

**PROSECUTOR v. JEAN-PIERRE BEMBA
GOMBO**

Case No. ICC-01/05-01/08
International Criminal Court
Trial Chamber Judgment
March 21, 2016

Judges:

Judge Sylvia Steiner
Judge Joyce Aluoch
Judge Kuniko Ozaki

Prosecution:

Ms. Fatou Bensouda
Mr. Jean-Jacques Badibanga

Defense:

Mr. Peter Haynes
Ms. Kate Gibson
Ms. Melinda Taylor

Gender Keyword(s): Coercion; Consent; Corroboration; Credibility or Character of the Victim; Gang Rape; Forced Nudity; Nudity, Public; Penis; Rape; Vagina

Procedural History: On May 23, 2008, the Pre-Trial Chamber of the International Criminal Court (ICC) issued a warrant for the arrest of Mr. Jean-Pierre Bemba Gombo (“Bemba”) (¶ 5). On May 24, 2008, the authorities in the Kingdom of Belgium arrested Bemba (*id.*). On June 10, 2008, the Pre-Trial Chamber issued a new warrant of arrest after the Office of the Prosecutor submitted additional information (*id.*). On July 3, 2008, the Belgian authorities transferred Bemba and surrendered him to the ICC where he made his first appearance on July 4, 2008, before the Pre-Trial Chamber (*id.*). On October 1, 2008, the Prosecution filed the document containing the charges (DCC) which was amended on October 17, 2008, charging Bemba with criminal responsibility under Article 25(3)(a) of the Rome Statute for crimes against humanity and war crimes (¶ 6). On March 30, 2009, in response to an invitation by the Pre-Trial Chamber to consider command or superior responsibility as a mode of liability, the Prosecution amended the charges against Bemba to allege his responsibility as either a “co-perpetrator” under Article 25(3)(a) or as a person effectively acting as a military commander or superior under Article 28(a) or (b), for crimes against humanity and war crimes (¶¶ 6-7). On June 15, 2009, the Pre-Trial Chamber confirmed the charges against Bemba under command responsibility pursuant to Article 28(a) for the crimes

against humanity of murder and rape, and the war crimes of murder, rape, and pillaging (*id.*). On November 4, 2009, the Prosecution filed the second amended DCC upon the Trial Chamber's order, to reflect the Pre-Trial Chamber's confirmation decision (¶ 8). On July 20, 2010, the Chamber ordered the Prosecution to file a revised version of the second amended DCC which was then filed on August 18, 2010 (¶ 9). On October 13, 2010, the Prosecution filed the second amended DCC (*id.*). On November 22, 2010, the Trial Chamber commenced the trial, which closed on November 13, 2014 (¶ 10). This is a digest of the Trial Chamber's Judgement of March 21, 2016.

Disposition: The parties did not dispute and the Trial Chamber finds that, during the time period relevant to the charges, Bemba was the Commander-in-Chief of ALC (Armée de Libération du Congo), the military branch of the Mouvement de libération du Congo (MLC) (¶¶ 1, 697). Based on his actions in this role, the Trial Chamber finds Bemba guilty through command responsibility, under Article 28(a) of the Rome Statute, for murder and rape as crimes against humanity, and murder, rape and pillaging as war crimes (¶ 752). The Trial Chamber finds that convictions for these offenses are not impermissibly cumulative on the basis that war crimes and crimes against humanity each have materially distinct elements (¶¶ 749,751). The Chamber sentences Mr. Bemba to 18 years of imprisonment.¹

Key Gender-Based Holdings:

COERCION:

- The Trial Chamber addresses the concept of coercion in its definition of rape (¶ 102). As explained below in the "Rape" section, the Trial Chamber refers to the ICC's Elements of Crimes as well as the definition of rape from the *Katanga* case, which both provide that "for the invasion of a person's body to constitute rape" the act has to be committed under one of four circumstances:
 - (i) by force;
 - (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person;
 - (iii) by taking advantage of a coercive environment; or
 - (iv) against a person incapable of giving genuine consent (*id.*).
- In defining "coercive environment", the Trial Chamber refers to the *Akayesu* case from the International Criminal Tribunal for Rwanda (ICTR), which held that coercive circumstances "need not be evidenced by a show of physical force" (¶ 103). Rather, "Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion" (*id.*). The Trial Chamber notes that the *Akayesu*

¹ *Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber "Decision on Sentence Pursuant to Article 76 of the Statute," June 21, 2016.

judgment cited the existence of armed conflict and the presence of military personnel as examples of situations which are inherently coercive, but acknowledges that other factors may also contribute to a coercive environment, including “the number of people involved in the commission of the crime or whether the rape is committed during or immediately following a combat situation or is committed together with other crimes” (¶ 104) The Trial Chamber finds that in addition to proving the existence of a coercive environment, it must also be proven that the perpetrator’s conduct took advantage of this environment (*id.*).

