

1 International Criminal Court
2 Trial Chamber III - Courtroom 2
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch, and Judge Kuniko Ozaki
6 Sentencing Hearing
7 Wednesday, 18 May 2016
8 (The hearing starts in open session at 9.01 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning, everyone.
13 Could please court officer call the case.
14 THE COURT OFFICER: Thank you, Madam President.
15 The situation in the Central African Republic in the case of the Prosecutor versus
16 Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.
17 For the record, we are in open session.
18 PRESIDING JUDGE STEINER: Thank you very much.
19 I welcome the Prosecution team, Madam Prosecutor, Legal Representatives of Victims,
20 the Defence team, Mr Jean-Pierre Bemba Gombo. Good morning and welcome to
21 our interpreters and court reporters.
22 Today we will proceed with the last part of the hearing for the presentation of the
23 evidence and submissions on the appropriate sentence convened in accordance with
24 Article 76(2) of the Statute.
25 As scheduling decisions 3384 of 4 May 2016 and 3387 of 10 May 2016, we will begin

1 today by hearing from the Prosecution, who will present to the Court as informed
2 yesterday for approximately 1 hour, then Legal Representative of Victims will take
3 the floor for up to 30 minutes before Defence delivers its final submissions for up to 2
4 hours.

5 The parties and the Legal Representative are reminded to observe these time limits as
6 far as possible in order to ensure the efficient delivery of the final oral submissions on
7 sentencing.

8 The Chamber may ask the parties and Legal Representative any questions in order to
9 seek clarification or any additional information.

10 It's now time to hand over to the parties and participant to allow them to begin giving
11 their final oral submissions on sentencing.

12 Firstly I give the floor to Madam Prosecutor, Ms Fatou Bensouda, and your team in
13 order to present your submissions.

14 MS BENSOU DA: Thank you, Madam President.

15 Madam President, your Honours, the Prosecution is present before you today to assist
16 the Chamber in its determination of the appropriate sentence to be imposed on
17 Mr Jean-Pierre Bemba Gombo, who was at all material times the president of the
18 Mouvement de Libération du Congo, MLC, and the commander in chief of the Armée
19 de Libération du Congo during the relevant events in the Central African Republic.

20 In March of this year, Mr Bemba was convicted of some of the most serious and
21 heinous crimes under the Rome Statute, crimes which shock the conscience of
22 humanity. He was convicted pursuant to the mode of liability enshrined in Article
23 28 of the Rome Statute for murder as crimes against humanity and as a war crime, for
24 rape as a crime against humanity and as a war crime, and for pillaging as a war crime
25 committed by the MLC troops in the territory of the Central African Republic during

1 the 2002-2003 conflict.

2 Before you impose the appropriate sentence in this case, it is important to recall the
3 overarching principle that the sentence to be handed down must be appropriate to the
4 gravity of the offences, offences committed and to the degree of culpability of the
5 convicted person.

6 Your Honours, the Prosecution respectfully submits that in the instant case the
7 seriousness of the crimes of which Mr Bemba was convicted beyond reasonable doubt
8 in accordance with Article 66(3) of the Statute and his high degree of responsibility in
9 the commission of these crimes demand the imposition of an equally serious and
10 effective sentence.

11 Additionally, the sentence that you are about to impose on Mr Bemba should also
12 serve to publicly reprimand his criminal conduct and demonstrate to the international
13 community the commitment of this Court to end impunity for such grave crimes that
14 cause such mass suffering and violently tear the social fabric of society.

15 Another important purpose of the sentence that you will impose is that it will and
16 must serve as an acknowledgment of the harm done to the innocent victims of the
17 Central African Republic, who have suffered immensely from Mr Bemba's proven
18 criminal conduct.

19 A sentence proportionate to the gravity of Mr Bemba's culpability will also pursue the
20 objective of deterring other military commanders from committing serious crimes.

21 Mr Bemba failed as a commander and leader of the MLC troops to ensure those under
22 his authority and control did not commit atrocities and were punished if they did so.

23 Mr Bemba did not merely send his soldiers to militarily support the then general
24 African president, Central African president. What he did was to release his armed
25 men into the civilian population in the Central African Republic where they engaged

1 in horrific campaign of pillage, rape and murder.

2 Your Honours, to meet their ends, Mr Bemba's troops inflicted grave crimes against
3 the civilian population. To this day men, women and children who survived are still
4 haunted by the horror of what happened to them and what they saw happen to other
5 victims. Lives have been destroyed and emotional scars have been etched in the
6 memory of countless victims.

7 The egregious sexual and gender based crimes seen in this case and the need to
8 eradicate such serious crimes as weapons of war in conflict also demand a stern
9 sentence proportionate to Mr Bemba's culpability of such heinous crimes.

10 In this case the number of rapes committed against civilians exceeded the number of
11 murders. This campaign had horrific consequences and resulted in great
12 victimisation.

13 Your Honours, in the sentencing framework of the Court, Article 78 of the Statute and
14 Rule 145 of the Rules are the relevant provisions stipulating that a Chamber must take
15 into account such factors as the gravity of the crime and the individual circumstances
16 of the convicted person as well as any mitigating and aggravating circumstances
17 which are set out in Rule 145(2)(a) and (b). Additional factors to be considered are
18 listed in Rule 145(1)(c).

19 The remainder of the Prosecution's submissions today will focus on the intrinsic
20 gravity of the crimes for which Mr Bemba has been convicted, the gravity of the
21 crimes committed by MLC troops, the degree of Mr Bemba's participation and intent,
22 Mr Bemba's individual circumstances, the aggravating circumstance in the case, the
23 mitigating circumstances which must also be taken into account according to the
24 Defence, and finally, the sentence recommended by the Prosecution which we submit
25 all relevant factors considered should not be less than 25 years of imprisonment.

1 It is our considered position that such a sentence would be proportionate to the
2 gravity of the offences committed by Mr Bemba and to his degree of culpability.
3 Your Honours, it goes without saying that your esteemed role in determining the
4 appropriate sentence in this case is critically important. The yearning of the victims
5 in this case to have meaningful justice and see that justice is finally done rests largely
6 on a proportionate but effective sentence to be handed down by this Chamber. They
7 have waited for far too long for finality and justice in the case. They need not wait
8 any longer.

9 With those brief introductory remarks and with your indulgence, Madam President, I
10 will now invite my learned colleague Mr Jean-Jacques Badibanga, the senior trial
11 lawyer with carriage over the case, and other members of the team to continue with
12 the Prosecution's sentencing submissions.

13 Thank you, Madam President, your Honours.

14 PRESIDING JUDGE STEINER: Thank you, Madam Bensouda, Madam Prosecutor.
15 Mr Badibanga has the floor.

16 MR BADIBANGA: (Interpretation) Thank you very much, your Honour.

17 I will now start with the intrinsic gravity of the crimes for which Jean-Pierre Bemba
18 has been convicted by this Chamber.

19 The crimes of murder, rape and pillaging committed by the MLC troops for which
20 Bemba has been convicted under Article 28 of the Statute are among the most serious
21 that this Court was established to prosecute.

22 Additionally, command responsibility is intrinsically a very serious form of criminal
23 liability. The role of military commanders is decisive for the implementation of
24 international humanitarian law. Military commanders have the necessary authority
25 to stop these atrocities occurring or at least to sanction those subordinates who

1 commit them.

2 The commanders who decide not to act, to not utilise the authority they have to
3 intervene and prevent the crimes from being committed should be held criminally
4 responsible for the crimes they could have prevented and should have punished.

5 Such responsibility must be sanctioned with harsh punishment where the facts of the
6 case, including the nature of the crimes, so justify.

7 All the individual perpetrators who commit war crimes are criminally responsible for
8 the acts that they have committed. But the military commander who fails to exercise
9 his or her authority to stop these atrocities is responsible for the cumulative whole of
10 the criminal acts of all of his or her subordinate forces.

11 The Prosecution reiterates that in determining the sentence the Court's legal regime
12 generally accords command responsibility parity with individual criminal
13 responsibility. In its written submissions the Defence objects by arguing that, and
14 here I quote, "Under Article 28 the responsibility of a commander is different to that
15 of a person who commits a crime."

16 This objection of the Defence is without merit. The fact that Article 28 provides a
17 distinct mode of liability from those under Article 25 does not affect in any way the
18 gravity of command responsibility and does not exclude parity between this
19 responsibility, command responsibility and individual responsibility when it comes
20 to the determination of the sentence.

21 The Appeals Chambers of the ICTR and the ICTY, the Appeals Chambers of these two
22 courts therefore have rejected Defence submissions claiming that command
23 responsibility is a lesser form of culpability that must attract in the abstract lower
24 sentences than direct participation would. The law governing this Court defines a
25 single sentencing framework that applies to all crimes mentioned in Article 5 of the

1 Statute and irrespective of the modes of liability. Neither command responsibility
2 mentioned in Article 28 nor any other form of criminal responsibility mentioned
3 under Article 25 are specifically singled out as constituting an aggravating or
4 mitigating factor under Rule 145(2) of the Rules.

5 The Defence contends that the Trial Chambers of the ICTY and ICTR have not
6 automatically equated the conduct of military commanders with that of the principle
7 perpetrators, but rather have had regard to the gravity of the crimes committed and
8 the degree of the accused participation in them.

9 We stress that the gravity of crimes committed by the MLC forces of which Bemba
10 was convicted and the degree of Jean-Pierre Bemba's participation and culpability are
11 precisely the factors upon which we, the Prosecution, rely on to submit that a long
12 sentence should be imposed on him.

13 I would now like to go into the issue of the gravity of the crimes committed by MLC
14 troops.

15 The military commander's culpability depends to a large degree on the gravity in
16 concreto of the crimes committed by the subordinates. In the context of
17 circumstances of manner, time and location of the crimes, which is one of the factors
18 indicated in Rule 145(1)(c), the extent and nature of the crimes committed by the MLC
19 forces in the CAR has to be taken into account in setting the sentence.

20 The Chamber found, this Chamber found that MLC soldiers on several occasions
21 perpetrated the acts of rape and pillaging and murder for four and a half months over
22 a broad geographic area, encompassing each location under their control, and that
23 repeatedly. The MLC troops targeted civilians of every age, gender, profession and
24 social status. They raped women, girls and men in positions of authority. The
25 MLC soldiers raped in broad daylight and night. They raped everywhere, in homes,

1 compounds and private spaces; they raped in the streets, in the fields and in public.

2 MLC troops also committed widespread pillaging and murders.

3 Your Chamber has found beyond a reasonable doubt that pillaging committed by

4 MLC troops occurred on a large scale. These circumstances increase the gravity of

5 the MLC crimes.

6 Another factor that's useful in assessing the gravity of the crimes is the extent of the

7 damage and harm caused to the victims and their families.

8 As this Chamber established in its judgment, rape victims experience serious medical,

9 psychiatric, psychological and social consequences.

10 Witness 229, Dr André Tabo, Prosecution expert witness, who conducted interviews

11 of sexual violence -- or, conducted interviews with sexual violence victims in the

12 Central African Republic explained that the medical consequences suffered by victims

13 of rape may include lesions to organs, HIV seroconversion, syphilis serology, lesions

14 to vagina and unwanted pregnancies.

15 Witness 221, Dr Adeyinka Akinsule, another Prosecution expert witness, explained

16 that an act of sexual violence is a deliberate act meant to dominate and control the

17 victim while devastating their families and communities.

18 The consequences of sexual violence during armed conflict impacts the physical and

19 mental health of the survivor and can last long after the atrocities were committed.

20 The Chamber's findings have well captured the repercussions on many victims'

21 mental health. Witness 69 of the Prosecution, a man who was raped by MLC troops,

22 provided a clear example of the consequences of rape on victims. He stated before

23 the Chamber, and here I quote, "I see myself as a dead man." End of quote.

