

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/05-01/08**

Date: **21 June 2016**

**TRIAL CHAMBER III**

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

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

**Public with annexes I and II**

**Decision on Sentence pursuant to Article 76 of the Statute**

**Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:**

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**Amicus Curiae**

**REGISTRY**

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Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on Sentence pursuant to Article 76 of the Statute (“Decision”).

## I. BACKGROUND

1. On 26 May 2014, the Chamber decided, *inter alia*, to issue separate decisions on guilt pursuant to Article 74 of the Rome Statute (“Statute”) and, in the event of a conviction, on sentence pursuant to Article 76.<sup>1</sup>
2. On 21 March 2016, the Chamber convicted Mr Jean-Pierre Bemba Gombo under Article 28(a), as a person effectively acting as a military commander, of the crimes of (i) murder as a crime against humanity under Article 7(1)(a); (ii) murder as a war crime under Article 8(2)(c)(i); (iii) rape as a crime against humanity under Article 7(1)(g); (iv) rape as a war crime under Article 8(2)(e)(vi); and (v) pillaging as a war crime under Article 8(2)(e)(v) (“Judgment”).<sup>2</sup>
3. On 11 and 18 April 2016,<sup>3</sup> respectively, the Office of the Prosecutor (“Prosecution”)<sup>4</sup> and Legal Representative of Victims (“Legal Representative”)<sup>5</sup> filed their submissions concerning the appropriate sentence.
4. On 19 April 2016, the Defence for Mr Bemba (“Defence”) filed submissions on agreed facts relating to Mr Bemba’s family and personal history.<sup>6</sup>
5. On 22 April 2016,<sup>7</sup> the Registry filed a report concerning Mr Bemba’s solvency and conduct while in detention.<sup>8</sup> On 29 April 2016 and 4 May 2016, respectively,

<sup>1</sup> [ICC-01/05-01/08-3071](#), paras 13 and 18. References to Articles and Rules in this Decision refer to the Rome Statute and Rules of Procedure and Evidence, unless otherwise indicated. Full citations to all orders, decisions, and judgments are included in Annex II.

<sup>2</sup> [Judgment](#), para. 752. *See also* [T-367](#).

<sup>3</sup> The Chamber set the timeline for sentencing submissions and requests on 21 March 2016. *See* [ICC-01/05-01/08-3344](#), para. 11. *See also* [ICC-01/05-01/08-3071](#); and [ICC-01/05-01/08-3357](#).

<sup>4</sup> Prosecution’s Sentencing Submissions, 11 April 2016, ICC-01/05-01/08-3363-Conf, with one public annex. A public redacted version was filed on 15 April 2016 (“[Prosecution Submissions](#)”).

<sup>5</sup> *Soumissions de la Représentante légale des victimes sur la peine*, 18 April 2016, ICC-01/05-01/08-3371-Conf, with one public annex (“[Legal Representative Submissions](#)”).

<sup>6</sup> Defence’s Submissions on Agreed Facts, 19 April 2016, ICC-01/05-01/08-3373, with one public annex and one confidential annex (“[Submissions on Agreed Facts](#)”). A public redacted version of the confidential annex was filed the same day.

the Defence<sup>9</sup> and Prosecution<sup>10</sup> responded. On 6 May 2016, the Defence requested that the Chamber dismiss the Prosecution's response.<sup>11</sup>

6. On 25 April 2016, the Defence filed its submissions on the appropriate sentence.<sup>12</sup>
7. On 4 May 2016, the Chamber decided on the requests of the parties and Legal Representative to present additional evidence and submissions on sentence and scheduled the sentencing hearing.<sup>13</sup> Between 16 and 18 May 2016, the Chamber heard the testimonies of Monseigneur Fridolin Ambongo (D63), a character witness called by the Defence,<sup>14</sup> and Dr Daryn Reicherter (P925), an expert witness called by the Prosecution;<sup>15</sup> the views and concerns of protected victims a/0555/08<sup>16</sup> and a/0480/08;<sup>17</sup> and the final oral submissions of the Prosecution,<sup>18</sup> Legal Representative,<sup>19</sup> and Defence.<sup>20</sup>

## II. APPLICABLE LAW

8. For purposes of the present Decision, the Chamber has taken into account, *inter alia*, Articles 23, 76, 77, and 78 and Rules 143, 144, 145, 146, and 147 of the Rules of Procedure and Evidence ("Rules").

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<sup>7</sup> The Chamber ordered this report on 7 April 2016. See Email communication from the Chamber to the Registry on 7 April 2016 at 13:45.

<sup>8</sup> Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention, 22 April 2016, ICC-01/05-01/08-3375-Conf, with one confidential *ex parte* annex and two confidential annexes. The filing, but not the annexes, was reclassified as public on 20 June 2016 ("[Registry Report](#)").

<sup>9</sup> Defence Response to Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention (ICC-01/05-01/08-3375-Conf), 29 April 2016, ICC-01/05-01/08-3381-Conf, with two confidential *ex parte* annexes.

<sup>10</sup> Prosecution's Response to "Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention", (ICC-01/05-01/08-3375-Conf), 4 May 2016, ICC-01/05-01/08-3383-Conf, with one confidential annex.

<sup>11</sup> Defence Request to Dismiss *in limine* the "Prosecution's Response to 'Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention'", 6 May 2015, ICC-01/05-01/08-3385-Conf.

<sup>12</sup> Submissions on Sentence, 25 April 2016, ICC-01/05-01/08-3376-Conf, with one confidential *ex parte* annex and one public annex. A public redacted version was filed on 26 April 2016 ("[Defence Submissions](#)").

<sup>13</sup> [ICC-01/05-01/08-3384](#), para. 52. See also [ICC-01/05-01/08-3387](#), para. 5.

<sup>14</sup> **D63**: [T-368](#), page 4, line 13 to page 70, line 3.

<sup>15</sup> **P925**: [T-368](#), page 70, line 14 to page 116, line 2; and [T-369](#), page 1, line 15 to page 34, line 24.

<sup>16</sup> **a/0555/08**: [T-369](#), page 41, line 9 to page 58, line 12.

<sup>17</sup> **a/0480/08**: [T-369](#), page 58, line 25 to page 70, line 14.

<sup>18</sup> T-370, page 2, line 14 to page 30, line 14 ("[Prosecution Oral Submissions](#)").

<sup>19</sup> T-370, page 30, line 19 to page 37, line 9 ("[Legal Representative Oral Submissions](#)").

<sup>20</sup> T-370, page 37, line 24 to page 60, line 13 ("[Defence Oral Submissions](#)").

9. At the outset, the Chamber emphasises that this Decision must be read in conjunction with the Judgment, as a whole,<sup>21</sup> as well as the entirety of the trial proceedings. The Chamber need not set out in detail every factor considered, especially if it accords minor importance thereto.<sup>22</sup> Likewise, although the Chamber must consider all relevant evidence admitted and submissions made throughout the trial, it need not expressly reference or comment on each.<sup>23</sup>
10. The Preamble of the Statute declares that “the most serious crimes of concern to the international community as a whole must not go unpunished”.<sup>24</sup> Further, in establishing the ICC, the States Parties were “[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”.<sup>25</sup> Accordingly, the Chamber considers that the Preamble establishes retribution and deterrence as the primary objectives of punishment at the ICC.<sup>26</sup>
11. Retribution is not to be understood as fulfilling a desire for revenge, but as an expression of the international community’s condemnation of the crimes.<sup>27</sup> In this way, a proportionate sentence also acknowledges the harm to the victims and promotes the restoration of peace and reconciliation.<sup>28</sup> With respect to deterrence, a sentence should be adequate to discourage a convicted person from recidivism (specific deterrence), as well as to ensure that those who would consider committing similar crimes will be dissuaded from doing so (general deterrence).<sup>29</sup> Rehabilitation is also a relevant purpose. However, in cases concerning “the most

<sup>21</sup> This includes, but is not limited to, the Chamber’s factual and legal findings. As appropriate, this Decision should also be read in light of, *inter alia*, those parts of the Judgment containing explanations concerning style and terminology, and considerations relating to methods and confines of interpretation, applicable law, and evidence. See, similarly, [ICTY, Mrkšić and Šljivančanin Appeal Judgment](#), para. 379.

<sup>22</sup> [ICTR, Ntabakuze Appeal Judgment](#), para. 287, citing [ICTY, Kupreškić et al. Appeal Judgment](#), para. 430.

<sup>23</sup> [Lubanga Sentencing Appeal Judgment](#), paras 69 to 70; and [ICTR, Munyakazi Appeal Judgment](#), para. 174.

<sup>24</sup> Preamble, para. 4 of the Statute.

<sup>25</sup> Preamble, para. 5 of the Statute.

<sup>26</sup> [Katanga Sentencing Decision](#), paras 37 to 38. See also [ICTY, Popović et al. Appeal Judgment](#), para. 1966; and [ECCC, Kaing Appeal Judgment](#), para. 380.

<sup>27</sup> [Katanga Sentencing Decision](#), para. 38. See also [ICTY, Krajišnik Appeal Judgment](#), para. 775.

<sup>28</sup> [Katanga Sentencing Decision](#), para. 38.

<sup>29</sup> [ICTY, Krajišnik Appeal Judgment](#), para. 776.

serious crimes of concern to the international community as a whole”,<sup>30</sup> rehabilitation should not be given undue weight.<sup>31</sup> The objectives underlying sentencing are fulfilled with “the imposition of a just and appropriate sentence, and nothing more”.<sup>32</sup> As reflected in Article 81(2)(a) and Rule 145(1), and as emphasised by the Appeals Chamber, the sentence must be proportionate to the crime and the culpability of the convicted person.<sup>33</sup>

12. The Appeals Chamber found that, when read together with the underlying objectives set out in the Preamble, the relevant provisions of the Statute and Rules establish the following, comprehensive scheme for the determination of a sentence.<sup>34</sup> The Chamber must first identify and assess the relevant factors in Article 78(1) and Rule 145(1)(c) and (2).<sup>35</sup> It must then balance all relevant factors pursuant to Rule 145(1)(b) and pronounce a sentence for each crime, as well as a joint sentence specifying the total period of imprisonment. The total sentence cannot be less than the highest individual sentence. Pursuant to Rule 145(1)(a), the sentence must reflect the culpability of the convicted person. Based on its intimate knowledge of the case, the Chamber has considerable discretion in imposing a proportionate sentence.<sup>36</sup> Finally, once the sentence has been imposed, Article 78(2) requires deduction of the time the convicted person has spent in detention upon an order of the Court.

13. As to the interaction between the factors identified in Article 78(1) and Rule 145(1)(c), the Appeals Chamber has acknowledged several possible approaches,

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<sup>30</sup> Preamble, para. 4 of the Statute.

<sup>31</sup> [Katanga Sentencing Decision](#), para. 38; and [ICTY, Popović et al. Appeal Judgment](#), para. 1966. See also [ECCC, Kaing Appeal Judgment](#), para. 370; and [ICTR, Kamuhanda Appeal Judgment](#), para. 351.

<sup>32</sup> [ICTY, Popović et al. Appeal Judgment](#), para. 1968, citing [ICTY, Kordić and Čerkez Appeal Judgment](#), para. 1075; and [ICTY, Krajišnik Appeal Judgment](#), paras 775 to 777. See also [ICTY, D. Nikolić Sentencing Appeal Judgment](#), para. 46, finding that, by tailoring a penalty to the gravity of the crime and the individual circumstances of the accused, trial chambers “contribute to the promotion of and respect for the rule of law and respond to the call of the international community to end impunity, while ensuring that the accused are punished solely on the basis of their wrongdoings and receive a fair trial.”

<sup>33</sup> [Lubanga Sentencing Appeal Judgment](#), paras 39 to 40.

<sup>34</sup> [Lubanga Sentencing Appeal Judgment](#), paras 32 to 35.

<sup>35</sup> [Lubanga Sentencing Appeal Judgment](#), para. 32.

<sup>36</sup> [Lubanga Sentencing Appeal Judgment](#), para. 34.

but, in the context of the *Lubanga* Sentencing Appeal Judgment, did not consider it necessary to determine which is correct.<sup>37</sup> Of the possible approaches, Trial Chambers I and II considered the Rule 145(1)(c) factors as relevant to an assessment of the Article 78(1) factors.<sup>38</sup> The Chamber further considers that some of the Rule 145(1)(c) factors may instead be relevant to an assessment of the mitigating and aggravating circumstances identified in Rule 145(2).<sup>39</sup> This is consistent with the *travaux préparatoires*, which indicate that the Rule 145(1)(c) factors were originally considered as a non-exhaustive list of aggravating and mitigating circumstances.<sup>40</sup> The *ad hoc* tribunals have also recognised such factors as aggravating and/or mitigating circumstances.<sup>41</sup>

14. In considering all relevant factors,<sup>42</sup> the Chamber cannot “double-count” any factors assessed in relation to the gravity of the crimes as aggravating

<sup>37</sup> [Lubanga Sentencing Appeal Judgment](#), paras 61 to 66, identifying the following possible approaches: (i) the Article 78(1) factors are separate from those listed in Rule 145(1)(c); (ii) some of the Rule 145(1)(c) factors are subsumed by the Article 78(1) factors, while others are separate; and (iii) the Rule 145(1)(c) factors are part of and must be taken into account in assessing the Article 78(1) factors.

<sup>38</sup> [Lubanga Sentencing Decision](#), para. 44; and [Katanga Sentencing Decision](#), paras 44 to 69. *See also* [Lubanga Sentencing Appeal Judgment](#), para. 65; and [Lubanga Sentencing Appeal Judgment, Partially Dissenting Opinion of Judge Sang-Hyun Song](#), paras 2 to 4.

<sup>39</sup> For example, without considering the “extent of the damage”, “the nature of the unlawful behaviour and the means employed to execute the crime”, “the degree of participation of the convicted person”, “the degree of intent”, and “the circumstances of manner, time and location”, as set out in Rule 145(1)(c), it would be difficult to assess whether there was an “abuse of power or official capacity”, or whether the crime was committed “where the victim was particularly defenceless”, “with particular cruelty”, “where there are multiple victims” and/or “for any motive involving discrimination”, as set out in Rule 145(2)(b).