CONSENT:

- The Trial Chamber holds that the drafters of the Rome Statute did not make the absence of the victim’s consent a legal element of the crime of rape because they recognized that doing so would “undermine efforts to bring perpetrators to justice” (¶ 105). Consequently, the Trial Chamber finds that the Prosecution need not prove the non-consent of the victim where “force”, “threat of force or coercion” or “taking advantage of coercive environment” is proven (¶ 106). The Trial Chamber recalls that “coercion” is present when the act is committed “against a person incapable of giving genuine consent” (¶ 107). The Trial Chamber states that this circumstance is met where the Prosecution proves “the victim’s capacity to give genuine consent was affected by natural, induced, or age-related incapacity” (*id.*). The Trial Chamber clarifies that only one of the four alternative possible circumstances need be proven to establish rape (¶ 108).

CORROBORATION:

- The Trial Chamber recalls that Rule 63(4) of the ICC’s Rules of Procedure and Evidence prohibits the Chamber from requiring corroboration “in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence” (¶ 245). The Chamber notes, however, that although there may be instances where a single piece of evidence is sufficient to prove a fact beyond reasonable doubt, there may also be instances where several pieces of evidence may be required, and thus the Chamber adopts a case-by-case approach when evaluating evidence (¶¶ 245-46).
- Indeed, the Trial Chamber notes that it may consider corroborating evidence of sexual violence, in particular to determine whether a victim’s account is reliable despite inconsistencies.
 - For instance, the Chamber finds P23’s testimony that his daughters were raped by MLC soldiers lacking in certain details; however, it considers that P23’s testimony “concerning the alleged rape of his daughters is corroborated by P80, P81, and P82, and the circumstances of the attack on the family compound as a whole” and “considers that it is reliable” (¶ 493).
 - With regards to testimony from P82, P23’s granddaughter, the Trial Chamber

considers it generally reliable despite some inconsistencies as “her account is corroborated by other members of her family and a neighbor” (¶ 490).

CREDIBILITY OR CHARACTER OF THE VICTIM:

- The Defense questioned the credibility of several of the victims and witnesses who testified about sexual violence. The Trial Chamber finds some witnesses’ testimonies about experiencing or witnessing sexual violence credible despite some minor inconsistencies in their testimonies while finding that other testimonies lacked credibility (¶469, 484).
 - **Witness P119** testified that she witnessed a group of soldiers raping two young girls ages 12 or 13 in a ditch and that she intervened by “pushing” a large stone on to one soldier who was waiting to rape the girls, causing him to cry out and for all of the soldiers to flee (¶ 467). The Defense argued that Witness P119’s testimony lacked credibility considering that she was not harmed or aware of the girls’ names despite the extent to which she helped them (¶ 468). Witness P119 explained that due to “circumstances and resulting distractions” at the time, she could not have asked for the victims’ names (*id.*). The Trial Chamber accepts Witness P119’s explanation because there were “chaotic and traumatic circumstances prevailing at the time;” the Chamber therefore finds that Witness P119’s inability to ask for the girls’ names does not “undermine the reliability of her account” (*id.*). Although the Trial Chamber finds part of Witness P119’s testimony pushing a stone at a perpetrator “might be exaggerated,” the Trial Chamber nonetheless finds her testimony to be generally reliable (¶ 469).
 - **Witness 87** testified to being raped by three soldiers in succession in her home (¶ 472). The Defense questioned Witness 87’s reliability because Witness 87 had not previously revealed the rapes to the family lawyer (¶ 473). The Trial Chamber accepts Witness 87’s explanation that she did not inform neighbors about the rapes – nor did she include this information in a complaint filed with the CAR *Procureur général* or in her victim’s application – because of feelings of shame (*id.*). The Trial Chamber finds that these previous omissions do not discredit Witness 87 and finds her testimony to be generally reliable (*id.*).
 - **Witness P47**, a mechanic for a river transport company that ferried MLC troops to CAR, testified that he witnessed two or three incidents of rape at the naval base at Port Beach after the MLC were in control of Bangui. (¶¶ 480-81). Concerning the first incident, the Trial Chamber finds that although there were minor inconsistencies regarding the precise timing of events between the witness’s prior statement and his in-court testimony, the Chamber considers this testimony reliable due to various factors such as the witness’s otherwise consistent testimony, the length of time that had elapsed between the events and the witness testifying, the traumatic circumstances under which the events

about which he testified took place, as well as P47's demeanor when testifying about this incident (¶ 483). Regarding the second and third incidents, the Trial Chamber finds that it is unable to rely on portions of Witness P47's testimony due to inconsistencies in her testimony, including the number of the perpetrators or victims, whether the MLC soldiers killed a woman during the second incident, and whether there was even a third incident (¶ 484).

