

1 International Criminal Court

2 Trial Chamber III - Courtroom 1

3 Situation: Central African Republic

4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08

5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch, and Judge Kuniko Ozaki

6 Delivery of the Decision on Sentence

7 Tuesday, 21 June 2016

8 (The sentencing hearing starts in open session at 1.46 p.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE STEINER: Good afternoon.

13 I welcome all those present in this courtroom, the Defence team, the Prosecution team,

14 Legal Representative of Victims, and I'd also like to greet the representatives of

15 non-governmental organisations, family members of Mr Bemba, diplomatic corps,

16 court staff and other individuals in the public gallery.

17 To begin with, I would like to ask the attendees to introduce themselves starting by

18 Madam Prosecutor.

19 MS BENSOUA: Madam President, the Office of the Prosecutor is today

20 represented by Mr Jean-Jacques Badibanga, senior trial lawyer; Massimo Scaliotti,

21 trial lawyer; Thomas Bifwoli, trial lawyer; Horejah Bala-Gaye, trial lawyer; Sylvie

22 Vidinha, case manager; Abdoul Aziz Mbaye, international cooperation advisor; and

23 myself, Fatou Bensouda, Prosecutor.

24 PRESIDING JUDGE STEINER: Thank you, Madam Bensouda.

25 I would like now to ask Legal Representatives of Victims to introduce herself and her

26

1 team.

2 MS DOUZIMA LAWSON: (Interpretation) Thank you, Madam President. I am  
3 Maître Marie-Edith Douzima Lawson, Legal Representative of Victims. I'm assisted  
4 by two case managers, namely, Evelyne Ombeni and Melanie Vianney-Liaud.  
5 Thank you.

6 PRESIDING JUDGE STEINER: Noticing the absence of the lead counsel, Mr Peter  
7 Haynes, the Chamber was not aware of his absence, but in any case I give the floor  
8 now to Ms Gibson to introduce herself and the Defence team.

9 MS GIBSON: Thank you, Madam President, your Honours. Today Mr Jean-Pierre  
10 Bemba is represented by myself, Kate Gibson, together with Melinda Taylor, Natacha  
11 Lebaindre and Cécile Lecolle.

12 PRESIDING JUDGE STEINER: I welcome as well Mr Jean-Pierre Bemba Gombo.  
13 We are today here to deliver the summary of the Chamber's decision on sentence  
14 pursuant to Article 76 of the Rome Statute, which I will proceed to read now.  
15 Trial Chamber III of the International Criminal Court hereby provides the following  
16 summary of its decision on sentence pursuant to Article 76 of the Rome Statute. The  
17 Chamber notes that only the written decision to be filed after this hearing is  
18 authoritative.

19 Background

20 On 21 March 2016 the Chamber convicted Mr Jean-Pierre Bemba Gombo under  
21 Article 28(a) of the following crimes committed by the soldiers of the Mouvement de  
22 libération du Congo in the Central African Republic between 26 October 2002 and 15  
23 March 2003: Murder as a crime against humanity under Article 7(1)(a); murder as a  
24 war crime under Article 8(2)(c)(i); rape as a crime against humanity under Article  
25 7(1)(g); rape as a war crime under Article 8(2)(e)(vi); and pillaging as a war crime

1 under Article 8(2)(e)(v).

2 Between 11 and 25 April 2016, the Prosecution, Legal Representative of Victims and  
3 Defence filed written submissions concerning the appropriate sentence. Between 16  
4 and 18 May 2016, the Chamber heard the testimonies of a character witness called by  
5 Defence and an expert witness called by the Prosecution; the views and concerns of  
6 two protected victims; and the final oral submissions of the Prosecution, the Legal  
7 Representatives and the Defence.

8 Analysis

9 In order to determine the appropriate sentence, in accordance with Article 76 to 78 of  
10 the Statute and Rules 145 to 147 of the Rules of Procedure and Evidence, the Chamber  
11 considered the gravity of the crimes, the gravity of Mr Bemba's culpable conduct, and  
12 Mr Bemba's individual circumstances. The Chamber took into account all relevant  
13 evidence and submissions presented throughout the trial, in order to decide on the  
14 proportionate sentence in relation to each crime, and all factors relevant to the finding  
15 on the existence of aggravating and mitigating circumstances.