<sup>40</sup> [Report of the Working Group on Penalties](#), A/Conf.183/C.1/WGP/L.14, 4 July 1998, page 3, footnote 3, *as amended by* [Corrigendum to the Report of the Working Group on Penalties](#), A/Conf.183/C.1/WGP/L.14/Corr.1, 6 July 1998, para. 2. *See also, inter alia*, [Report of the Preparatory Committee on the Establishment of an International Criminal Court: Addendum](#), A/Conf.183/2/Add.1, 14 April 1998, page 122, footnote 13; [Text of the Draft Statute for the International Criminal Court](#), A/AC.249/1998/CRP.13, 1 April 1998, page 4, footnote 10; [Report of the Inter-sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands](#), A/AC.249/1998/L.13, 4 February 1998, page 130, footnote 247; and [Decisions taken by the Preparatory Committee at its Session held from 1 to 12 December 1997](#), A/AC.249/1997/L.9/Rev.1, 18 December 1997, page 70, footnote 11.

<sup>41</sup> *See, for example*, [ICTY, Blaškić Appeal Judgment](#), para. 686; and [ICTY, Babić Sentencing Appeal Judgment](#), para. 43.

<sup>42</sup> As emphasised by the Appeals Chamber, the Chamber must consider all relevant factors. *See* [Lubanga Sentencing Appeal Judgment](#), para. 66. The Appeals Chamber has also indicated that aggravating and mitigating circumstances in Rule 145(2) may instead be considered in assessing the gravity of the crimes. *See* [Lubanga Sentencing Appeal Judgment](#), para. 85. *See also* [Katanga Sentencing Decision](#), para. 71.

circumstances and *vice-versa*.<sup>43</sup> Further, a legal element of the crimes or mode of liability cannot be considered as an aggravating circumstance.<sup>44</sup>

## A. GRAVITY

15. The gravity of the crime is a principal consideration in imposing a sentence.<sup>45</sup> In cases of command responsibility, the Chamber must assess the gravity of (i) the crimes committed by the convicted person's subordinate; and (ii) the convicted person's own conduct in failing to prevent or repress the crimes, or submit the matter to the competent authorities.<sup>46</sup> Unlike aggravating circumstances, gravity necessarily involves consideration of the elements of the offence itself.<sup>47</sup> Beyond such elements, the Chamber has a degree of discretion to consider relevant factors in assessing gravity or, if exceptional, as aggravating circumstances.<sup>48</sup>

16. The Chamber reiterates that Article 28 is designed to reflect the fundamental responsibility of superiors in ensuring the effective enforcement of international humanitarian law.<sup>49</sup> As noted in the Judgment, Article 28 provides for a distinct mode of liability from those under Article 25(3).<sup>50</sup> Command responsibility is a *sui generis* mode of liability.<sup>51</sup> It is not, inherently, a hierarchically lower or higher mode of liability in terms of gravity than commission of a crime under Article

<sup>43</sup> [Lubanga Sentencing Decision](#), para. 35, citing [ICTY, M. Nikolić Sentencing Appeal Judgment](#), para. 58; and [Katanga Sentencing Decision](#), para. 34. See also [ICTY, Dorđević Appeal Judgment](#), para. 936.

<sup>44</sup> [ICTY, Dorđević Appeal Judgment](#), para. 936. See also [ICTY, Blaškić Appeal Judgment](#), para. 693; [ICTR, Nzabonimana Appeal Judgment](#), para. 464, indicating that findings and circumstantial evidence used to infer a legal element may also be considered in proving aggravating factors, so long as the element and aggravating factor are distinct; [ICTR, Nyiramasuhuko et al. Appeal Judgment](#), paras 3356, and 3385 to 3387; and [ICTY, Deronjić Sentencing Appeal Judgment](#), paras 127 to 128.

<sup>45</sup> [Lubanga Sentencing Decision](#), para. 36. See also [ICTY, Popović et al. Appeal Judgment](#), para. 1991.

<sup>46</sup> [ICTY, Popović et al. Appeal Judgment](#), para. 1991, stressing that “the gravity of a subordinate’s crime remains an ‘essential consideration’ in assessing the gravity of the superior’s own conduct in sentencing”. See also [ICTY, Tolimir Appeal Judgment](#), para. 633.

<sup>47</sup> [ICTY, Kunarac et al. Appeal Judgment](#), para. 352.

<sup>48</sup> [ICTY, Vasiljević Appeal Judgment](#), para. 157; and [ICTY, Krajišnik Appeal Judgment](#), paras 786 to 787. See also [ICTY, Hadžihasanović and Kubura Appeal Judgment](#), para. 317.

<sup>49</sup> [Judgment](#), para. 172.

<sup>50</sup> [Judgment](#), paras 173 to 174.

<sup>51</sup> The majority of the Chamber found that command responsibility is a “*sui generis*” mode of liability. See [Judgment](#), para. 174. Judge Steiner would have adopted the word “additional” instead of “*sui generis*”. See [Judgment](#), footnote 388.

25(3)(a), or any other mode of liability identified in Article 25(3)(b) to (e).<sup>52</sup> In order to determine an appropriate sentence, gravity must be assessed *in concreto*, in light of the particular circumstances of the case, the gravity of the crimes committed by the subordinates, and the convicted person's culpability.<sup>53</sup>

17. The Chamber notes the consistent jurisprudence from the *ad hoc* tribunals that a commander's ongoing failure to exercise the duties to prevent or repress – with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity – is generally regarded as being of significantly greater gravity than isolated incidents of such a failure.<sup>54</sup> In addition, in accordance with the principle of gradation in sentencing,<sup>55</sup> high-level leaders, regardless of the mode of liability, generally bear heavier criminal responsibility than those further down the scale.<sup>56</sup> Although once or several times physically removed from the acts of his or her subordinates, the culpability of a superior and his or her degree of moral blameworthiness might, depending on the concrete circumstances, be greater than that of his or her subordinates.<sup>57</sup>

<sup>52</sup> See, for a similar approach, in the context of the ICTR and ICTY Statutes, [ICTR, Ntabakuze Appeal Judgment](#), para. 303, stating that “the [ICTR] Statute does not accord any ‘lesser’ form of individual criminal responsibility to superior responsibility”; [ICTR, Bagosora and Nsengiyumva Appeal Judgment](#), para. 740; and [ICTY, Delalić et al. Appeal Judgment](#), para. 735, stating that “[i]t would be incorrect to state that, as a matter of law, responsibility for criminal conduct as a superior is less grave than responsibility as the subordinate perpetrator”. See also [ICTR, Ndahimana Appeal Judgment](#), para. 235; and [ICTY Popović et al. Appeal Judgment](#), para 1997.

<sup>53</sup> [Katanga Sentencing Decision](#), para. 61. See also [Lubanga Sentence Appeal Judgment](#), para. 77, stressing that “the sentence must be ‘appropriate’ and must be based on all relevant factors of the specific case”; and [SCSL, Taylor Appeal Judgment](#), paras 664 and 666, finding that “[p]resumptions regarding the gravity of forms of participation in the *abstract* preclude an individualised assessment of the convicted person's *actual conduct* and may result in an unjust sentence” (emphasis in original).

<sup>54</sup> [ICTY, Delalić et al. Appeal Judgment](#), paras 739 to 740, finding that the trial chamber erred in not taking into account the effect of the accused's encouragement and promotion of the crimes committed by his subordinates, through his ongoing failures as a commander. See also [ICTY, Mucić et al. Sentencing Appeal Judgment](#), para. 35(a); and [ICTY, Milošević Appeal Judgment](#), para. 334.

<sup>55</sup> The principle of gradation has been defined as requiring that “sentences should be graduated, that is, that the most senior levels of the command structure should attract the severest sentences, with less severe sentences for those lower down the structure”. See V. Tochilovsky, *Jurisprudence of the International Criminal Courts and the European Court of Human Rights* (2008), page 529, referring to jurisprudence of the *ad hoc* tribunals, including some of those judgments cited in footnote 56 below.

<sup>56</sup> [ICTR, Ntabakuze Appeal Judgment](#), para. 303. See also [ICTR, Bizimungu Appeal Judgment](#), para. 402; [ICTR, Kanyarukiga Appeal Judgment](#), para. 280; [ICTR, Muhimana Appeal Judgment](#), para. 233; [ICTR, Musema Appeal Judgment](#), paras 381 to 383, citing [ICTY, Delalić et al. Appeal Judgment](#), paras 847 to 849; [ICTY, Tadić Sentencing Appeal Judgment](#), para. 56; and [ECCC, Kaing Appeal Judgment](#), para. 377.

<sup>57</sup> G. Mettraux, *The Law of Command Responsibility* (2012), page 92.

## B. AGGRAVATING AND MITIGATING CIRCUMSTANCES

18. The Chamber must be convinced of the existence of aggravating circumstances beyond reasonable doubt.<sup>58</sup> Aggravating circumstances must relate to the crimes upon which a person was convicted and to the convicted person himself.<sup>59</sup> The absence of a mitigating circumstance can never serve as an aggravating circumstance.<sup>60</sup>

19. The Chamber must be convinced of the existence of mitigating circumstances on a balance of probabilities.<sup>61</sup> Mitigating circumstances need not be directly related to the crimes and are not limited by the scope of the charges or Judgment.<sup>62</sup> They must, however, relate directly to the convicted person.<sup>63</sup> The Chamber has a considerable degree of discretion, in light of the particular circumstances of a case, in determining what constitutes a mitigating circumstance and the weight, if any, to be accorded thereto.<sup>64</sup> While the Chamber must consider any mitigating circumstances, it need not do so under any particular heading or according to any particular rubric.<sup>65</sup> For example, the Chamber may consider certain factors as being relevant to its assessment of gravity, instead of considering them in mitigation or aggravation of the overall sentence.<sup>66</sup>

<sup>58</sup> [Lubanga Sentencing Decision](#), para. 33; and [Katanga Sentencing Decision](#), para. 34.

<sup>59</sup> [ICTY, Deronjić Sentencing Appeal Judgment](#), para. 124, holding that the use of aggravating factors is justified where they are features of the crime of which an accused is aware or could be expected to foresee and for which it is fair to hold him responsible; and [SCSL, Sesay et al. Appeal Judgment](#), para. 1276. See also [ICTY, Deronjić Sentencing Appeal Judgment](#), para. 120, finding that criminal acts connected to, but not founding a conviction, maybe considered as aggravating circumstances in appropriate circumstances.

<sup>60</sup> [ICTY, Blaškić Appeal Judgment](#), para. 687. See also [ICTR, Musema Appeal Judgment](#), para. 397.

<sup>61</sup> [Lubanga Sentencing Decision](#), para. 34; and [Katanga Sentencing Decision](#), para. 34. See also [ICTY, Babić Sentencing Appeal Judgment](#), para. 43, finding that “the circumstance in question must have existed or exists ‘more probably than not’”; and [ICTY, Stakić Appeal Judgment](#), para. 406.

<sup>62</sup> [ICC-01/05-01/08-3384](#), para. 27, citing [Katanga Sentencing Decision](#), para. 32. See also [Lubanga Sentencing Decision](#), para. 34; and [ICTR, Kajelijeli Appeal Judgment](#), para. 298.

<sup>63</sup> [ICTR, Gacumbitsi Appeal Judgment](#), para. 198.

<sup>64</sup> [ICTY, Tolimir Appeal Judgment](#), para. 644. For example, whether a person’s character or background are mitigating or aggravating circumstances, if anything, depends on the circumstances of a particular case. See [ICTY, Hadžihasanović and Kubura Appeal Judgment](#), paras 328 and 332; [ICTR, Bizumungu Appeal Judgment](#), para. 400; and [SCSL, Fofana and Kondewa Appeal Judgment](#), para. 499.

<sup>65</sup> [ICTY, Bralo Sentencing Appeal Judgment](#), para. 29.

<sup>66</sup> [ICTY, Krnojelac Appeal Judgment](#), para. 254.

### III. ANALYSIS

20. In light of the above, and in order to determine an appropriate sentence, the Chamber considers (i) the gravity of the crimes, (ii) the gravity of Mr Bemba's culpable conduct, and (iii) his individual circumstances. The Chamber addresses the Rule 145(1)(c) and (2) factors and circumstances if, and where, relevant.

#### A. CRIMES

21. The Chamber convicted Mr Bemba for the war crimes of murder, rape, and pillaging, and the crimes against humanity of murder and rape committed by soldiers of the *Mouvement de libération du Congo* ("MLC"), who were under Mr Bemba's effective authority and control, in the Central African Republic ("CAR") between 26 October 2002 and 15 March 2003.<sup>67</sup>

22. Over the course of approximately four and a half months, beginning with their arrival on 26 October 2002, the MLC troops advanced through Bangui, to PK12 and PK22, and along the Damara-Sibut and Bossembélé-Bossangoa axes, attacked Mongoumba, and, on 15 March 2003, withdrew from the CAR ("2002-2003 CAR Operation").<sup>68</sup> MLC soldiers committed the crimes pursuant to a consistent *modus operandi*, in each of the locations that fell under their control.<sup>69</sup> As noted in the Judgment, there is consistent and corroborated evidence that MLC soldiers committed many acts of murder, rape, and pillaging against civilians over a large geographical area, including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke, and Mongoumba.<sup>70</sup> The Chamber based Mr Bemba's conviction on specific underlying acts that it found beyond reasonable doubt were committed

<sup>67</sup> [Judgment](#), para. 752.

<sup>68</sup> *See, inter alia*, [Judgment](#), para. 380.

<sup>69</sup> [Judgment](#), paras 676 to 677.

<sup>70</sup> [Judgment](#), paras 461, 486, 520, 525, 527, 531, 534, 543, 563, 671, and 688.

by MLC soldiers.<sup>71</sup> It found that these underlying acts were only a portion of the total number of crimes committed by MLC forces during the 2002-2003 CAR Operation.<sup>72</sup>

23. The crimes committed by MLC soldiers caused lasting damage to the victims and affected communities. P119 described the overall impact, as follows:<sup>73</sup>

when the Banyamulengu[és] came, their coming was dreadful for the local population. There were sons and daughters of my country that died, strong men, necessary men for driving the development of the country. There have been orphans left. There have been divorces, because the Banyamulengu[és] raped women, and given [the] state of affairs, the husband preferred to divorce. There were families that [broke] apart...there's a huge impact on the local population.