24 His wife was also raped.

25 The witness told the Chamber that after their rape, they are both wondering what

1 they are going to do in order to recover their dignity.

2 Additionally, during the sentencing hearing, you heard the testimony of

3 Dr Daryn Reicherter, Prosecution expert witness 925. He demonstrated the extent of

4 the damage and harm caused by single and multiple rapes by explaining how the

5 effects of a single individual rape can be felt across multiple generations beyond the

6 individual victim.

7 A vast amount of uncontested data within the science of psychology predicts

8 consistently poor outcomes for rape victims as well as long term and pervasive

9 negative impacts on their families and communities.

10 The expert witness explained that sexual violence causes terror and destabilisation by

11 undermining feelings of individual and community safety and security. Such

12 feelings of danger, threat and helplessness are not only experienced at the time of the

13 rape itself and in its immediate aftermath, but also resurface during many years well

14 into the future, even when safety is re-established.

15 The exposure to traumatic events such as rape can have lasting effects on the

16 functioning of the brain structure which results in cognitive, emotional and

17 behavioural difficulties that constitute the symptoms of disorders such as

18 post-traumatic stress disorder, depression, anxiety and the syndrome of dissociation.

19 Rape victims are at a greater risk for future re-victimisation as the inability of some

20 survivors to focus and function on daily living or to care for themselves is often

21 exploited in the aftermath of the assault.

22 Indeed, child victims of rape have a higher likelihood of being raped or re-victimised

23 afterwards. We have to stress the deleterious impact of rape on children. This

24 cannot be overstated. According to studies reported by Dr Reicherter, problematic

25 experiences of children, such as different types of abuse, were related to increased

1 smoking, alcoholism, drug abuse, depression, suicide attempts, sexually transmitted
2 diseases and obesity when they become adults.

3 Dr Reicherter explained that rape victims suffer a great number of anxiety symptoms
4 and specific phobias. The symptoms and disorders of anxiety have numerous
5 debilitating effects and consequences for the individual. The experience of fear,
6 avoidance, panic, uncontrollable arousal are common symptoms of anxiety disorders
7 that can lead to significant functional impairment. Mood disorders are a common
8 outcome for rape survivors.

9 Based on the current science of psychiatry, the prediction, with a high degree of
10 reliability, is that victims of sexual violence will suffer long term damage and
11 outcomes.

12 According to Dr Reicherter, the science of psychology and research conducted in
13 other situations of mass violence such as took place in Bosnia Herzegovina and
14 Rwanda revealed that the consequences of such sexual violence when deployed on a
15 massive and systematic scale are far more extensive, endemic and devastating than
16 can be measured in an individual victim. In the first case indeed, these impacts are
17 so considerable and profound that they can have psychosocial consequences that can
18 impact people living around the victim, including the victim's children, family and
19 community. For example, the increased rate of mental disorders in individuals
20 impairs community functioning. The traumatised populations tend to have
21 increased rates of domestic violence compared to pre-conflict rates.

22 Parents who are depressed and suffering from post-traumatic stress disorder are not
23 able to comfort their children, they are more likely to ask children to take on an adult
24 role, they are more likely to abuse and neglect them. There is strong evidence that
25 the ability of children to heal from trauma is closely linked to the mental health of

1 their mother.

2 On this aspect of the impact I would refer to what we heard yesterday in terms of the
3 concerns and views of victims who spoke about the impact on their relation with their
4 children.

5 Dr Reicherter also described the phenomenon of inter-generational trauma,
6 inter-generational transmission of trauma.

7 Researchers confirmed that parents' trauma creates a greater risk of post-traumatic
8 stress disorder, mood disorders and anxiety disorders in their children, even when
9 the children themselves were not exposed to traumatic stress.

10 Research has also shown that parental trauma exposure affects the expression of that
11 individual's genetic code; in other words, exposure to stress of the parents can
12 reprogramme the genetic blueprint of an individual for the development of neural
13 and biological systems.

14 Finally, Madam President, your Honours, the social consequences of sexual violence
15 cannot be understated. Women victims of rape are stigmatised and marginalised.
16 The impact was also felt by their children who bear stigma. They are taunted at
17 school and in their own villages and neighbourhoods. They are mocked by other
18 children.

19 The stigma of rape led to broken marriages and families. Many women were
20 abandoned by their husbands and partners. In some cases their children were taken
21 away from them, from mothers who were rape victims.

22 All these situations were seen in the Central African Republic following the acts
23 committed by Jean-Pierre Bemba's troops.

24 In the evaluation of the damage caused, it's also necessary to look at the damage
25 caused by pillaging. The Chamber established that MLC soldiers pillaged on a large

1 scale with grave consequences for the victims. Some victims could no longer
2 provide for their basic needs, including medical treatment.

3 In the Central African Republic, which is one of the poorest countries in the world,
4 this condition of extreme poverty to which the victims and families are reduced to
5 lasts for a very long time.

6 Taking into account these submissions, the extent of the damage and the harm caused
7 to the victims and their families greatly increases the gravity of the crimes of which
8 Bemba, Jean-Pierre Bemba has been convicted.

9 I would now like to go into the issue of the degree of Bemba's participation and
10 intent.

11 As the Chamber established, Mr Bemba was the authority within the MLC. He was
12 the president, the leader of the political branch and the commander-in-chief of the
13 Armée de Liberation du Congo. The Chamber's findings illustrate the extent of
14 Bemba's authority. Mr Bemba made the most important decisions. And his
15 decisions were not contested. Particularly, he had authority over military matters,
16 all military matters.

17 During the operation in the Central African Republic 2002-2003, Mr Bemba
18 maintained his authority and control over the MLC troops deployed to that country.
19 The degree of Jean-Pierre Bemba's authority and control is especially demonstrated
20 by the fact that he even retained operational command over his troops present in the
21 Central African Republic.

22 In line with his usual modus operandi, Jean-Pierre Bemba took the decisions on troop
23 movements and on military operations. Sometimes he even issued orders or
24 instructions directly to the commanders in the field who reported to him directly.
25 Your Chamber found that the effective control of Mr Bemba over his troops in the

1 Central African Republic was extensive. Effective control to that extent implies a
2 very high degree of responsibility, as it means that Jean-Pierre Bemba could have
3 prevented or repressed the commission of crimes by his MLC troops at any point in
4 time and in many ways during the Central African Republic operation.

5 Mr Bemba had a real knowledge of the crimes committed by the MLC troops and that
6 from the initial days of the operation, when he established an investigative
7 commission that was sent to Bangui per the two allegations of crimes. According to
8 the findings in the judgment of March, Mr Bemba kept receiving detailed information
9 about serious allegations of MLC crimes throughout the entire CAR operation.

10 The Chamber summarised the factors upon which Jean-Pierre Bemba's actual
11 knowledge of MLC crimes was based: The notoriety of the crimes, Mr Bemba's
12 position within the MLC and the ALC, the available channels of communication to
13 him, his regular contacts with his officials in intelligence in the Central African
14 Republic, diverse sources of information such as media, NGOs and reports from MLC
15 intelligence, as well as his direct knowledge of allegations of MLC crimes at very
16 specific times during the Central African Republic operation, all these factors point to
17 an extremely detailed knowledge by Mr Bemba, which in turn indicates a very high
18 degree of culpability. The extent to which a military commander failed to take all
19 necessary and reasonable measures must be determined in light of his material ability
20 to act.

21 The Chamber concluded that Mr Bemba's material ability to prevent and repress the
22 crimes was extensive and the Chamber identified several measures that Mr Bemba
23 could have implemented accordingly to prevent these crimes. In this context, the
24 Chamber found beyond reasonable doubt that Jean-Pierre Bemba failed to take all
25 necessary and reasonable measures within his power.

1 The Chamber further concluded that his failure and inaction aimed at encouraging
2 the attack against the CAR civilian population. According to the Chamber's findings,
3 Jean-Pierre Bemba used his authority and power to take a few measures that were not
4 only a grossly inadequate response to the numerous allegations of crimes by the MLC,
5 but these measures were only taken as a facade and were not properly or sincerely
6 executed.

7 The Chamber's findings relative to the fact that Mr Bemba omitted to take all
8 necessary and reasonable measures also indicate a very high degree of culpability.

9 Contrary to the Defence's assertions, the Chamber's factual findings on the nexus
10 between Bemba's omissions and the crimes committed by the MLC greatly impact on
11 Bemba's degree of participation and intent. In fact, it has been established that the
12 crimes of rape, murder and pillaging perpetrated by MLC forces were a result of
13 Bemba's refusal to correctly exercise control to the extent that had he taken measures
14 to prevent and repress that, the crimes would not have been committed or they would
15 have been prevented. The established nexus increases Jean-Pierre Bemba's degree of
16 culpability as it shows that despite all the measures available to him, he failed to take
17 any meaningful action. He let it happen while he had full ability to prevent or to
18 stop the MLC crimes in the Central African Republic.

19 Now to go on to Jean-Pierre Bemba's individual circumstances.

20 The individual circumstances constitute another factor increasing the gravity of the
21 crimes committed. In this case the accused, Jean-Pierre Bemba, was 40 years old
22 when the crimes of which he has been convicted were committed. Furthermore, he
23 is a very well-educated person. As such, Mr Bemba was fully able to understand the
24 seriousness and the consequences of the crimes. This high level of awareness is a
25 relevant factor for the determination of the appropriate sentence.

1 I would now, your Honour, like to give the floor to my colleague, who is going to take
2 up with you the issue of aggravating circumstances and possible mitigating
3 circumstances.

4 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga.

5 Mr Scaliotti, you have the floor.

6 MR SCALIOTTI: Madam President, your Honours, I will start by dealing with the
7 aggravating circumstances.

8 The Prosecution submits that two aggravating circumstances should be considered in
9 determining Mr Bemba's sentence. Under Rule 145(2)(b) of the Rules, victims of
10 crimes were particularly defenceless and crimes were committed with particular
11 cruelty.

12 Mr Bemba's MLC troops committed rape, murder and pillaging against defenceless
13 civilians. They victimised many individuals and entire families, including
14 particularly defenceless victims such as the children and the elderly. The Chamber
15 has established beyond reasonable doubt that several young girls were raped by the
16 MLC troops.

17 Prosecution Witness 42's daughter, she was 10 years old at the time of the rape.

18 The rape of two young girls, aged 12 and 13, was witnessed by Prosecution Witness
19 119.

20 Prosecution Witness 79's daughter was 11 years old when she was raped by an MLC
21 soldier in the presence of other children.

22 Prosecution Witness 23's daughters were respectively 14 and 16 years old at the time
23 of the rape.

24 Prosecution Witness 82 is also a victim of rape. She was between 10 and 13 when
25 she was raped by MLC soldiers.

1 Mr Bemba's MLC troops committed widespread crimes with particular cruelty and
2 against multiple victims. The evidence on record and the Chamber's findings show
3 that rapes committed by the MLC forces were particularly cruel. In addition to the
4 coercive environment, the MLC soldiers committed the rapes with brutality as they
5 slapped, kicked, punched, forcibly restrained, raped victims at gunpoint. MLC
6 troops raped victims in front of their family members. They raped children in front
7 of their parents.

8 Prosecution Witness 229, Dr André Tabo, explained to this Chamber that when rape is
9 committed in the presence of family members or third parties, it is a means to punish
10 the rape victim and to humiliate the person who is present.

11 Prosecution Witness 69 stated that when his wife was raped in his presence, it was
12 unbearable for him because there was nothing that he could do.

13 In addition to rape, MLC troops also committed murders with particular cruelty.

14 For instance, the Chamber found beyond reasonable doubt that MLC soldiers killed
15 an unidentified Muslim man by shooting and mutilating him at his house.

