

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido
6 ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut, and
8 Judge Raul Pangalangan
9 Sentencing Decision
10 Wednesday, 22 March 2017
11 (The sentencing hearing starts in open session at 10.59 a.m.)
12 THE COURT USHER: [10:59:58] All rise.
13 The International Criminal Court is now in session.
14 Please be seated.
15 PRESIDING JUDGE SCHMITT: [11:00:54] Good morning, everyone.
16 First of all, it would of course significantly delay the proceedings if the Presiding
17 Judge did not have earphones. So we just wait a second, and I think you had
18 enough time to have your photographs.
19 And then I would like the court officer to please call the case.
20 THE COURT OFFICER: [11:01:16] Thank you, Mr President. The situation in the
21 Central African Republic in the case of The Prosecutor versus Jean-Pierre Bemba
22 Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala
23 Wandu and Narcisse Arido, case reference ICC-01/05-01/13.
24 For the record, we are in open session.
25 PRESIDING JUDGE SCHMITT: Thank you very much.

1 And I ask now for the appearances of the parties. We start with the Prosecution.

2 MS BENSOUA: Thank you, Mr President. Mr President, the Office of the
3 Prosecutor is represented by Kweku Vanderpuye, senior trial lawyer; Olivia Struyven,
4 trial lawyer; Sylvie Wakchom, assistant trial lawyer; Sylvie Vidinha, case manager;
5 Marie-Alvine Tchekanda, associate international cooperation advisor; and Adepeju
6 Adewoye, Mr President, and myself, Prosecutor.

7 PRESIDING JUDGE SCHMITT: Thank you very much.

8 I turn now to the five Defence teams. I think we start with the Defence team of
9 Mr Kilolo.

10 MR KARNAVAS: Good morning, Mr President. Good morning, your Honours,
11 and good morning to everyone in and around the courtroom.

12 Mr Kilolo is represented by myself, Michael Karnavas, Steven Powles, Rosalie
13 Mbengue, Lueka Groga and Mr Noah Al-Malt. Thank you.

14 PRESIDING JUDGE SCHMITT: Thank you.

15 Mr Taku, please, for Mr Arido's team.

16 MR TAKU: May it please the Court, I appear for Mr Arido. With me today is Mr
17 Michael Rowse. My learned friend and esteemed colleague Beth Lyons is not here,
18 your Honours, and sends her apologies.

19 PRESIDING JUDGE SCHMITT: Thank you.

20 And perhaps Mr Kilenda then for Mr Babala.

21 MR KILENDA: (Interpretation) Good morning, your Honours. Vera Piovesan is
22 with me and our legal assistant, Adriana-Maria Manolescu, case manager, Professor
23 Jean-Pierre Fofé, and myself, Jean-Pierre Kilenda Kakengi Basila.

24 PRESIDING JUDGE SCHMITT: Thank you.

25 Mr Gosnell.

1 MR GOSNELL: Good morning, Mr President and your Honours.

2 Christopher Gosnell for Mr Mangenda this morning, who is present, assisted by Ms
3 Rita Yip. Thank you.

4 PRESIDING JUDGE SCHMITT: And finally Mrs Taylor for Mr Bemba.

5 MS TAYLOR: Good morning, Mr President, your Honours. Melinda Taylor for Mr
6 Jean-Pierre Bemba. I'm appearing today with Ms Mylène Dimitri, Ms Ines Pierre de
7 la Brière and Ms Yuqing Liu.

8 And I would just like to note that Mr Bemba's transcript was not working but it seems
9 to be in the process of being fixed at the moment. Thank you.

10 PRESIDING JUDGE SCHMITT: (Microphone not activated) On 19 October 2016,
11 Trial Chamber VII of the International Criminal Court convicted, to varying degrees,
12 Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda
13 Kabongo, Mr Narcisse Arido and Mr Fidèle Babala Wandu of offences against the
14 administration of justice, pursuant to Article 70 of the Statute, involving 14 witnesses
15 who had testified on behalf of the Defence in the case of The Prosecutor versus
16 Jean-Pierre Bemba Gombo, the so-called Main Case. Today this Chamber hands
17 down their sentences pursuant to Article 76 of the Statute. The Chamber
18 underscores that only the written decision in English is authoritative.
19 Before proceeding to sentence the convicted persons, the Chamber will set out its
20 understanding of the law regarding three issues, namely, first, the maximum sentence
21 for offences against the administration of justice; second, the relevant factors for the
22 determination of a sentence and the exercise of discretion; and, third, whether a
23 sentence can be suspended under the Rome Statute.