- **Witnesses including P23 and his family members** testified regarding rapes committed in their family compound in PK12 against P23 and his wife, daughters, and granddaughter (¶¶ 487-93). The Trial Chamber notes that there were inconsistencies in the testimonies of some of the victims concerning certain details. P23's daughter, P81, as well as P23's granddaughter, P82, were unable to recall certain facts such as their ages at the time that they were raped (¶¶ 490-92). The Chamber acknowledges that certain factors contribute to these inconsistencies, including the young ages of the witnesses at the time the events occurred, the passage of time since then, and the traumatic nature of the events (*id.*). The Trial Chamber finds that the inconsistencies do not undermine their credibility (*id.*).
- **Witness P69** testified that MLC soldiers came to his house and raped his wife and then him (¶¶ 497-98). The Trial Chamber considers inconsistencies in P69's testimony including "whether his wife was inside or outside the house at the time of the events, the number of soldiers who allegedly raped his wife, his account of his own alleged rape, the language spoken by one of the 'Banyamulengués'² who killed his sister [prior to the rapes], and the date of her death" (¶ 499). The Chamber accepts Witness P69's testimony despite these inconsistencies, acknowledging the amount of time that had passed since the incident, the traumatic circumstances surrounding the events, and Witness P69's demeanor while testifying, as well as his explanations for the inconsistencies and his spontaneous responses (¶ 500).
- **Witness P79** testified that five armed soldiers entered her home while she was sleeping and raped her and then her 11-year-old daughter (¶¶ 510-11). The Trial Chamber considers several documents relating to a *procès-verbaux* purportedly addressing the same events, but Witness P79 denied that the documents concerned her and her daughter, stating that she had not reported the rapes to the authorities because revealing that a Muslim girl had been raped would prevent her from finding a husband (¶ 512). The Trial Chamber decides not to accord any weight to the documents due to their lack of dates, letterhead, and signatures and finds that the events Witness 79 described did occur (¶¶

² Witnesses frequently used the term "Banyamulengués" to describe MLC fighters from the Democratic Republic of Congo, and identify them by the fact that they speak Lingala. *See e.g.*, FN 1112, ¶¶ 425, 462, 467, 471-2, 474).

512-13).

- **Witness V1** testified that group of around 20 armed soldiers found her and other persons, who were hiding under beds in the local hospital in Mongoumba, seized her, forced her to help interpret while the soldiers looted several locations, and raped her twice: the first rape was committed by two soldiers and the second rape by 12 soldiers (¶¶ 546-51). The Defense argued that V1's testimony was "incapable of belief" due to "its scale" and because of some alleged inconsistencies or omissions between her statement to the Legal Representative and her victim application (¶ 552). The Chamber notes that the victim application was written in French—a language V1 does not understand—and V1 stated that no one re-read it to her in Sango (*id.*). Witness V1 acknowledges that she may have forgotten some details in her prior statement to the Legal Representative (*id.*). The Chamber accepts these explanations for minor inconsistencies, noting the passage of time since the events occurred, the traumatic circumstances, her consistent testimony, and her demeanor, concluding that the inconsistencies do not undermine V1's testimony (*id.*).

FORCED NUDITY:

- As explained in the "Rape" section below, witnesses in their testimonies stated how MLC soldiers undressed them with force before raping them. The Trial Chamber does not use the term "forced nudity" but does use terms like "undress" (¶¶ 481, 510), "forced to undress" (¶ 491), or notes that perpetrators tore or removed victims' undergarments (¶¶¶ 508, 548, 553).

NUDITY, PUBLIC:

- As explained in the "Rape" section below, witness P47 testified about how he saw eight women, some of which were already naked and others who were undressed on the deck of the ferry by the MLC soldiers, before they were raped (¶ 481).

PENIS:

- In defining rape, the Trial Chamber does not use the term "penis" but instead uses the term "sexual organ" (¶ 99). However, the Chamber uses the term "penis" when recounting each witness's testimony describing rapes by MLC soldiers that involved perpetrators penetrating victims' vaginas, anuses, or other parts of the body and when characterizing these acts as rape (¶¶ 464, 467, 469, 473, 481, 483, 488-90, 492-94, 501, 508, 510, 513, 516, 523, 545, 551, 553, 633, 637).

GANG RAPE:

- Although the Trial Chamber does not use the word "Gang Rape" in its Judgment, the

Chamber recalls many witness testimonies describing rapes involving multiple perpetrators and finds that several victims and witnesses experienced rapes by more than one MLC soldier (see *e.g.*, ¶¶ 469, 473, 481, 488, 492-93, 498). Additionally, in interpreting the concept of “coercive environment” in its definition of rape, the Chamber finds that one factor that contributes to a finding of a coercive environment is the involvement of multiple perpetrators (¶ 104).

RAPE:

- The Prosecutor charged Bemba for rape as both as a crime against humanity and as a crime of war (¶ 7). The Prosecution charged Bemba with these and other crimes alternatively as either a co-perpetrator or under command or superior responsibility (*id.*). The Pre-Trial Chamber confirmed the charges against Bemba of rape and other crimes under command responsibility based on his role as a military commander heading the ALC (¶¶ 1-2, 7). The Trial Chamber’s findings regarding the issue of modes of liability is discussed further below under “Other Issues.”
- The Trial Chamber addresses the legal elements of rape both as a war crime and as a crime against humanity together, noting that the elements are distinct only in terms of their contextual elements (¶ 98). The Trial Chamber defines rape as “the invasion of a person’s body by conduct resulting in penetration, however slight, of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body” (¶ 99). The Trial Chamber further explains that this definition “is intended to be broad enough to be gender-neutral” (¶ 100). Thus the term “invasion” includes same-sex penetration, and encompasses both male and/or female perpetrators and victims (*id.*) The Chamber notes further that “acts of ‘invasion’ of any part of a victim’s body” include invasion of the victim’s mouth by a sexual organ (¶ 101). The Trial Chamber cites the four material circumstances and conditions which give such acts of invasion a criminal character, including acts committed: “(i) by force; (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person; (iii) by taking advantage of a coercive environment; or (iv) against a person incapable of giving genuine consent” (¶ 102). The Trial Chamber’s findings regarding the elements of coercion and consent are discussed under those headings above. The Trial Chamber states that the mental elements of rape are knowledge and intent (¶ 110). The perpetrator must have intentionally committed the act of rape, meaning he “meant to engage in the conduct in order for the penetration to take place” (¶ 111). To establish the “knowledge” requirement, “it must be proven that the perpetrator was aware that the act was committed by force, by the threat of force or coercion, by taking advantage of a coercive environment, or against a person incapable of giving genuine consent” (¶ 112).

