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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 Redacted Document
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URGENT

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INTRODUCTION

This case is about justice for the horrific crimes of mass rape, murder, and pillaging committed against countless vulnerable victims in the Central African Republic (CAR). It is about Jean-Pierre Bemba Gombo's (Bemba) responsibility as a controlling self-appointed military leader who gave his army the license to commit these crimes during the 2002-2003 armed conflict.

As the President of the *Mouvement de Libération du Congo (MLC)* and the Commander-in-Chief of the *Armée de Libération du Congo* (ALC), Bemba had the power to prevent and repress the commission of these crimes, as well as the authority to discipline his subordinates. Instead, he chose not to. As a result, Bemba's men acted with impunity and terrorised the CAR civilian population. The mass atrocities, in particular the multiple acts of rape which was used as a weapon of war to retaliate against the civilian population of the CAR, were committed in the most brutal manner and against the most vulnerable victims of the conflict.

Bemba's quest for ultimate power in the Democratic Republic of Congo (DRC) led to his creation of a military force of 20,000 men and a movement that was owned, controlled, and directed by Bemba for Bemba. Bemba used his army as a personal tool and bargaining chip to make himself a relevant player on the DRC political scene. He launched an armed insurgency in 1998 to overthrow the government of President Kabila. By 1999, Bemba had control of the entire region of the Équateur Province, a territory that was larger than France.

Bemba did not pay his troops. He bought their loyalty by giving them a license to live off the civilian population. Bemba willingly prioritised his personal ambition to rule the DRC over controlling his undisciplined rebel force. Bemba's troops were particularly ruthless in the CAR, where Bemba had nothing to gain from the

humanitarian treatment of the civilian population. The intervention of the MLC troops during the 2001 CAR conflict was testament to the permissive atmosphere Bemba created within his army, as his troops committed mass atrocities including rape, murder and pillaging without consequence.

Against this back-drop, in 2002 Bemba sent his forces of 1,500 to 2,000 men to the CAR to assist President Ange-Felix Patassé to counter General Francois Bozizé's *coup d'état*. The civilian population of the CAR paid the ultimate price. Throughout the conflict and until the withdrawal of his men, Bemba knew that MLC troops were committing large-scale atrocities against defenceless civilians in the CAR.

Bemba was the ultimate authority within the MLC and retained all of the attendant command, control and authority over his movement and his forces. As a commander, Bemba had every possibility to take action. Bemba's responsibility for the crimes perpetrated by his forces in the CAR is textbook case of superior responsibility: one cannot find a case of a superior with more power than Bemba.

Bemba knew what the right choice was in the circumstances, but deliberately abdicated his moral and legal responsibilities. The MLC troops' rapes, murders, and pillaging on a massive scale and with particular brutality against the civilian population of the CAR, manifest Bemba's choice and conscious decisions.

CHAPTER 1. CONTEXTUAL BACKGROUND

I. The Central African Republic

1. Nestled between Chad, Sudan, South Sudan, the DRC, Republic of Congo and Cameroon, the CAR has suffered decades of armed conflict. The subject of this trial concerns the armed conflict which occurred on the territory of the CAR between 2002 and 2003 during the presidency of Ange-Felix Patassé (Patassé).

2. The events pleaded in the Corrected Revised Second Amended Document Containing the Charges[1] and this Brief took place against the backdrop of a military intervention by troops of Bemba's MLC in the CAR. The intervention was directed at quelling an attempted coup d'état by the forces of former Chief of Staff of the Forces Armées Centrafricaines (FACA) General François Bozizé (Bozizé), who had been dismissed from military service following his participation in a similar coup, launched by André Kolingba (Kolingba) to overthrow Patassé in 2001.

3. Consequently Bozizé retreated north behind the Chadian border with numerous FACA defectors.[2] On 25 October 2002, Bozizé's rebels besieged Bangui, the capital of the CAR to topple Patassé.[3] From Chad, they advanced southwards to Bangui occupying the towns of Bozoum, Bossembélé, Kaga Bandoro, Dékoa, Grimari, Sibut and PK12.[4] On arriving in Bangui, they captured Gobongo, Fouh, Boy-Rabé, Miskine, Dedengue and the 8eme Arrondissement neighbourhoods.[5]

[1] ICC-01/05-01/08-950-Red-AnxA
[2] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0417
[3] EVD-T-OTP-00446/CAR-OTP-0013-0082
[4] [P151-T175-ENG-ET-p26-L19-and-p31-L1]/[P151-T175-FRA-ET-p27-L8-and-p31-L21]; [V2-T223-ENG-ET-p30-L16]/[V2-T223-FRA-ET-p30-L2]; [V2-T224-ENG-ET-p3-L19-p4-L1]/[V2-T224-FRA-ET-p4-L1]
[5] [D26-T332-ENG-ET-p79-L5]/[D26-T332-FRA-ET-p86-L18-p87-L2]

II. Jean-Pierre Bemba Gombo

4. When the conflict in the CAR broke out, Bemba was the President and Commander-in-Chief of the ALC. For the purposes of this Brief the term "MLC" encompasses and is used interchangeably with "ALC", "Bemba's men", and "the Banyamulenge". The ALC was an armed faction of the MLC established by Bemba during the second half of 1998.