16 In response to Prosecution's submissions on aggravating circumstances, the Defence
17 object that allegations of torture were found by Pre-Trial Chamber II to be subsumed
18 within the conduct supporting the charge of rape. Therefore, according to the
19 Defence, reliance on this same conduct for the purpose of an aggravating
20 circumstance would violate the ne bis in idem principle enshrined in Article 20(1) of
21 the Statute.

22 The Defence argument is without merit. It is true that Pre-Trial Chamber II
23 determined that the charges of rape as a crime against humanity and of torture as a
24 crime against humanity were inappropriately cumulative because the same evidence,
25 namely the acts related to the rapes, was used to satisfy the elements of both crimes.

1 However, the fact that certain acts of violence and brutality committed by the MLC
2 perpetrators during the rapes were not the basis for a separate charge of torture does
3 not mean that those acts should not be considered for sentencing purpose. Although
4 charges, and by consequence convictions, for both crimes of rape and torture were not
5 permitted in this case, nevertheless nothing prevents this Chamber from taking into
6 account those acts of brutality and violence at this stage as they do not constitute the
7 legal elements of rape and were proved to be constant features of the crimes
8 committed -- of the rapes committed by the MLC troops. Therefore, those acts
9 should be considered as an aggravating circumstance, namely, the commission of the
10 crime with particular cruelty.

11 Contrary to the Defence's contentions, the aggravating circumstances in question are
12 within the scope of Mr Bemba's personal culpability. The Chamber's findings read
13 in conjunction with evidence presented at trial show that Mr Bemba was aware of
14 those aggravating circumstances and additionally in the ordinary course of crimes of
15 which Mr Bemba has been found guilty, victims were particularly defenceless and
16 treated with particular cruelty.

17 A report issued by the Fédération Internationale des droits de l'Homme on 13
18 February 2003 described the events in the CAR following the MLC intervention. The
19 report included a section dedicated to analysing the crimes of rape, murder and
20 pillaging allegedly committed by the MLC troops. Based on the testimony of 79
21 victims raped, the report provided detailed individual accounts. As noted by the
22 Chamber in its findings, the accounts included those of two young girls, respectively
23 15 and 17 years old. The report further mentioned the rape of a 9 year old boy and
24 the rape of a number of young girls who were allegedly raped in a school at PK12.
25 The report also showed the cruelty towards the victims, which was a constant feature

1 of the crimes committed by the MLC soldiers. According to the accounts, victims
2 were threatened with guns, were raped in front of family members, were harassed in
3 many ways.

4 Mr Bemba acknowledged awareness of that report in a letter sent to the president of
5 the Fédération Internationale des droits de l'Homme on 20 February 2003, a few days
6 after the report was issued. However, that was not the only report. Many media
7 reports at the time of events contained detailed accounts from alleged victims.

8 In light of the notoriety of the crimes committed by the MLC forces, Mr Bemba's
9 available channels of communication and sources of information such as media and
10 NGO reports, not only Mr Bemba had actual knowledge of the crimes that MLC
11 troops were committing or about to commit as established by the Chamber in its
12 findings, Mr Bemba also had actual knowledge that his troops were committing
13 crimes against particularly defenceless victims and with particular cruelty.

14 The Chamber's findings and evidence presented at trial also demonstrate that the two
15 aggravating circumstances in question occurred in the ordinary course of the crimes
16 of which Mr Bemba has been found guilty.

17 In the alternative, these aggravating circumstances are attributable to Mr Bemba
18 because of the objective foreseeability. Therefore, in accordance with the
19 requirements established by the Appeals Chamber in the Lubanga case, the Chamber
20 has a basis for attributing those aggravating circumstances to the convicted person.
21 Moreover, considering the particularly defenceless victims and the particular cruelty
22 as aggravating circumstances does not amount to double counting because these two
23 circumstances are not relevant to the factors that under Rule 145(1)(c) should be
24 considered when assessing the gravity of the crimes.

25 Madam President, I will turn now to the mitigating circumstances that, according to

1 the Defence, the Chamber should take into consideration in determination of the
2 sentence to be imposed.

3 The Defence first points to some measures taken by Mr Bemba as a response to the
4 allegation of widespread crimes committed by the MLC troops during the CAR
5 military operation. It is a clear attempt to turn circumstances actually increasing
6 Mr Bemba's responsibility into mitigating circumstances. According to the Defence,
7 and I quote, "The MLC had measures aimed at ensuring a disciplined army ... Central
8 to those measures was the code of conduct. To enforce the code, resources were
9 directed away from the war to set up a judicial system."

10 Now, it is true that the MLC had the code of conduct. However, that code was
11 considered by the Chamber when it reached the conclusion that Mr Bemba failed to
12 take all necessary and reasonable measures in his power to prevent the crimes. As
13 stated by the Chamber, the MLC code of conduct setting some basically disciplinary
14 rules was not properly disseminated. It was written in French, a language that most
15 MLC soldiers did not understand, and commanders were responsible for translating
16 it orally into Lingala. By consequence, some MLC troops were not familiar with that
17 code.

18 In any event, the code was a completely inadequate document that could not ensure
19 any compliance with international humanitarian law. For instance, the code failed to
20 set the basic distinction between civilians and combatants. It didn't define the
21 concept of protected persons. It didn't contain any provision prohibiting the crime
22 of pillaging. It didn't define what could be taken as a war booty. It even permitted
23 the execution of detainees. Simply, the execution had to be authorised.

24 Now, such a code cannot be considered as a factor in mitigation of the sentence.

25 Regarding the setting up of a judicial system, it does not amount to a mitigating

1 circumstance either. To the contrary, it shows that Mr Bemba had the material
2 ability to repress the crimes and nevertheless he did not use the available justice
3 system for the genuine purpose of repressing the crimes. This actually increases
4 Mr Bemba's degree of participation and intent.

5 The Defence further refers to other measures taken by the convicted person. Let's
6 see them one by one briefly. The Defence relies on an investigative commission led
7 by Colonel Mondonga that was sent to Bangui to investigate allegations of MLC
8 crimes and resulted in the arrest of seven soldiers who were subsequently put on trial.

9 As established by the Chamber, the commission's report that was sent to Mr Bemba
10 alleged systematic pillage and rape by MLC soldiers and even included, it even
11 involved the responsibility, among others, of the field commander in the CAR.

12 Nevertheless, neither the responsibility of military commanders nor allegations of
13 rapes were investigated. No explanation was provided for those omissions. The
14 seven soldiers who were convicted for minor crimes, for pillaging a few minor goods
15 and small sums of money and were sentenced to low terms of imprisonment merely
16 on the basis of their own statements. This was the only outcome of that investigation.

17 No other witnesses or victims were interviewed, no physical evidence was collected.

18 The Defence further relies on an investigation into pillage conducted in Zongo in the
19 Democratic Republic of Congo in December 2002 upon Mr Bemba's orders. This
20 investigation was clearly biased. Investigators did not go beyond the area of Zongo.

21 Any investigative activity was limited to the interview of eight individuals belonging
22 or linked to the MLC.

23 As observed by the Chamber, despite its ability to summon soldiers, the commission
24 did not interview any MLC soldiers. The scope of the investigation was clearly
25 extremely limited. Nevertheless, not only the commission concluded that it was

1 unable to establish pillage committed by the MLC, the commission went beyond and
2 ruled out allegations of MLC crime by attributing them to the fact that, and I quote,
3 "France and the political opponents of the CAR had developed a campaign of
4 demonization to tarnish President Patassé's regime."

5 Another initiative taken by Mr Bemba was the mission sent to Sibut. As underlined
6 by the Chamber, during that mission that was not an investigation, reporters spoke to
7 individuals, a number of whom exercised public functions and were linked to
8 President Patassé's regime. The interviews were conducted in a coercive atmosphere
9 with armed MLC soldiers moving among the interviewees.

10 The Defence additionally refers to two letters sent by Mr Bemba during relevant
11 events in the Central African Republic. The first letter was sent to General Cissé, the
12 UN representative in the CAR. In this letter Mr Bemba requested assistance with
13 regard to investigation into the events that occurred in the CAR during the military
14 operation. General Cissé responded and offered his assistance to any such initiative.
15 Mr Bemba's request, however, was not genuine. As stressed by the Chamber in its
16 findings, Mr Bemba did not take up on this offer of assistance.

17 The second letter was addressed to Mr Kaba, the president of the Fédération
18 Internationale de droits de l'Homme. The letter was sent on 20 February 2003.

19 Again, Mr Bemba requested assistance with regard to investigations into the
20 allegations of crimes. In his response Mr Kaba informed that the Fédération
21 Internationale de droits de l'Homme had formally seized the ICC with the matter of
22 the crimes committed in the CAR and encouraged Mr Bemba to transmit any
23 information in his possession to the ICC. Again, Mr Bemba took no measures in
24 relation to his correspondence to Mr Kaba. None of these measures can mitigate the
25 sentence to be imposed on the convicted person.

1 As established by the Chamber beyond reasonable doubt, the inadequacy of these
2 minimal measures is aggravated by indications that they were not genuine and not
3 sincerely and properly executed. Accordingly, only public allegations of MLC
4 crimes prompted some limited reactions by Mr Bemba, whereas no measures were
5 taken in response to information of MLC crimes transmitted internally within the
6 MLC. This occurred because, as established by the Chamber, Mr Bemba's primary
7 intention was not to genuinely take all necessary and reasonable measures within his
8 powers. His key intention was to counter public allegations and rehabilitate and
9 protect the image of the MLC. The measures relied upon by the Defence, therefore,
10 do not warrant any reduction of the sentence. They rather indicate Mr Bemba's high
11 degree of culpability.

12 The Defence further claims that Mr Bemba's contribution to establishing peace and
13 security in the DRC should be taken into account as a mitigating factor. If
14 peace-building initiatives can in principle constitute a mitigating circumstance, in this
15 case there is no evidence provided by the Defence, not even on a balance of
16 probabilities, that Mr Bemba was involved in such activities. The MLC goal as set
17 out in the MLC statute to establish a democratic state in the DRC based on elections
18 and respect for human rights is irrelevant. It is a mere declaration which doesn't
19 prove anything.

20 Likewise, the MLC participation in negotiations, including the Sun City negotiations,
21 is not evidence of contribution to peace-building initiatives. That participation
22 actually was made possible by the MLC previous political and military control over
23 the Équateur province in the DRC, and that participation to negotiations aimed at
24 conquering political and military power within the entire state of the DRC. It cannot
25 be considered as a mitigating factor.

1 The statement of a former Belgian minister of foreign affairs referred to by the
2 Defence merely acknowledges some undertakings by Mr Bemba at the time of
3 political negotiations for the DRC, but is not evidence of any concrete step
4 subsequently taken. To the contrary, evidence in this case indicates that Mr Bemba
5 refused a political agreement offering him the position of prime minister in the DRC
6 because he wanted a higher position.

7 As Prosecution Witness 15 testified, had Mr Bemba accepted that agreement, the
8 situation would have been quite different in the DRC.

9 As to Mr Bemba's part in negotiating an end to the conflict between the Hema and
10 Lendu tribes, again, the Defence failed to produce any relevant evidence as the
11 Defence allegation is essentially supported by an account provided by Mr Bemba
12 himself in a book that he wrote. Moreover, the conflict between the Hema and
13 Lendu tribes has been discussed at length in the first two cases adjudicated by this
14 Court, but it has never been mentioned that Mr Bemba played any role in
15 negotiations to end that conflict.

16 The Defence's contention that Mr Bemba's good character should also be considered
17 as a mitigating factor is not supported by evidence either. Charity activities to which
18 Mrs Bemba is dedicated are certainly commendable, but they do not militate in favour
19 of Mr Bemba's good character.

20 The Defence also presented Witness D-63 to argue that Mr Bemba contributed to the
21 quality of living conditions in the Équateur province when it was under MLC control.
22 The witness seemed to be unaware of several facts put to him by the Prosecution,
23 facts that negatively impact on the assessment of the MLC presence in the Équateur
24 province. Therefore, his testimony should be considered with caution.