- The Trial Chamber considers evidence offered at trial to support the charges of rape as both a war crime and as a crime against humanity, including testimonies regarding the following acts in the following locations:
 - **Events in Bondoro:** Witness P68 testified that around the end of October 2002, she and her sister-in-law were fleeing the area known as PK5 when they were attacked by a group of “Banyamulengués” on their way through the Bondoro neighborhood of Bangui (¶ 462). The soldiers took the goods they were carrying and then dragged witness P68 into a compound, threw her on the ground, forcefully removed her clothes, and threatened her with a weapon (¶ 464). The soldiers restrained P68’s arms and two of the soldiers penetrated her vagina with their penises; P68 lost consciousness during this time and later regained it (*id.*). P68 testified that while this was occurring, she could hear her sister-in-law crying out from an adjacent compound where another soldier had dragged her, and when P68’s her sister-in-law returned, she explained to P68 that she had been “raped” by three soldiers from the same group that had attacked P68 (¶ 465). The Trial Chamber notes that although P68 in her testimony did not specify the details of the alleged “rape” of her sister-in-law, “based on her description of the events she personally experienced, the Chamber considers that her use of the term rape indicates that the perpetrators penetrated her sister-in-law’s body with a sexual organ or otherwise penetrated the anal or genital opening of the victim” (¶ 466). The Trial Chamber finds that three soldiers forcibly penetrated P68’s sister-in-law’s anal or genital opening with a sexual organ and finds that two soldiers forcibly invaded P68’s body by penetrating her vagina with their penises (¶¶ 464, 466).
 - **Events around Witness P119’s house:** Witness P119 testified that on or around October 30, 2002, a group of “Banyamulengués” who told her they were sent by “Papa Bemba” arrived at her compound (¶ 467). She later heard girls shouting and after following the shouts, P119 saw many armed “Banyamulengués” lined up in two columns in a canal, “waiting for their turn” to “sleep with” two girls (*id.*). In her testimony, P119 stated that she “pushed” a large stone onto one of the soldiers, causing him to cry out and leading to the flight of the other soldiers (*id.*). The Defense’s arguments and the Trial Chamber’s findings regarding Witness P119’s credibility are discussed further under “Credibility or Character of the Victim” above. Although the Trial Chamber finds that part of her testimony concerning how she pushed the stone on a soldier may have been exaggerated, the Chamber considers her testimony to be generally reliable and finds that two soldiers forcibly invaded the bodies of two unidentified girls, aged 12 and 13 years old, by penetrating their vaginas with their penises (¶ 469).
 - **Events at Witness P87’s house:** Witness P87 testified that on or around October 30, 2002, in the evening after two armed groups of “Banyamulengués” had come

that day to her house and left with goods, a third armed group came to her house (¶¶ 471-72). One of the men in the group forced P87 to the back of the house, threw her on the ground, took off her underwear and with his hand on his weapon, which he placed on the ground, penetrated her vagina with his penis, after which he called a second person who “did same the same thing” who also called a third person who did the same thing while pointing the barrel of his rifle at her (¶ 472). The Defense’s arguments and the Trial Chamber’s findings regarding Witness 87’s credibility are discussed under “Credibility or Character of the Victim” above. The Chamber finds that three perpetrators forcibly invaded P87’s body by penetrating her vagina with their penises behind her house (¶ 473).

- **Events at the Port Beach naval base:** Witness P47, a mechanic for a river transport company that ferried MLC troops to the CAR, testified that he witnessed two or three incidents of rape at the naval base at Port Beach after the MLC were in control of Bangui (¶ 480). P47 testified that he witnessed the first incident on or around the end of October or beginning of November 2002, reporting that he saw about 22 MLC soldiers bringing eight women, some naked, to the deck of the ferry, where they were “terrorized,” injured, frightened, beaten, and kicked, and that after the women fell during the beatings, the soldiers, while holding weapons, undressed the women and took turns penetrating the women’s vaginas with their penises (¶ 481). P47 stated that after the incident, he talked to the women and learned that they were Central Africans from Boy-Rabé and PK12 (*id.*). The Trial Chamber’s findings in relation to the second and third incidents about which P47 testified is discussed above in the section “Credibility and Character of the Victim.” Based on P47’s testimony, the Trial Chamber finds that on a ferry docked at the Port Beach naval base in Bangui, perpetrators forcibly invaded the bodies of eight women from Boy-Rabé and PK12, penetrating their vaginas with their penises (¶ 483).
- **Events at PK12:** Four witnesses testified regarding events that occurred to several members of one family in PK12 (¶¶ 487-950). Witness P23 testified that in or around early November in PK12, he heard gunfire and went to speak to nearby soldiers (¶ 487). P23 testified that he tried to tell the soldiers that there were no rebels in the area, but the soldiers told him to lie down and said he would be punished for being a rebel (*id.*). Subsequently, eight soldiers entered his compound with guns and threatened his family (¶ 488). The Chamber heard testimony that one soldier pushed P23’s wife, P80, another slapped her in the face, and a third soldier said he would “sleep with her 50 times without stopping” if she resisted; then, all three soldiers penetrated her vagina with their penises (¶ 488). The Chamber finds three soldiers forcibly invaded P80’s body by penetrating her vagina with their penises (*id.*). The Chamber also heard testimony that the soldiers raped three of P23 and P80’s daughters, including two who were