16 The crimes

17 Over the course of approximately four and a half months, beginning with their arrival  
18 on 26 October 2002, the MLC troops advanced through Bangui, to PK12 and PK22,  
19 and along the Damara-Sibut and Bossembélé-Bossangoa axes, attacked Mongoumba,  
20 and, on 15 March 2003, withdrew from the CAR. MLC soldiers committed crimes  
21 pursuant to a consistent modus operandi, in each of the locations that fell under their  
22 control. As noted in the judgment, there is consistent and corroborated evidence  
23 that MLC soldiers committed many acts of murder, rape and pillaging against  
24 civilians over a large geographical area, including in and around Bangui, PK12, PK22,  
25 Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptélé,

1 Boali, Yaloke and Mongoumba. The Chamber based Mr Bemba's conviction on  
2 specific underlying acts that it found beyond reasonable doubt were committed by  
3 the MLC soldiers. It further found that these underlying acts were only a portion of  
4 the total number of crimes committed by MLC forces during the 2002-2003 CAR  
5 Operation.

6 Below, the Chamber details its findings relevant to Mr Bemba's sentence in relation to  
7 each of the crimes for which it entered a conviction as to their gravity, and when  
8 applicable, aggravating circumstances.

#### 9 Murder

10 The murders identified in the judgment were committed when the victims were  
11 resisting acts of pillaging. All acts of murder were committed in the presence of  
12 other civilians, including some victims' family members, were accompanied by acts of  
13 pillaging, rape, and/or physical and verbal abuse. MLC soldiers shot P-69's sister in  
14 the head when she resisted pillaging. Likewise, MLC soldiers, who had entered his  
15 home at night, shot P-87's brother twice in the chest when he tried to protect his  
16 motorbike. It was the third group to come to his compound that day, during which  
17 his family's belongings were pillaged and P-87 was raped. Finally, as witnessed by  
18 V1, MLC soldiers shot and mutilated an unidentified Muslim man in his home, after  
19 he refused to hand over a sheep.

20 Murder deprives the direct victim of his or her life, the ultimate harm. Relatives and  
21 dependents left behind are not only deprived of the direct victim but may also be  
22 directly injured - physically and/or psychologically - as a result of the murder.

23 Further, persons who rely on the direct victim for support, whether financial, physical,  
24 emotional, psychological, moral, or otherwise are also affected.

25 The impact of the victims' deaths rippled through the relevant communities. Due to

1 the prevailing chaotic and traumatic circumstances, family members and others with  
2 special bonds of affection to those murdered were deprived of the closure that funeral  
3 services and burial rituals may provide in periods of grief. For some victims, the  
4 impact of the murders was chronic and severe.

5 Accordingly, in light of the circumstances of time, manner, and location, in particular,  
6 the geographical and temporal scope of the underlying acts of murder, the nature of  
7 the unlawful behaviour, the means employed to execute the crime, and the extent of  
8 the damage caused, the Chamber finds that, in this case, the crime of murder is of  
9 serious gravity.

10 The Chamber notes that, in exercise of its discretion, it considered all relevant factors  
11 above in its assessment of the gravity of the crime of murder. The Chamber is not  
12 convinced that any aggravating circumstances apply in this case in relation to the  
13 crime of murder.

14 Rape

15 Gravity

16 The number of victims of underlying acts of rape is substantial. The underlying acts  
17 of rape were committed throughout the geographical and temporal scope of the  
18 2002-2003 CAR operation, as part of an attack targeting many civilians throughout the  
19 CAR between 26 October 2002 and 15 March 2003. The degree of damage caused to  
20 victims, their families, and communities was severe and lasting.

21 The victims of rape in this case faced many physical problems, such as vaginal and  
22 anal illnesses, abdominal pains, skin disorders, pelvic pain, high blood pressure,  
23 gastric problems, hypertension, miscarriage, infertility, and HIV. They also suffered  
24 psychological, psychiatric, and social consequences, such as PTSD, depression,  
25 humiliation, anxiety, guilt, and nightmares. P-22 testified that, after her rape, she

1 became suicidal, no longer desired any sexual relationship, and presented with severe  
2 PTSD, including sadness, an overall sense of pessimism, and inhibition. P-79 was  
3 unable to tell anyone her daughter was raped, as the rape of a Muslim girl inhibits her  
4 from finding a husband in the future. In this regard, the Chamber notes that some of  
5 the victims lost their virginity as a result of their rape, a harm that cannot be  
6 underestimated, particularly in the cultural context in which they occurred.  
7 When their rapes were known to their communities, victims were ostracised, socially  
8 rejected and stigmatised. For example, V1 felt like she was no longer treated as a  
9 human being, that she, and I quote, "lost her dignity," end of quote, was mocked and  
10 called, and I quote, a "Banyamulengué wife," end of quote.  
11 Accordingly, in light of the special status ascribed to sexual crimes in the Statute and  
12 the Rules, the circumstances of time, manner, and location, in particular, the vast  
13 geographical and temporal scope of the underlying acts of rape, and the extent of  
14 damage caused, the Chamber finds that in this case the crime of rape is of utmost  
15 serious gravity.