24. Below, the Chamber addresses each of the crimes for which it entered a conviction in relation (i) to their gravity, and (ii) when applicable, aggravating circumstances. Crimes against humanity and war crimes are addressed together when based on the same conduct. In assessing the gravity of the crimes of murder, the Chamber considers the following Rule 145(1)(c) factors: the extent of damage caused, the nature of the unlawful behaviour, the means employed to execute the crime, and the circumstances of manner, time, and location. The Chamber notes the special nature of the crimes of rape and pillaging in the *Bemba* case, as set out in more detail below. The Chamber therefore exercises its discretion to consider the relevant Rule 145(1)(c) factors, which are not addressed in relation to the gravity of rape and pillaging,<sup>74</sup> in its assessment of the alleged aggravating circumstances identified in Rule 145(2)(b)(iii) and (iv).<sup>75</sup>

<sup>71</sup> [Judgment](#), Sections V(C), VI(A), VI(B), and VI(C).

<sup>72</sup> [Judgment](#), paras 671 and 688.

<sup>73</sup> **P119**: [T-84](#), page 11, line 4 to page 12, line 5. *See also* **a/0394/08**: [T-227](#), page 41, lines 14 to 16, stating that the “months that [the MLC soldiers] spent in the locality was disastrous, because they destroyed absolutely everything in the locality before they left”; and **a/0511/08**: [T-228](#), page 20, lines 18 to 21.

<sup>74</sup> These include the nature of the unlawful behaviour and the means employed to execute the crime, and the circumstances of manner, time, and location beyond those considered in relation to the gravity of the crimes.

<sup>75</sup> The Prosecution submits that two aggravating circumstances exist in this case, namely, that the crimes were committed against particularly defenceless victims and with particular cruelty. *See* [Prosecution Submissions](#), paras 103 to 115; and [Prosecution Oral Submissions](#), page 15, line 6 to page 18, line 24. The Legal Representative also makes submissions on the particular cruelty with which MLC soldiers committed the crimes.

25. In considering the alleged aggravating circumstances relevant to rape and pillaging, the Chamber has taken into account, *inter alia*, whether the victims were armed;<sup>76</sup> the location of a crime, for example, whether it was committed in places of civilian sanctuary, such as churches and hospitals, or the victims' homes;<sup>77</sup> the victims' ages, particularly in cases of sexual violence;<sup>78</sup> the duration and repeated nature of the acts;<sup>79</sup> the perpetrators' motives;<sup>80</sup> and the violent and humiliating nature of the acts,<sup>81</sup> including their public nature, and any verbal, physical, or other abuse or threats accompanying the crime.<sup>82</sup>
26. The Defence submits that Mr Bemba was unaware of the alleged aggravating circumstances.<sup>83</sup> However, the Chamber's findings in the Judgment and the evidence admitted at trial, demonstrate that various sources put Mr Bemba on consistent notice of the factors relevant to proof of the alleged aggravating circumstances.<sup>84</sup> The Chamber therefore finds beyond reasonable doubt that Mr Bemba knew of the factors relevant to proof of the alleged aggravating circumstances.

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*See* Legal Representative Submissions, paras 42 to 57; and [Legal Representative Oral Submissions](#), page 32, lines 16 to 25.

<sup>76</sup> [ICTY, Popović et al. Appeal Judgment](#), para. 2038.

<sup>77</sup> [SCSL, Sesay et al. Appeal Judgment](#), para. 1275.

<sup>78</sup> [ICTY, Kunarac et al. Appeal Judgment](#), paras 381 and 405.

<sup>79</sup> [ICTY, Milošević Appeal Judgment](#), para. 304; and [ICTY, Krajišnik Appeal Judgment](#), para. 814.

<sup>80</sup> [ICTY, Blaškić Appeal Judgment](#), para. 694, citing [ICTY, Jelisić Appeal Judgment](#), para. 49; and [SCSL, Fofana and Kondewa Appeal Judgment](#), paras 522, 524, noting that, *inter alia*, desire for personal or pecuniary gain may constitute an aggravating circumstance, and 528.

<sup>81</sup> [ICTY, Kvočka Appeal Judgment](#), para. 697, citing [ICTY, Blaškić Appeal Judgment](#), para. 686.

<sup>82</sup> [ICTY, Vasiljević Appeal Judgment](#), paras 161 to 162; [ICTY, Delalić et al. Appeal Judgment](#), para. 825; and [ICTR, Kayishema and Ruzindana Appeal Judgment](#), para. 352.

<sup>83</sup> [Defence Submissions](#), paras 61 to 62.

<sup>84</sup> [Judgment](#), Sections V(B)(2)(b), *in particular*, para. 425, V(D), *in particular*, paras 425, 576 to 578, and 607 to 608, and VI(F)(3), and the accompanying footnotes and evidentiary sources cited therein, referring to victimisation of multiple family members, the young age of many victims, commission of crimes by multiple perpetrators, the attack of persons seeking refuge, attacks on victims in their homes and places of sanctuary, the fact that victims were unarmed, the repeated nature of the crimes, the perpetrators' motives, and the violent and humiliating nature of the crimes, including the abuse and threats accompanying the crimes.

## 1. Murder

27. In convicting Mr Bemba of murder, the Chamber relied, in particular, on the underlying murders of the following victims: P87's "brother" in Bangui at the end of October 2002; P69's sister in PK12 the day after the MLC's arrival in PK12; and an unidentified "Muslim" man on 5 March 2003 in Mongoumba.<sup>85</sup>
28. MLC soldiers killed the victims after they resisted acts of pillaging.<sup>86</sup> All acts of murder were committed in the presence of other civilians, including some victims' family members, and were accompanied by acts of pillaging, rape, and/or physical and verbal abuse.<sup>87</sup> MLC soldiers shot P69's sister in the head when she resisted pillaging in her house.<sup>88</sup> Likewise, MLC soldiers, who had entered his home at night, shot P87's brother twice in the chest when he tried to protect a motorbike. It was the third group to come to his compound that day, during which his family's belongings were pillaged and his sister, P87, was raped.<sup>89</sup> Finally, as witnessed by V1, MLC soldiers shot and mutilated an unidentified "Muslim" man in his home after he refused to hand over a sheep.<sup>90</sup>
29. Murder deprives the direct victim of life, the ultimate harm. Relatives and dependants left behind are not only deprived of the direct victim, an impact that cannot be underestimated, but may also be directly injured – physically and/or psychologically – as a result of the murder. For example, P69 witnessed his sister's murder. He testified, "I saw the brain of my sister. I saw that as if an animal's skull had been hit";<sup>91</sup> "she was killed like an animal, like a dog".<sup>92</sup> P69

<sup>85</sup> [Judgment](#), paras 624 to 630.

<sup>86</sup> [Judgment](#), paras 475, 496, 549, and 565 to 567.

<sup>87</sup> [Judgment](#), paras 471 to 479, 496, and 546 to 554.

<sup>88</sup> [Judgment](#), para. 496.

<sup>89</sup> [Judgment](#), paras 471 to 478.

<sup>90</sup> [Judgment](#), para. 549 and footnote 1683; and **V1**: [T-220](#), page 32, line 24 to page 33, line 16; and [T-222](#), page 25, lines 9 to 25.

<sup>91</sup> **P69**: [T-192](#), page 16, lines 13 and 14.

<sup>92</sup> **P69**: [T-192](#), page 31, line 8.

added, “[i]n view of what they had done [...], I moved towards them and I asked them to kill me as well, to kill me after my sister”.<sup>93</sup>

30. Persons who relied on the direct victim for support, whether financial, physical, emotional, psychological, moral, or otherwise, were also affected.<sup>94</sup> The impact rippled through the relevant communities. Due to the prevailing chaotic and traumatic circumstances, family members of, and others with special bonds of affection to, some murder victims were deprived of the comforts that funeral services and burial rituals may provide in periods of grief. For example, the body of P69’s sister was in such a state that it could not be preserved. P69 had to bury it next to his compound the same day as her murder.<sup>95</sup> Moreover, although P87 and others tried to take her brother’s body to his parents in PK22, due to the danger posed by the presence of soldiers along the road, the body of P87’s brother was buried a day before his parents arrived.<sup>96</sup>

31. For some victims, the impact of the murders was chronic and severe.<sup>97</sup> Following her brother’s murder, P87 suffered nightmares and hallucinations for years.<sup>98</sup> She began to hear voices, “[s]ometimes I’d get up and try to see whether somebody has called me and people say to me, ‘[n]o one has called you’”.<sup>99</sup> In December 2011, P69 testified that he was still suffering after his sister’s death.<sup>100</sup>

32. The Chamber notes that the abovementioned acts of murder were committed near the beginning and end of the 2002-2003 CAR Operation, in three different

<sup>93</sup> P69: [T-192](#), page 36, lines 20 to 22. *See also* a/0511/08: [T-228](#), page 19, lines 10 to 14, submitting that, after he was attacked, his mother confronted the perpetrators and was killed.

<sup>94</sup> *See, for example*, P119: [T-84](#), page 8, line 16 to page 9, line 3, testifying that she had lived with her son, a tradesman, before his murder. *See also* a/0480/08: [T-369](#), page 66, lines 16 to 20, submitting that her father “was a big tree with many branches and in whose shadow we all felt safe”.

<sup>95</sup> P69: [T-192](#), page 37, lines 6 to 11; and [T-194](#), page 12, lines 11 to 22.

<sup>96</sup> P87: [T-44](#), page 30, line 19 to page 32, line 23. *See also* P119: [T-84](#), page 8, line 17 to page 9, line 3, testifying that a woman never saw the body of her murdered son, which, when it was found, was already in “advanced putrefaction”; and a/0480/08: [T-369](#), page 66, lines 4 to 13, submitting that she was unable to locate her father’s body until, with the assistance of the Red Cross, his body was found in a mass grave.

<sup>97</sup> *See, for example*, P9: [T-104](#), page 30, lines 1 to 7.

<sup>98</sup> P87: [T-44](#), page 46, lines 8 to 23.

<sup>99</sup> P87: [T-44](#), page 46, lines 8 to 13.

<sup>100</sup> P69: [T-196](#), page 12, line 25.

locations. As detailed above, they were committed inside the victims' homes and in the presence of others, including family members, and were preceded or succeeded by acts of pillaging, rape, and other violence and abuse during the same series of events and against the same direct and indirect victims. The underlying acts were committed as part of an attack targeting many civilians throughout the CAR between 26 October 2002 and 15 March 2003. The direct victims lost their lives. The indirect victims, in particular, family members, also suffered severe and lasting harm. Accordingly, in light of the circumstances of time, manner, and location, the nature of the unlawful behaviour, the means employed to execute the crime, and the extent of damage caused, the Chamber finds that, in this case, the crimes of murder are of serious gravity.

33. In its discretion and in light of the particular circumstances of this case, in particular, the fact that the Prosecution only proved three underlying acts of murder beyond reasonable doubt, the Chamber considered all relevant factors concerning the crimes of murder in assessing their gravity. The Chamber is not convinced that any aggravating circumstances apply to the crimes of murder.

## **2. Rape**

34. In convicting Mr Bemba of rape, the Chamber relied, in particular, on the underlying rapes of the following victims: P68 and her sister-in-law in Bangui at the end of October 2002; two unidentified girls aged 12 and 13 years in Bangui on or around 30 October 2002; P87 in Bangui on or around 30 October 2002; eight unidentified women in Bangui at the end of October or beginning of November 2002; P23, P80, P81, P82, and two of P23's other daughters in PK12 in early November 2002; P69 and his wife in PK12 at the end of November 2002; P22 in PK12 on or around 6 or 7 November 2002; P79 and her daughter in PK12 several days after the MLC arrived in PK12; P42's daughter in PK12 around the end of

November 2002; a woman outside of PK22 in November 2002; P29 in Mongoumba on 5 March 2003; and V1 in Mongoumba on 5 March 2003.<sup>101</sup>

35. The Chamber emphasises that the Statute and Rules accord a special status to sexual crimes, crimes against children, and the victims thereof.<sup>102</sup> In drafting these provisions, the States Parties recognised the especially grave nature and consequences of sexual crimes, in particular, against children.

#### a) Gravity

36. Dr Adeyinka M. Akinsulure-Smith (P221) and Dr André Tabo (P229), experts on post-traumatic stress disorder (“PTSD”) and sexual violence in armed conflict, testified that rape victims generally suffer from four types of consequences: (i) medical (including lesions to organs, human immunodeficiency virus (“HIV”), loss of virginity, and unwanted pregnancies); (ii) psychological (fear, anxiety, anger, aggression, guilt, isolation, embarrassment and shame, loss of confidence, and washing rituals); (iii) psychiatric (PTSD, reactive depression, melancholia, neuroses, addictive behaviour, and psychosomatic disorders); and (iv) social (stigmatisation and repudiation).<sup>103</sup>

37. Dr Daryn Reicherter (P925), an expert on the “longitudinal and intergenerational impact of mass sexual violence”, noted that the more severe the crime is – for instance someone who “was gang raped multiple times”,<sup>104</sup> “particularly intimate and humiliating traumatic experiences like rape ... witnessed by family members”,<sup>105</sup> and the rape of children<sup>106</sup> – the more likely it will increase the

<sup>101</sup> [Judgment](#), paras 633 and 638.

<sup>102</sup> *See, for example*, Articles 36(8)(b), 42(9), 43(6), 54(1)(b), and 68(1) to (2) of the Statute; and Rules 16(1)(d), 17(2)(a)(iv), 17(2)(b)(iii), 17(3), 19(f), 63(4), 70, 72(1), 86, 88(1), 88(5), and 112(4) of the Rules.