25 In any case, as Defence Witness 39 explained during his testimony, the support of the

1 population is one of the main weapons of a revolution. Therefore, entertaining good
2 relations with the civilian population in Équateur was necessary for the MLC. It was
3 necessary to have the population's support in its fight against the central government.
4 Therefore, it is clear from Defence Witness 39's testimony that the MLC policy in its
5 relationship with the population, with the civilian population in the Équateur
6 province was determined by the political goals pursued by the MLC. As such, this
7 cannot be evidence of Mr Bemba's good character.

8 The family circumstances adduced by the Defence are equally irrelevant for
9 sentencing purpose. The fact that Mr Bemba's children grew up without the
10 presence of their father is certainly unfortunate. However, a reduction of the
11 sentence cannot be a compensation for this fact. Likewise, a reduction of sentence
12 cannot be a compensation for the loss of some beloved persons that unfortunately
13 Mr Bemba suffered while in detention.

14 Other circumstances invoked by the Defence are irrelevant and do not justify
15 mitigating the sentence. The fact that Mr Bemba, because of his individual
16 circumstances, is no longer in command of any armed forces and therefore the
17 likelihood that he will commit any similar crimes in the future is nothing, is not
18 existent, is not a factor mitigating the sentence.

19 The Defence further argues that Mr Bemba will likely be the only individual to be
20 sentenced for the events that occurred in the CAR in the last 15 years. In the Defence
21 view, the sentence should be mitigated because of the resulting sense of injustice
22 perceived by Mr Bemba. Nowhere a similar fact can be found as a mitigating
23 circumstance, neither in the Court's sentencing framework nor in the jurisprudence of
24 international courts and tribunals. Moreover, investigations into the situation in the
25 CAR are ongoing. Therefore, it is simply a Defence allegation that Mr Bemba alone

1 falls to be sentenced for the events in the CAR.

2 Under the label of cooperation with the Court, the Defence also brings a number of
3 facts to the Chamber's attention allegedly warranting a reduction in the sentence.

4 The Defence claims that Mr Bemba stated publicly his willingness to surrender and
5 cooperate with the Court. However, Mr Bemba was arrested pursuant to an arrest
6 warrant. His alleged willingness to surrender and cooperate with the Court is not
7 more than a mere declaration, it is not a fact. As such, it cannot be accorded any
8 weight.

9 The Defence also relies on the convicted person's comportment in the courtroom
10 during the trial. As ruled by Trial Chamber II, good comportment in the courtroom
11 during the trial is what is expected of an accused. It cannot be considered in
12 mitigation of the sentence.

13 The same principle applies to Mr Bemba's good behaviour when he was briefly
14 released to attend his father's and stepmother's funerals. The convicted person was
15 granted these opportunities and good behaviour was simply expected of him.

16 The Defence contends that Mr Bemba's conduct in detention has been commendable.
17 As stated by Trial Chamber II, good conduct in itself, although appreciable, does not
18 constitute cooperation with the Court and is not a mitigating circumstance.

19 The Defence would like the Chamber to also consider alleged delays during the trial
20 for reasons not attributable to the Defence as a mitigating factor. Regardless of
21 whether or not the alleged circumstance occurred, as ruled by Trial Chamber I in the
22 Lubanga case, it doesn't merit a reduction in the sentence. Any relevant period that
23 Mr Bemba spent in detention, including during the trial, will be deducted from the
24 sentence that will be passed.

25 In the Defence view, multiple allegations of Mr Bemba's rights would also constitute a

1 mitigating factor. A similar argument was brought by the Defence in the Lubanga
2 case at sentencing stage. This argument was dismissed as Trial Chamber I had
3 already considered and rejected an abuse of process challenge in relation to those
4 alleged violations. The same must apply in this case. An abuse of process
5 application has been adjudicated and rejected by this Chamber. Therefore, the
6 Defence rejected allegations cannot have any bearing for any purpose in these
7 criminal proceedings.

8 Finally, the Defence submits that the sentence to be imposed on Mr Bemba should be
9 reduced in relation to the resources that he contributed to the trial. This Defence
10 argument again has no merit. Assets belonging to Mr Bemba were frozen upon
11 Pre-Trial Chamber's order and subsequently the amount for legal fees paid to his
12 Defence was deducted from those frozen assets. This simply proves that Mr Bemba
13 complied with his obligation to pay legal fees for these criminal proceedings as he
14 possessed the resources that enable him to pay for the cost of his defence. But the
15 fact that those assets can no longer be used for reparation to victims does not justify
16 mitigating the sentence as if Mr Bemba had compensated victims of MLC crimes.
17 Any speculation by the Defence as to how Mr Bemba would have used those
18 resources, if not discovered and frozen, is totally irrelevant.

19 Therefore, in conclusion, the Prosecution submits that no mitigating circumstances
20 should be considered in the determination of the appropriate sentence to be imposed
21 on Mr Bemba.

22 Madam President, your Honours, this concludes my intervention. I will now give
23 back the floor to Mr Badibanga, who will address the Court on some final
24 observations on the sentence recommended by the Prosecution. Thank you,
25 Madam President, your Honours, for your attention.

1 PRESIDING JUDGE STEINER: Thank you, Mr Scaliotti.

2 Maître Badibanga, you have the floor.

3 MR BADIBANGA: (Interpretation) Thank you, your Honour.

4 I'd just like to make some final observations on the sentence recommended by the
5 Prosecution.

6 Trial Chambers enjoy broad discretion in determining a sentence. The sentence must
7 be determined by weighing and balancing all the relevant factors. The military
8 commander's culpability must be measured to a relevant degree by the gravity of the
9 subordinates' crimes. Additionally, the gravity of the convicted person's conduct in
10 failing to prevent or repress the subordinates' crimes and the totality of the convicted
11 person's individual circumstances is to be taken into account.

12 Now, the Defence argues that a superior convicted of 3 murders, 28 rapes and
13 large-scale pillaging should be punished with a lower sentence than a case where the
14 subordinates perpetrated mass murders, attempted extermination or genocide. This
15 is the reason why the Prosecution, mindful of possible future command responsibility
16 cases, that is to say cases in relation to the above-mentioned crimes has not requested
17 that the maximum penalty applicable before this Court be imposed on Bemba.

18 The Defence, while seeking sentencing guidance, refers to several ICTY and ICTR
19 cases and to the two previous ICC cases to state that a sentence imposed on
20 Jean-Pierre Bemba above the range of 12 to 14 years of imprisonment would
21 undermine the sentencing framework of the ICC. However, it should be noted, your
22 Honour, that it was the Appeals Chamber of the ICTY and the ICTR that ruled in the
23 Bagasora case that command responsibility is not to be seen as less grave than
24 individual criminal responsibility of direct perpetrators of crimes.

25 This implies that regardless of the mode of liability, the sentence must be

1 proportionate to the gravity of the crime in concreto and the degree of culpability of
2 the convicted person. Thus, the position of the Defence is that the sentence to be
3 passed in this case should not be above the range of 12 to 14 years.

4 However, let us consider the preamble of the Statute of Rome. This Court was
5 established to prosecute the most serious crimes of concern to the international
6 community; to put to an end impunity for the perpetrators of these grave crimes that
7 threaten the peace, security and well-being of the world. By endorsing the Defence
8 argument, the absurd consequence would be that the sentencing framework
9 applicable to the most serious crimes that deeply shock the conscience of humanity
10 would be much more lenient than the sentencing regime of most national systems
11 where, for instance, applicable provisions prescribe penalties up to 30 years'
12 imprisonment and even life imprisonment for a simple murder.

13 Furthermore, Jean-Pierre Bemba was perfectly aware of the gravity of the crime of
14 rape or murder. Indeed, in Équateur province, in the Democratic Republic of Congo,
15 the province for which he was responsible, a perpetrator of a rape or murder without
16 aggravating factors faces the death sentence. As the MLC logbook demonstrated, it
17 fell to Jean-Pierre Bemba to confirm execution of such a sentence when an individual
18 was accused of murder or rape. So he was perfectly aware of the gravity of the
19 crimes before this Court.

20 Your Honours, you heard the testimony of the expert witness Mr Daryn Reicherter on
21 the longitudinal and intergenerational impact of one single rape, whereas in this case
22 widespread rapes occurred on a large scale.

23 The Defence also contends that under Article 78(3) of the Statute, at the ICC the joint
24 sentence has been equal to the longest individual sentence. Likewise in this case, the
25 sentence should be determined by the offence which the Chamber deems to be the

1 most grave. Far from binding this Chamber, the practice of the ICC so far only
2 includes two cases and is still developing. The Prosecution submits that once the
3 Chamber has identified the gravest crime committed by Bemba, the joint sentence
4 should be finally determined by increasing the sentence pronounced for that crime as
5 Article 78(3) allows.

6 The gravity of the crimes of rape, pillaging and murder of which Jean-Pierre Bemba
7 were convicted are among the most serious and heinous crimes of concern to the
8 international community.

9 The Chamber's findings reflect the gravity of Bemba's conduct in failing to prevent
10 and repress his subordinates' crimes. Bemba had extensive authority and control
11 over the MLC forces. A military commander exercising more authority and control
12 is hardly conceivable. Bemba had actual knowledge of the crimes committed by his
13 MLC troops in the Central African Republic. His knowledge was detailed and
14 constant throughout the CAR operation. Despite this detailed knowledge of the
15 crimes and the measures available to him, he failed to take any meaningful action.
16 Had he properly exercised his authority, the crimes committed by the MLC troops
17 would have been prevented or would not have been committed in the circumstances
18 in which they were or on the scale on which they were. However, Bemba only used
19 his authority in an attempt to protect and rehabilitate the image of the MLC. As a
20 result of Mr Bemba's failure to discharge his duties, crimes of rape, murder and
21 pillaging were committed by his MLC troops. Under these circumstances,
22 Jean-Pierre Bemba bears the highest degree of culpability for a military commander
23 under Article 28 of the Statute.

24 Additionally, two aggravating circumstances are attributable to him, the commission
25 of the crime against particularly defenceless victims and the commission of the crime

1 with particular cruelty.

2 Finally, no mitigating circumstances alleged by the Defence can reduce the sentence.

3 In any case, should any mitigating circumstance be taken into account by the
4 Chamber, it should be given little relevance and be largely outweighed by the gravity
5 of the crimes.

6 The Prosecution therefore reiterates its request that a sentence of at least 25 years and
7 in any case not less than 25 years of imprisonment be imposed on Jean-Pierre Bemba
8 Gombo as it would be proportionate to the gravity of the offences he committed and
9 to his degree of culpability.

10 I leave the matter in your hands, your Honours.

11 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga. I assume that
12 Prosecution has concluded the presentation of its final submissions.

13 MR BADIBANGA: (Interpretation) Absolutely, your Honour. This was our last
14 word.

15 PRESIDING JUDGE STEINER: Thank you very much.

16 We'll now give the floor to Maître Douzima Lawson, Legal Representative of the
17 Victims for her final submissions on behalf of the victims that she represents.
18 Maître Douzima, you have the floor.

19 MS DOUZIMA LAWSON: (Interpretation) Thank you, your Honours.

20 It is my task today to bear the responsibility of communicating to the Chamber the
21 views of the 5,229 victims accepted into the trial as well as those of a whole
22 community, the Central African community, which have never seen atrocities of the
23 type witnessed in 2002-2003.

24 Over the last two months the Chamber has received the written submissions of the
25 parties and representative of the victims setting out the principles to be taken into

1 account when determining a suitable sentence and their views on an appropriate
2 sentence taking into account any aggravating or mitigating factors under Rule 145 of
3 the Rules of Court.