16 Aggravating circumstance: Particularly defenceless victims

17 Before committing the crime of rape, MLC soldiers first confirmed that General  
18 Bozizé's rebels had departed, and the MLC were thereafter the only armed forces in  
19 the area. Armed MLC soldiers then targeted the unarmed victims in their homes, on  
20 temporary MLC bases, or in isolated locations, such as the bush. Many victims had  
21 already fled their homes or were seeking refuge when they were targeted. The MLC  
22 soldiers, always acting in groups to avoid any resistance, beat, restrained, threatened,  
23 and held under gunpoint the victims and others present, especially any who  
24 attempted to resist.

25 The young age of at least eight of the known rape victims, who were between 10 and

1 17 years old at the time of the attacks, rendered them especially vulnerable and  
2 defenceless. During the attacks, some of these children expressed their vulnerability.  
3 P-82 testified, and I quote, "I wanted to flee ... I cried out. That alerted my father.  
4 My father tried to intervene and they put their weapons against him ... and then they  
5 deflowered me." End of quote. P-42, who was restrained at the time of his  
6 10-year-old daughter's rape, recalled that his daughter shouted, and I quote, "Papa,  
7 they are undressing me. They are undressing me," end of quote, but he could do  
8 nothing. After the attacks, some parents found their daughters lying on the ground,  
9 crying, and bleeding from their vaginas.

10 Accordingly, the Chamber finds beyond reasonable doubt that MLC soldiers  
11 committed the crime of rape against particular defenceless victims, constituting an  
12 aggravating circumstance under Rule 145(2)(b)(iii).

13 Aggravating circumstance of particular cruelty

14 Dr André Tabo testified that MLC soldiers used sexual violence as a weapon of war.  
15 As found in the judgment, MLC troops did not receive adequate financial  
16 compensation and, in turn, self-compensated through acts of, inter alia, rape.

17 Moreover, MLC soldiers committed acts of rape in order to punish civilians who were  
18 suspected rebels or rebel sympathisers and targeted their victims without regard for  
19 age, gender, or social status, including local officials. All acts of rape were  
20 committed together with, or during the course of, acts of murder and pillaging and in  
21 the presence or within earshot of other soldiers and civilians, including their children,  
22 parents, siblings, other family members, and/or neighbours. Acts of rape were also  
23 accompanied by physical and verbal abuse and threats of death and rape to the  
24 victims and their families.

25 No perpetrator acted alone: All of the underlying acts of rape were committed by at

1 least two, often multiple perpetrators, and in some cases more than 20 soldiers against  
2 the same victim. The vast majority of rape victims were raped by multiple  
3 perpetrators, some being orally, vaginally, and anally, penetrated during the same  
4 attack. V1 was gang-raped on two separate occasions during the one-day attack on  
5 Mongoumba. First, two soldiers took turns raping her, while others looked on,  
6 "shouting with joy," and then four soldiers raped V1 until she lost consciousness.  
7 When she regained consciousness, the rapes continued. Twelve soldiers in total  
8 penetrated her vagina, anus, and mouth with their penises during the second  
9 incident.

10 The Chamber notes that some of the underlying acts of rape were especially sadistic.  
11 Entire families - the elderly, men, women, and children - were victimized in turns  
12 during the same attacks by the same MLC soldiers or soldiers of the same group that  
13 raped and murdered other family members and pillaged their belongings. For  
14 example, P-23, three of his daughters, his granddaughter, and his wife were raped in  
15 turn during one attack.

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

19 Pillaging

20 Gravity

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

24 The Chamber found that MLC soldiers pillaged property from CAR civilians on a  
25 large scale and with grave consequences for the victims. As described by P-9, and I



1 quote, "Looting took place in practically every town where MLC troops were to be  
2 found ... MLC soldiers just went through every single house and took whatever they  
3 wanted." End of quote. The consequences for the victims, particularly in light of  
4 the economic context, were far-reaching, impacting various aspects of their personal  
5 and professional lives, often leaving victims with nothing. For example, when Mr  
6 Flavien Mbata, the Senior Investigative Judge of the Tribunal de Grande Instance in  
7 Bangui, returned to his home, which had been occupied by MLC soldiers for several  
8 months, he found it, and I quote, "was pretty much empty," end of quote. Likewise,  
9 P-23, P-80, and P-81 all testified that the MLC soldiers took everything from their  
10 compound in PK12.