<sup>103</sup> **EVD-T-D04-00024/CAR-OTP-0065-0178**; and **P229**: [T-100](#), page 20, line 1 to page 35, line 23, and page 48, lines 5 to 22; and [T-101](#), page 5, line 5 to page 7, line 24; **EVD-T-OTP-00003/CAR-OTP-0064-0560**; and **P221**: [T-38](#), page 24, line 2 to page 29, line 5; and [T-39](#), page 5, lines 2 to 18, and page 7, line 3 to page 14, line 11. *See also* [Judgment](#), para. 567 and footnote 1761.

<sup>104</sup> **P925**: [T-368](#), page 109, lines 6 to 8. *See also* **P221**: [T-38](#), page 23, lines 9 to 17.

<sup>105</sup> **P925**: [T-368](#), page 86, lines 22 to 24. *See also* **P229**: [T-100](#), page 37, lines 5 to 14.

magnitude of negative and permanent psychological issues. Moreover, Dr Akinsulure-Smith noted that, in the CAR, rape victims have particular difficulties with social reintegration and because of their inability to demand and receive appropriate medical treatment due to, *inter alia*, lack of resources and fear of social rejection.<sup>107</sup> Dr Tabo testified that, in the CAR, rape is considered to be tantamount to adultery, leading to victims being abandoned by their husbands and having their children taken away.<sup>108</sup> Further, he testified that, in the CAR, anal rape, particularly of men, carries certain connotations and resulted in extreme humiliation for the victims.<sup>109</sup>

38. The victims of rape in this case suffered, *inter alia*, physical problems, such as vaginal and anal ailments, abdominal pains, skin disorders, pelvic pain, high blood pressure, gastric problems, hypertension, miscarriage, infertility, and HIV.<sup>110</sup> They also suffered psychological, psychiatric, and social consequences, such as PTSD, depression, humiliation, anxiety, guilt, and nightmares.<sup>111</sup> For instance, P22 testified that, after her rape, she became suicidal, no longer desired any sexual relationship,<sup>112</sup> and presented with severe PTSD, including sadness, an overall sense of pessimism, and inhibition.<sup>113</sup> P79 described her constant anxiety after her rape and that of her daughter, testifying, “I have nightmares at night...I live in worry, in a state of worry. I’m troubled. I don’t know. Now, I know that I’m not right in my mind”.<sup>114</sup> Moreover, P79 was unable to tell anyone her daughter was raped, as the rape of a Muslim girl hinders her ability to find a

<sup>106</sup> **P925**: [T-368](#), page 98, lines 2 to 6. *See also* **P229**: [T-100](#), page 37, line 15 to page 38, line 2, and page 48, lines 5 to 22; **P221**: [T-39](#), page 11, line 20 to page 12, line 5; and **EVD-T-OTP-00861/CAR-OTP-0094-0493**, at 0515.

<sup>107</sup> **P221**: [T-38](#), page 24, line 2 to page 29, line 5; and [T-39](#), page 5, lines 2 to 18, and page 7, line 3 to page 14, line 11.

<sup>108</sup> **P229**: [T-100](#), page 20, line 15 to page 22, line 5.

<sup>109</sup> **P229**: [T-100](#), page 38, lines 11 to 17; and [T-101](#), page 6, line 13 to page 7, line 4.

<sup>110</sup> [Judgment](#), paras 464 to 465, 472, 488, 492, 494, 510, 522, and 545; and **P22**: T-41-Conf, page 3, line 23 to page 4, line 2. *See also* **a/0542/08**: [T-227](#), page 23, line 6 to page 24, line 2, and page 29, lines 9 to 13.

<sup>111</sup> [Judgment](#), paras 464, 472, 510, 522, and 567. *See* **P229**: [T-100](#), page 30, line 13 to page 34, line 19.

<sup>112</sup> **P22**: [T-41](#), page 17, lines 12 to 15, page 39, line 7, and page 42, lines 18 to 21; and [T-42](#), page 11, lines 2 to 12. *See also* **EVD-T-OTP-00861/CAR-OTP-0094-0493** at 0521.

<sup>113</sup> **EVD-T-OTP-00125/CAR-OTP-0004-0316**. *See* [Judgment](#), para. 545.

<sup>114</sup> **P79**: [T-77](#), page 35, lines 14 to 20.

husband in future.<sup>115</sup> In this regard, the Chamber notes that some of the victims lost their virginity as a result of their rape,<sup>116</sup> a harm that cannot be underestimated, particularly in the cultural context in which the crimes were committed.

39. When their rapes were known within their communities, victims were ostracised, socially rejected, and stigmatised.<sup>117</sup> P42, whose young, virgin daughter was raped, testified about the impact of stigmatisation:<sup>118</sup>

my daughter was ten years old. She could no longer go to school, because she was stigmatised at the school. The other pupils were making fun of her – that is the Banyamulengué’s wife, and so on and so forth – so she dropped out because of that. I could not do anything. I allowed her to continue like that. So I am very disappointed. I’m very upset. If she had continued with her studies, maybe she could have become an authority. Maybe she could have become someone important today.

Similarly, V1 felt like she was no longer treated as a human being, that she “lost [her] dignity”, and was mocked and called a “Banyamulengué wife”.<sup>119</sup> Following her rape, P81’s husband left with her children because the “Banyamulengu[e] had sullied” her.<sup>120</sup> P82 was socially ostracised by other girls her age.<sup>121</sup> P23 considered himself a “dead man”.<sup>122</sup> P69’s family was “destroyed”.<sup>123</sup> He testified to the humiliation he feels because of his and his wife’s rapes, “[w]e no longer have any

<sup>115</sup> [Judgment](#), para. 512. See also **P79**: [T-77](#), page 18, line 22 to page 19, line 2.

<sup>116</sup> See, *inter alia*, **P119**: [T-82](#), page 44, lines 15 to 19, and page 45, lines 7 to 11; **P42**: [T-64](#), page 48, line 25; **P80**: [T-61](#), page 9, lines 14 to 22; and **P82**: [T-58](#), page 15, line 10 to page 16, line 5. See also [Judgment](#), paras 467, 512, 516, and 567, and footnote 1761.

<sup>117</sup> See, *inter alia*, [Judgment](#), paras 473, 488, 492, 494, 512, 522, and 551; **P69**: [T-194](#), page 13, line 17 to 20; **P82**: [T-58](#), page 27, lines 1 to 3; and **P229**: [T-100](#), page 20, line 15 to page 42, line 13. See also **a/0542/08**: [T-227](#), page 25, line 1 to page 26, line 10; and **EVD-T-OTP-00861/CAR-OTP-0094-0493**, at 0512 to 0513.

<sup>118</sup> **P42**: [T-64](#), page 21, lines 7 to 14.

<sup>119</sup> [Judgment](#), para. 551; and **V1**: [T-220](#), page 53, line 6 to page 54, line 24; and [T-221](#), page 3, line 23 to page 5, line 15. See also [Judgment](#), para. 492; and **a/0555/08**: [T-369](#), page 51, lines 1 to 5.

<sup>120</sup> **P81**: [T-55](#), page 16, lines 8 to 22.

<sup>121</sup> [Judgment](#), para. 489.

<sup>122</sup> [Judgment](#), para. 494.

<sup>123</sup> [Judgment](#), para. 498.

value. We are wondering what we are going to do in order to recover our dignity".<sup>124</sup>

40. The Chamber notes that the number of victims of underlying acts of rape is substantial. The underlying acts of rape were committed throughout the geographical and temporal scope of the 2002-2003 CAR Operation. They were committed as part of an attack targeting many civilians throughout the CAR between 26 October 2002 and 15 March 2003. The degree of damage caused to the victims, their families, and communities was severe and lasting. Accordingly, in light of the circumstances of time, manner, and location considered above, and the extent of damage caused, the Chamber finds that, in this case, the crimes of rape are of utmost, serious gravity.

**b) Aggravating circumstance: particularly defenceless victims**

41. Before committing rape, MLC soldiers first confirmed that General Bozizé's rebels had departed, and the MLC were thereafter the only armed force in an area.<sup>125</sup> Armed MLC soldiers then targeted the unarmed victims in their homes, on temporary MLC bases, or in isolated locations, such as the bush.<sup>126</sup> Many victims had already fled their homes or were seeking refuge when they were targeted.<sup>127</sup> Groups of MLC soldiers beat, restrained, threatened, and held under gunpoint the victims and others present, in particular, any who attempted to resist.<sup>128</sup>

<sup>124</sup> P69: [T-194](#), page 13, line 1 to 10.

<sup>125</sup> [Judgment](#), paras 462, 467, 471, 485, 487, 496, 502, 510, 522, 531, 543, 564, 625 to 626, 634, 642, 664, 673, 676, and 695.

<sup>126</sup> [Judgment](#), Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11), and paras 563, 625, 641, 673, 676, and 680.

<sup>127</sup> See, *inter alia*, [Judgment](#), paras 462 to 464, 522 to 523, 545 to 554, 633, and 640. See also [a/0542/08: T-227](#), page 14, line 25 to page 15, line 22; [a/0555/08: T-369](#), page 46, line 3 to page 47, line 13; and [a/0480/08: T-369](#), page 62, line 16 to page 63, line 12.

<sup>128</sup> [Judgment](#), Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11), and paras 564, 567, 664, 673, and 676. See also [a/0480/08: T-369](#), page 63, line 8 to page 64, line 25.

42. The young age of at least eight of the known rape victims, who were between 10 and 17 years old at the time of the attacks,<sup>129</sup> rendered them especially vulnerable and defenceless.<sup>130</sup> During the attacks, some of these children expressed their vulnerability. P82 testified, “I wanted to flee [...] I cried out. That alerted my father. My father tried to intervene and they put their weapons against him [...] and they deflowered me”.<sup>131</sup> P42, who was restrained at the time of his 10-year-old daughter’s rape, recalled, “[m]y daughter was screaming, but I could not do anything. At one point my daughter started shouting, ‘Papa, they are undressing me. They are undressing me,’ but I could do nothing.”<sup>132</sup> After a while, P42 did not hear his daughter’s screams anymore.<sup>133</sup> P119 also witnessed two of the victims, aged 12 and 13 years old, screaming and struggling,<sup>134</sup> their faces covered with the dress of one of the girls.<sup>135</sup> During the rape of P79’s 11-year-old daughter, which occurred in the presence of other children, the children tried to cry out. The MLC soldiers silenced them, warning, “[d]on’t make a noise or we will shoot you”.<sup>136</sup> After the attacks, some parents found their daughters lying on the ground, crying, and bleeding from their vaginas.<sup>137</sup>

43. As set out above, the rape victims and other civilians present were (i) unarmed; (ii) targeted by multiple armed MLC soldiers in their homes, on MLC bases, in isolated locations, such as the bush, and/or while seeking refuge; (iii) forcefully restrained; and/or (iv) children. For these reasons, taken together, the Chamber finds beyond reasonable doubt that MLC soldiers committed the crimes of rape

<sup>129</sup> At the time of the events, P81 was 17 years old, two of P23’s other daughters were 14 and 16 years old, P82 was between 10 and 13 years old, P79’s daughter was 11 years old, the two girls identified by P119 were 12 and 13 years old, and P42’s daughter was 10 years old. *See* **P81**: [T-55](#), page 36, lines 4 to 5; and [Judgment](#), paras 469, 489, 493, 511, 516, and 633.

<sup>130</sup> *See, for example*, **P229**: [T-100](#), page 3, lines 16 to 18.

<sup>131</sup> **P82**: [T-58](#), page 18, line 21 to page 19, line 1.

<sup>132</sup> **P42**: [T-64](#), page 18, lines 5 to 8. *See also* [Judgment](#), para. 516.

<sup>133</sup> **P42**: [T-64](#), page 41, line 24 to page 42, line 1.

<sup>134</sup> **P119**: [T-82](#), page 41, lines 15 to 24. *See also* **P119**: [T-82](#), page 45, lines 12 to 17.

<sup>135</sup> **P119**: [T-82](#), page 41, line 25 to page 42, line 10.

<sup>136</sup> [Judgment](#), para. 511.

<sup>137</sup> [Judgment](#), paras 511 and 516; and **P79**: [T-77](#), page 17, line 20 to page 18, line 11. *See also* [Judgment](#), para. 467; and **P119**: [T-82](#), page 42, lines 5 to 13, and page 45, lines 7 to 11.

against particularly defenceless victims, constituting an aggravating circumstance under Rule 145(2)(b)(iii).

**c) Aggravating circumstance: particular cruelty**

44. Dr Tabo testified that MLC soldiers used sexual violence as a weapon of war.<sup>138</sup>

As the Chamber found in the Judgment, the MLC troops did not receive adequate financial compensation and, in turn, self-compensated through acts of, *inter alia*, rape.<sup>139</sup> Moreover, MLC soldiers committed acts of rape in order to punish civilians who were suspected rebels or rebel sympathisers.<sup>140</sup> MLC soldiers targeted their victims without regard for age, gender, or social status, including local officials.<sup>141</sup> All acts of rape were committed together with, or during the course of, acts of murder and pillaging.<sup>142</sup> All underlying acts of rape were committed in the presence or within earshot of other soldiers and/or civilians, including their children, parents, siblings, other family members, and/or neighbours.<sup>143</sup> All acts of rape were also accompanied by physical and verbal abuse and threats to the victims and their families.<sup>144</sup>

45. The Chamber notes that some of the underlying acts of rape were especially sadistic. Entire families – the elderly, men, women, and children – were victimised in turn during the same attacks and by the same MLC soldiers or soldiers of the same group that raped and murdered other family members and pillaged their belongings.<sup>145</sup> No perpetrator acted alone: all underlying acts of rape were committed by or otherwise involved at least two, often multiple, and in

<sup>138</sup> **P229: T-100**, page 3, lines 6 to 15; and **T-101**, page 40, lines 1 to 7.

<sup>139</sup> **Judgment**, paras 565 to 567.

<sup>140</sup> **Judgment**, paras 565 to 567. *See also* **P925: T-368**, page 106, lines 12 to 15; and **P229: T-100**, page 8, line 21 to page 9, line 7.

<sup>141</sup> **Judgment**, para. 673.

<sup>142</sup> **Judgment**, para. 673.

<sup>143</sup> **Judgment**, Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11).

<sup>144</sup> **Judgment**, Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11).