24 But before we come to these questions, and with regard to the confidential Bemba
25 Defence application 2120, the Chamber notes that the Bemba Defence requested the

1 Chamber for leave to submit observations in response to the Registry's updated
2 solvency report submitted on 17 March 2017 in advance of any decisions being
3 adopted by the Chamber in relation to the financial assets owned or directly
4 controlled by Mr Bemba.

5 The Chamber received an advance copy of the application, which was notified
6 yesterday. By email of 20 March 2017, the Chamber dismissed the application, with
7 reasons to follow. Those reasons will be summarised now.

8 In reaching its decision, the Chamber considered the fact that the Bemba Defence had
9 already been given full opportunity to respond to the Registry's previous solvency
10 report on the convicted person's solvency of 6 December 2016 by virtue of the
11 Chamber's "Decision on Defence Request for Variation of the Sentencing Calendar."
12 That decision ensured that the Registrar filed the solvency report prior to the receipt
13 of the parties' submissions on sentencing, even granting the Defence an extension of
14 time to achieve this, in order to allow the Defence to incorporate any relevant aspects
15 of the solvency report into their sentencing submissions. The Bemba Defence
16 availed itself of this opportunity. Moreover, the content of the updated solvency
17 report does not affect the Chamber's view as to the solvency of Mr Bemba or the
18 decision on sentencing being issued today.

19 The application was thereby dismissed.

20 I turn now to the question I have already mentioned. First of all, to the question of
21 the maximum sentence for offences against the administration of justice. The
22 Chamber found that the maximum sentence for one or more offences against the
23 administration of justice cannot exceed five years, as prescribed in Article 70(3) of the
24 Statute. In short, the Chamber's understanding is rooted in a combined reading of
25 Articles 70(3) and 78(3) of the Statute and the following three main considerations.

1 First, Rule 166(2) of the Rules explicitly excludes the applicability of Article 77(1) of
2 the Statute to offences against the administration of justice, which is replaced by the
3 *lex specialis* Article 70(3) of the Statute which allows for the imposition of a sentence
4 not exceeding five years.

5 Second, States Parties purposely differentiated between "crimes" within the meaning
6 of Article 5 of the Statute and "offences against the administration of justice" within
7 the meaning of Article 70 of the Statute. This important conceptual difference, which
8 is based on the principled difference regarding the gravity of Article 5 crimes and
9 Article 70 offences, must be upheld when determining the sentence. Therefore,
10 whereas persons convicted of Article 5 crimes may be sentenced for a specified
11 number of years which may not exceed 30 years, persons convicted of Article 70
12 offences may be sentenced to a term of imprisonment not exceeding five years.

13 Third, Article 78(3) of the Statute must be applied *mutatis mutandis*, as amended by
14 and read together with Article 70(3) of the Statute which imposes a sentence limit of
15 five years. Even if a person is convicted of one or multiple offences, these provisions
16 prohibit the accumulation of convictions amounting to an accumulation of sentences
17 exceeding five years' imprisonment.

18 I now turn to the relevant factors for the determination of a sentence and the exercise
19 of discretion.

20 Guided by Article 78(1) of the Statute and Rule 145 of the Rules of Procedure and
21 Evidence, the Chamber must identify all the relevant factors for each convicted
22 person, namely the gravity of the offences and the individual circumstances of the
23 person, including mitigating and aggravating circumstances. Upon identification of
24 the relevant factors, the Chamber must then weigh and balance the factors in order to
25 determine an appropriate sentence. That said, the Chamber considered in its

1 decision, first, the gravity of the offences that were the basis for conviction of the
2 person concerned; second, the culpable conduct of the convicted person concerned;
3 and, third, the individual circumstances of the convicted persons concerned.
4 The Chamber enjoys considerable discretion in determining an appropriate sentence.
5 However, in so doing, it is guided by two considerations: First, the sentence must
6 reflect the culpability of the convicted person, as stipulated in Rule 145(1)(a) of the
7 Rules; and, second, the sentence must be proportionate to the crime, or in this case
8 offence, as enshrined in Articles 81(2)(a) and 83(3) of the Statute. Both these
9 considerations make clear that the sentence must be individualised for each convicted
10 person.