11 Accordingly, the Chamber finds in this case the crime of pillaging is of serious  
12 gravity.

13 Aggravating circumstance: Particular cruelty

14 The Chamber notes that many of the same factors relevant to aggravating  
15 circumstances provided in Rule 145(2)(b)(iii) and (iv) and recognized above as  
16 applicable to the crime of rape are also relevant to the aggravating circumstance  
17 applicable to the crime of pillaging.

18 Armed MLC soldiers targeted unarmed victims in their homes, places of sanctuary,  
19 such as churches; temporary MLC bases; or in isolated locations, such as the bush.  
20 Many victims had already fled their homes or were seeking refuge at the time of the  
21 acts. All underlying acts of pillaging were committed by or otherwise involved at  
22 least two, and often multiple, MLC soldiers. Because the MLC troops did not receive  
23 adequate financial compensation, they self-compensated through acts of, inter alia,  
24 pillaging. The acts of pillaging were often accompanied by acts of murder and rape,  
25 and always by physical and verbal abuse, and threats of death and rape to the victims

1 and their families.

2 Many victims were subject to repeated acts of pillaging and other violence.

3 Generally, the MLC soldiers pillaged without concern for the victims' livelihood or  
4 well-being, or even feed their families. For example, groups of MLC soldiers  
5 pillaged P-87's compound on three different occasions in a single day, while also  
6 committing acts of rape, murder, and other violence and abuse. Approximately  
7 three weeks after one group of MLC soldiers pillaged his sister's belongings and  
8 murdered her in cold blood in his home, P-69 found that MLC soldiers had again  
9 come to his home to pillage his belongings. They came yet again some days later to  
10 pillage, when this time six MLC soldiers gang-raped him and his wife.

11 Accordingly, the majority of the Chamber finds beyond reasonable doubt that MLC  
12 soldiers committed the crime of pillaging with particular cruelty, constituting an  
13 aggravating circumstance pursuant to Rule 145(2)(b)(iv). The Presiding Judge,  
14 however, considers that the same factors taken into account by the majority  
15 established that the crime of pillaging was committed against particularly defenceless  
16 victims, constituting an aggravating circumstance pursuant to Rule 145(2)(b)(iii).

17 Mr Bemba's culpable conduct

18 The Chamber convicted Mr Bemba under Article 28(a), as a person effectively acting  
19 as a military commander, who knew that MLC forces under his effective authority  
20 and control were committing or about to commit the crimes against humanity of  
21 murder and rape, and the war crimes of murder, rape, and pillaging. The Chamber  
22 further found that these crimes were a result of Mr Bemba's failure to exercise control  
23 properly.

24 Over the course of approximately four and a half months, Mr Bemba had consistent  
25 information of crimes committed by MLC soldiers in the CAR, over which he had

1 ultimate, effective authority and control. Such authority extended to logistics,  
2 communications, military operations and strategy, and discipline. Although not  
3 physically present, Mr Bemba maintained a constant, remote presence, requiring and  
4 receiving regular, if not daily, reports and affirmatively exercising his authority,  
5 including by taking the most important decisions, such as committing MLC troops to  
6 the CAR and withdrawing them. Mr Bemba also visited the CAR on a number of  
7 occasions, including in November 2002 when he met with MLC troops. He provided  
8 arms, ammunition, and reinforcement to his troops and the forces aligned with  
9 President Patassé.

10 Mr Bemba took some measures in reaction to public allegations of crimes by MLC  
11 soldiers, including two missions to the CAR, but failed to take any measure in  
12 reaction to allegations of crimes reported internally within the MLC. The Chamber  
13 found that Mr Bemba did not genuinely intend to take all necessary and reasonable  
14 measures within his material ability to prevent or repress the commission of crimes,  
15 as was his duty. Rather his key intention was to counter public allegations and  
16 rehabilitate the public image of the MLC. Despite his ongoing knowledge of the  
17 crimes, ultimate authority over the MLC contingent in the CAR and the means to  
18 exercise such authority, Mr Bemba repeatedly failed to take genuine and adequate  
19 measures to prevent and repress the crimes, or to submit the matter to competent  
20 authorities.