<sup>145</sup> **Judgment**, paras 563 and 673.

some cases, more than 20 MLC soldiers.<sup>146</sup> Some victims were orally, vaginally, and anally penetrated during the same attack.<sup>147</sup>

46. For example, the Chamber notes the extreme and repeated crimes experienced and witnessed by P23 and V1. P23, three of his daughters, his granddaughter, and his wife were raped in turn during an attack on their family compound in PK12. They were also subject to other physical and verbal abuse and their belongings were pillaged.<sup>148</sup> During the one-day attack on Mongoumba, V1 was gang-raped on two separate occasions. First, two soldiers took turns raping her, while others looked on, “shouting with joy”.<sup>149</sup> Second, four soldiers raped V1 until she lost consciousness. When she regained consciousness, the rapes continued. Twelve soldiers in total penetrated her vagina, anus, and mouth with their penises during the second incident.<sup>150</sup> She also witnessed the mutilation and murder of an unidentified “Muslim” man.<sup>151</sup> Finally, the same MLC soldiers pillaged the belongings of V1 and multiple others throughout Mongoumba.<sup>152</sup>

47. As set out above, multiple MLC perpetrators committed the underlying acts of rape (i) for self-compensation; (ii) to punish suspected enemies and their sympathisers; (iii) without regard to age, gender, or social status, including against multiple members of the same family and local officials; (iv) in the presence of the victims’ family members, neighbours, and/or other civilians or soldiers, thereby heightening the victims’ humiliation; (v) in conjunction with acts of murder, pillaging, and other violence and abuse during the same events and against the same direct and indirect victims; and/or (vi) repeatedly against the same victims, sometimes penetrating the same victim orally, vaginally, and

<sup>146</sup> [Judgment](#), paras 466 to 467, 469, 473, 481, 483, 488, 490 to 492, 494, 498, 501, 508, 510 to 511, 516, 522 to 523, 545, 548, 553, and 633.

<sup>147</sup> [Judgment](#), Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11).

<sup>148</sup> [Judgment](#), Section V(C)(4)(a).

<sup>149</sup> [Judgment](#), para. 548.

<sup>150</sup> [Judgment](#), para. 551.

<sup>151</sup> [Judgment](#), para. 549 and footnote 1683. *See also* V1: [T-220](#), page 32, line 24 to page 33, line 19; and [T-222](#), page 25, lines 9 to 25.

<sup>152</sup> [Judgment](#), Section V(C)(11)(b).

anally. For these reasons, taken together, the Chamber finds beyond reasonable doubt that MLC soldiers committed the crimes of rape with particular cruelty, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iv).

### 3. Pillaging

48. In convicting Mr Bemba of pillaging, the Chamber relied, in particular, on the underlying acts of pillaging of items of property from the following individual and groups of victims: P68 and her sister-in-law in Bangui at the end of October 2002; P119 in Bangui after 30 October 2002; P87 and her family in Bangui on or around 30 October 2002; P23, P80, P81, and P82 in Bangui in early November 2002; P69's sister in PK12 the day after the MLC arrived; P69 in PK12 in November 2002; P108 in PK12 during the MLC's presence; P110 in PK12 the day after the MLC arrived; P112 in PK12 in November 2002; P22 and her uncle in PK12 on or around 6 or 7 November 2002; P79 and her brother in PK12 several days after the MLC's arrival; P73 in PK12 at the end of November 2002; P42 and his family in PK12 at the end of November 2002; a woman outside PK22 in November 2002; V2 in Sibut in the days after the MLC's arrival; and V1, a church, nuns, priests, an unidentified "Muslim" man and his neighbour, the gendarmerie, and mayor in Mongoumba on 5 March 2003.<sup>153</sup>

#### a) Gravity

49. The Chamber found that MLC soldiers pillaged property from CAR civilians on a large scale and with grave consequences for the victims.<sup>154</sup> As described by P9, "looting took place in practically every town where MLC troops were to be found ... MLC soldiers just went through every single house and took whatever they wanted".<sup>155</sup> P6 noted that "pillaging became widespread already on the very

<sup>153</sup> [Judgment](#), paras 640 and 648.

<sup>154</sup> [Judgment](#), para. 646.

<sup>155</sup> **P9**: [T-104](#), page 28 line 17 to page 29, line 3.

first day of the deployment of those [MLC] troops ... it was in the house-by-house search that the MLC soldiers carried out these acts of violence".<sup>156</sup>

50. The consequences for victims were far-reaching, impacting various aspects of their personal and professional lives, often leaving victims with nothing.<sup>157</sup> P38 described the timing and seriousness of the acts of pillaging in Bégoua:<sup>158</sup>

the B[é]goua neighbourhood was full of all Bemba's rebels. They were breaking everything. They were stealing everything. It was terrible to see. So every house in B[é]goua was broken into and they took everything they could see: Radio sets, cell phones and everything that they could see. It's if as though that is what they were coming to look for in Bangui, so they started stealing and I believe that was the day following their arrival.

When he returned to his home, which had been occupied by MLC soldiers for several months, Mr Flavien Mbata (P108), Senior Investigative Judge of the *Tribunal de Grande Instance* in Bangui, found it "was pretty much empty".<sup>159</sup> Likewise, P23, P80, and P81 all testified that, from their compound in PK12, the MLC soldiers took everything.<sup>160</sup> In P112's words, "[t]hey left the residents in a situation – well, they were – they had nothing".<sup>161</sup>

51. The Chamber notes that the number of pillaging victims was substantial and the underlying acts covered the geographical and temporal scope of the 2002-2003 CAR Operation. The crimes impacted various aspects of the victims' lives, often leaving them without basic necessities. Accordingly, in light of the circumstances of time, manner, and location considered above, and the extent of damage caused, the Chamber finds that, in this case, the crime of pillaging is of serious gravity.

<sup>156</sup> P6: [T-96](#), page 3, lines 5 to 18.

<sup>157</sup> [Judgment](#), para. 646. See also P23: [T-51](#), page 49 line 19 to page 50, line 3; P80: [T-61](#), page 22, lines 16 to 24; P108: [T-132](#), page 30, lines 7 to 15; P81: [T-55](#), page 7, lines 7 to 11; P112: [T-129](#), page 28, lines 18 to 21; and a/0394/08: [T-228](#), page 6, lines 6 to 13, page 7, line 10 to page 8, line 1; a/0555/08: [T-369](#), page 51, lines 11 to 18.

<sup>158</sup> P38: [T-33](#), page 21, lines 13 to 18.

<sup>159</sup> P108: [T-132](#), page 30, lines 7 to 15. See also [Judgment](#), paras 502 to 503.

<sup>160</sup> P23: [T-51](#), page 49 line 19 to page 50, line 3; P80: T-61-Conf, page 22, lines 16 to 22; and P81: [T-55](#), page 7, lines 7 to 11.

<sup>161</sup> P112: [T-129](#), page 28, lines 18 to 21.

## b) Aggravating circumstance: particular cruelty

52. The Chamber notes that many of the same factors considered in relation to the circumstances aggravating the crimes of rape are equally applicable in assessing the aggravating circumstances alleged for pillaging.
53. Armed MLC soldiers targeted unarmed victims in their homes; places of sanctuary, such as churches; temporary MLC bases; or isolated locations, such as the bush.<sup>162</sup> Many victims had already fled their homes or were seeking refuge at the time of the acts.<sup>163</sup> All underlying acts of pillaging were committed by or otherwise involved at least two, and often multiple, MLC soldiers.<sup>164</sup> The MLC troops did not receive adequate financial compensation and, in turn, self-compensated through acts of pillaging.<sup>165</sup> Generally, MLC soldiers pillaged without concern for the victims' livelihood or well-being, such as the ability to seek treatment, arrange burial or funeral services, or even feed their families.<sup>166</sup>
54. Acts of pillaging were often accompanied by acts of murder and rape,<sup>167</sup> and always by physical and verbal abuse, and threats of violence, death and/or rape.<sup>168</sup> For example, while three MLC soldiers were pillaging items from P87's home, they told her, "give us money and we won't kill you".<sup>169</sup> P87 recalled that they had to let the armed MLC soldiers "do what they wanted and take away our belongings ... to save our own lives".<sup>170</sup> P69 recounted the perils of resisting the

<sup>162</sup> [Judgment](#), Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11), and paras 462, 467, 471, 485, 487, 496, 502, 510, 522, 531, 543, 563 to 564, 625 to 626, 634, 641 to 642, 664, 673, 676, 680, and 695.

<sup>163</sup> *See, inter alia*, [Judgment](#), paras 462 to 464, 522 to 523, 545 to 554, 633, and 640. *See also* [a/0542/08: T-227](#), page 14, line 25 to page 15, line 22; [a/0555/08: T-369](#), page 46, lines 3 to 6, and page 47, lines 1 to 13; and [a/0480/08: T-369](#), page 62, line 16 to page 63, line 12.

<sup>164</sup> [Judgment](#), paras 466 to 467, 469, 473, 481, 483, 488, 490 to 492, 494, 498, 501, 508, 510 to 511, 516, 522 to 523, 545, 548, 553, and 633.

<sup>165</sup> [Judgment](#), paras 565 to 567.

<sup>166</sup> [P42: T-64](#), page 44, lines 13 to 14; and [V1: T-220](#), page 45, line 21 to page 46, line 5. *See also* [a/0394/08: T-228](#), page 7, lines 10 to 24; [a/0511/08: T-228](#), page 22, lines 3 to 9; and [P42: T-64](#), page 48, line 14 to page 49, line 6.

<sup>167</sup> [Judgment](#), para. 673.

<sup>168</sup> [Judgment](#), Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11).

<sup>169</sup> [Judgment](#), para. 471; and [P87: T-44](#), page 33, lines 23 to 25.

<sup>170</sup> [P87: T-44](#), page 35 lines 3 to 8.

MLC soldiers. As noted above,<sup>171</sup> after P69's sister resisted giving MLC soldiers money, the soldiers threw her down and shot her in the head.<sup>172</sup>

55. Many victims were subject to repeated acts of pillaging and other violence. For example, groups of MLC soldiers pillaged P87's compound, while also committing acts of rape, murder, and other violence and abuse, on three different occasions in a single day.<sup>173</sup> Approximately three weeks after one group of MLC soldiers pillaged his sister's belongings and murdered her in his home, P69 found that MLC soldiers had again come to his home, pillaging his belongings. They came yet again days later, when six MLC soldiers gang-raped him and his wife.<sup>174</sup>

56. As set out above, multiple, armed MLC soldiers targeted the unarmed victims (i) in their homes, places of business, and places of civilian sanctuary, such as churches and hospitals, on MLC bases, in isolated locations, such as the bush, and/or while seeking refuge; (ii) for pecuniary gain; (iii) to punish suspected enemies and their sympathisers; (iv) in conjunction with acts of murder, rape, and other violence and abuse during the same events and against the same victims; (v) repeatedly against the same victims and the same families; and/or (vi) without regard to the victims' livelihood or well-being.

57. The Majority of the Chamber considers that it is on the basis of a cumulative assessment of all relevant factors that the exceptional nature of the crime of pillaging is established. Such factors include not only those relevant to the victims' status – for example, the fact that they were unarmed and targeted by groups of armed soldiers in, *inter alia*, their homes – but also other factors demonstrating the repeated, cruel, violent, and humiliating nature of the acts and the perpetrators' motives. Accordingly, the Majority, Judge Steiner dissenting, finds beyond reasonable doubt that the perpetrators committed the crime of

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<sup>171</sup> See para. 28 above.

<sup>172</sup> [Judgment](#), para. 496; and **P69**: [T-192](#), page 31, lines 3 to 20.

<sup>173</sup> [Judgment](#), paras 471 to 479.

<sup>174</sup> [Judgment](#), paras 496 to 501.

pillaging with particular cruelty, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iv).

58. Judge Steiner, partly dissenting, considers that the fact that most acts of pillaging were committed by groups of soldiers, all of them well-armed, against entire families – including children – in their homes, on the streets, inside their small businesses, and many times simultaneous to rape and murder, demonstrate that the crimes were committed against particularly defenceless victims. Therefore, on the same factors that the Majority considered relevant to proof of the aggravating circumstance provided for in Rule 145 (2)(b)(iv), Judge Steiner finds beyond reasonable doubt that the aggravating circumstance provided for in Rule 145(2)(b)(iii) is present.

## **B. MR BEMBA’S CULPABLE CONDUCT**

59. Of those factors in Rule 146(1)(c), the Chamber primarily considers Mr Bemba’s conduct and *mens rea* in assessing the gravity of his culpable conduct. In this regard, the Chamber considers that, amongst others, two features of command responsibility as established in the Statute are of particular relevance: the nexus requirement and the alternative *mens rea* standards.

60. Unlike the statutes and jurisprudence of other Courts, Article 28 requires that the crimes be committed “as a result of [the commander’s] failure to exercise control properly over [the] forces [under his effective command and control, or effective authority and control]”. This nexus requirement considerably elevates the significance of the commanders’ role, particularly in cases “when it is established that the crimes would not have been committed, in the circumstances in which they were, had the commander exercised control properly, or the commander

exercising control properly would have prevented the crimes.”<sup>175</sup> Similarly, all other things being equal, the gravity of the commander’s conduct is significantly greater when he or she has actual (or positive) knowledge, i.e. he or she “knew [...] that the forces were committing or about to commit such crimes”, when compared against a commander who “should have known” that his or her forces were committing or about to commit crimes. In accordance with the principle of proportionality,<sup>176</sup> a commander’s key role in the events, as well as his or her actual knowledge, must be reflected in the sentence.<sup>177</sup>

61. The Chamber convicted Mr Bemba under Article 28(a), as a person effectively acting as a military commander,<sup>178</sup> who knew that the MLC forces under his effective authority and control were committing or about to commit the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging.<sup>179</sup> The Chamber further found that these crimes were a result of Mr Bemba’s failure to exercise control properly.<sup>180</sup>

62. Over the course of approximately four and a half months, Mr Bemba had consistent information of crimes committed by MLC soldiers in the CAR, over which he had ultimate, effective authority and control.<sup>181</sup> Such authority extended to logistics, communications, military operations and strategy, and discipline.<sup>182</sup> Although not physically present, Mr Bemba maintained a constant, remote

<sup>175</sup> [Judgment](#), para. 213. See also Separate Opinion of Judge Sylvia Steiner, [ICC-01/05-01/08-3343-AnxI](#), paras 16 to 24; and Separate Opinion of Judge Kuniko Ozaki, [ICC-01/05/01-08-3343-AnxII](#), paras 8 to 11.