aged 12 to 16 at the time, as well as witness P81, who testified that about four or five soldiers raped her in a separate house in the same compound when she was pregnant (¶ 492). The Chamber also heard testimony from P82, P23's granddaughter, who testified that she was raped during the incident when she was between 10 and 13 years of age (¶ 489). The Chamber's findings regarding these victims' credibility is discussed above under "Character or Credibility of the Victim," The Chamber considers the accounts of P81 and P82 to be generally reliable and finds that at least two soldiers forcibly invaded P82's body by penetrating her vagina with their penises and at least four soldiers committed the same acts against P81 (¶¶ 490-92). In addition to raping his wife, three daughters, and granddaughter, P23 testified that the soldiers also raped him, by forcefully penetrating his anus with their penises in his compound, while family members and his neighbor looked on (¶ 494). The Chamber finds that three perpetrators forcibly invaded his body by penetrating his anus with their penises, an act that constitutes rape (¶¶ 494, 633, 637-38).

- **Events at P69's house (PK12):** Witness P69 testified that two soldiers from the MLC raided his house, demanded money from his sister, and then shot his sister in the head after she refused to give them the money (¶ 496). P69 testified that after this incident, he fled for approximately three weeks, and then days after his return, six armed officers entered his compound and about four of them dragged his wife, threw her down and "slept with" her (¶¶ 497-98). P69 testified that he saw semen leaking from his wife, who said that the soldiers had penetrated her (¶ 498). P69 testified that when he protested, two soldiers took him to a bedroom, held him at gunpoint, and penetrated his anus and mouth (*id.*). Despite some inconsistencies in P69's testimony discussed above under "Character or Credibility of the Victim," the Chamber considers his testimony to be reliable and finds that perpetrators forcibly invaded his wife's body by penetrating her vagina and anus with their penises and that two perpetrators forcibly invaded P69's body by penetrating his anus and mouth with their penises (¶¶ 499-501).
- **Events at Witness P22's Uncle's house:** Witness P22 testified that on or around 6 or 7 November 2002, more than 20 "Banyamulengués" broke into P22's uncle's house, where she was living at the time (¶ 508). Six of the soldiers entered the room P22 was in, asked her for money, and then, while holding her at gunpoint, pushed her to the bed and tore her undergarments, opened her legs using their boots, and took turns penetrating her with their penises (*id.*). The Chamber finds that three perpetrators forcibly invaded P22's body by penetrating her vagina with their penises (*id.*).
- **Events at Witness P79's house:** Witness P79 testified that five armed soldiers forcibly entered her house while she was sleeping in the living room (¶ 510). P79 testified that the soldiers pulled her out of bed, threw her on the ground, undressed

her, and then one soldier held her at gun point while two other soldiers forcibly penetrated her vagina with their penises (*id.*). At the same time, in another room, a soldier vaginally penetrated her 11-year-old daughter in the presence of other children, threatening to shoot her if she made a sound (¶ 511). As discussed above under “Character or Credibility of the Victim,” the Chamber, in spite of the inconsistencies with regards to documents related to P79’s testimony, finds that two perpetrators forcibly invaded P79’s body by penetrating her vagina with their penises and that a perpetrator forcibly invaded her daughter’s body by penetrating her vagina (¶¶ 512-13).

- **Events at Witness P42’s compound:** Witness P42 testified that on or around the end of November 2002, MLC soldiers came to his house and took his son’s business supplies without paying for them on two occasions (¶¶ 515, 519). P42 stated that when his son asked to be paid for the goods, soldiers beat him, accused him of being a rebel, and took him to military headquarters (*id.*). P42 testified that the soldiers also accused him of being a “rebel,” and they forced P42 and his family to lie face-down in one of the houses in the compound (¶ 515). The soldiers took his 10-year-old daughter to a small shelter behind his house where two soldiers vaginally penetrated her, one with his finger and the other with his penis, after which they took “everything” from the house (¶¶ 516-17). The Chamber finds that two perpetrators forcibly invaded the body of P42’s daughter by penetrating her vagina (¶ 519).
- **Events in the bush outside PK22:** Witness P75 testified that in or around November of 2002, she encountered four “Banyamulengues” in the bush confronting a woman and asking her for money (¶ 522). There were three male soldiers and one female soldier (*id.*). P75 testified that the soldiers threw the woman on the ground, beat her, and threatened her at gun point, and one of the soldiers wiped his penis on her face, forcing her to lick it, while others pulled her hair (*id.*). When the woman resisted, the soldiers ripped off her clothes, pulled her legs apart, and beat and threatened her (*id.*). Then all three men vaginally penetrated her and one anally penetrated her, after which the female “Banyamulengué” who accompanied the three male soldiers took the woman’s bag and all its contents (*id.*). The Chamber finds that in the bush outside PK22, three perpetrators forcibly invaded the body of a woman by penetrating her mouth, vagina, and anus with their penises (¶ 523).
- **Events at Witness P29’s house at Mongoumba:** Witness P29 testified that on or around March 5, 2003, while P29 was preparing to flee, three soldiers forced her back into her house, kicked her to the ground onto her back, ripped her clothes off, and pushed apart her legs, then took turns vaginally penetrating her (¶ 545). The Chamber finds that three perpetrators forcibly invaded P29’s body by penetrating her vagina with their penises in her home in Mongoumba (*id.*).