5. Originally from Bokada, Equateur province, Bemba set up the MLC with the aim of overthrowing the DRC government. With Bemba at the helm of the MLC's Presidency, the ALC was placed under his command.[6]

6. Bemba was a hands-on commander within the hierarchical structure of the ALC, often directly intervening with officers in the field and issuing them orders, despite the well-established chain of command.[7] He similarly controlled all military matters of the MLC and made decisions relating to troop deployments. As Commander-in-Chief, Bemba made the decision to send the MLC troops to the CAR.[8] Bemba controlled the provision of weapons and logistics requisitioned by MLC troops deployed to the CAR.[9]

7. By June 2003, as a result of a ceasefire agreement[10], Bemba had become one of the vice-presidents of the DRC Transitional Government. In 2006, he ran unsuccessfully for the DRC Presidency. A deadly clash ensued between his personal guards and the DRC government forces on 22 and 23 March 2007, forcing him into

[6] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0364-and-0365; [P44-T205-ENG-ET-p17-L5]/[P44-T205-FRA-ET-p19-L12]; [D18-T317-ENG-ET-p30-L19]/[D18-T317-FRA-ET-p31-L27]
[7] [P44-T205-ENG-ET-p51-L21-p52-L10]/[P44-T205-FRA-ET-p57-L3]; [P33-T158-ENG-ET-p35-L16-p37-L2]/[P33-T158-FRA-ET-p34-L13-p35-L20]
[8] [P45-T201-ENG-ET-p33-L9]/[P45-T201-FRA-ET-p36-L20]; [P44-T205-ENG-ET-p31-L19-p32-L2]/[P44-T205-FRA-ET-p35-L13]
[9] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1632
[10] EVD-T-D04-00048/CAR-D04-0003-0527

exile in Portugal.[11] On 23 May 2008, Belgian authorities arrested Bemba pursuant to an International Criminal Court (ICC) Arrest Warrant for War Crimes and Crimes against Humanity, committed by MLC troops under his command in the CAR between 26 October 2002 and 15 March 2003.

III. Establishment and Background of the MLC leading to the 2002-2003 intervention

8. Following the adoption of the MLC Statute, the ALC evolved from a military organisation into a hierarchical Politico-Military movement composed of a Presidency, a Political-Military Council, a General Secretariat and an army.[12] Its headquarters in Gbadolite, Equateur province, DRC,[13] was Bemba's stronghold. The ALC was organised along the lines of a conventional army, bearing a military structure and chain of command.[14] The ALC had a Code of conduct (Code) regulating the behaviour of its troops.[15]

IV. The 2002-2003 CAR intervention

9. Early on the morning of 25 October 2002, Bozizé forces advanced towards Bangui, having seized PK12.[16] They progressed south through the 4eme and 8eme Arrondissements.[17] In a contemporaneous interview on Radio France Internationale (RFI), Bozizé confirmed that his troops were between 500 metres to 1 kilometre from Patassé's residence and approaching the airport.[18] An attack launched by Libyan

[11] ICC-01/05-01/08-950-Conf-AnxA-p6
[12] [P33-T159-ENG-ET-p52-L18-p53-L18]/[P33-T159-FRA-ET-p54-L6-p55-L5]; EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0364
[13] ICC-01/05-01/08-950-Conf-AnxA-p22
[14] [P219-T197-ENG-ET-p51-L12-p52-L12]/[P219-T197-FRA-ET-p56-L27-p58-L1]; [P15-T207-ENG-CT-p37-L20]/[P15-T207-FRA-ET-p39-L12]
[15] EVD-T-OTP-00700/CAR-DEF-0001-0161
[16] EVD-T-OTP-00446/CAR-OTP-0013-0082
[17] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0084
[18] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083

forces providing presidential security at PK12 proved futile as Bozizé's men subsequently occupied the 4eme Arrondissement, the headquarters of the Mouvement de Libération du Peuple Centrafricain (MLPC), the neighbourhoods of Boy-Rabé, Fou (also written as Fouh), Combattants and Gobongo in the northern area of Bangui.[19] During Bozizé's advance toward Bangui, Patassé called on the MLC's leadership for aid; Bemba's MLC forces had previously entered CAR in 2001 to quell Kolingba's rebellion.[20] Their intervention then was also marked by crimes of sexual violence, pillaging and murder.[21]

10. Agreeing to help Patassé again, Bemba unilaterally and without consulting his ALC Chief of Staff committed MLC forces to an intervention.[22] He ordered the deployment of a brigade of two MLC battalions (Poudrier B and the 28th Battalion) to Bangui in October 2002 under Colonel Mustapha Mukiza Gabby's (Colonel Mustapha) command.[23] Poudrier B and the 28th Battalion were led by Major Kamisi[24] and Major Seguin,[25] respectively. Bemba reinforced the brigade with the 5th Battalion, led by Major Yves, in January 2003.[26]