<sup>176</sup> As set out above, the sentence must be proportionate to the crime and the culpability of the convicted person. See [Lubanga Sentencing Appeal Judgment](#), paras 39 to 40. See also K. Ambos, *Treatise on International Criminal Law. Volume II: The Crimes and Sentencing* (2014), page 286.

<sup>177</sup> For a similar approach, see [ICTY, Krajišnik Appeal Judgment](#), para. 739, finding that, even when a convicted person did not directly perpetrate or order any of the crimes, a severe sentence may be warranted when his contributions to a joint criminal enterprise are extensive; [ICTY, Jelisić Appeal Judgment](#), paras 109 to 110, finding that the fact that crimes may be more specifically ascribed to other individuals does not detract from an accused’s own culpability; and [ICTR, Nahimana et al. Appeal Judgment](#), para. 1054, finding that the fact that a convicted person had not personally committed acts of violence did not mitigate his guilt, as he had otherwise substantially contributed to the commission of such acts. See also [ECCC, Kaing Appeal Judgment](#), para. 377; [ICTY, Stakić Appeal Judgment](#), para. 380; and [ICTY, Babić Sentencing Appeal Judgment](#), para. 40.

<sup>178</sup> [Judgment](#), paras 705 and 752.

<sup>179</sup> [Judgment](#), para. 717.

<sup>180</sup> [Judgment](#), para. 741.

<sup>181</sup> [Judgment](#), Sections VI(F)(2) and VI(F)(3).

<sup>182</sup> [Judgment](#), Sections V(A), V(B)(2), and VI(F)(2).

presence, requiring and receiving regular, if not daily, reports and affirmatively exercising his authority, including by taking the most important decisions, such as to commit MLC troops to the CAR and withdraw them.<sup>183</sup> Mr Bemba also visited the CAR on a number of occasions, including in November 2002, when he met with MLC troops.<sup>184</sup> He provided arms, ammunition, and reinforcements to his troops and the forces aligned with President Patassé.<sup>185</sup>

63. Mr Bemba took some measures in reaction to public allegations of crimes by MLC soldiers, including two missions to the CAR, but failed to take any measures in response to allegations of crimes reported internally within the MLC.<sup>186</sup> The Chamber found that, in taking such measures, Mr Bemba did not genuinely intend to take all necessary and reasonable measures within his material ability to prevent or repress the commission of crimes, as was his duty; rather his key intention was to counter public allegations and rehabilitate the public image of the MLC.<sup>187</sup> Despite his ongoing knowledge of the crimes, ultimate authority over the MLC contingent in the CAR, and the means to exercise such authority, Mr Bemba repeatedly failed to take genuine and adequate measures to prevent and repress the crimes, and submit the matter to the competent authorities.<sup>188</sup>

64. The Prosecution submits that Mr Bemba's character increases the gravity of his culpable conduct.<sup>189</sup> The Defence submits that the acts identified by the Prosecution as relevant to Mr Bemba's character fall outside the scope of the charges and are unsubstantiated.<sup>190</sup> The Prosecution relies on evidence of Mr Bemba's character, additional to that relied upon in the Judgment, to demonstrate that "despite his full knowledge of the crimes [... Mr] Bemba pursued his

<sup>183</sup> [Judgment](#), Sections V(B)(2)(b), V(B)(2)(c), V(C)(1), V(C)(11), and V(C)(12).

<sup>184</sup> [Judgment](#), Sections V(B)(2)(b), V(D)(3), and V(D)(4), and para. 426.

<sup>185</sup> [Judgment](#), Sections V(B)(2)(a) and V(C)(8).

<sup>186</sup> [Judgment](#), Sections V(D) and V(F)(4).

<sup>187</sup> [Judgment](#), para. 728.

<sup>188</sup> [Judgment](#), Section VI(F)(4).

<sup>189</sup> [Prosecution Submissions](#), paras 97 to 102.

<sup>190</sup> [Defence Submissions](#), paras 79 to 80.

objectives at any cost, no matter ... the consequences".<sup>191</sup> The Chamber considers this proposed conclusion to be largely a restatement of its findings in the Judgment. The Chamber therefore finds it unnecessary to consider the additional evidence and related submissions concerning Mr Bemba's character further.<sup>192</sup>

65. The Defence also claims that the measures Mr Bemba took in producing a Code of Conduct, training his troops, establishing a judicial and disciplinary system, and in the course of the 2002-2003 CAR Operation constitute mitigating circumstances.<sup>193</sup> The Chamber, however, considers that the measures taken by Mr Bemba cannot mitigate his sentence as proposed by the Defence. Rather, such minimal and inadequate measures, as well as the incomplete Code of Conduct, deficiencies in its dissemination, uneven training regime, and the MLC disciplinary system,<sup>194</sup> demonstrate the means at Mr Bemba's disposal to take measures to prevent and repress crimes. Such ability underscores Mr Bemba's superior failures.<sup>195</sup> They do not reduce his culpability or justify mitigation.<sup>196</sup>

66. Mr Bemba's failures were ongoing throughout the 2002-2003 CAR Operation. The reasonable and necessary measures at his disposal, which he did not take, would have deterred the commission of crimes, and generally diminished, if not eliminated, the climate of acquiescence surrounding and facilitating the crimes.<sup>197</sup> Accordingly, he did more than tolerate the crimes as a commander. Mr Bemba's failure to take action (i) was deliberately aimed at encouraging the attack directed

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<sup>191</sup> [Prosecution Submissions](#), para. 102.

<sup>192</sup> In any event, evidence of character and/or prior conduct, regardless of whether it is good or bad, generally has limited, if any, weight for sentencing purposes. See [ICTY, Stakić Appeal Judgment](#), para. 406; and [ICTR, Kajelijeli Appeal Judgment](#), paras 298, 301, and 311.

<sup>193</sup> [Defence Submissions](#), paras 68 to 72, and 89; and [Defence Oral Submissions](#), page 52, lines 6 to 11, and page 56, line 16 to page 57, line 12.

<sup>194</sup> [Judgment](#), Sections V(A)(2), V(A)(4), V(A)(5), V(D), VI(F)(4), and VI(F)(5).

<sup>195</sup> See, for example, [Judgment](#), paras 730 and 732.

<sup>196</sup> In this regard, the Defence's submissions appear to be an attempt to re-litigate the nature of and intentions behind the measures Mr Bemba took. The Defence cannot attempt to re-litigate issues that have already been decided upon in the Judgment by claiming that they are mitigating circumstances. See [ICTY, Kunarac et al. Appeal Judgment](#), para. 388.

<sup>197</sup> [Judgment](#), para. 738. See also [Judgment](#), paras 737 and 740.

against the civilian population of which the crimes formed part,<sup>198</sup> and (ii) directly contributed to the continuation and further commission of crimes.<sup>199</sup> Finally, the Chamber emphasises that Mr Bemba's position as the highest-ranking MLC official, with authority over both the political and military wings,<sup>200</sup> as well as his education and experience,<sup>201</sup> increase the gravity of his culpable conduct.<sup>202</sup> Such circumstances enabled him to fully appreciate the consequences of his actions, as well as the alternative and remedial measures at his disposal to prevent and repress the crimes. Mr Bemba's knowing and willing impact on the crimes is therefore unquestionable.

67. The Chamber notes that, at the *ad hoc* tribunals, a superior's direct contribution to the crimes may be considered as an aggravating circumstance.<sup>203</sup> However, as the Chamber considered such contribution as fulfilling a legal element of Article 28,<sup>204</sup> it cannot consider it in aggravation of Mr Bemba's sentence. The Chamber nevertheless emphasises that Mr Bemba's repeated and ongoing failures over approximately four and a half months, especially in light of his consistent knowledge and his ultimate authority over the MLC troops in the CAR, demonstrate that his culpable conduct was of serious gravity.

### C. MR BEMBA'S INDIVIDUAL CIRCUMSTANCES

68. The Chamber addresses below Mr Bemba's circumstances that have not been previously considered, namely those that do not relate directly to the crimes or his culpable conduct. Of those factors in Rule 145(1)(c), the convicted person's age

<sup>198</sup> [Judgment](#), para. 685.

<sup>199</sup> [Judgment](#), para. 738. *See also* [Judgment](#), paras 737 and 740.

<sup>200</sup> *See, inter alia*, [Judgment](#), paras 384 to 385.

<sup>201</sup> *See, inter alia*, [Submissions on Agreed Facts](#). The convicted person's education is among the factors identified in Rule 145(1)(c).

<sup>202</sup> *See also* para. 76 below.

<sup>203</sup> [ICTR, Nyiramasuhuko et al. Appeal Judgment](#), para. 3360; [ICTY, Milošević Appeal Judgment](#), paras 303 to 304, and 334; [ICTY, Delalić et al. Appeal Judgment](#), para. 736; [ICTR, Kayishema and Ruzindana Appeal Judgment](#), para. 358; and [ICTY, Aleksovski Appeal Judgment](#), para. 183. *See also* [ICTY, Hadžihasanović and Kubura Appeal Judgment](#), para. 320; and [ICTY, Strugar Appeal Judgment](#), para. 381.

<sup>204</sup> [Judgment](#), para. 213 and Section VI(F)(5).

and social and economic condition are of particular relevance in assessing his or her individual circumstances.<sup>205</sup> The Chamber also considers in this section submissions on the mitigating circumstance identified in Rule 145(2)(a)(ii), namely, the convicted person's conduct after the act.

69. In addition to the circumstances already addressed in relation to the gravity of Mr Bemba's culpable conduct,<sup>206</sup> the Defence submits that the following constitute mitigating circumstances: (i) Mr Bemba's peacebuilding efforts; (ii) his family circumstances; (iii) his cooperation with the Court; (iv) the unlikelihood that he will reoffend; (v) his depleted resources and frozen assets; (vi) lack of accountability for others connected to crimes in the CAR; and (vii) alleged rights violations.<sup>207</sup> The Defence does not submit that Mr Bemba's age is relevant, nor is its relevance apparent to the Chamber. The Prosecution and Legal Representative both submit that there are no mitigating circumstances in this case.<sup>208</sup>

70. The Chamber emphasises that, according to the plain language of the Statute and Rules, any individual or mitigating circumstances must relate to Mr Bemba personally.<sup>209</sup> The Chamber therefore summarily dismisses requests for mitigation based on the acts of persons other than Mr Bemba – for example, other members of the MLC,<sup>210</sup> members of his Defence team,<sup>211</sup> and his wife<sup>212</sup> – in the absence of any indication that Mr Bemba was responsible for or contributed to such third party acts. The Chamber further notes that the Defence provides no concrete support for its assertions concerning the unlikelihood that Mr Bemba will reoffend,<sup>213</sup> was willing to surrender and cooperate with the Prosecution,<sup>214</sup> had

<sup>205</sup> [Lubanga Sentencing Decision](#), para. 54.

<sup>206</sup> See paras 65 to 66 above.

<sup>207</sup> [Defence Submissions](#), paras 65 to 104.

<sup>208</sup> [Prosecution Oral Submissions](#), page 18, line 25 to page 26, line 21; [Legal Representative Submissions](#), para 58; and [Legal Representative Oral Submissions](#), page 33, line 2 to page 34, line 22.

<sup>209</sup> Article 78(1) of the Statute; and Rule 145 of the Rules. See also [ICTR, Gacumbitsi Appeal Judgment](#), para. 198.

<sup>210</sup> [Defence Submissions](#), para. 92.

<sup>211</sup> ICC-01/05-01/08-3381-Conf, para. 22.

<sup>212</sup> [Defence Submissions](#), para. 80; and [Defence Oral Submissions](#), page 56, lines 12 to 15.

<sup>213</sup> [Defence Submissions](#), para. 85.

no means of identifying the victims before his assets were frozen, and was or is now willing to provide assistance to the victims.<sup>215</sup> Without any concrete indications, the Chamber cannot be expected to speculate in the abstract as to what Mr Bemba might have done, might have been willing to do, or might do in future based solely on his assertions and those of the Defence.<sup>216</sup> Accordingly, the Chamber does not consider such submissions and requests for mitigation further.

## 1. Peacebuilding

71. The Defence submits that the MLC was created with the goal of establishing a democratic state in the Democratic Republic of the Congo (“DRC”) and that, in this context, the MLC was party to the Lusaka ceasefire agreement and Sun City negotiations.<sup>217</sup> The Defence also submits that, in 2001, Mr Bemba was responsible for negotiating an end to the century-long conflict between the Hema and Lendu tribes in Ituri province.<sup>218</sup> Finally, it submits that Mr Bemba’s contribution to the well-being of the population of Équateur Province, DRC is also a mitigating circumstance.<sup>219</sup> The Prosecution and Legal Representative respond that the Defence has not proven Mr Bemba’s contribution to establishing peace and security in the DRC.<sup>220</sup>

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<sup>214</sup> [Defence Submissions](#), para. 90, *citing* filing ICC-01/05-01/08-455, para. 23. However, this filing of the Legal Representative is not relevant. It seems the Defence meant to refer to [ICC-01/05-01/08-475](#), para. 23, *citing* [T-13](#), page 19, lines 21 to 22, and page 43, lines 4 to 5. In this same Decision, Pre-Trial Chamber II dismissed Defence assertions that Mr Bemba was willing to surrender and participate with the Court as hypothetical and lacking any concrete evidence. *See* [ICC-01/05-01/08-475](#), para. 60. Pre-Trial Chamber II and the Appeals Chamber repeatedly dismissed such assertions as unfounded and speculative. *See* [ICC-01/05-01/08-80-Anx](#), para. 58; [ICC-01/05-01/08-323](#), para. 56; and [ICC-01/05-01/08-631](#), para. 75.