11 The parties made extensive references to the case law rendered in other international
12 jurisdictions involving similar offences. However, while guidance may be found in
13 other cases before international criminal tribunals, the Chamber underscores that each
14 case must be assessed individually and on the basis of the legal framework applicable,
15 tailoring the penalty to fit the gravity of the crime or offence and the individual
16 circumstances of the convicted person. The interplay of the individual
17 circumstances of the offences and the individual circumstances of the convicted
18 person make it clear that each case is unique and cannot - or at most only
19 partially - be equated with other cases. As other Chambers of this Court have
20 clarified, this "makes it difficult, at the least, to infer from the sentence that was
21 imposed in one case the appropriate sentence in another case." It should be added
22 that by the discretion conferred by the law, sentencing is an individual, highly
23 personal decision of each Judge.

24 I now turn to the question of whether a sentence can be suspended under the Rome
25 Statute.

1 The Chamber recalls that the Defence, during the sentencing hearing, proposed to
2 suspend any potential custodial sentence. The Statute and the Rules remain silent as
3 to whether prison sentences may be suspended. The Chamber is of the view that the
4 option to suspend sentences must also be available under the Statute. On one end of
5 the spectrum, the Statute allows a Chamber to impose a sentence of imprisonment
6 and, at the other end of the spectrum, it allows a Chamber to decline to impose any
7 sentence. If these measures are possible, then the intermediate step of a suspended
8 sentence is likewise possible. To conclude otherwise would fetter the discretion of
9 the Chamber and lead to an unfair result whereby a convicted person could not serve
10 a sentence other than by way of unconditional imprisonment, even when the
11 Chamber considered less restrictive means to be more appropriate. As a result, the
12 Chamber finds that its power to suspend a sentence of imprisonment is inherent to its
13 power to impose and to determine the sentence. Moreover, this finding accords with
14 the practice of other international and national jurisdictions.

15 We now come to the determination of the sentence for each of the convicted persons.

16 I turn first to Mr Babala.

17 The Chamber recalls that Mr Babala has been convicted of the charge of corruptly
18 influencing witnesses in two instances, namely Witnesses D-57 and D-64.

19 The Chamber has considered the gravity of the two offences and the culpable conduct
20 of Mr Babala. It also found one aggravating circumstance, namely Mr Babala's
21 assistance in the attempt to obstruct the present Article 70 investigation. However,
22 this must be balanced against Mr Babala's relatively limited participation in the
23 relevant offences and the fact that his criminal conduct amounted to nothing more
24 than illegal money transfers to two witnesses. The Chamber also took into account
25 Mr Babala's individual circumstances, such as his good behaviour throughout the trial,

1 the absence of prior convictions and his family situation.

2 Mr Babala, please stand up.

3 Taking into account all the above factors, the Chamber sentences you, Mr Babala, to
4 six months' imprisonment. Pursuant to Article 78(2) of the Statute, you are entitled
5 to have deducted from your sentence the time previously spent in detention in
6 accordance with an order of the Court, namely since your arrest on 24 November 2013,
7 pursuant to the warrant of arrest issued by the Pre-Trial Chamber II on 20 November
8 2013. You were released on 23 October * 2014. Since the imposed sentence is less
9 than the credit to be applied for the period of time you have been in custody, the
10 Chamber considers the sentence of imprisonment as served.

11 Mr Babala, you may be seated.

12 In light of this determination, the Chamber dismisses the Babala Defence request for
13 continued provisional release pending the appeal as moot.

14 I now turn to Mr Arido.

15 The Chamber recalls that Mr Arido has been convicted of the charge of corruptly
16 influencing witnesses in four instances, namely Witnesses D-2, D-3, D-4 and D-6.

17 The Chamber has considered the gravity of the four offences and the culpable
18 conduct of Mr Arido. It has found no mitigating or aggravating circumstances, and
19 took into account Mr Arido's individual circumstances, such as his good behaviour
20 throughout the trial, his personal situation, the absence of prior convictions, his
21 family situation, his peace, justice and reconciliation advocacy in Central African
22 Republic and his generosity towards compatriots and persons in need.

