly exercised his authority, the crimes committed by the MLC troops would have been prevented, or would not have been committed in the circumstances in which they were. But Bemba only used his authority in an attempt to protect and rehabilitate the image of the MLC. As a result of Bemba's failure to discharge his duties, crimes of rape, murder and pillaging were committed by his MLC forces. The specific underlying acts of which Bemba was convicted²⁴² are only a portion of the total number of crimes committed by the MLC forces in the course of the 2002-2003 CAR operation.²⁴³ Under these circumstances,

²³⁹ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgment and sentence, 18 December 2008, para. 2278.

²⁴⁰ *Ntabakuze* Appeal Judgment, paras. 301-306.

²⁴¹ *Bagosora and Nsengiyumva* Appeal Judgment, paras. 739-740.

²⁴² Bemba Judgment, sections VI(A), VI(B) and VI(C).

²⁴³ *Ibid.*, paras. 671, 688.

Bemba bears the highest degree of culpability for a military commander under article 28 of the Statute.

126. Deterrence is one of main purposes of sentencing.²⁴⁴ A long sentence, proportionate to gravity of Bemba's culpability would also pursue the objective of deterring other military commanders from committing similar crimes.

127. In light of the submissions above, the Prosecution hereby requests that a sentence of not less than 25 years of imprisonment be imposed on Bemba.



Fatou Bensouda, Prosecutor

Dated this 15th Day of April 2016
At The Hague, The Netherlands

²⁴⁴ See paras. 15, 16 above.