[19] EVD-T-OTP-00446/CAR-OTP-0013-0082; EVD-T-OTP-00849/CAR-OTP-0013-0320-at-0327
[20] [P42-T64-ENG-ET-p14-L18-p15-L12]/[P42-T64-FRA-ET-p16-L19-p17-L15]
[21] EVD-T-OTP-00404/CAR-OTP-0004-0577; EVD-T-OTP-00425/CAR-OTP-0008-0409;EVD-T-OTP-00440/CAR-OTP-0011-0422; [P178-T154-ENG-ET-p36-L1]/[P178-T154-FRA-ET-p39-L7]; [T165-ENG-CT-p37-L22-p38-L16]/[P32-T165-FRA-ET-p37-L3]; [P36-T215-ENG-ET-p60-L4]/[P36-T215-FRA-ET-p58-L18-p59-L3]
[22] [P33-T158-ENG-ET-p32-L2-p33-L10]/[P33-T158-FRA-ET-p30-L24-p32-L4]
[23] [P213-T186-ENG-ET-p55-L16]/[P213-T186-FRA-ET-p57-L21] ;[P36-T213-ENG-ET-p63-L16-and-p64-L24-p65-L1]/[P36-T213-FRA-CT-p64-L7-and-p65-L24]; [D19-T287-ENG-ET-p21-L13]/[D19-T287-FRA-ET-p20-L27-p21-L2]; [REDACTED][D19-T290-ENG-ET-p22-L20-p23-L23]/[D19-T290-FRA-ET-p24-L8]; [D53-T231-ENG-ET-p18-L7]/[D53-T231-FRA-ET-p18-L15]; [P65-T168-ENG-ET-p56-L7]/[P65-T168-FRA-ET-p56-L27]; [D39-T308-ENG-ET-p35-L16-p36-L1]/[D39-T308-FRA-ET-p36-L22-p37-L4]; [P36-T218-ENG-CT-p60-L14]/[P36-T218-FRA-ET-p63-L26]; EVD-T-OTP-00394/CAR-DEF-0002-0567-at-0568
[24] [D19-T289-ENG-ET-p16-L6]/[D19-T289-FRA-ET-p17-L22]; [D19-T292-ENG-ET-p31-L17]/[D19-T292-FRA-ET-p31-L28-p32-L2]; [D39-T309-ENG-ET-p47-L21]/[D39-T309-FRA-ET-p50-L18]
[25] [D19-T288-ENG-ET-p10-L22]/[D19-T288-FRA-ET-p11-L7]; [D19-T292-ENG-ET-p31-L6]/[D19-T292-FRA-ET-p31-L15]; [D39-T309-ENG-ET-p47-L21]/[D39-T309-FRA-ET-p50-L18]; [D13-T350-ENG-ET-p13-L5]/[D13-T350-FRA-ET-p11-L24]
[26] [P169-T136-ENG-ET-p24-L15]/[P169-T136-FRA-ET-p25-L15]; [P169-T137-ENG-ET-p4-L20-p6-L3]/[P169-T137-FRA-ET-p4-L28-p6-L8]

A. MLC's arrival on CAR territory and combat in Bangui

11. On 26 October 2002, more than 500 MLC troops deployed to CAR territory.[27] The Poudrier B and the 28th battalions arrived from Zongo, DRC, via the Ubangui River.[28] They were stationed at the CAR naval base and later moved to Camp Béal near the 4eme Arrondissement.[29]

12. The MLC had been commissioned to support the FACA and the Unité de Sécurité Présidentielle (USP) forces loyal to Patassé to quash Bozizé's insurgency. Their agenda instead was to reign terror on the civilian population.[30] Throughout the neighbourhoods to which they advanced to, the MLC committed crimes against the Central Africans.

13. On 27 October 2002, MLC troops took position at 36 Villas[31] and Camp Béal, where CAR authorities provided some of them with new uniforms.[32] Together with

[27] EVD-T-OTP-00822/CAR-OTP-0005-0129 ;EVD-T-OTP-00823/CAR-OTP-0005-0131; [P65-T170-ENG-ET-p46-L18]/[P65-T170-FRA-CT-p46-L22]; [D49-T271-ENG-ET-p5-L3]/[D49-T271-FRA-ET-p5-L20];[P36-T213-ENG-ET-p64-L24-p65-L5]/[P36-T213-FRA-CT-p65-L24-p66-L2]; [D19-T284-ENG-ET-p15-L1]/[D19-T284-FRA-ET-p16-L1]; EVD-T-OTP-00446/CAR-OTP-0013-0082

[28] [P36-T213-ENG-ET-p65-L6]/[P36-T213-FRA-CT-p66-L3]; [P169-T137-ENG-ET-p5-L13]/[P169-T137-FRA-ET-p5-L21];[P169-T138-ENG-ET-p40-L1]/[P169-T138-FRA-ET-p39-L7]; [P169-T141-ENG-CT-p13-L12]/[P169-T141-FRA-CT-p14-L28-p15-L19]; [P213-T186-ENG-ET-p54-L15]/[P213-T186-FRA-ET-p56-L18]

[29] [P63-T108-ENG-ET-p44-L25-p45-L11]/[P63-T108-FRA-ET-p46-L13-p46-L25]; [D6-T328-ENG-ET-p15-L12]/[D6-T328-FRA-ET-p16-L13]; EVD-T-OTP-00446/CAR-OTP-0013-0082; EVD-T-CHM-00023/CAR-OTP-0005-0125

[30] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083; [P31-T182-ENG-ET-p35-L11-p36-L7]/[P31-T182-FRA-ET-p35-L23-p36-L26];[P151-T173-ENG-ET-p9-L11]/[P151-T173-FRA-ET-p10-L7]; [P42-T64-ENG-ET-p53-L8]/[P42-T64-FRA-ET-p59-L5]; [P42-T66-ENG-CT-p9-L6]/[P42-T66-FRA-ET-p10-L2] [P151-T172-ENG-ET-p25-L11]/[P151-T172-FRA-ET-p25-L23-p26-L12]; [P31-T182-ENG-ET-p38-L3-p39-L15]/[P31-T182-FRA-ET-p38-L24-p40-L7]

[31] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083

[32] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083; [P87-T46-ENG-CT-p32-L13]/[P87-T46-FRA-ET-p31-L27-p32-L1]; [P31-T182-ENG-ET-p33-L7]/[P31-T182-FRA-ET-p33-L15]; [CHM1-T353-ENG-ET-p52-L15-p53-L13-and-p60-L7]/[CHM1-T353-FRA-ET-p47-L10]; [P38-T33-ENG-ET2-p42-L22-p43-L8]/[P38-T33-FRA-ET-p47-L3-L17]; [P6-T97-ENG-ET-p37-L12-p38-L3]/[P6-T97-FRA-ET-p35-L26-p36-L17]; [P63-T109-ENG-CT-p4-L9]/[P63-T109-FRA-ET-p4-L18]; [P63-T110-ENG-CT2-p29-L25-p30-L6]/[P63-T110-FRA-ET-p30-L21]; [P63-T113-ENG-CT-p30-L23-p31-L21]/[P63-T113-FRA-ET-p31-L21-p32-L21]