<sup>215</sup> [Defence Submissions](#), paras 99 to 103; and ICC-01/05-01/08-3381-Conf, para. 23. Following internal consultations, including with relevant field offices, the Registry has no information concerning the provision of assistance to the victims. *See* [Registry Report](#), para. 6.

<sup>216</sup> *See, similarly*, [ICTY, Galić Appeal Judgment](#), para. 426; and [ICTY, Kvočka Appeal Judgment](#), para. 711. *See also* [ICTY, Dorđević Appeal Judgment](#), para. 945; and [ICTR, Karera Appeal Judgment](#), para. 388.

<sup>217</sup> [Defence Submissions](#), paras 75 to 76; and [Defence Oral Submissions](#), page 41, line 13 to page 42, line 18.

<sup>218</sup> [Defence Submissions](#), paras 77 to 78; and [Defence Oral Submissions](#), page 40, line 10 to page 41, line 12.

<sup>219</sup> [Defence Submissions](#), para. 81; and [Defence Oral Submissions](#), page 43, lines 6 to 23.

<sup>220</sup> [Prosecution Oral Submissions](#), page 22, line 12 to page 24, line 7; and [Legal Representative Oral Submissions](#), page 33, lines 6 to 22.

72. The Chamber considers that promotion of peace and reconciliation may only constitute a mitigating circumstance if it is genuine and concrete.<sup>221</sup> Meanwhile, assistance to persons other than the victims<sup>222</sup> and selective assistance to the victims<sup>223</sup> may be of limited, if any, relevance to the sentence.
73. The Chamber notes various indications causing it to doubt that Mr Bemba's alleged peacebuilding and humanitarian efforts in the DRC were sincere, genuine, or ever implemented. For example, in the Judgment, the Chamber noted that, as the *Armée de libération du Congo* ("ALC") still existed and possessed weapons in October 2002, the 1999 Lusaka ceasefire and disarmament agreement, which Mr Bemba signed, was never implemented.<sup>224</sup> Likewise, P15 testified that, as he was not satisfied with the role attributed to him in the first agreement reached at Sun City in early 2002, Mr Bemba refused to implement it, thereby delaying and complicating negotiations until a second agreement was signed about a year later, in early 2003.<sup>225</sup> Further, the Chamber notes that, in support of Mr Bemba's role in negotiating an end to the Hema-Lendu conflict, the Defence only cites Mr Bemba's book, "*Le choix de la Liberté*".<sup>226</sup> D63 was also unable to provide any clear or first-hand information concerning Mr Bemba's role in such negotiations, merely repeating second-hand accounts that, after the arrival of the MLC, the conflict had "calmed down somewhat".<sup>227</sup>
74. The Chamber emphasises that, before, during, and after the above-mentioned negotiations and other acts, Mr Bemba and the MLC were engaged in (i) the 2002-2003 CAR Operation, during which MLC soldiers committed many acts of

<sup>221</sup> [Katanga Sentencing Decision](#), para. 91; [Lubanga Sentencing Decision](#), para. 87; and [ICTY, Blagojević and Jokić Appeal Judgment](#), para. 330.

<sup>222</sup> [ICTY, Kunarac et al. Appeal Judgment](#), para. 408; and [ICTY, Krajišnik Appeal Judgment](#), para. 817.

<sup>223</sup> [ICTY, Kvočka Appeal Judgment](#), para. 693; and [ICTR, Kajelijeli Appeal Judgment](#), paras 311 to 312.

<sup>224</sup> [Judgment](#), footnote 1269.

<sup>225</sup> **P15: T-208**, page 38, lines 8 to 20; T-209-Conf, page 49, line 24 to page 53, line 11; and T-210-Conf, page 4, lines 1 to 9.

<sup>226</sup> [Defence Submissions](#), footnotes 173 to 177.

<sup>227</sup> **D63: T-368**, page 66, lines 15 to 21.

murder, rape, and pillaging;<sup>228</sup> and/or (ii) conflict in other regions of the DRC, where MLC soldiers were allegedly committing crimes against civilians.<sup>229</sup>

75. In any event, even if the Chamber were to accept that Mr Bemba contributed to peace in the DRC and the well-being of the population of Équateur, the Chamber notes that such efforts are, in and of themselves, unrelated to the CAR. D63 lamented, “[h]ow can it be that the same person [...] who has aided and assisted us in the Congo in very troubled times and has brought order to our affairs, how can the same person [...] transform himself into a monster [in the CAR]?”<sup>230</sup> D63 answered his own question. He testified that, in Équateur, the political goals and motivations of the MLC translated into at least some humanitarian assistance.<sup>231</sup> Meanwhile, in the Chamber’s view, Mr Bemba’s political goals and motivations created the circumstances in the CAR in which the crimes against humanity and war crimes upon which he was convicted were committed.<sup>232</sup>

76. Rather than constituting a mitigating circumstance, the Chamber considers that Mr Bemba’s alleged contributions to peace in the DRC and the well-being of the population of Équateur demonstrate his experience and capacity to engage in peacebuilding efforts and assist civilians.<sup>233</sup> However, despite invitations and repeated opportunities to make the same efforts in the CAR,<sup>234</sup> he failed to do so. The Chamber therefore considers that any efforts Mr Bemba allegedly took to promote peace in the DRC or improve the lives of civilians in Équateur are irrelevant to his sentence in this case. They do not demonstrate any awareness of the wrongfulness of his actions or his intention to make amends by promoting

<sup>228</sup> [Judgment](#), paras 380, 461, 486, 520, 525, 527, 531, 534, 543, 563, 671, 677, and 688.

<sup>229</sup> *See, for example*, [Judgment](#), paras 397 to 400, and 403; and **D63**: [T-368](#), page 64, line 3 to page 65, line 16.

<sup>230</sup> **D63**: [T-368](#), page 67, lines 22 to 25.

<sup>231</sup> **D63**: [T-368](#), page 52, lines 12 to 20.

<sup>232</sup> *See, inter alia*, [Judgment](#), paras 453, 555, 728, and 730.

<sup>233</sup> *See also* para. 66 above.

<sup>234</sup> [Judgment](#), Sections V(D) and VI(4).

peace in the CAR or providing assistance to the victims.<sup>235</sup> Insofar as the Defence relies on these same efforts to establish Mr Bemba's good character,<sup>236</sup> the Chamber considers that the same considerations apply. Mr Bemba's selective efforts towards peace in the DRC and the civilians of Équateur, while declining to take any such measures in the CAR, do not demonstrate his good character.<sup>237</sup>

## 2. Family circumstances

77. The Defence submits that Mr Bemba has a wife and five children, who, since his detention, were deprived of the emotional, financial, and educational care of a father.<sup>238</sup> It also submits that Mr Bemba has been deprived of "participation in their lives as they have moved into adulthood".<sup>239</sup> Finally, the Defence submits that Mr Bemba's parents and others died during his detention and that he has been unable to visit some of their graves.<sup>240</sup> The Prosecution responds that such circumstances are irrelevant.<sup>241</sup> The Legal Representative indicates that these circumstances are outweighed by the gravity of the crimes.<sup>242</sup>

78. The Chamber considers that the family circumstances alleged by the Defence are common to many convicted persons and are not exceptional. They therefore do not constitute a mitigating circumstance in this case.<sup>243</sup>

<sup>235</sup> [ICTY, Babić Sentencing Appeal Judgment](#), paras 55, and 60 to 61. See also [ICTR, Kajelijeli Appeal Judgment](#), paras 298, 301, and 311, considering that prior conduct is generally accorded limited weight, regardless of whether it is good or bad.

<sup>236</sup> [Defence Submissions](#), para. 81; and [Defence Oral Submissions](#), page 56, lines 3 to 15.

<sup>237</sup> See, similarly, [ICTY, Kvočka Appeal Judgment](#), para. 693, considering that selective assistance to some victims and not to others "is less decisive when one notes that criminals frequently show compassion for some of their victims even when perpetrating the most heinous of crimes". It is less decisive still when those victims are assisted because they are known to the accused or they share similar characteristics with the accused. This suggests that they are being helped, not because they are innocent victims, but because the accused considers them to be like himself." See also [ICTR, Kajelijeli Appeal Judgment](#), paras 311 to 312. In any event, good character is likely to have limited, if any, weight in sentencing. See [ICTY, Stakić Appeal Judgment](#), para. 406.

<sup>238</sup> [Defence Submissions](#), paras 82 to 83; and [Defence Oral Submissions](#), page 55, lines 13 to 23.

<sup>239</sup> [Defence Submissions](#), para. 84; and [Defence Oral Submissions](#), page 55, lines 13 to 23.

<sup>240</sup> [Defence Submissions](#), para. 84; and [Defence Oral Submissions](#), page 55, lines 13 to 15.

<sup>241</sup> [Prosecution Oral Submissions](#), page 24, lines 8 to 13.

<sup>242</sup> [Legal Representative Oral Submissions](#), page 34, lines 3 to 9.

<sup>243</sup> Family circumstances are accorded little, if any weight, in sentencing, unless exceptional. See [Katanga Sentencing Decision](#), paras 88 and 144; [ICTR, Ntabakuze Appeal Judgment](#), para. 284; and [ICTY, Babić Sentencing Appeal Judgment](#), paras 50 to 51.

### 3. Cooperation with the Court

79. The Defence submits that Mr Bemba's behaviour in the courtroom, in detention, and on provisional release has been "commendable", "irreproachable", and "exemplary".<sup>244</sup> The Prosecution and Legal Representative submit that Mr Bemba's good behaviour is irrelevant.<sup>245</sup> Further, in light of alleged omissions from the Registry Report, the Prosecution submits that the Chamber should take into account Mr Bemba's alleged misuse of the telecommunications system at the Detention Centre.<sup>246</sup> The Defence requests that the Chamber dismiss such submissions *in limine* because they (i) do not respond to the Registry Report, (ii) have no evidential value, and (iii) breach both the Chamber's injunction on introduction of evidence from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo et al.* ("case ICC-01/05-01/13") and the relevant submissions deadlines.<sup>247</sup>

80. The Chamber recalls its prior decisions concerning case ICC-01/05-01/13.<sup>248</sup> Mr Bemba's alleged misuse of communications from the Detention Centre fall within the scope of the charges before Trial Chamber VII. Considering them in this case for purposes of sentencing is inappropriate.<sup>249</sup> In any event, the Chamber considers that, as the Defence submits,<sup>250</sup> the Registry was aware of the information cited by the Prosecution before filing the Registry Report.

81. The Chamber considers that, leaving aside the outcome of case ICC-01/05-01/13, Mr Bemba otherwise exhibited good behaviour in detention, during the

<sup>244</sup> [Defence Submissions](#), paras 90 to 93; ICC-01/05-01/08-3381-Conf, paras 34 and 36; and [Defence Oral Submissions](#), page 55, line 19 to page 56, line 2.

<sup>245</sup> [Prosecution Oral Submissions](#), page 25, lines 2 to 24; and [Legal Representative Oral Submissions](#), page 33, line 23 to page 34, line 2.

<sup>246</sup> ICC-01/05-01/08-3383-Conf, paras 1 and 4 to 11.

<sup>247</sup> ICC-01/05-01/08-3385-Conf, paras 1 to 6.

<sup>248</sup> [ICC-01/05-01/08-3029](#). See also [Judgment](#), paras 252 to 260.

<sup>249</sup> A convicted person's obstruction of justice, or attempts to do so, may, in appropriate circumstances, be considered in sentencing or as separate and independent offences against the administration of the justice, but not both. See, similarly, [ICTY, Delalić et al. Appeal Judgment](#), paras 789 to 790; and [ICTY, Popović et al. Appeal Judgment](#), para. 2046.

<sup>250</sup> ICC-01/05-01/08-3385-Conf, para. 6.

proceedings, and on conditional release.<sup>251</sup> The Chamber acknowledges that Mr Bemba's behaviour and cooperation in these contexts has been commendable. However, good behaviour and compliance with the law are expected of any accused or convicted person and therefore do not constitute mitigating circumstances, unless exceptional.<sup>252</sup> The Chamber is not satisfied that Mr Bemba's behaviour and cooperation have been exceptional. They therefore do not constitute mitigating circumstances in this case.

#### 4. Expended resources and frozen assets

82. The Defence submits that the resources Mr Bemba has contributed to the trial and reparations process, as well as the losses incurred as a result of the depreciation of frozen and seized assets, should mitigate his sentence, implying that such losses constitute sanctions and should not operate to his detriment.<sup>253</sup> The Prosecution submits that such submissions are without merit and speculative.<sup>254</sup>

83. The Chamber emphasises that the order concerning the identification, seizure, and freezing of Mr Bemba's property and assets pursuant to Article 57(3)(e) constituted a protective measure for the purpose of forfeiture, in particular, for the ultimate benefit of the victims.<sup>255</sup> It is not a sanction. Accordingly, there is no risk that Mr Bemba will be doubly punished because of any sentence imposed and the freezing order.

84. Insofar as the Defence submits that Mr Bemba's property has depreciated and debts have increased as a result of the freezing order, the Defence does not claim

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<sup>251</sup> [Registry Report](#), para. 4; ICC-01/05-01/08-3375-Conf-AnxIII; Report of the Registrar providing feedback on the implementation of the "Decision on the Defence's Urgent Request concerning Mr Jean-Pierre Bemba's Attendance of his Father's Funeral", 10 July 2009, ICC-01/05-01/08-445-Conf; and Report of the Registrar on the implementation of the "Decision on the Defence requests for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral", 12 January 2011, ICC-01/05-01/08-1106-Conf, with two confidential, *ex parte* annexes.

<sup>252</sup> [Katanga Sentencing Decision](#), paras 127 to 128; and [ICTY, Naletilić and Martinović Appeal Judgment](#), para. 630.

<sup>253</sup> [Defence Submissions](#), paras 98, 101, and 104.

<sup>254</sup> [Prosecution Oral Submissions](#), page 26, lines 8 to 18.