23 Mr Arido, please stand up. Please stand up, Mr Arido.

24 Taking into account all the above factors, Mr Arido, the Chamber sentences you to 11
25 months' imprisonment. Pursuant to Article 78(2) of the Statute, you are entitled to

1 have deducted from your sentence the time previously spent in detention in
2 accordance with an order of the Court, namely from your arrest on 23 November 2013,
3 pursuant to the arrest warrant of the Pre-Trial Chamber that I have already
4 mentioned, until you were released on 22 October 2014. Since the imposed sentence
5 is equivalent to the credit to be applied for the period of time you have already been
6 in custody, the Chamber considers the sentence of imprisonment as served.

7 Mr Arido, you may be seated.

8 In light of this determination, the Chamber dismisses the Arido Defence request for
9 continued provisional release pending appeal as moot.

10 We turn now to Mr Mangenda.

11 The Chamber recalls that Mr Mangenda has been convicted of the charge of: First,
12 corruptly influencing witnesses, as co-perpetrator, in 14 instances, namely Witnesses
13 D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64;
14 second, presenting the false evidence, as co-perpetrator, in 14 instances, namely
15 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
16 D-64; and, third, assisting in the giving of false testimony of witnesses in nine
17 instances, namely D-2, D-3, D-4, D-6, D-13, D-15, D-25, D-29 and D-54.

18 The Chamber has considered the gravity of the offences and the culpable conduct of
19 Mr Mangenda. The Chamber found two aggravating circumstances, namely
20 Mr Mangenda's abuse of trust vis-à-vis the Court and his role in the attempt to
21 obstruct the present Article 70 investigation. The Chamber emphasises that it has
22 distinguished between the offences in which Mr Mangenda participated as
23 co-perpetrator and those in relation to which he was an accessory. The number of
24 witnesses involved and Mr Mangenda's varying degree of participation, albeit to a
25 lesser degree, have also been taken into account. The Chamber also paid heed to the

1 fact that the false testimony related to matters informing the credibility of witnesses.
2 Lastly, the Chamber took into account Mr Mangenda's role vis-à-vis the other
3 co-perpetrators and his individual circumstances, such as his good behaviour
4 throughout the trial and cooperation with the Court, the absence of criminal record
5 and the prohibition from working in his country of residence.

6 Mr Mangenda, please stand up.

7 Taking into account all of the above factors, the Chamber imposes on you,
8 Mr Mangenda, a joint sentence of 24 months' (two years) imprisonment. Pursuant to
9 Article 78(2) of the Statute, you are entitled to have deducted from your sentence the
10 time previously spent in detention in accordance with an order of the Court, namely
11 since your arrest on 23 November 2013, pursuant to the arrest warrant I have already
12 mentioned, until your release on 31 October 2014.

13 Mindful of your personal circumstances, your good behaviour throughout the present
14 proceedings and the consequences of incarceration for your family, the Chamber
15 suspends the operation of the remaining term of imprisonment for a period of three
16 years so that the sentence shall not take effect unless during that period you commit
17 another offence anywhere that is punishable with imprisonment, including offences
18 against the administration of justice.

19 Mr Mangenda, you may be seated.

20 In light of this determination, the Chamber also dismisses the Mangenda Defence
21 request for continued provisional release pending appeal as moot.

22 I now turn to Mr Kilolo.

23 The Chamber recalls that Mr Kilolo has been convicted of the charge of: First,
24 corruptly influencing witnesses, as co-perpetrator, in 14 instances, namely Witnesses
25 D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64;

1 second, presenting the false evidence, as co-perpetrator, in 14 instances, namely
2 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
3 D-64; and, third, inducing the giving of false testimony of witnesses in 14 instances,
4 namely D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
5 D-64.

6 THE INTERPRETER: Message from the interpreters: Could the Presiding Judge
7 kindly slow down.

8 PRESIDING JUDGE SCHMITT: The Chamber has considered the gravity of the
9 offences and the culpable conduct of Mr Kilolo. The Chamber found three
10 aggravating circumstances, namely Mr Kilolo's abuse of trust vis-à-vis the Court, his
11 abuse of the lawyer-client privilege and attendant rights, and his role in the attempt to
12 obstruct the present Article 70 investigation. The Chamber emphasises that it has
13 distinguished between the offences that Mr Kilolo committed as co-perpetrator and
14 those in relation to which he was an accessory. The number of witnesses involved
15 has also been taken into account. The Chamber also paid heed to the fact that the
16 false testimony related to matters informing the credibility of witnesses. Lastly, the
17 Chamber took into account Mr Kilolo's individual circumstances, such as his efforts to
18 promote the legal profession in Belgium and the Democratic Republic of the Congo,
19 his involvement in a non-governmental organisation, his cooperation with the Court
20 and constructive attitude during trial, and finally the absence of a criminal record and
21 disciplinary record with the Brussels bar.