Libyan forces, the MLC launched their first counter-offensive against the Bozizé rebels in Bangui on 27 October 2002.[33]

14. At 09.00 hours on 30 October 2002, Colonel Mustapha arrived in Bangui, and after a coordination meeting with his officers, led MLC combat operations against Bozizé rebels[34] following a 24-hours cease-fire.[35] As the MLC attack progressed to northern Bangui neighbourhoods, the forces made no effort to conceal their identities from their victims. They acknowledged Bemba as their leader, calling him the "saviour" of the CAR.[36] Le Citoyen reported the following, from two victims of pillaging by the Banyamulenge:

> "…Une victime de pillage nous rapportera que les Banyamulengués, yeux en sang, après l'avoir pillé lui poseront la question qui vaut son pesant d'or : « Qui a sauvé la Centrafrique, Patassé ou Bemba ? » Il leur répondra sans hésiter : « C'est Jean Pierre Bemba » « Merci. Tu as de la chance. Sinon…" Une autre victime nous fait part de son humiliation: "Après m'avoir tout dépouillé, un de mes bourreaux va me poser une question que je ne m'y attendais pas : « Qui est ton président? » Tout naïvement, je réponds :-Ange Félix Patassé. Mais à ma grande surprise le gars qui a peut-être l'âge d'un de mes fils, va piquer une crise et vociférer en me demandant de dire : « Jean Pierre Bemba » Et moi de répéter après lui, mais en ajoutant « Mon Président c'est Jean Pierre Bemba, notre sauveur »… "[37]

[33] EVD-T-CHM-00024/CAR-OTP-0005-0127; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083
[34] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1637; EVD-T-OTP-00821/CAR-OTP-0030-0274-at-0275
[35] EVD-T-OTP-00822/CAR-OTP-0005-0129; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0085
[36] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0086
[37] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0086

15. The MLC forces were commonly referred to in the CAR as "Banyamulenge"; a term used by Central Africans to identify Bemba's men.[38] However, as Colonel Mustapha and most of his soldiers were of the same background, all MLC troops involved in the 2001 and 2002 CAR interventions came to be collectively described by Central Africans in this manner.[39]

16. After nearly a week of intense fighting in Bangui[40], the ALC drove Bozizé forces towards PK12[41] along two axes: Poudrier B pursued the rebels along the Chad axis in the direction of the towns of Damara and Sibut[42], while the 28th Battalion went after them on the Cameroon axis en route to Boali and Bossembélé.[43]

B. Movement of MLC troops along the Chad axis

17. On 31 October 2002[44], MLC troops arrived at PK12 and set up their base near the Bégoua School.[45] Bemba's men also established bases at Damara, Bossembélé and Boali.[46]

[38] [P22-T40-ENG-ET-p21-L14-p22-L2]/[P22-T40-FRA-ET-p23-L5]; [P38-T33-ENG-ET-p16-L3]/[P38-T33-FRA-ET-p17-L3]; [P178-T151-ENG-CT-p21-L3]/[P178-T151-FRA-ET-p22-L13]; [P45-T205-ENG-ET-p10-L19]/[P45-T205-FRA-ET-p11-L23]; [CHM1-T353-ENG-ET-p64-L3]/[CHM1-T353-FRA-ET-p57-L18]
[39] [P33-T159-ENG-ET-p33-L19-p34-L17]/[P33-T159-FRA-ET-p35-L10-p36-L9]; [P44-T205-ENG-ET-p32-L24-p33-L8]/[P44-T205-FRA-ET-p36-L20-p37-L4]
[40] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0672; EVD-T-OTP-00821/CAR-OTP-0030-0274
[41] EVD-T-OTP-00438/CAR-OTP-0011-0293; [P38-T33-ENG-ET-p16-L11-18-and-p23-L1]/[P38-T33-FRA-ET-p17-L11-and-p24-L18]; [P63-T108-ENG-ET-p45-L7-and-p49-L23-p50-L5]/[P63-T108-FRA-ET-p46-L21-p47-L4-and-p51-L16-L25]
[42] [P42-T64-ENG-ET-p14-L4]/[P42-T64-FRA-ET-p15-L25]; [P42T-63-ENG-ET-p62-L2]/[P42-T63-FRA-ET-p66-L18-p67-L5];[P169-T136-ENG-ET-p28-L22]/[P169-T136-FRA-ET-p30-L1]
[43] [P42-T64-ENG-ET-p14-L5]/[P42-T64-FRA-ET-p15-L27-p16-L1]; [P79-T78-ENG-ET-p8-L2]/[P79-T78-FRA-ET-p8-L21-p9-L8]; [D53-T231-ENG-ET-p35-L20-p36-L5]/[D53-T231-FRA-ET-p35-L27-p36-L13]; [P169-T136-ENG-ET-p28-L23]/[P169-T136-FRA-ET-p30-L1]
[44] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050
[45] [P23-T51-ENG-CT2-p9-L22-and-p17-L3]/[P23-T51-FRA-ET-p10-L5-and-p17-L9]; [P6-T94-ENG-ET-p28-L12]/[P6-T94-FRA-ET-p26-L19];[P178-T151-ENG-CT-p4-L14]/[P178-T151-FRA-ET-p4-L23]; [P69-T193-ENG-ET-p19-L6]/[P69-T193-FRA-ET-p20-L18]; [D6-T-328bis-ENG-ET-p5-L1]/[D6-T328-FRA-ET-p50-L1]
[46] [P38-T33-ENG-ET-p27-L9-p28-L2-and-p35-L12-p36-L20-and-p37-L6-and-p39-L17]/[P38-T33-FRA-ET-p29-L19-p30-L13-and-p38-L15-p40-L1-and-p43-L12];[P6-T96-ENG-CT-p23-L4]/[P6-T96-FRA-CT-p22-L25-p23-L10]; [P178-T150-ENG-ET-p34-L1]/[P178-T150-FRA-ET-p35-L5]; [P31-T183-ENG-CT-p9-L20-p10]/[P31-T183-FRA-ET-p10-L12]