- **Events experienced by V1 in Mongoumba:** Witness V1 testified that on or about March 5, 2003, a group of around 20 armed soldiers ambushed V1 and others who were hiding under beds in the local hospital in Mongoumba and told her that their president was Mr. Bemba (¶ 546). Because V1 spoke Lingala, the soldiers took her with them as they looted everything they found at the hospital and in a church in Mongoumba (¶ 547). The soldiers then took V1 to a camp where two soldiers removed her trousers and undergarments, knocked her to the ground when she tried to fight back, and “slept with” and “raped” her in turns while other soldiers looked on, “shouting with joy” (¶ 548). The MLC soldiers asked her to follow them back to Mongoumba where they looted several places again and then took V1 back to the camp, where they threw her to the ground and stripped her naked and four soldiers vaginally penetrated her with their penises until she lost consciousness (¶ 551). When V1 regained consciousness, soldiers continued raping her: a total of 12 soldiers, armed with rifles, penetrated her vagina, anus, and mouth with their penises (¶ 551). Although there were inconsistencies and omissions in witness V1’s testimony, the Chamber finds her testimony generally reliable and finds that, although “V1 did not specify what she meant when she testified that the soldiers ‘slept’ with her and ‘raped’ her during the first incident” given her testimony that the soldiers removed her clothes and “undergarments”, as well as her testimony concerning the second incident of rape during which she indicated “her understanding of the term [rape] to include penile penetration of her body,” the Chamber finds that, on 5 March 2003, at a camp on the riverbank in Mongoumba, 12 perpetrators forcibly invaded V1’s body by penetrating her vagina, anus and mouth with their penises (¶¶ 552-53).
- ***Rape as a crime against humanity:*** Based on all of the findings above concerning the acts of rape established by witness testimonies, the Trial Chamber finds beyond reasonable doubt that rape as a crime against humanity was committed (¶ 633-38). The Trial Chamber finds that there was a widespread attack by the MLC soldiers directed against the civil population in CAR, and that the acts of rape were committed as “part of” this widespread attack, pursuant to and in furtherance of an organizational policy, and with the knowledge that these acts were part of the attack (¶ 671-91). The Trial Chamber identified several pieces of evidence in support of finding the attack on civilians was pursuant to an organizational policy, including the fact that the acts were “consistent with evidence of a *modus operandi* on the part of MLC soldiers throughout the 2002-2003 CAR Operation;” the identity of the (usually multiple) perpetrators; the fact that the acts were not isolated or random but rather demonstrated a “course of conduct;” that they were clearly conducted against civilians, as shown by the fact that whole families were victimized including “the elderly, women, children, and men;” the fact that the soldiers also looted from the victims during the rapes; the organizational structure of the MLC, which demonstrated resources and structures necessary to carry

out an organizational policy; the consistent nature of the attacks, which were carried out over a period of four and a half months over a large geographic area; the fact that troops were inadequately compensated and thus MLC leadership condoned “self-compensation” through raping and pillaging; the fact that many rapes were committed in retaliation for resisting acts of pillaging or as punishment for perceived rebel involvement; the scale and organization of the pillaging, which was accompanied by widespread rapes; the fact that certain attacks on civilians occurred in retaliation for acts committed by opposing forces; the fact that MLC leaders authorized use of force against civilians; the lack of training and a code of conduct for MLC fighters; the fact that at the time they committed these acts, the perpetrators were acting on behalf of the MLC; and finally, the lack of measures enacted to prevent or repress any of these acts (¶¶ 671-86). The Chamber therefore finds that the acts were not spontaneous or uncoordinated and that, despite Bemba’s occasional directions to his troops to avoid misconduct, many of his commanders actively encouraged the conduct, reflecting a policy, albeit not a formalized one (¶ 685). The Chamber also finds that the acts were widespread, based upon the large number of victims across a large geographical area, and that for the reasons already stated, the rapes were clearly “part of” the broader attack (¶¶ 688-90). The Chamber also finds that the perpetrators had knowledge that the acts were part of a larger attack given the fact that the acts were committed over four and a half months, throughout a large area, and reported in several media outlets (¶ 691). Therefore, the Trial Chamber finds that the contextual elements for crimes against humanity are satisfied (¶ 692).