4 I will not come back to my written submissions, which I believe were sufficiently clear
5 on the subject. I would simply like to highlight what we have heard over the two
6 days of this hearing. Article 78(1) of the Statute sets out that the sentence must be
7 proportionate to the gravity of the crime of which the accused has been found guilty.
8 This has been sufficiently well demonstrated during the trial and confirmed in the
9 sentence -- in the conviction both in qualitative and quantitative terms. The
10 Chamber has also recognized the significance of the crimes. The Chamber has
11 accepted the medical, psychological and psychosocial consequences of rape, the
12 looting which has left so many victims with no hope and no possessions, living a life
13 in very difficult circumstances today having lost everything they had acquired over
14 many long years of hard work.

15 The Chamber has also recognized that the MLC troops killed civilians. As you know,
16 killing the head of a family has very significant consequences within a community.
17 The notion of family in Central African Republic and in Africa in general is a very
18 wide-reaching concept. Yesterday you heard Victim 480, her father had 4 wives, 23
19 children, and thus his death had significant repercussions on the future of his family.
20 In other cases, families mourned their relatives killed by the Banyamulenge without
21 being able to bury their bodies. The victim I referred to had the good luck that she
22 was able to find the body of her father, but only after the period of mourning already
23 gone through by the family, they had been unable to bury him previously. This is
24 unacceptable, this is a very shocking circumstance in Africa in general, in the CAR in
25 general.

1 I am very surprised to hear the Defence say that he has only been convicted of 3
2 murders, 28 cases of pillaging and 16 rapes. As the Chamber itself highlighted, acts
3 of pillaging, murder and rapes in his judgment represent only a proportion of the
4 crimes committed by the MLC soldiers. I would remind the Defence that we have
5 accepted more than 5,000 victims into the trial procedures. And these were not all
6 the victims who came forward. There were some victim dossiers which were not
7 accepted.

8 Furthermore, the judgment makes clear that these crimes were widespread and were
9 committed in a systematic fashion in a recurring pattern of violence. It is therefore
10 in vain that the Defence is trying to reduce the situation, gravity of the situation by
11 simply putting forward these figures.

12 The crimes of which Mr Bemba has been accused are referred to as being less serious
13 than crimes dealt with in other tribunals. I think that this has no sense, it is in fact an
14 illogical reaction. As you say, you are professional Judges and therefore you will not
15 allow yourselves to be ambushed by such a statement.

16 The Defence has understated the seriousness of the crimes in this case. It has also
17 been suggested that aggravating circumstances should be directed towards Mr Bemba
18 in relation to the crimes that he is responsible for. He was aware of the crimes and
19 he was aware of the factors involved.

20 It is not necessary to show that the aggravating factors can also be attributed to
21 Mr Bemba as commander-in-chief of the MLC. The Chamber in its decision, in its
22 judgment said that Jean-Pierre Bemba, amongst other things, also took the -- that if he
23 had taken the measures available to him, the crimes would have been worse or would
24 have not been committed in the various very serious circumstances in which they
25 were committed. Given his authority, given the means of communication available

1 to him, he would have had this option.

2 Further, the Defence believes that Jean-Pierre Bemba should be able to take advantage
3 of mitigating circumstances. I will leave aside statements saying that we consider
4 the MLC as a disciplined army rather than a band of rebels. I feel this would be
5 wasting our time.

6 Mr Bemba, with regard to taking measures to attenuate the crimes, the Chamber has
7 said, it said that these measures were not implemented in good faith. The
8 insufficiency was made worse by this fact that they were not taken in good faith.

9 The Defence also related Bemba's participation in re-establishing peace in the
10 Équateur region. I would remind the Defence that Witness P-15 said that the first
11 Sun City agreement failed because Mr Bemba refused to implement it because he was
12 not satisfied with the power-sharing arrangements it contained. According to the
13 Defence, Bemba would have liked to have established peace in Ituri in 2001, but I
14 would recall that the massacres in 2002 in this region were attributed to the MLC
15 according to P-15.

16 With regard to efforts to obtain peace in Équateur, according to P-15 again, he himself,
17 Monsignor Ambongo, Defence witness, said that Équateur is intrinsically linked to
18 the history of the MLC and, therefore, Bemba had a great interest in protecting this
19 region. Again, Monseigneur Ambongo did not make a mistake when I asked him in
20 whose interests this was done, and he said it was with a view to achieving power that
21 Mr Bemba tried to establish peace in Équateur. The end justified the means, not
22 therefore in the interests of the population, but in his own interests.

23 Further, the Defence refers to the cooperation of Bemba and the Court. He was
24 disposed, saying that he was disposed to make himself available to justice, but this
25 was not of his own accord. Behaving well while in detention should, according to

1 Defence, be considered an action in his favour. But what else could he do in prison?
2 This cannot be seen as a mitigating circumstance.
3 There is mention of his family circumstances which should mitigate in his favour,
4 hoping for, allegedly hoping for a lighter sentence. It could be considered disgusting
5 that when his troops destroyed, shattered lives in many ways, there were so many
6 victims who for 14 years have been deprived of their parents, their children, their
7 partners. Many children had their futures shattered, you heard it yesterday, because
8 of what happened to them. Children were raped, abandoned thereafter because of
9 the murder of their parents, of their family.
10 You heard about young girls losing their virginity, their lives being lost thereafter.
11 I won't come back to the pillaging that occurred. It is sufficient to read the statement
12 of the Prosecution witness talking about the mass rapes having an effect on the
13 psychology of victims. He confirmed that what happened in Central African
14 Republic was a question of rape being used as a weapon of war. It was a question of
15 violence. It was a question of power.
16 He said that once an individual's biology has been changed, it is very difficult to
17 return to 100 per cent normality. This expert explained to us that multiple rapes of
18 the same person or rape on multiple occasions causes there frequently to be problems
19 in the future. So it's not only the problem at the time you lose the person you love,
20 the person who manages your life, you lose your husband, you are likely to have
21 difficult health problems and, furthermore, you are the victim of pillaging. So there
22 are no mitigating circumstances for Jean-Pierre Bemba.
23 Yesterday, your Honours, you heard statements from two victims corroborating the
24 findings of the Prosecution witness. I take the case of Victim 0555/08, who explained
25 the circumstances of her family to this day having been completely pillaged by the

1 Banyamulenge; the question of her father's health, having been beaten by the
2 Banyamulenge; of the death of her aunt from AIDS contracted through being the
3 victim of multiple rapes by the Banyamulenge. And she said that she died without
4 leaving any descendants. She talked of her own stigmatised situation, the
5 impossibility of having a stable life, four children from three different men. She
6 talked of having lost her chances, her opportunities. She had been attending school.
7 This was taken away from her. She was a sexual slave for four years. She could no
8 longer return to school and achieve what she might have achieved. She is now sad
9 when she sees her former schoolmates. They have been to university. They have
10 good jobs.
11 And she has had suicidal thoughts herself. She has children. She is an adult, but is
12 still in care today under guardianship. She is very concerned for the future of her
13 children, particularly the child born of her rape.
14 For her it is not sufficient that it simply be recognized that Bemba is guilty. She
15 believes that he must be given a sentence which illustrates and represents the
16 seriousness of the harm and the events.
17 With regard to Victim 480/08, she talked of the murder of her father. He was the
18 pillar of the family. She depended entirely on him. She talks of a deep, deep
19 sadness. She is a rape victim, multiple rapes. These rapes were committed in the
20 presence of her father. She says she is frequently ill. She has a delicate, fragile state
21 of health.
22 With regard to herself, she has no love life, no sentimental life, and her circumstances
23 do not encourage efforts to do so. She has no means to take care of her health
24 problems. Her children do not go to school because there is no money available for
25 their schooling.

1 These are the living dead if you listen to their words, people for whom life has no
2 purpose. As Monseigneur Ambongo would say, "There are certain things," and I use
3 his own words, "There are certain things that one never forgets, and among these
4 things that one never forgets one must include rape."

5 So I said that there are no mitigating circumstances for Jean-Pierre Bemba as
6 described in 145(2) of the Rules of Court. Why not? In addition to what I've just
7 presented, Jean-Pierre Bemba has expressed no compassion to his victims. His
8 conduct, in fact, expresses his contempt.

9 He has spoken -- he has brought victims who praised the events. I'm talking of the
10 people of Sibut. It was to achieve power that the MLC went down, attacked Sibut.
11 In order to help himself, to exonerate himself, he organised a mock trial in fact. No
12 victims were involved in this trial. Soldiers were convicted of minor theft, and the
13 pillaged goods were never returned to their owners, nor was there any form of
14 indemnification or reparation.

15 In front of this Chamber, your Honours, we have heard the Defence calling the
16 victims alleged victims when talking of alleged crimes. These are the words that
17 were used on several occasions during the trial in your Chamber. No repentance, no
18 compassion, no regret and, indeed, no remorse at all. On the contrary, Mr Bemba
19 has always denied the fact, he has denied the evidence. He has neither been willing
20 or capable of even once showing this type of conduct.

21 This is why the views expressed by the victims with regard to Mr Bemba is to ask the
22 Court, the Chamber to impose on him a sentence reflecting the gravity of the crime
23 and the harm which has been done to them.

24 The appropriate sentence for Mr Bemba, given the extreme seriousness of his crimes
25 of which he has been convicted and in view of his level of responsibility should be

1 beyond the maximum sentence set out in Article 78(1) or that in 117(2). It is to
2 render justice to his victims.

3 As Monseigneur Ambongo said, and again I quote him, "The ICC can do a lot to
4 ensure that there is more justice in the world. It is the ICC that can deter future
5 dictators." And this is also what is being asked for by the victims I represent, your
6 Honours.

7 So on the basis of all these observations and views, I would ask you to take into
8 account my written submissions on the subject and my presentation here this
9 morning. Thank you very much.

10 PRESIDING JUDGE STEINER: Thank you very much, Maître Douzima.

11 Instead, since we have only 15 minutes, instead of giving immediately the floor to the
12 Defence, we are going to anticipate the break. We are going to suspend right now
13 and resume at a quarter past 11 when Defence will be able to start with its final
14 submissions. The hearing is suspended.

15 THE COURT USHER: All rise.

16 (Recess taken at 10.47 a.m.)

17 (Upon resuming in open session at 11.18 a.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE STEINER: Good morning again and welcome back.

21 We will now start or conclude this hearing starting with the Defence presentation of
22 its final submissions.

23 Mr Haynes, you have the floor.

24 MR HAYNES: May it please your Honour. Good morning, ladies and gentlemen.

25 I want to begin much as I did when I addressed you at the final oral arguments in the

1 trial proper by commending to you our written submissions on sentence. They are
2 substantial and thorough and address properly the sentencing framework at the
3 International Criminal Court, the jurisprudence on the sentencing of commanders.
4 They provide an extensive review of comparable cases in international criminal law
5 and list the mitigating factors which are unique to Mr Bemba's case. It is not our
6 intention this morning simply to repeat what we have already written. It is there for
7 your and the public's consideration.

8 So where to start? Well, what better place than with the man you have to sentence,
9 Jean-Pierre Bemba Gombo, a man who in our submission has been incorrectly and
10 unfairly caricatured during the course of this trial. That is not entirely surprising for
11 this was a fairly unique case, a case in which the accused and relevant events were
12 separated by thousands of miles.

13 Very few of the witnesses who ventured opinions about Mr Bemba have ever met him
14 or spoken to him. They knew little of his life, little of his work, little of his thoughts.
15 They knew only of him what they were told and they saw what they believed to be
16 his image in the behaviour of soldiers from his country, such as you have found it to
17 have been.