18. Incensed by the MLC forces' raids of civilian homes and looting whatever they found there,[47] after Bozizé's rebels retreated from the northern neighbourhoods, the youth of PK12 protested on 1 November 2002. The same day, Bemba publicly denied the reports of violence and looting by his troops, whilst stating that they were more than 20 kilometres outside Bangui.[48] However, media reports days thereafter confirmed that the lootings, rapes and murder committed in the northern neighbourhoods were attributable to the MLC.[49] On 2 November 2002, Bemba personally visited the ALC troops in PK12.[50]

19. When Bozizé's rebels retreated to PK22, some of the ALC troops pursued them there.[51] Like in PK12, the MLC committed crimes against the civilian population of PK22 on a massive scale, making them pay the price of the war.[52]

20. Poudrier B proceeded from PK12 in the direction of Damara[53] in December 2002[54], attacking the residents of Nguerengou[55] and PK45.[56] Poudrier B together with

[47] EVD-T-OTP-00849/CAR-OTP-0013-0320-at-0328
[48] EVD-T-OTP-00821/CAR-OTP-0030-0274
[49] EVD-T-OTP-00427/CAR-OTP-0008-0413; EVD-T-OTP-00407/CAR-OTP-0004-0067-at-0669; EVD-T-OTP-00846/CAR-OTP-0004-0874; EVD-T-OTP-00849/CAR-OTP-0013-0320-at-0321-and-0327; EVD-T-OTP-00413/CAR-OTP-0005-0133; EVD-T-OTP-00847/CAR-OTP-0013-0012
[50] [P38-T36-ENG-CT-p23-L25-p24-L13]/[P38-T36-FRA-ET-p32-L17-p33-L4]; [P73T-65-ENG-ET-p11-L13]/[P42-T65-FRA-ET-p11-L9]; [P73-T72-ENG-ET-p-10-L24-p12-L7]/[P73-T72-FRA-ET-p11-L8-p12-L13]; [P65-T170-ENG-ET-p60-L20]/[P65-T170-FRA-CT-p60-L8-L11]; [P213-T186-ENG-ET-p62-L5-p64-L19]/[P213-T186-FRA-ET-p64-L26-p67-L13]; [P36-T215-ENG-ET-p20-L2]/[P36-T215-FRA-ET-p18-L8]; [D50-T254-ENG-ET-p39-L18-p40-L7]/[D50-T254-FRA-ET-p40-L28-p41-L20]; [D19-T286-ENG-ET-p16-L15-p17-L1]/[D19-T286-FRA-ET-p16-L28-p17-L12]; [D13-T351-ENG-ET-p73-L6]/[D13-T351-FRA-ET-p66-L11]; EVD-T-CHM-00019/CAR-OTP-0056-0278-at-0280; EVD-T-OTP-00575/CAR-OTP-0031-0093; EVD-T-OTP-00395/CAR-OTP-0001-0034; EVD-T-OTP-00444/CAR-OTP-0013-0053-at-0054; EVD-T-OTP-00347CAR-OTP-0037-0092-R01-at-0097
[51] [P38-T33-ENG-ET-p23-L5]/[P38-T33-FRA-ET-p24-L23]; [P6-T94-ENG-ET-p27-L16-p28-L14]/[P6-FRA-ET-p25-L26-p26-L22]; [P79-T77-ENG-CT-p5-L10]/[P79-T77-FRA-ET-p5-L20]; [P87-T46-ENG-CT-p30-L12]/[P87-T46-FRA-ET-p30-L7]; [P42-T64-ENG-ET-p12-L6]/[P42-FRA-ET-p13-L14]
[52] [P119-T84-ENG-ET-p8-L3]/[P119-T84-FRA-ET-p7-L19]; [P6-T94-ENG-ET-p47-L10]/[P6-T94-FRA-ET-p44-L14];[P6-T95-ENG-CT-p22-L8]/[P6-T95-FRA-ET-p21-L3]; [P69-T193-ENG-ET-p14-L1-p15-L9]/[P69-T193-FRA-ET-p15-L12-p16-L25]; [P69-T195-ENG-ET-p38-L20-p39-L3]/[P69-T195-FRA-ET-p42-L7]; EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0344
[53] [D19-T289-ENG-ET-p16-L4]/[D19-T289-FRA-ET-p17-L19]; [D19-T292-ENG-ET-p31-L16]/[D19-T292-FRA-ET-p31-L27-p32-L6]; [P42-T64-ENG-ET-p56-L2]/[P42-T64-FRA-ET-p62-L7]
[54] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1679; [D13-T351-ENG-ET-p68-L9]/[D13-T351-FRA-ET-p62-L6]
[55] [P63-T109-ENG-ET-p11-L7-p12-L4]/[P63-T109-FRA-ET-p11-L5]; [REDACTED]

FACA and USP soldiers seized Damara on 7 December 2002[57] and maintained its position there, along with Colonel Mustapha, for the whole of December 2002[58], and later sent two if its companies to capture Sibut.[59] On 14 February 2003 the two ALC companies arrived in Sibut[60] and remained there for two weeks[61] before their withdrawal.