- ***Rape as a crime of war:*** Based on all of the findings above concerning the acts of rape established by witness testimonies, the Chamber finds beyond reasonable doubt that rape as a war crime was committed (¶¶ 633-38). The Trial Chamber finds beyond reasonable doubt that there was an armed conflict in CAR not of an international character which was between governmental authorities supported by certain forces including the MLC, an organized armed group, against other factions; that this conflict lasted for more than four and a half months, during which there was a serious level of intensity; that “at all times relevant to the charges, there was a resort to armed force and protracted violence between organized armed forces supporting President Patassé and General Bozizé’s rebels” during which time breaks in the fighting were not the result of a “peaceful settlement” but merely lulls in active engagement between troops (¶¶ 650-63). The Chamber finds further that there was a nexus between the armed conflict and the rapes, pillaging, and murders committed by MLC soldiers because the armed conflict “played a major part in the perpetrators’ ability to commit the crimes insofar as their presence and their control in those areas can be attributed to their involvement in the armed conflict” (¶ 664). The Chamber notes further that the nexus between the crimes and the conflict is demonstrated by the fact that “MLC perpetrators targeted their victims in order to self-compensate absent adequate payment and rations

from the MLC organization” as well as “to destabilise, humiliate, or punish suspected rebels, rebel sympathisers, or those who resisted pillaging and rape” (*id.*). Several acts were committed against civilians in retribution for opposing troops seizing items MLC soldiers had pillaged, further evidencing the connection between the crimes and the conflict (*id.*). The Chamber concludes that “the armed conflict played a major part in the perpetrators’ decision to commit the crimes and the manner in which the crimes were committed” (*id.*). The Chamber also finds that the perpetrators knew their acts were connected to the armed conflict since they were soldiers participating in the conflict (¶ 667). The Chamber “finds beyond reasonable doubt that the acts of murder, rape, and pillaging...were committed by the MLC forces in the context of and in association with the armed conflict not of an international character that occurred on the territory of the CAR between forces supporting President Patassé and General Bozizé’s rebels from on or about 26 October 2002 to 15 March 2003” (¶ 666). The contextual elements for war crimes are therefore satisfied (¶ 668).

- The Trial Chamber “finds beyond reasonable doubt that Mr. Bemba was criminally responsible under Article 28(a) for the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging committed by his forces during the 2002-2003 CAR operation” (¶ 742). Bemba’s role is discussed in more detail under “Modes of Liability” in the “Other Issues” section below.

VAGINA:

- As noted above in the “Rape” section, the Trial Chamber uses the term “vagina” in the discussion of witness testimonies describing rapes (¶¶ 508-10). However, in its definition of rape, the Trial Chamber uses the term “genital opening” and “sexual organ” (¶ 99).

RAPE, PUBLIC:

- As noted above in the “Rape” section, several witnesses testified to rapes that occurred in public or otherwise in front of others (see, *e.g.*, ¶¶ 481, 494). In at least one instance, a victim testified that the public nature of the acts added to the humiliation and resulting social ostracization he suffered (¶ 494).

Other Issues:

MODE OF LIABILITY:

- As described in the Procedural History section above, the Prosecutor initially charged Bemba under co-perpetration pursuant to Article 25(3)(a) of the Rome Statute (¶ 6). Subsequently, the Pre-Trial Chamber invited the Prosecution to amend the mode of liability to address the possibility of charging Bemba under command responsibility

pursuant to Article 28(a) after finding that “the evidence appeared to establish a mode of liability other than co-perpetration under Article 25(3)(a)” (*id.*). Trial proceeded on charges under command responsibility (¶ 2).

- The Trial Chamber finds that to establish command responsibility under Article 28(a) of the Rome Statute, the following elements must be satisfied:
 - a. crimes within the jurisdiction of the Court must have been committed by forces;
 - b. the accused must have been either a military commander or a person effectively acting as a military commander;
 - c. the accused must have had effective command and control, or effective authority and control, over the forces that committed the crimes;
 - d. the accused either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes;
 - e. the accused failed to take all necessary and reasonable measures within his power to prevent or repress the commission of such crimes or to submit the matter to the competent authorities for investigation and prosecution; and
 - f. the crimes committed by the forces were a result of the failure of the accused to exercise control properly over them (¶ 170).

- ***Crimes committed:*** As noted above, the Trial Chamber finds that crimes within the jurisdiction of the Court, including rape as a war crime and a crime against humanity, were committed (¶¶ 633-638).
- ***Role as military commander with effective control:*** The Trial Chamber considers the related issues of Bemba’s role as a military commander and his effective control in that role using the same evidence (¶ 696). The Trial Chamber finds that, during the time period relevant to the charges, Bemba was the Commander-in-Chief of *Armée de libération du Congo* (ALC), the military branch of the *Mouvement de libération du Congo* (MLC), and held the rank of Divisional General (¶ 697). In determining whether, in this capacity, Bemba was “effectively acting as a military commander” and had “effective authority and control” over the MLC forces that committed the crimes, the Chamber considers various factors including: the powers Bemba exerted over these groups, such as ultimate decision-making authority; the powers of appointment, promotion and dismissal; control over MLC’S, funding; and disciplinary powers over MLC members, “including the power to initiate inquiries and establish courts-martial” (*id.*). The Chamber determines that these findings “establish that Mr Bemba effectively acted as a military commander and had effective authority and control over the MLC, including ALC troops, during the time period of the charges” (*id.*). This