22 Mr Kilolo, please stand up.

23 Taking into account all the above factors, the Chamber imposes on you, Mr Kilolo, a
24 joint sentence of two years and six months' imprisonment. Pursuant to Article 78(2)
25 of the Statute, you are entitled to have deducted from your sentence the time

1 previously spent in detention in accordance with an order of the Court, namely since
2 your arrest on 23 November 2013, pursuant to the warrant of arrest issued by
3 Pre-Trial Chamber II on 20 November 2013, until your release on 22 October 2014.
4 Mindful of your family situation, your good behaviour throughout the present
5 proceedings and the consequences of incarceration on your professional life, the
6 Chamber agrees to suspend the operation of the remaining term of imprisonment for
7 a period of three years so that the sentence shall not take effect, first, if you pay the
8 fine imposed by the Chamber, as I shall set out shortly, and, second, unless during
9 that period you commit another offence anywhere that is punishable with
10 imprisonment, including offences against the administration of justice.
11 In addition, the Chamber finds that a fine is a suitable part of the sentence. In
12 particular, the Chamber is of the view that there is a need to discourage this type of
13 behaviour by counsel appearing before a court of law. It is incumbent upon this
14 Chamber to dissuade the repetition of such conduct on your part, Mr Kilolo, or on
15 any other person. Recognising your enhanced culpability in comparison to
16 Mr Mangenda, and considering your solvency, the Chamber is of the view that you
17 must be fined 30,000 euros. Noting Rule 166(4), first sentence, of the Rules of
18 Procedure and Evidence, the amount must be paid to the Court within three months
19 of this decision. The Chamber orders that the fine is to be transferred ultimately to
20 the Trust Fund for Victims.
21 Mr Kilolo, you may be seated. You may be seated, Mr Kilolo.
22 I turn finally to Mr Bemba.
23 The Chamber recalls that Mr Bemba has been convicted of the charge of: First,
24 corruptly influencing witnesses, as co-perpetrator, in 14 instances, namely Witnesses
25 D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64;

1 second, presenting the false evidence, as co-perpetrator, in 14 instances, namely
2 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
3 D-64; and, third, soliciting the giving of false testimony of witnesses in 14 instances,
4 namely D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-55, D-54, D-57 and
5 D-64.

6 The Chamber has considered the gravity of the offences and the culpable conduct of
7 Mr Bemba. The Chamber found two aggravating circumstances, namely Mr
8 Bemba's abuse of the lawyer-client privilege and attendant rights, and his role in the
9 attempt to obstruct the present Article 70 investigation. It also took into account the
10 fact that, when committing the offences, Mr Bemba took advantage of his
11 long-standing and current position as President of the Mouvement de Libération du
12 Congo. The Chamber emphasises that it has distinguished between the offences that
13 Mr Bemba committed as co-perpetrator and those in relation to which he was an
14 accessory. Furthermore, the number of witnesses involved has been taken into
15 account. The Chamber also paid heed to the fact that the false testimony related to
16 issues other than the merits of the Main Case and that the actual contributions of Mr
17 Bemba to the implementation and concealment of the common plan were of a
18 somewhat restricted nature. Lastly, the Chamber took into account Mr Bemba's
19 family situation.

20 Mr Bemba, please stand up.

21 Taking into account all of the above factors, the Chamber imposes on you, Mr Bemba,
22 an additional joint sentence of 12 months' (one year) imprisonment. The Chamber
23 does not consider it appropriate that this term be served concurrently with your
24 existing sentence as the offences are not related. Therefore, the Chamber orders that
25 the sentence be served consecutively to your existing sentence.

1 I will come to the question of deduction of time previously spent in detention shortly,
2 and first address another question.