C. Movement of MLC troops along the Cameroon axis

21. Upon the 28th Battalion's arrival at PK12 from Bangui, they followed Bozizé's forces in the direction of Boali-Bossembélé.[62] Bozizé's forces had regained Bossembélé on 25 November 2002 but most of its inhabitants had deserted the town in fear of the war.[63] By 26 December 2002, the 28th Battalion occupied Bossembélé.[64] Local media reports and complaints lodged before the Tribunal de Grande Instance in Bangui thereafter, as well as the CAR's national gendarmeries, confirmed MLC forces had committed rape, murder and pillaging against the civilian population in Boali, Bossembélé, and Yaloké during the months of November and December 2002.[65]

[56][P63-T109-ENG-ET-p16-L1-and-p17-L15]/[P63-T109-FRA-ET-p16-L4-L13-and-p17-L20]; [P112-T129-ENG-CT2-p46-L4]/[P112-T129-FRA-CT-p46-L3]
[57] EVD-T-CHM-00060/CAR-D04-0002-1380
[58] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1654-and-1679-and-1665; [P65-T171-ENG-ET-p7-L12-24]/[P65-T171-FRA-ET-p7-L13]
[59] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-track-1,1:58
[60] EVD-T-OTP-00825/CAR-V20-0001-0165-at-0168
[61] [V2-T223-ENG-ET-p23-L3]/[V2-T223-FRA-ET-p22-L23-p24-L5]
[62] [P169-T136-ENG-ET-p33-L14]/[P169-T136-FRA-ET-p34-L3]; [P169-T137-ENG-ET-p2-L19-p3-L3]/[P169-T137-FRA-ET-p2-L24-p3-L7]
[63] EVD-T-OTP-00852/CAR-OTP-0013-0052; EVD-T-OTP-00445/CAR-OTP-0013-0065
[64] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1679
[65] EVD-T-OTP-00854/CAR-OTP-0013-0113; EVD-T-OTP-00848/CAR-OTP-0013-0051;EVD-T-OTP-00852/CAR-OTP-0013-0052; EVD-T-OTP-00445/CAR-OTP-0013-0065-at-0066; EVD-T-CHM-00049/CAR-OTP-0013-0098; EVD-T-OTP-00209/CAR-OTP-0001-0405-R01; EVD-T-OTP-00334/CAR-OTP-0002-0115-R01;EVD-T-OTP-00801/CAR-OTP-0042-0236;EVD-T-OTP-00803/CAR-OTP-0042-0243; EVD-T-OTP-00804/CAR-OTP-0042-0246

22. In January 2003[66], the 5th Battalion led by Major Yves was sent from Basankusu[67] to reinforce the ALC forces[68] at Bossembélé. Their mission was to secure Bozoum from Bozizé's forces.[69] From Bossembélé, the 5th Battalion took the axis in the direction of Bossemptélé and Bozoum, eventually capturing Bozoum on 15 February 2003.[70] Bozizé acknowledged that his forces were defeated in Bozoum and Sibut by MLC troops with whom they had been fighting since 13 February 2003.[71]

23. On 20 January 2003, Bemba issued a press statement confirming the MLC's official withdrawal from the CAR on 15 February 2003.[72] In an RFI interview on 13 February 2003, he clarified that his 1,500-man force would gradually leave the CAR with their equipment through the Bangui airport and Zongo port.[73] Bemba's plan, however, would not reach fruition for another month. ALC troops progressed from Bossembélé in the direction of Bossangoa, eventually capturing it around 19 February 2003.[74] Patassé's government had requested the MLC to stay in order to keep Bozizé's rebels at bay, who had fled to Chad by 20 February 2003.[75] In response to the request, Bemba maintained his plan to proceed with the pull-out, stating: "[f]or us the decision taken (to withdraw) is clear and irrevocable…Everyone must take his responsibility…We have our own problems here in Congo."[76]

[66] [D39-T310-ENG-ET-p11-L8]/[D39-T310-FRA-ET-p12-L16]; [P169-T137-ENG-ET-p5-L13-p6-L13]/[P169-T137-FRA-p5-L21-p6-L18]
[67] [P36-T215-ENG-ET-p26-L23-p28-L8]/[P36-T215-FRA-ET-p24-L28-p26-L8]; [P36-T218-ENG-CT-p60-L14-20]/[P36-T218-FRA-ET-p63-L26-p64-L4]; [P169-T137-ENG-ET-p5-L13]/[P169-T137-FRA-ET-p5-L21]
[68] [P169-T141-ENG-CT-p11-L25-p12-L10]/[P169-T141-FRA-CT-p13-L11]; [P36-T215-ENG-ET-p52-L16]/[P36-T215-FRA-ET-p50-L8]
[69] [P178-T154-ENG-ET-p19-L13]/[P178-T154-FRA-ET-p21-L13]; [D19-T285-ENG-ET-p6-L17]/[D19-T285-FRA-ET-p6-L27-p7-L6]
[70] [P173-T144-ENG-ET-p35-L16]/[P173-T144-FRA-ET-p37-L2]
[71] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0685
[72] EVD-T-OTP-00807/CAR-OTP-0064-0265-at-0267
[73] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0682
[74] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0687; [P169-T136-ENG-ET-p33-L20]/[P169-T136-FRA-ET-p34-L8]
[75] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0688
[76] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0690

24. Like all other towns which the MLC besieged, Bozoum was not spared of crimes.[77] A few weeks thereafter Bozizé's rebels returned to Bozoum, recapturing it at the beginning of March 2003 and consequently driving the 5th Battalion back toward Bossemptélé.[78]

D. Events preceding the MLC's withdrawal from CAR

25. FACA soldiers arrested MLC troops attempting to leave the CAR with looted property at Mongoumba on 5 March 2003. Two boats filled with pillaged items were seized by the FACA troops who prevented the MLC from taking it across the Ubangi River.[79]

26. The reaction by Bemba was fierce and swift. In retaliation, pursuant to an order given by Bemba[80] and with the reinforcement of over 500 troops from Libenge[81], the MLC attacked Mongoumba, reigning terror upon it for two days. One victim likened the gunfire in Mongoumba to a "storm of bullets upon the city".[82] Nothing was spared; Bemba's men went house to house, pillaging every possession they came across.