<sup>255</sup> [ICC-01/05-01/08-8](#).

that it exhausted available and reasonable measures to address such matters with the Registry, or raise the issue with other competent authorities at the appropriate time. In such circumstances, and on the information before it, the Chamber is unable to assess the Defence submissions concerning the alleged depreciation of Mr Bemba's property. In any event, Mr Bemba's assets were seized and frozen as a protective measure imposed for the ultimate benefit of the victims.<sup>256</sup> Such matters are therefore better addressed at the reparations phase of proceedings and are not relevant to the sentence. The Chamber nevertheless notes that there is no indication that Mr Bemba has taken any initiative for the purpose of reparations to the victims.<sup>257</sup>

## 5. Lack of accountability for others

85. The Defence submits that Mr Bemba will be the sole individual punished for crimes committed in the CAR, identifying others who are also allegedly responsible for crimes, but have not been investigated or prosecuted.<sup>258</sup> It claims that Mr Bemba cannot face responsibility for this lack of accountability, and the fact that he alone is to be sentenced should mitigate his sentence.<sup>259</sup> The Prosecution submits that this alleged circumstance is irrelevant.<sup>260</sup>

86. As noted above,<sup>261</sup> submissions based on the conduct of third parties, including any failure to investigate others' crimes, are, without more, irrelevant to the appropriate sentence,<sup>262</sup> which must be tailored to the gravity of the crimes and Mr Bemba's individual circumstances. The Chamber considers that the Defence

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<sup>256</sup> [ICC-01/05-01/08-8](#), para. 7, considering that "*l'identification, la localisation, le gel ou la saisie des biens et avoirs de M. Jean-Pierre Bemba est nécessaire dans l'intérêt supérieur des victimes pour garantir que, dans l'hypothèse où M. Jean-Pierre Bemba serait déclaré coupable des crimes qui lui sont reprochés, lesdites victimes puissent, en application de l'article 75 du Statut, obtenir réparation des préjudices qui peuvent leur avoir été causés*".

<sup>257</sup> [Registry Report](#), para. 6.

<sup>258</sup> [Defence Submissions](#), paras 86 to 89.

<sup>259</sup> [Defence Submissions](#), para. 89.

<sup>260</sup> [Prosecution Oral Submissions](#), page 24, line 19 to page 25, line 1.

<sup>261</sup> See para. 70 above.

<sup>262</sup> [ICC-01/05-01/08-3384](#), para. 46.

fails to demonstrate the relevance of this circumstance to any of the factors set out in Article 78(1) or Rule 145.<sup>263</sup> In any event, as submitted by the Prosecution and acknowledged by the Defence, ICC investigations in the CAR are ongoing.<sup>264</sup> Defence assertions that others will not be investigated or prosecuted are therefore speculative and unsubstantiated.

## 6. Alleged rights violations

87. The Defence claims that delays over the course of the proceedings, as well as alleged violations of Mr Bemba's rights to privileges, immunities, privacy, and disclosure, constitute a mitigating factor.<sup>265</sup> The Prosecution submits that any mitigation for alleged delays and rights violations is not warranted.<sup>266</sup>
88. Although not technically a mitigating circumstance, a reduction in sentence may, in exceptional circumstances, be a remedy where the length of proceedings is disproportional due to no fault of the convicted person, or for other violations of his rights. However, where the convicted person fails to demonstrate a violation, a Chamber is not obliged to consider this factor,<sup>267</sup> particularly in light of Article 78(2), which credits the convicted person for time spent in detention.
89. The Defence does not substantiate its suggestion that Mr Bemba's rights were violated or even explain why a reduction in sentence would be an appropriate remedy.<sup>268</sup> Throughout the proceedings, the Chamber has addressed and, where

<sup>263</sup> See, similarly, [SCSL, Taylor Sentencing Judgment](#), para. 81.

<sup>264</sup> [Prosecution Oral Submissions](#), page 24, lines 24 to 25; and [Defence Oral Submissions](#), page 51, lines 15 to 20.

<sup>265</sup> [Defence Submissions](#), paras 93 to 97.

<sup>266</sup> [Prosecution Oral Submissions](#), page 25, lines 19 to 24.

<sup>267</sup> [Katanga Sentencing Decision](#), paras 136 to 137; [Lubanga Sentencing Decision](#), paras 89 to 90; [ICTR, Karemera and Ntirumpatse Appeal Judgment](#), para. 696; [ICTR, Ntabakuze Appeal Judgment](#), para. 310; and [ICTR, Karera Appeal Judgment](#), para. 395.

<sup>268</sup> Likewise, throughout the proceedings, the Defence has failed to substantiate its allegations of rights violations. See, *inter alia*, [ICC-01/05-01/08-3336](#), paras 30, 53 to 55, 57, and 59; [ICC-01/05-01/08-3255](#), paras 33, 47, 64, 72, and 128; [ICC-01/05-01/08-3204](#), paras 27 to 28; [ICC-01/05-01/08-3091](#), para. 12; [ICC-01/05-01/08-3080](#), paras 22, 39, and 48; [ICC-01/05-01/08-3075](#), para. 18; [ICC-01/05-01/08-3059](#), paras 20, 22, and 24; [ICC-01/05-01/08-2925](#), paras 40 and 45; [ICC-01/05-01/08-2830](#), paras 6 and 11; and [ICC-01/05-01/08-2800](#), para. 15.

appropriate, remedied alleged rights violations.<sup>269</sup> The Defence does not request the Chamber to reconsider these decisions, nor does the Chamber see any reason to do so *proprio motu*. Accordingly, the Chamber does not consider the Defence's submissions on this alleged mitigating circumstance further.

#### IV. DETERMINATION OF SENTENCE

90. The Prosecution submits that Mr Bemba's sentence should be no less than 25 years of imprisonment.<sup>270</sup> The Legal Representative submits that Mr Bemba deserves a sentence beyond the maximum threshold.<sup>271</sup> The Defence submits that Mr Bemba should receive a joint sentence in the lower range of sentences previously passed on commanders at the international criminal courts.<sup>272</sup> It stresses that a sentence outside the range of 12 to 14 years of imprisonment would infringe Mr Bemba's rights.<sup>273</sup>

91. As set out above,<sup>274</sup> pursuant to Rule 145(1)(a) and (b), the Chamber must balance all the relevant factors, including any mitigating and aggravating factors, and consider the circumstances both of the convicted person and the crime. In order to sufficiently and adequately acknowledge the harm to the victims and fulfil the objectives of sentencing, the Chamber must impose a sentence that is proportionate to the gravity of the crimes, and the individual circumstances and culpability of the convicted person. The Chamber notes that, unlike domestic jurisdictions of various legal traditions,<sup>275</sup> the Court's statutory framework does

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<sup>269</sup> See, *inter alia*, [ICC-01/05-01/08-3336](#); [ICC-01/05-01/08-3335](#); [ICC-01/05-01/08-3255](#); [ICC-01/05-01/08-3196](#); [ICC-01/05-01/08-3167](#); [ICC-01/05-01/08-3101](#); [ICC-01/05-01/08-3100](#); [ICC-01/05-01/08-3089](#); [ICC-01/05-01/08-3080](#); [ICC-01/05-01/08-3075](#); [ICC-01/05-01/08-3070](#); [ICC-01/05-01/08-3059](#); [ICC-01/05-01/08-2924](#); [ICC-01/05-01/08-2500](#); [ICC-01/05-01/08-2482](#); [ICC-01/05-01/08-2292](#); and [ICC-01/05-01/08-802](#).

<sup>270</sup> [Prosecution Submissions](#), para. 127; and [Prosecution Oral Submissions](#), page 4, lines 19 to 25, and page 30, lines 6 to 9.

<sup>271</sup> Legal Representative Submissions, para. 65; and [Legal Representative Oral Submissions](#), page 36, line 24 to page 37, line 2.

<sup>272</sup> [Defence Submissions](#), para. 109.

<sup>273</sup> [Defence Submissions](#), paras 55 to 56.

<sup>274</sup> See Section II above.

<sup>275</sup> See, for example, Canada, Canada Criminal Code, R.S.C., ch. C-46 (1985), art. 235(1); Central African Republic, Code pénal Centrafricain (2010), art. 52; Democratic Republic of Congo, Code pénal Congolais

not provide individualised sentencing ranges for specific crimes or modes of liability. Pursuant to Article 77(1), the Chamber may sentence a person convicted of any crime referred to in Article 5 to a term of up to 30 years imprisonment or, when justified by the crime's extreme gravity and the convicted person's individual circumstances, life imprisonment.

92. The Chamber notes the submissions of the parties and Legal Representative concerning sentences previously imposed on convicted persons at the Court, *ad hoc* tribunals, and in the CAR.<sup>276</sup> However, none of these cases concern the same offences committed in substantially similar circumstances. They therefore provide the Chamber little, if any, guidance in determining the appropriate sentence, particularly in light of the Chamber's obligation to individualise the sentence to the concrete gravity of the crimes and Mr Bemba's individual circumstances.<sup>277</sup>

93. The Chamber has found that, in this case, the crimes of murder, rape, and pillaging are of serious gravity. The Chamber has found that two aggravating circumstances apply to the crimes of rape: it was committed (i) against particularly defenceless victims, and (ii) with particular cruelty. The Majority, Judge Steiner dissenting, has also found that the crime of pillaging was committed with particular cruelty, an aggravating circumstance. On the same factors considered by the Majority, Judge Steiner has found that the crime of pillaging was committed against particularly defenceless victims, an aggravating circumstance. The Chamber has found that Mr Bemba's culpable conduct is of

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(2004), arts. 44 to 45; France, Code pénal (2005), art. 221-1; Italy, Codice penale (2015), art. 575; Japan, Keihō (2006), art. 199; Brazil, Código Penal, art. 121; Kenya, Penal Code, ch. 63 (2012), art. 204; Netherlands, Wetboek van Strafrecht (2012), section 289; New South Wales, Australia, Crimes Act No. 40, 1900 (2016), section 19A(1); Norway, Almindelig Borgerlig Straffelov (General Civil Penal Code), 22:233; People's Republic of China, Criminal Law of the People's Republic of China (1997), art. 232; Switzerland, Code pénal Suisse (2016), art. 112; United Kingdom, Criminal Justice Act, 2003, Chapter 44, Section 269(5), Schedule 21, subsections (5)(1)(b); and United States, 18 U.S.C. §1111(b) (2003).

<sup>276</sup> [Prosecution Submissions](#), para. 123; Legal Representative Submissions, para. 62; [Defence Submissions](#), paras 3 to 6, 13, 15, 22 to 25, 28 to 58, and 71; and [Defence Oral Submissions](#), page 49, line 17 to page 50, line 8, and page 59, lines 3 to 16.

<sup>277</sup> [Lubanga Sentencing Appeal Judgment](#), paras 76 to 77, *citing, with approval*, [ICTY, Furundžija Appeal Judgment](#), para. 250; [ICTY, Delalić et al. Appeal Judgment](#), paras 719 to 720; and [ICTY, Strugar Appeal Judgment](#), paras 348 to 349. *See also* [ICTY, Babić Sentencing Appeal Judgment](#), para. 33.

serious gravity. Finally, the Chamber has found that no mitigating circumstances exist in this case.

94. As the war crime and crime against humanity of murder, in this case, are based on the same conduct, although fulfilling distinct contextual elements, the Chamber imposes the same sentence for each. Likewise, as the war crime and crime against humanity of rape, in this case, are based on the same conduct, although fulfilling distinct contextual elements, the Chamber imposes the same sentence for each. Taking into account all factors mentioned above, the Chamber sentences Mr Bemba, who was convicted for the following crimes under Article 28(a) as a person effectively acting as a military commander, to the following terms of imprisonment:

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

95. The Chamber notes that, based on the same acts, it entered cumulative convictions for murder and rape as both war crimes and crimes against humanity.<sup>278</sup> Further, all crimes are geographically and temporally connected and Mr Bemba's responsibility is based on the same conduct.<sup>279</sup> The Chamber also considers that the highest sentence imposed, namely, 18 years for the crimes of

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<sup>278</sup> [Judgment](#), para. 751. In the case of two distinct crimes arising from the same incident, care must be taken to ensure that the sentence does not doubly punish conduct in respect of the same act which is relied on as satisfying the elements common to the two crimes, but only that conduct which is relied on to satisfy the distinct elements of the relevant crimes. See [ICTY, Delalić et al. Appeal Judgment](#), para. 769. See also [ICTY, Mucić et al. Sentencing Appeal Judgment](#), paras 26 to 27.

<sup>279</sup> Where a set of underlying crimes are geographically and temporally connected, and the convicted person's responsibility therefor is based on the same conduct, it may be appropriate for a global sentence to be imposed, instead of individual sentences for each crime, so long as such global sentence adequately reflects the convicted person's culpability. See [ICTR, Nahimana et al. Appeal Judgment](#), paras 1042 to 1043, citing [ICTR, Kambanda Appeal Judgment](#), para. 111; and [SCSL, Fofana and Kondewa Appeal Judgment](#), paras 546 to 552.

rape, reflects the totality of Mr Bemba's culpability. In these circumstances, the Chamber decides that the sentences for the war crimes and crimes against humanity of murder and rape and the war crime of pillaging shall run concurrently. Finally, noting that the parties and Legal Representative do not request the imposition of a fine or order of forfeiture under Article 77(2) and Rules 146 to 147, the Chamber decides that, in the circumstances of this case, imprisonment is a sufficient penalty.

96. Pursuant to Article 78(2), Mr Bemba is entitled to credit against his sentence for the time he has spent in detention in accordance with an order of this Court, namely, since his arrest, pursuant to a warrant issued by Pre-Trial Chamber II, on 24 May 2008.<sup>280</sup>

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<sup>280</sup> [ICC-01/05-01/08-6](#). See also [Judgment](#), para. 5.

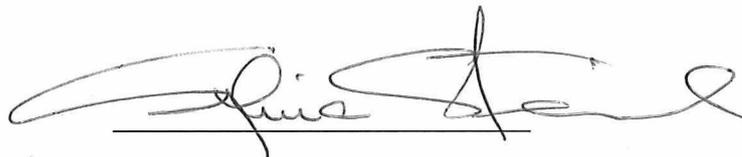
## V. CONCLUSION

97. For the foregoing reasons, the Chamber hereby:

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

98. Judge Kuniko Ozaki appends a separate opinion.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 21 June 2016

At The Hague, The Netherlands