control over MLC soldiers extended to MLC soldiers in CAR at the time, as evidenced by the fact that Bemba ordered the initial deployment of the MLC troops to CAR; maintained regular, direct contact with senior officers in CAR on the state of operations; received reports, provided logistical support and equipment; and represented the forces in CAR (¶¶ 697-700). He also represented the MLC forces in external matters, including with respect to UN personnel (¶ 702). Importantly, “Bemba retained primary disciplinary authority over the MLC troops in the CAR, including through the establishment of commissions of inquiry, powers of arrest, and the convening of courts-martial,” which was evidenced by Bemba’s exercise of these powers on four separate occasions (¶ 703). The Trial Chamber finds that “effective authority and control rests on that person’s material power to prevent or repress the commission of crimes or to submit the matter to a competent authority” and emphasizes that the accused does not have to enjoy “exclusive power;” rather, “multiple superiors can be held concurrently responsible for their subordinates’ actions” (¶ 698). Thus, the Chamber finds that the role of others in the CAR operation does not diminish Bemba’s “ultimate authority over the military operations” (¶ 701). Based upon this evidence, the Chamber “finds beyond reasonable doubt that Mr. Bemba was both a person effectively acting as a military commander and had effective authority and control over the contingent of MLC troops in the CAR throughout the 2002-2003 CAR operation” (¶ 705).

- **Knowledge of crimes:** The Trial Chamber finds that despite being based outside of CAR, in his capacity as “MLC President, Commander-in-Chief of the ALC, and the organization’s figurehead, as well as the source of its funding, goals, and aims,” Bemba held broad powers and ultimate authority over military operations and strategy (¶ 706). In addition to Bemba’s responsibility over the troops, the Chamber notes the many means, and direct and frequent examples, of communication between Bemba and his commanders in CAR (¶ 707). The Chamber notes that Bemba had access to intelligence reports and media coverage that referenced acts of rape, pillaging, and killings committed by MLC troops (¶ 708-09, 711-16). The Chamber finds that these channels of communication and the various sources reporting crimes committed by MLC soldiers establishes Bemba’s “direct knowledge of crimes by MLC soldiers at various, specific stages throughout the 2002-2003 CAR Operation” (¶ 710). Given all of these factors, the Chamber finds that Bemba 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” (¶ 717). Having established that Bemba knew of the crimes, the Chamber notes it does not need to consider the alternative mental element that he “should have known” of the crimes (¶ 718).

- ***Failure to take measures:*** The Chamber finds that Bemba took some measures to prevent or punish crimes committed by MLC troops, including visits to CAR, correspondence sent to commanders in CAR, the creation of inquiries and commissions, and a courts-martial trying individual soldiers (¶ 719). However, the Chamber finds that all of these measures were limited in their “mandate, execution, and/or results,” as evidenced by the fact that the courts-martial of seven soldiers was only for pillaging minor goods, while information gathered during investigations, including evidence of rapes, were not acted upon, without explanation (¶ 720). The Chamber finds that Bemba could have “(i) ensured that the MLC troops in the CAR were properly trained in the rules of international humanitarian law, and adequately supervised during the 2002-2003 CAR Operation; (ii) initiated genuine and full investigations into the commission of crimes, and properly tried and punished any soldiers alleged of having committed crimes; (iii) issued further and clear orders to the commanders of the troops in the CAR to prevent the commission of crimes; (iv) altered the deployment of the troops, for example, to minimise contact with civilian populations; (v) removed, replaced, or dismissed officers and soldiers found to have committed or condoned any crimes in the CAR; and/or (vi) shared relevant information with the CAR authorities or others and supported them in any efforts to investigate criminal allegations,” or ultimately, he could have withdrawn the troops from CAR (¶¶ 729-30). Noting the “wide range of available measures at his disposal,” the Chamber finds that the measures Bemba did take “patently fell short of ‘all necessary and reasonable measures’” to prevent and repress the commission of crimes of his subordinates within his material ability during the 2002-2003 CAR Operation, or to submit the matter to the competent authorities (¶¶ 731, 733-34).
- ***Crimes were result of failure to take measures:*** The Chamber reiterates its findings with regard to Bemba’s position of authority, knowledge of the crimes being committed in CAR, and failure to take actions to repress these crimes, including the suggested measures listed above under “failure to take measures” and notes further that Bemba could have provided adequate payment and rations to reduce the risk of acts of pillaging, rape, and murder committed “for self-compensation,” finding that all of these measures would have “reduced, if not eliminated” the commission of these crimes (¶¶ 736-40). The Chamber therefore “finds beyond reasonable doubt that the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging committed by the MLC forces in the course of the 2002-2003 CAR Operation were a result of Mr. Bemba’s failure to exercise control properly” (¶ 741).
- Based on all of the above, the Chamber finds Bemba criminally responsible under command responsibility pursuant to Article 28 (a) of the Rome Statute for the crimes against humanity of murder and rape, and the war crimes of murder, rape,

and pillaging committed by his forces (¶ 742).