27. The administrative buildings and the gendarmerie were all looted and set on fire by the MLC forces. Women were raped. Those who resisted were murdered.[83] Yet Bemba denied the MLC's responsibility for these atrocities. In an interview with Agence France Presse (AFP), Bemba blamed CAR soldiers for preventing their boat

[77] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0686-0689
[78] EVD-T-OTP-00825/CAR-V20-0001-0165-at-0176
[79] EVD-T-OTP-00820/CAR-OTP-0013-0114
[80] [P169-T138-ENG-ET-p48-L21-p49-L1]/[P169-T138-FRA-ET-p47-L18]; [P169-T142-ENG-CT2-p11-L13-p12-L10]/[P169-T142-FRA-ET-p11-L15-p12-L9]
[81] EVD-T-OTP-00855/CAR-OTP-0013-0115
[82] EVD-T-OTP-00825/CAR-V20-0001-0165-at-0169
[83] EVD-T-OTP-00825/CAR-V20-0001-0165-at-0170; EVD-T-V20-00006/CAR-V20-0001-0177-at-0181

from crossing the Ubangui River and for pillaging its contents, namely uniforms, boots and medicine.[84]

28. It was similarly reported that Bozizé's troops recaptured Bossemptélé on 8 March 2003, causing the ALC forces to flee south to Bossembélé and thereafter to retreat through the countryside to Bagandou near Mbaïki.[85] The ALC terrorised the civilian population in the villages of Kapou, Bimon, Ndangala and Yombo, pillaging, raping and destroying property as they fled towards the border of the country[86].

CHAPTER 2. CONTEXTUAL ELEMENTS OF CRIME AGAINST HUMANITY

29. Bemba is charged **pursuant** to Article 28(a) for rape and murder as crimes against humanity under counts 1 and 7 of the DCC in accordance with Articles 7(1)(g) and 7(1)(a) of the Rome Statute.

I. Rape and Murder as crimes against humanity

30. The MLC troops were the direct perpetrators of rape and murder. The PTC II confirmed only a "widespread attack".[87] As required by Article 7(1) of the Statute, the Prosecution has proved beyond reasonable doubt that, from on or about 26 October 2002 to March 2003, MLC troops committed acts of rape and murder as part of a widespread attack direct against the civilian population in the CAR.

31. In accordance with Article 7(2), the Prosecution has proved that the widespread attack directed against the civilian population involved a series of violent acts and mistreatment of the civilian population, in particular, multiple acts of mass rape,

[84] EVD-T-OTP-00825/CAR-V20-0001-0165-at-0167
[85] EVD-T-OTP-00853/CAR-OTP-0013-0090
[86] EVD-T-OTP-00853/CAR-OTP-0013-0090
[87] ICC-01/05-01/08-424, paras-72-and-82

murder, and mass pillaging, committed pursuant to or in furtherance of an MLC organisational plan or policy to commit such an attack. The MLC perpetrators knew of the existence of the widespread attack and knew that their individual acts were part of this attack.

II. The existence of an attack directed against the civilian population

A. Multiple commission of acts against the civilian population

32. The attack against the civilian population consisted of an organised campaign involving multiple acts of rape, murder, and pillaging,[88] which affected a large number of victims.[89] In accordance with the jurisprudence that the attack encompasses any mistreatment of the civilian population,[90] acts of pillaging are included and limited to the description of the attack.

33. The civilian population was the primary target of the MLC attack.[91] After taking control of a specific area, armed MLC troops targeted civilians in house-to-house operations or intercepted civilians in public places as they fled from the violence and combat.[92] That MLC troops termed some civilians they attacked as "rebel supporters"[93] or "rebels"[94] does not deprive the population of its civilian character.

[88] [P6-T96-ENG-CT-p7-L3]/[P6-T96-FRA-CT-p7-L2]; [P9-T102-ENG-ET-p21-L5]/[P9-T102-FRA-ET-p22-L23]
[89] [P6-T95-ENG-CT-p10-L11]/[P6-T95-FRA-ET-p10-L8]; [P9-T104-ENG-CT-p7-L7]/[P9-T104-FRA-ET-p23-L1]
[90] *Kordić and Čerkez* Appeal Judgement, para. 666 (citing *Kunarac et al*. Appeal Judgement, para. 86): the "attack is not limited to the use of armed force; it encompasses any mistreatment of the civilian population."
[91] ICC-01/05-01/08-424, para-76; [P178-T151-ENG-CT-p21-L9]/[P178-T151-FRA-ET-p22-L20]; [P178-T152-ENG-ET-p36-L6]/[P178-T152-FRA-ET-p37-L19]
[92] [P9-T104-ENG-CT-p7-L22-p8-L3]/[P9-T104-FRA-ET-p8-L25-p9-L6]; [P6-T96-ENG-CT-p7-L3]/[P6-T96-FRA-CT-p7-L2-L14];[P178-T150-ENG-ET-p73-L7]/[P178-T150-FRA-ET-p75-L28-p76-L1]; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0509-para-2; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0424-0425-and-0426
[93] [P23-T51-ENG-CT2-p31-L8]/[P23-T51-FRA-ET-p33-L3];[P6-T95-ENG-CT-p14-L2]/[P6-T95-FRA-ET-p13-L25]