18 He became in that way a sort of mythical figure to many, especially in the Central
19 African Republic, a ghoul to be feared, a sort of Keizer Sose or a bogeyman. But
20 Keizer Sose and the bogeyman are both fictional creations and, we submit, so is the
21 image of Mr Bemba that the Prosecution, the Legal Representative of Victims and
22 some of the witnesses in this case have presented to you. The reality is, we suggest,
23 a thousand miles from the caricature with which you have been presented, as far
24 away from reality as the man himself was from the events that cause him to be here.
25 Our invitation to you as the Judges who must determine his sentence is to take a step

1 back, widen your lens a little and view the man as a whole. In doing that, we submit,
2 you will be able not only to contextualise his omissions as a commander, but also to
3 properly mitigate his sentence by reference to his other achievements.

4 Now, the wider Central African region and especially the Congo has been the
5 preoccupation of the ICC throughout the entirety of its existence and arguably is still,
6 and that is no surprise. In its opening statements in both the Lubanga and Katanga
7 cases, the Prosecution asserted that the Congolese wars in which 4 million people
8 died was the gravest conflict since World War II. The Prosecution emphasised the
9 protracted and complicated nature of this war, which involved at least nine African
10 countries and multiple militia groups. The majority of the commanders of those
11 various factions have not nor in any likelihood ever will answer for the atrocities
12 committed there.

13 In 1998, together with a group of other like-minded public servants and career
14 soldiers, who were all concerned primarily about the fact that the Democratic
15 Republic of Congo so-called had had no elections for a very long time and who
16 wanted the Congo to be a democratic state, Mr Bemba formed the Mouvement de
17 Liberation du Congo.

18 Of course he formed and recruited an army. Sadly, political reform in the Congo in
19 the late 20th century was impossible from the ballot box, because there wasn't one,
20 and it was never going to be achieved from a soapbox. But he made sure that his
21 army was trained and disciplined.

22 Monseigneur Ambongo on Monday was the umpteenth witness to tell you that the
23 MLC forces were disciplined and well trained, and nobody stood up to challenge him
24 about that.

25 As your Honours have observed in the trial judgment, the MLC formalized its

1 structure through a constitution which was committed to the establishment of peace
2 and democracy in the Congo.

3 The MLC was based in Gbadolite, where it administered a province of the Congo,
4 Équateur, which was roughly the size of France. In Équateur, the MLC was
5 responsible for healthcare, education, transport and justice as well as defending this
6 region from military attacks. Move forward three years and they've been doing it for
7 that length of time.

8 As a snapshot of the man himself, by then Mr Bemba was married and had five
9 children, the youngest of which was 3 years old.

10 In 2001, in the neighbouring province of Ituri, the Hema and Lendu tribes had been at
11 war with each other for nearly a century. It was a truly bloody and violent conflict.
12 Following the withdrawal of Ugandan troops, it was apparent to the MLC that Ituri
13 could simply explode. And so in February 2001, Mr Bemba left the MLC base in
14 Gbadolite and travelled to Ituri with a contingent of MLC soldiers. His sole purpose
15 was to try to end the conflict. The only reason he was there was to try to broker
16 peace.

17 On 10 February, he made a radio broadcast and spoke to the local population in the
18 following terms, "I'm neither Hema, Lendu, nor Nande, I'm just a Congolese, a son of
19 the country, shocked to see that we can still kill each other in the name of a logic of
20 extermination of a clan, tribe or ethnic group."

21 He warned the population that those who committed crime would be tried and
22 punished. He asked people to turn in their weapons to the local authorities, and he
23 ordered the MLC troops who had come with him to Ituri to identify and dismantle
24 any militia or deserters who were trying to regroup.

25 He then organised a three-day conference and invited the local chiefs and notables

1 from both sides, trying to bring them together to identify the origins of the conflict
2 and find solutions for a lasting peace.

3 He set up a working committee that drafted an agreement which provided for an
4 immediate end to hostilities, the dismantling of militia training centres, the setting up
5 of tribunals and the rehabilitation of prisoners.

6 On 17 February 2001, the local population filled the football stadium in Bunia and
7 watched 159 local leaders from both sides sign this agreement. The spokesman of
8 the Hema tribe and the spokesman of the Lendu tribe buried machetes together in a
9 symbolic gesture of peace. And Mr Bemba and his troops went back to Gbadolite.

10 The United Nations Secretary-General acknowledged Mr Bemba's role in brokering
11 this peace in his report on the DRC on 17 April of that year. Mr Bemba had nothing
12 to gain from this process except ending the violence in a neighbouring province.

13 In fact, Mr Bemba's conduct at the head of the MLC between 1998 and 2006 shows a
14 consistent pattern of prioritising peace and democracy, for under Mr Bemba, instead
15 of fighting for power at all costs against the Kinshasa government, the MLC signed a
16 ceasefire agreement in Lusaka in July of 1999 and took part in negotiations for the
17 disarmament of the belligerent groups. The MLC went to the Sun City negotiations
18 in South Africa, the purpose of which was to establish a framework for multiparty
19 government in the Congo and set a timeline for democratic elections, after which the
20 MLC transformed from a rebellion into a political party, which ultimately resulted in
21 Mr Bemba handing over his entire force of 20,000 men to the national unified army.

22 In 2006, of course, he stood for election as president and very narrowly lost.

23 These are not just our submissions, these are historical facts. And we invite you to
24 consider them, not with cynicism, but with objectivity. Were all these steps just
25 political manoeuvring just to gain favour with the international community? Was it

1 all for appearance?

2 Mr Louis Michel was the Belgian Minister of Foreign Affairs during this period. He
3 was heavily involved in these negotiations for peace in the Congo. He was a third
4 party, an impartial observer, and he formed an impression of Mr Bemba during this
5 time which is worth noting.

6 In July 2008 he wrote, "Each time I approached him about moderating his positions
7 and showing flexibility in order to reconcile viewpoints, he responded positively.

8 After the presidential and legislative elections in the DRC, I asked to meet with him in
9 order to persuade him to act henceforth in the framework of a democratic opposition
10 that respects the legitimacy of the institutions. On that occasion he agreed to draft a
11 letter that was transmitted to the foreign ministers of the European Union and to the
12 major partners in the international community, including the Secretary-General of the
13 United Nations, in which he committed himself to leading a constructive opposition
14 and to refrain from any military or armed initiatives and from any statement which
15 might lead to an escalation of the violence. He even expressed his willingness to
16 give the elected majority sufficient time to allow it to implement its plan. He gave
17 me the genuine impression that he had permanently embraced the role of an
18 opposition leader who respects the institutions of a constitutional State."

19 Now, I'd read to you the letter that Mr Bemba wrote, but it's in French, and you'll just
20 laugh at my English accent. But, seriously, that was an important thing to do. It is
21 well-known above all perhaps in this institution that the gracious acceptance of
22 electoral defeat is not, as it were, a specialty of the region. Many leaders throughout
23 history who dispute or are disappointed by election results do not step back calmly
24 and reassure the international community that despite everything they will never call
25 for violence, they will respect the democratic institutions of the State. And these are

1 acts here above all places that should be encouraged.

2 Certainly that was the view of the president of the United Nations Security Council
3 on 6 December 2006 when he welcomed Mr Bemba's commitment to continuing to
4 play a role in Congolese politics within the framework of the institutions of the
5 republic.

6 Now, these steps towards peace were recognized on an international scale. On a
7 smaller scale, the Trial Chamber has now heard evidence from Monseigneur
8 Ambongo about the role the MLC played in dramatically improving the lives of
9 people in Équateur. The monseigneur described the situation in this province prior
10 to the arrival of the MLC in 1998. The area had been decimated by war. The
11 population was living in poverty and fear. Roads and schools and hospitals had
12 been attacked and pillaged and abandoned. And the population was under constant
13 threat from bombing by government forces.

14 When the MLC arrived, in the monseigneur's words, "life started to begin again."
15 Health centres and hospitals reopened with the MLC securing safe passage for
16 medicine and other medical supplies. The MLC worked with NGOs to open schools
17 and make sure children got an education. Economic activity restarted and the
18 population was able to sell coffee, corn and soya and build businesses and live and
19 survive.

20 These ostensibly basic acts of providing healthcare and education and economic
21 activity arguably did just as much, if not more, for peace and stability than the larger
22 gestures of demobilisation, commitment to a democratic process, brokering peace in a
23 neighbouring region.

24 Regardless of that, Mr Bemba did both. In the middle of this eight-year period
25 between setting up the MLC in 1998 and forming a constructive opposition in 2006,

1 Mr Bemba sent a relatively
2 small military force, less than 10 per cent of ALC resources, to the Central African
3 Republic. They were sent to support a democratically-elected leader in a
4 neighbouring state who was facing a violent military coup and who asked for that
5 assistance. The coup that he was facing was illegal and was repeatedly condemned
6 by the United Nations and by the international community. Mr Bemba's support for
7 his neighbour, President Patassé, was not illegal.

8 There was no way that Mr Bemba could have foreseen that request from President
9 Patassé coming. The government in Bangui was completely taken by surprise.

10 Moreover, he cannot at that time have had any conception of the extent of the MLC's
11 involvement in the conflict either temporally or geographically, and he must have
12 imagined that citizens of the Central African Republic, especially in Bangui, were in
13 considerable danger from Bozizé's actions.

14 According to the findings in the trial judgment, he had almost no time to weigh the
15 pros and cons of action over inaction. Hindsight is a wonderful thing.

16 The Trial Chamber has found that the decision to send these troops ultimately
17 resulted in crimes being committed against innocent Central African civilians.

18 Nothing in these submissions is intended to mitigate or denigrate the suffering of
19 those people such as it was and possibly may continue to be.

20 However, we commence by pointing out to you the wider-angled perspective of
21 Mr Bemba's achievements really for three reasons. Firstly, because the International
22 Criminal Court sentencing jurisprudence recognizes that peace building is a
23 legitimate mitigating factor.

24 So far the ICC has sentenced two accused to prison terms. In both of those cases the
25 Trial Chamber accepted that a contribution to peace and stability should count as a

1 mitigating factor. This is the ICC's practice.

2 In Katanga, the Trial Chamber reduced Katanga's sentence on the basis of his support
3 for the disarmament and demobilisation of child soldiers in Ituri. Mr Bemba agreed
4 to demobilise his entire force of 20,000 men and agreed for them to be merged in the
5 national army led by his adversary, all in the name of peace, all in the name of
6 stability.

7 None of this is open to challenge. It's historical fact. These steps towards peace in
8 one of the most protracted and complicated conflicts of modern times should be given
9 significant weight.

10 Perhaps to give the matter a more graphic illustration, we say that the Trial Chamber
11 is not only entitled, but ought in having regard to the suffering which flowed from his
12 omissions as a commander weigh in the balance in assessing his sentence the
13 suffering he prevented by his more positive actions.

14 Secondly, we say taking this wider view of him will able you to contextualise the
15 matters for which he falls to be sentenced. This was a four and a half month period
16 in nearly a decade in which Mr Bemba's attention was focused firmly on the goal of a
17 peaceful and democratic Congo.

18 And, thirdly, this is highly relevant to contextualise the decision initially to send
19 troops to the Central African Republic. Through the wider lens and drawing on
20 objective fact and the opinions of those who did meet him and who have no obvious
21 axe to grind, we say you'll view that decision, taken in just a few hours, according to
22 the judgment, was not just legal but was probably well-intentioned.

23 I'm going to turn now to his conviction and address briefly to matters that have been
24 addressed to you by others in this room, the gravity of the crimes and the extent of
25 Mr Bemba's involvement in them.

1 The Trial Chamber in its judgment was particularly careful to enumerate the precise
2 number of offences which comprised what is often referred to as the crime base
3 against which Mr Bemba's failings as a commander have to be measured.

4 It was also equally clear in its determination that while certain evidence was helpful
5 in establishing the contextual elements of crimes against humanity, that was the limit
6 of that evidence, and it was not useful in quantifying the number of offences in the
7 crime base.

8 PRESIDING JUDGE STEINER: I received, Mr Haynes, another reminder that you
9 are supposed to speak slower because the court reporters are having difficulties with
10 the French transcript. So please slow down a little bit. Thank you very much.