3 In addition, the Chamber finds that a substantial fine is necessary to achieve the
4 purposes for which punishment is imposed. In particular, the Chamber is of the
5 view that there is a need to discourage this type of behaviour and to dissuade the
6 repetition of such conduct on your part, Mr Bemba, or on the part of any other person.
7 Recognising your culpability and considering your solvency, the Chamber is of the
8 view that you must be fined 300,000 euros. Noting Rule 166(4), first sentence, of the
9 Rules of Procedure and Evidence, the amount must be paid to the Court within three
10 months of this decision. The Chamber orders that the fine is to be transferred
11 ultimately to the Trust Fund for Victims.

12 Mr Bemba, you may be seated.

13 I turn now to the question of deduction of time previously spent in detention.

14 Pursuant to Article 78(2) of the Statute, Mr Bemba is entitled to have deducted from
15 his sentence the time previously spent in detention in accordance with an order of the
16 Court. In this regard, the Chamber notes that since the day he received the warrant
17 of arrest in this case, on 23 November 2013, he has been in detention also for another
18 cause and on the basis of two different reasons: The warrant of arrest of Pre-Trial
19 Chamber III issued on 24 May 2008, and the sentencing decision of Trial Chamber III
20 rendered on 21 June 2016. As a result, there is a time overlap between the two cases
21 that impacts the question whether and how Mr Bemba should benefit from a
22 deduction of time in the present case.

23 On 21 June 2016, Trial Chamber III sentenced Mr Bemba in the Main Case to 18 years'
24 imprisonment. That Chamber at the same time ordered the deduction of time
25 already spent in detention for the purpose of the Main Case, that is since 24 May 2008

1 until at least 21 June 2016. Given that situation, a majority of this Chamber finds that
2 a deduction of time until 21 June 2016 in the context of this case is not possible. To
3 put it simply, time already deducted cannot be deducted for a second time.
4 Since 21 June 2016, Mr Bemba remains in detention because of his conviction and the
5 sentence in the Main Case. Again, a deduction of time is impossible as he remains in
6 detention for another cause. As a result, the majority of the Chamber determines
7 that Mr Bemba will not benefit from any deduction of time in this case.
8 Judge Pangalangan concurred in the result of one additional year of imprisonment,
9 but wrote separately on the issue of sentencing credit and the proportionality of
10 Mr Bemba's sentence. Judge Pangalangan will shortly set out his opinion.
11 JUDGE PANGALANGAN: Thank you very much, Mr President. Today I write
12 separately on two issues. I believe that Mr Bemba is entitled to full sentencing
13 credits for the entire period of his detention in this case, from his 2013 arrest to the
14 present. This follows from the straightforward application of Article 78(2) of the
15 Statute which requires the Court to "deduct the time ... previously spent in detention
16 in accordance with an order of the Court." Even if Mr Bemba was also detained in
17 the Main Case, in the eyes of the law, he simultaneously remained behind bars by an
18 order of this Court. If the majority finds room to interpret Article 78(2), that
19 interpretive latitude must be exercised in favour of the defendant under the principle
20 in dubio pro reo. I therefore disagree that the Court may sua sponte exclude
21 Mr Bemba from the full benefit of Article 78(2).
22 On the other hand, I also consider that the majority has given Mr Bemba a
23 disproportionately low sentence in view of the central and overwhelming role he
24 played in the offences for which he was convicted.
25 This, combined with full sentencing credits, leads me to concur with the additional

1 term of imprisonment now imposed against Mr Bemba.

2 Thank you, Mr President.

3 PRESIDING JUDGE SCHMITT: Thank you very much.

4 This concludes the decision on sentencing. I wish to thank the parties for their
5 contributions and the quality of their work. I also particularly thank all those who
6 contributed to the good conduct of these proceedings, namely the courtroom officers,
7 court clerks, interpreters, stenographers, audio-visual production assistants,
8 colleagues from the VWU, who ensured the presence of the witnesses in this case,
9 security guards and colleagues from IT and General Services.

10 Such thanks may be a standard at the end of a trial, but I would like to assure all
11 involved that this Chamber is truly aware of the fact that these proceedings could
12 only have run smoothly and expeditiously because of your commitment.

13 The hearing is concluded.

14 THE COURT USHER: [11:37:29] All rise.

15 (The hearing ends in open session at 11.37 a.m.)

16 CORRECTION REPORT

17 The Trial Chamber I has made the following correction in the transcript:

18 *Page 8 line 8:

19 "2015" is corrected by "2014"