21 Mr Bemba's failures were ongoing throughout the 2002-2003 CAR Operation. The  
22 reasonable and necessary measures at his disposal, which he did not take, would have  
23 deterred the commission of crimes, and generally diminished, if not eliminated, the  
24 climate of tolerance surrounding and facilitating the commission of the crimes.  
25 Accordingly, he did more than tolerate the crimes as a commander. Mr Bemba's

1 failure to take action was deliberately aimed at encouraging the attack directed  
2 against the civilian population of which the crimes formed part, and directly  
3 contributed to the continuation and further commission of crimes. Finally, the  
4 Chamber emphasises that Mr Bemba's position as the highest-ranking MLC official,  
5 with authority over both political and military wings, as well as his education and his  
6 experience, increased the gravity of his culpable conduct. Such circumstances  
7 enabled him to fully appreciate the consequences of his conduct as well as the  
8 alternative and remedial measures at his disposal to prevent and repress the crimes.  
9 Mr Bemba's knowing and willing impact on the crimes is therefore unquestionable.  
10 Accordingly, the Chamber finds that Mr Bemba's culpable conduct was of serious  
11 gravity.

#### 12 Mitigating circumstances

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

#### 16 Determination of sentence

17 The Prosecution submits that Mr Bemba's sentence should be no less than 25 years of  
18 imprisonment. The Legal Representative submits that Mr Bemba deserves a  
19 sentence beyond the maximum threshold. The Defence submits that Mr Bemba  
20 should receive a joint sentence in the lower range of sentences previously passed on  
21 commanders at international criminal courts. It stresses that a sentence outside the  
22 range of 12 to 14 years of imprisonment would infringe Mr Bemba's rights.  
23 Pursuant to Rule 145(1)(a) and (b), the Chamber must balance all the relevant factors,  
24 including any mitigating and aggravating factors and consider the circumstances both  
25 of the convicted person and the crimes. In order to sufficiently and adequately

1 acknowledge the harm to the victims and fulfil the objectives of sentencing - in  
2 particular, retribution and deterrence - the sentence must be proportionate to the  
3 gravity of the crimes, and the individual circumstances and culpability of the  
4 convicted person. Pursuant to Article 77(1), the Chamber may sentence a person  
5 convicted of any crime referred to in Article 5 to a term of imprisonment of up to 30  
6 years or, when justified by the extreme gravity of the crime and the convicted  
7 person's individual circumstances, a term of life imprisonment.

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

11 Murder as a war crime: 16 years of imprisonment;  
12 Murder as a crime against humanity: 16 years imprisonment;  
13 Rape as a war crime: 18 years of imprisonment;  
14 Rape as a crime against humanity: 18 years of imprisonment; and  
15 Pillaging as a war crime: 16 years of imprisonment.

16 The Chamber considers that the highest sentence imposed, namely, 18 years for rape,  
17 reflects the totality of Mr Bemba's culpability. The Chamber decides that the  
18 sentences imposed for the war crimes and crimes against humanity of murder and  
19 rape and the war crime of pillaging shall run concurrently. Finally, the Chamber  
20 decides that, in the circumstances of this case, imprisonment is a sufficient penalty.

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

25 Conclusion

1 For the foregoing reasons, the Chamber sentences Mr Jean-Pierre Bemba Gombo to a  
2 total of 18 years of imprisonment;  
3 Orders the deduction of the time Mr Bemba has spent in detention pursuant to an  
4 order of this Court; and  
5 Informs the parties and participants that reparations to victims pursuant to Article 75  
6 of the Statute shall be addressed in due course.  
7 The Chamber thanks everyone here present for your kind attention.  
8 On behalf of the Chamber, I would like to thank the entire staff of the Registry,  
9 including court officers, the interpreters, the court reporters, and all dedicated  
10 members of the Registry staff who have assisted us in this hearing and who made it  
11 possible for us to conduct this entire trial.  
12 I also would like to thank the Chamber's administrative and legal staff, the legal  
13 advisor, our legal officers, our associate legal officers, our assistant legal officers and  
14 research assistants, our administrative assistants, interns, and visiting professionals,  
15 who assisted us throughout the proceedings, and whose assistance was fundamental  
16 for the conduct of the proceedings throughout this trial.  
17 With this decision this Chamber, in its current composition, concludes the present  
18 trial.  
19 The hearing is concluded.  
20 THE COURT USHER: All rise.  
21 (The sentencing hearing ends in open session at 2.27 p.m.)