11 MR HAYNES: Thank you for the pointer.

12 The Chamber's approach in this regard is understandable. The basis of an accused's
13 conviction is the starting point in assessing sentence. It needs, therefore, to be
14 certain. No sentencing exercise could even be commenced on the basis that the
15 accused liability as a commander was for the actions of his troops in killing a lot of
16 people. All that the sentencing tribunal was not sure how many, but knew it was
17 somewhere between two and 3,000.

18 Firstly, of course, the labels of the conviction are important. This Chamber has never
19 been invited to convict Mr Bemba of mass murder. If that had been the Prosecution's
20 case, then the charge of extermination is available under the Statute of Rome to
21 distinguish a case where one, two or three murders are alleged to have been
22 committed by his subordinates from one where hundreds or even thousands are
23 alleged.

24 No such charge was ever brought, nor in truth could it have been. There simply
25 never was evidence of murder on a large scale by Mr Bemba's troops in the Central

1 African Republic as opposed, for example, to Miskine's troops. The Trial Chamber
2 mined every available piece of evidence that there was to find three murders, and it is
3 therefore three murders that form the basis of the conviction.

4 Now, the Prosecution say in their written sentencing submissions that murder is the
5 most serious crime. At first blush, that is an ambiguous submission to make. But
6 upon closer examination it cannot possibly mean that murder is the most serious
7 crime that anyone can commit under the Statute of Rome because self-evidently the
8 crimes of genocide, extermination and persecution just for starters must be regarded
9 as more serious.

10 Therefore, we must assume that it is the Prosecution's case that of the crimes
11 committed by MLC troops, murder is the most serious. Of course, the twin focal
12 points of public interest in this case have been since confirmation the fact that it is
13 both a case about command responsibility and a case about sexual violence. And as
14 Madam Bensouda said this morning, there are rather more acts of rape in this case
15 than there are murder. Rape, like murder, is a singular offence, unlike genocide or
16 extermination or persecution. Accordingly, therefore, as with murder, when you
17 record a conviction for rape, it behoves the convicting court to specify the number of
18 crimes thereby committed, which this Trial Chamber did.

19 I observe again that Mr Bemba was not charged that his troops were guilty of
20 persecution through rape. It is for the Prosecution to draw the charges and it is for
21 the Prosecution to choose which evidence it will call both as to type and as to
22 quantity.

23 Before I leave the issue of sexual violence, I will make one last observation. Nobody
24 in these benches, nor Mr Bemba himself, underestimates the suffering of those who
25 have been raped. However, following the evidence of Dr Reicherter, and I think I

1 got that right, it would be wrong in our submission for this Chamber to approach the
2 question of sentence on the basis that it can be sure that the events of 2002 and 2003
3 was the major operative trauma determining the stress levels of the populace of the
4 Central African Republic in 2016.

5 I will remark only that I found Ms Douzima-Lawson's submissions about the
6 significance of those events in history to be surprising.

7 Mr Bemba was convicted by this Trial Chamber on the basis that his subordinates
8 carried out 3 murders, 28 rapes and that they pillaged. This is the scope of the acts
9 we are talking about, and no submission has been made by the Prosecution either in
10 writing or today to contradict that. That is the scope of the conviction.

11 Now, it's not lost on us that it's unattractive to talk in numbers or figures when
12 discussing the loss of any human life. But this, unfortunately, is the task that is
13 before all of us, trying to assist the Trial Chamber in quantifying these acts. And so
14 numbers and figures take on a significance. A case in which three people lost their
15 lives is different from cases where commanders are implicated in the extermination of
16 7 to 8,000 Bosnian Muslim men and boys in Srebrenica, or where troops of Rwandan
17 commanders contributed to the genocide of hundreds of thousands of Rwandan
18 Tutsis and moderate Hutus.

19 Former Prosecutor Mr Ocampo stood up in the sentencing hearing in Lubanga said,
20 "The gravity of the crimes defines the gravity of the sentence," and he was right.

21 Decades of jurisprudence from the tribunals provides that in sentencing commanders,
22 Trial Chambers should have regard to the gravity and scope of the crimes and the
23 degree of the accused's participation in them.

24 Now, in terms of Mr Bemba's participation, it is difficult to think of a factual scenario
25 where a commander could be more removed from the crime base. Mr Bemba did

1 not participate in the crimes. Unlike many, many command cases, he was not
2 standing there encouraging his troops or participating as they massacred civilians or
3 tortured prisoners.

4 In a factual scenario that is completely unique to international criminal law,
5 Mr Bemba was not even in the same country. He didn't order the perpetrators to
6 commit the crimes. He didn't intend the crimes to occur. He wasn't motivated by
7 any particular ethnic or religious or racial hatred. He had no discriminatory motive.
8 He didn't share the intent of the soldiers who committed the acts.

9 Mr Bemba's culpability arises from his failure to control a small fraction of his soldiers
10 who were thousands of miles away fighting in a foreign conflict and who committed
11 crimes over a relatively limited temporal period.

12 To amplify discussion of the sentencing matrix and the principles of sentencing
13 commanders, I'll now pass you over to Ms Gibson.

14 PRESIDING JUDGE STEINER: Thank you very much, Mr Haynes.

15 Ms Gibson, you have the floor.

16 MS GIBSON: Thank you, your Honour.

17 Over the course of the last two decades, 54 people have been sentenced as
18 commanders before the international tribunals, here in The Hague, in Arusha, in
19 Freetown, 54 people have been sent to prison for the actions of their subordinates.
20 So while this is the first superior responsibility case at the ICC, we're not without
21 guidance. These 54 cases in which judges have been asked to translate criminal
22 activity into prison terms have set up a range or matrix of sentence, a sort of range of
23 sentences into which subsequent judgments can fit.
24 This scale exists because not every commander who is convicted automatically
25 receives a heavy sentence. Courts need to be able to differentiate those commanders

1 who are objectively more culpable than others. At one end of this scale you find
2 commanders who were present or participating when their troops engaged in
3 genocide or extermination, sexual violence on a mass scale over a prolonged period
4 involving thousands of victims and who took no steps to control their troops.
5 At the other end of this scale you find commanders who were nowhere near the crime
6 site and who took some but insufficient measures over troops who were engaged in,
7 for example, plunder or destruction of cultural property.
8 There is a scale. This scale exists, and on any objective viewing it makes the
9 Prosecution's proposed sentence in this case simply wrong. In effect, the
10 Prosecution is inviting the Chamber to disregard the precedent that's been established
11 by bench after bench and chamber after chamber who have gone before us.
12 Why is it important not to throw this practice aside? Why should we have regard to
13 this sentencing range in this trial, in this case before this Court? For starters, as
14 argued by the Prosecution in Lubanga, two accused convicted of similar crimes in
15 similar circumstances are not in principle expected to receive widely different
16 sentences. Certainty of the law is important. It's a central component of fair trials.
17 It also avoids any criticism that international trials are political, that accused from
18 different regions are subject to different treatment. A consistent sentencing scale
19 completely destroys those sorts of arguments.
20 It's also about fairness really to victims and survivors. If the commander of troops in
21 one conflict receives a sentence that is dramatically higher than the commander of
22 troops in another conflict convicted in similar circumstances, what does that say to
23 these victims and these survivors? It runs the risk that they'll feel that their suffering
24 or their loss has been ascribed less weight or given less importance.
25 We also can't be blind to the fact that the ICC operates within a larger system of

1 international criminal justice. As a court, the ICC has limited jurisdictional reach.

2 In all likelihood there will be tribunals and courts established in the future, whether

3 to try crimes committed in Sri Lanka or Syria or Kosovo The sentence that the

4 Prosecution is urging this bench to pass will mean that the Bemba judgment will just

5 become that command case that no one refers to, a satellite that's floating outside the

6 main body of cases on command because it just doesn't fit.

7 There are many, many reasons to have regard to the sentencing matrix as it's been

8 established.

9 But even if this Trial Chamber decides no, the ICC is a new court, we're

10 unconstrained by what happened at the tribunals, those cases aren't relevant, that still

11 doesn't help the Prosecution. It still doesn't open the door to a sentence in the order

12 of 25 years. And that is because this will not be the only command trial at the ICC.

13 And the Court needs to be in a position to aggravate sentences when it tries

14 commanders who had a greater level of involvement in crimes of a greater gravity.

15 Take, for example, the Prosecution's report of September 2014 in its second

16 investigation into the Central African Republic. The Prosecution found that between

17 December 2012 and July 2014, the Séléka troops responsible for the deaths of at least

18 1,488 people, not 3 deaths, nearly 1500. Among these troops were an estimated 3,500

19 child soldiers, children taken from their families and given guns and sent into a

20 violent conflict.

21 The anti-Balaka troops were responsible in the same period for killings involving

22 1,249 victims, mostly Muslim civilians, and many in the same areas at issue in this

23 case.

24 These murders were alleged by the Prosecution to have been committed with

25 particular cruelty and particular brutality. Victims were tortured before they were

1 killed, others were burned alive, pregnant women were gang-raped, children were
2 gang-raped, victims were raped in front of their families.

3 It cannot be the case that the Prosecution would just leave this, that it wouldn't
4 fervently pursue the commanders who were responsible for the deaths of 2,800
5 people, killings with particular brutality and particular cruelty.

6 When those commanders do eventually appear in this dock, when this Court is seized
7 with crimes on that scale being committed with discriminatory motivation, with
8 religious and ethnic hatred as a motivating factor, cases involving murder, rape,
9 forced displacement, persecution by groups that had no code of conduct, no system in
10 place to ensure discipline, no measures to control their troops, the judges hearing
11 those cases need to be able to give a meaningful sentence.

12 If Mr Bemba has received 25 years in a case with a dramatically reduced crime base,
13 where he was nowhere near the crimes and had no discriminatory motive, then
14 where will the Court go?

15 Now, on this point it's worth remembering that the Prosecution never wanted this to
16 be a command case. The Prosecution arrested Mr Bemba in 2008 on the basis that he
17 was liable as an independent co-perpetrator under Article 25(3)(a) of the Statute.

18 The Pre-Trial Chamber disagreed and suggested to the Prosecution that it should try
19 charging Mr Bemba as a commander instead. Even then in its amended DCC the
20 Prosecution still clung to this original charge stating primarily Mr Bemba is
21 individually criminally responsible as an indirect co-perpetrator, but then in the
22 alternative, he's liable as a commander.

23 Why this reluctance on the part of the Prosecution to change the charge? Because
24 any way you look at it, superior responsibility is indirect responsibility. It allows for
25 someone to be convicted of a crime even though they had no part in its commission

1 and never intended for it to occur. In that way it's actually unique in criminal law.
2 It focuses on failures, on omissions rather than acts. In general it's used to secure
3 convictions of high level officials when prosecutors don't have proof of their direct
4 involvement in crimes. And the result of this is that superiors receive smaller
5 sentences.

6 The ICTY has been explicit about this, that prima facie a lower sentencing scale
7 applies because of the nature of command responsibility. The cases are in our brief
8 and I won't repeat them, but I will note that in the Prosecution's submissions this
9 morning, Mr Badibanga cited the Defence brief and said under Article 28, the
10 responsibility of a commander is different from that of the person who commits the
11 crime.

12 At page 8 of today's transcript, Mr Badibanga called this submission without merit.
13 This quote is lifted directly from the Trial Chamber's judgment where your Honours
14 recognized at paragraph 173, and I quote, "It is important to recognize that the
15 responsibility of a commander under Article 28 is different from that of a person who
16 commits a crime within the jurisdiction of the Court."

17 The Prosecution is just on the wrong track.

18 We should be clear, we're not asserting that commanders must always attract in the
19 abstract lower sentences. The practice of the international courts is more nuanced.
20 It recognizes that there is a difference in the culpability of superiors and perpetrators,
21 but that the Court must have regard to two things, the gravity and scope of the crimes
22 and the degree of the accused participation in them.

23 Of course a superior who authorises genocide and is present and takes no actions to
24 control his troops can attract a similar sentence as his subordinates who physically
25 picked up the machetes. But as a starting point, commanders lack the intent to

1 commit the crime and often lack the same level of direct involvement as their
2 subordinates who perpetrated them.

3 Without some kind of what the ICTY calls "specific circumstances that would allow
4 responsibility to be linked or assimilated to individual responsibility," commanders
5 receive smaller sentences.

6 In 40 pages of written submissions, the Prosecution cites only the convictions of two
7 commanders in support of its proposed sentence, Colonel Theoneste Bagosora and
8 Major Aloys Ntabakuze.

9 The comparison that the Prosecution attempts to draw between their cases and
10 Mr Bemba's is badly misplaced. You cannot compare the crime base in the present
11 case to that for which Bagosora and Ntabakuze were held responsible, the systematic
12 targeting, rape and murder of Tutsi civilians who had been deliberately gathered in
13 schools, in churches, in mosques and slaughtered by their thousands.

14 In the capital Kigali, the roadblocks that had been set up by Bagosora subordinates
15 were the scenes of the most brutal crimes in modern times, bodies of men, women,
16 children left piled up. Genocide, extermination, persecution on a scale never before
17 seen. Both of these commanders were found to have failed in their duty to prevent
18 or punish crimes because they in fact participated in them. They had a high degree
19 of involvement and the crimes would only have occurred following their orders or
20 with their authorisation.

21 In reality, Bagosora and Ntabakuze's case supports a vastly reduced sentence for
22 Mr Bemba.

23 That is all we want to say on the question of conviction and the sentencing of
24 commanders. In the time remaining we wanted to focus on other factors which in
25 our submission warrant a reduction in Mr Bemba's sentence.

1 Mr Haynes spoke earlier of Mr Bemba's commitment to peace. There are other
2 mitigating factors that have been accepted by the ICC as mitigating sentence. One of
3 these is family circumstances.

4 The Prosecution and the Legal Representative of Victims have criticised the Defence
5 for even raising this factor, but it was expressly recognized in Katanga that this is a
6 factor to which the Court can properly have regard, and in that case sentence was
7 mitigated on the basis of family circumstances.

8 Mr Bemba has been in detention for eight years. It took eight years from his arrest to
9 receive a judgment. The reasons behind this delay are in our brief, but we just note
10 for today's purposes that none of these delays are attributable to Mr Bemba.

11 When his lead counsel died during the trial, he instructed the remaining members of
12 his team to continue on without asking for a delay.

13 In these eight years, Mr Bemba did not just lose his lead counsel, he lost his father, his
14 stepmother and his grandmother, whose graves in Kinshasa he has never visited.

15 He was separated from each of them at the time that they died.

16 His five children are now adults. They have been deprived of the emotional and
17 pastoral and educational care of a father, and Mr Bemba has been denied any part in
18 their day-to-day lives.

19 There has been a report from the detention unit. It acknowledges that Mr Bemba's
20 family is of the utmost importance and that he works hard to maintain his family
21 links with his wife and children. Sentences have been mitigated in an
22 acknowledgment of the hardship that detention brings, particularly over a prolonged
23 period.

24 This report from the detention unit also accords with others' observations of

25 Mr Bemba over the last six years, his respect, his warmth, his good humour, his

1 compassion for the other detainees, sharing everything he has from clothing to food,
2 his concern for the people around him.

3 It suits the Prosecution to paint Mr Bemba as someone who has no regard for human
4 life, who just didn't care if his troops were raping women. It's just propaganda. It's
5 just for a headline. It's not who he is. It doesn't fit with someone who came to
6 Gbadolite and whose movement sat down with NGOs and church groups and tried to
7 figure out ways to reopen schools and put in place vaccination programmes. It
8 doesn't fit with the evidence in this case that two years prior to the intervention in the
9 Central African Republic he signed a decree authorising the implementation of the
10 death penalty for any one of his soldiers who committed rape.

11 It doesn't fit with Louis Michel's impression of him. It doesn't fit with Monseigneur
12 Ambongo's impression of him. It doesn't fit with the detention unit's impression of
13 him. It doesn't fit with someone whose wife spends her days running a
14 not-for-profit to help orphans and widows and refugees in the Congolese community
15 in Belgium.

16 Nor does it fit with the evidence in this case about the steps Mr Bemba took to ensure
17 the safety of the civilian population in the Congo during the time that the ALC was in
18 operation, because that really is the best indicator of the importance he places on the
19 value of human life.

20 Under Mr Bemba, the MLC was unique amongst rebellions. To ensure discipline, he
21 took resources away from the war and set up a court system with judges and a
22 registrar and defence lawyers and a prosecutor. Soldiers who committed infractions
23 were tried and sentenced and sent to prison. No other rebellion in history has
24 appointed and trained political commissioners whose role it was to go out into the
25 civilian population and just make sure everything was okay. No other rebellion in

1 history has established disciplinary units that moved around with the military forces.
2 Can you imagine the Séléka forces or the anti-Balaka troops or the LRA or the Free
3 Syria army or any of the other groups who try to use armed conflict to seek political
4 change appointing political commissioners or putting their own soldiers in prison
5 when they pillage.

6 It was not an easy thing to do to raise an army of 20,000 men to co-exist with a civilian
7 population in an area of the Congo that was remote and had been devastated by war.
8 But Mr Bemba did it. In 2006, the MLC was the only one of the belligerents in the
9 Congo who was elected in the territory it administered. The MLC won Équateur
10 with an overwhelming percentage of the vote. The population valued the peace and
11 stability and development and assistance that Mr Bemba brought to their region.
12 This will forever be reflected in those election results.

13 Monseigneur Ambongo told us on Monday that when the MLC arrived, it felt like
14 "life began again." The population finally found peace. Compared with the horror
15 of Mobutu's forces and the horror of Kabila's forces, the people of Équateur finally
16 saw an army which took care of the population and who took on its defence. In the
17 monseigneur's words, "people felt safe" when the MLC was there.

18 PRESIDING JUDGE STEINER: Thank you, Ms Gibson.

19 Mr Haynes.

20 MR HAYNES: Just to conclude. It's an unfortunate fact that the wheels of
21 international justice move very slowly. They've moved particularly slowly in this
22 case. We're now concerned with events that took place almost 14 years ago, and it is
23 8 years since Mr Bemba was taken from his home and family in Belgium under an ex
24 parte arrest warrant.

25 The world has changed much in that time, perhaps nowhere more than the Central

1 African Republic. Patassé passed away. Bozizé was driven out. The country has
2 been torn apart by years more horrors, worse by far than anything that happened in
3 2002 and 2003, which events for those still alive to remember them must be becoming
4 a dim and distant memory.

5 Mr Bemba has had some changes to his life as well. He spent eight years in prison,
6 not being a businessman, not being a politician, not being a husband, not being a
7 father. You can imagine how frustrating that has been for this talented and energetic
8 man. His wealth, such as it was, has been almost entirely dissipated by freezing
9 orders and legal fees.

10 Notwithstanding that, over the last eight years Mr Bemba has cooperated fully with
11 these proceedings. He has been courteous and respectful to the Court. Apart from
12 the odd bout of sickness, he turned up to his trial day after day, year after year. He
13 is the only accused who has worked with the Registry to transfer his resources to the
14 Court to pay for his legal fees. The Registry has acknowledged that his personal
15 cooperation was instrumental in this regard.

16 There is no risk that if released he will re-offend. He will never again be in charge of
17 an army. And although still loved and revered by many in his own country, the fact
18 of this conviction as well as the effluxion of time would rule out any return to politics.
19 Despite the Prosecution's attempts, as I said in opening, Mr Bemba's actions, his life,
20 his achievements cannot be narrowed to a four and a half month period and the acts
21 of some of his troops.

22 Now, it would be naive to ignore the fact that this case has attracted a lot of publicity
23 and comment. In many ways the comments it has provoked have been surprising.
24 The comments, it seems to us, have been motivated by three things: Firstly, the fact
25 that Mr Bemba has a higher profile than anybody previously convicted by the ICC;

1 the fact that this is the first command case before the ICC; and the fact that this is the
2 ICC's first sexual violence case.

3 But are those things really so remarkable? Mr Bemba's profile is neither higher nor
4 lower than many accused previously convicted in other courts and tribunals. The
5 gravity of the crimes in this case bears no unfavourable comparison with the cases
6 which the ICC has already dealt with. He is far from being the first commander
7 convicted in international criminal law, and neither is this the first case in which
8 crimes of sexual violence have been found to be proven. It's just that in the main in
9 the past, those crimes have been subsumed within broader allegations of genocide,
10 extermination, persecution and inhumane treatment.

11 As Ms Gibson has already observed, other men and women of high profile will fall to
12 be sentenced as commanders for similar offences in the future, and many of them will
13 not face trial or sentence in this building.

14 The ICC needs to be at the centre of a body of consistent jurisprudence. It needs to
15 be the repository of good practice. It needs to be the library of precedent, like the
16 sun at the centre of the solar system.

17 If you pass the sort of massive sentence upon Mr Bemba such as is demanded by
18 those opposite, you can expect in the short term that it will be hailed as a victory, a
19 victory for justice, a victory for victims, a victory for the fight against impunity.

20 You'll get the headlines. But as we say in England, today's headlines are tomorrow's
21 fish and chip paper. And the long-term effect would be to cause this case to be
22 regarded as an aberration, a freak, and to cause jurists in the future to regard the
23 ICC's jurisprudence, not as the centre of the solar system, but rather Pluto, seldom
24 seen and never visited.

25 A real victory would be to do justice in this case. Justice, real justice, we submit,

1 comes from the proper calibration of individual responsibility, from the calm
2 application of principles that will stand the test of time and contribute to the larger
3 system.

4 Our written filing on sentence contains comparisons to cases before other courts
5 which have similarities in terms of the gravity of the crimes and the participation of
6 the accused. These commanders in similar circumstances received sentences at the
7 lower end of the scale available to you and about which we've talked, even in the
8 absence of the kind of mitigating factors that exist in this case. We would invite your
9 Honours to have close regard to those cases when sentencing Mr Bemba.

10 We submit if you do that you will be driven to the conclusion that Mr Bemba has not
11 just reached, but has long ago passed the point at which his detention should have
12 been ended.

13 Thank you.

14 PRESIDING JUDGE STEINER: Thank you very much, Mr Haynes.

15 With that, we conclude this hearing on submissions on sentencing. And I would like
16 to thank the parties, the Legal Representative of Victims for their attendance and for
17 their assistance through the evidence and submissions presented before this
18 Chamber.

19 The Chamber shall now deliberate on the appropriate sentence to be imposed, taking
20 into account the whole case file, the final written submissions, the evidence and
21 submissions presented during this hearing. The decision under Article 76 of the
22 Statute will be delivered within a reasonable period of time.

23 Before we conclude, the Chamber would like to issue a short order to the parties and
24 legal representative and also to the Registry. First, to file public redacted versions of
25 their filings, those submitted during the sentencing proceedings; and, second, to

- 1 review the case record in light to comply with their obligations under Regulation
2 23bis(3) and submit as soon as practicable public redacted versions of all submissions
3 currently classified ex parte, under seal or confidential where the basis for the
4 classification no longer exists.
- 5 The Chamber thanks to the Prosecution team today represented by Madam
6 Prosecutor Fatou Bensouda and the whole team; Ms Douzima, Legal Representative
7 of the Victims; Mr Haynes, Ms Gibson, Mr Jean-Pierre Bemba Gombo; and with our
8 thanks to our interpreters and court reporters.
- 9 I declare this hearing concluded.
- 10 THE COURT USHER: All rise.
- 11 (The hearing ends in open session at 12.19 p.m.)