The totality of the evidence shows that their attack was directed against the CAR civilian population. This is demonstrated by the means and methods used in the attack, the status of civilians, victim numbers, the nature and the consequences of the crimes committed, and victim's resistance to the MLC perpetrators.[95]

34. Firmin Findiro (P6), the CAR prosecutor who opened the national inquiry into crimes committed during the 2002-2003 conflict and participated in the investigations,[96] estimated that out of approximately 1,000 MLC victims, three-quarters were rape victims.[97] Dr. André Tabo (P229), a gender expert that treated sexual violence victims following the 2002-2003 CAR conflict, identified a total of 512 victims in the limited geographical area of Bangui and its environs.[98] However, these figures must be considered in light of the underreporting of sexual crimes in the CAR due to fear of discrimination, stigmatisation and ostracism.[99] Pillaging occurred simultaneously with rape[100] and therefore shares a similar estimate, which may be higher in cases where MLC troops pillaged empty homes. As for the killings, the dossier from the CAR national proceedings approximated that out of 203 MLC victims, 37 murders were committed in Bangui, whilst the number of pillaging incidents was approximated at 159.[101] The participation of over 5,000 victims in the record of the case testifies to the scope of the crimes perpetrated by MLC troops in the CAR.[102]

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[94] [P42-T64-ENG-ET-p17-L2]/[P42-T64-FRA-ET-p19-L10]; [P6-T95-ENG-CT-p14-L2]/[P6-T95-FRA-ET-p13-L25]
[95] ICC-01/05-01/08-424, para.95
[96] [P6-T94-ENG-ET-p23-L16-p24-L7]/[P6-T94-FRA-ET-p22-L4-p22-L19]
[97] [P6-T95-ENG-CT-p10-L11]/[P6-T95-FRA-ET-p10-L8]
[98] [P229-T99-ENG-CT3-p50-L1-and-p8-L21]/[P229-T99-FRA-CT-p48-L13-and-p8-L12]; EVD-T-OTP-00568/CAR-OTP-0030-0002
[99] [P229-T99-ENG-CT3-p45-L1]/[P229-T99-FRA-CT-p43-L22]; [P119-T82-ENG-CT-p53-L17]/[P119-T82-FRA-CT-p53-L10]; [P69-T193-ENG-ET-p29-L19]/[P69-T193-FRA-ET-p32-L12];EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0511
[100] [P178-T150-ENG-ET-p73-L7]/[P178-T150-FRA-ET-p75-L28]; [P173-T144-ENG-ET-p28-L8]/[P173-T144-FRA-ET-p29-L4]; [P9-T104-ENG-CT-p7-L22]/[P9-T104-FRA-ET-p8-L25]; [P6-T95-ENG-CT-p10-L11]/[P6-T95-FRA-ET-p10-L8]; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0048-and-0081; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0422-and-0428; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0509
[101] EVD-T-OTP-00142/CAR-OTP-0001-0159-R01-to-CAR-OTP-0547 ;EVD-T-OTP-00254/CAR-OTP-0002-0002-R01-to-CAR-OTP-0002-0137
[102] ICC-01/05-01/08-2964, para-3

35. During their advance northwards and subsequent withdrawal, MLC troops attacked civilians in areas under their control. In PK12 and Mongoumba, for instance, MLC troops did not engage in direct military combat with Bozizé's rebel forces. Bozizé's forces withdrew prior to the arrival of MLC troops. Nevertheless, civilians were widely targeted and suffered large-scale crimes in PK12.[103] In Mongoumba, a locality in southern CAR that was not occupied by Bozizé's rebels, MLC troops carried out a punitive operation against the civilian population.[104] In Bossangoa, Bozizé's hometown, MLC troops widely targeted civilians as supporters of the rebels, particularly through acts of murder.[105]

36. In addition to their control of the area, MLC troops were identified as the perpetrators of the crimes charged based on:[106] (i) Language – they spoke Lingala (sometimes mixed with "little French") rather than the CAR national language, Sango;[107] (ii) Mixed clothing and incomplete uniforms – which were distinct from CAR soldiers who wore complete uniforms with insignia or Bozizé's rebels who wore yellow arm-bands and sometimes turbans;[108] (iii) Self-identification by MLC troops as agents of Bemba ("Bemba's men");[109] and (v) identification by others who interacted with them.[110] Depending on the circumstances, each of these factors,

[103] See, for example, P79, P23, P22, P69 in Chapter 4,5 and 6
[104] [P29-T80-ENG-p26-L2-p27-L14]/[P29-T80-FRA-p28-L2-p29-L20]; [P169-T137-ENG-ET-p48-L11-p50-L5]/P169-T137-FRA-ET-p49-L13-p50-L9]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[105] [P169-T138-ENG-ET-p5-L6]/[P169-T138-FRA-ET-p5-L1]; [P178-T152-ENG-ET-p36-L6]/[P178-T152-FRA-ET-p37-L19]
[106] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0504-0510-0530
[107] [P9-T102-ENG-ET-p43-L17-p44-L16]/[P9-T102-FRA-ET-p46-L27-p47-L26]; [P169-T138-ENG-ET-p8-L3]/[P169-T138-FRA-ET-p7-L20]; [P169-T138-ENG-ET-p8-L24-p9-L1]/[P169-T138-FRA-ET-p8-L13]; [P169-T138-ENG-ET-p54-L6]/[P169-T138-FRA-ET-p52-L15]; [CHM1-T354-ENG-ET-p45-L11-p46-L23]/[CHM1-T354-FRA-ET-p39-L12-p40-L16]
[108] [P9-T102-ENG-ET-p50-L2]/[P9-T102-FRA-ET-p53-L8]; [P6-T95-ENG-CT-p11-L3]/[P6-T95-FRA-ET-p10-L26]; [P169-T140-ENG-ET-p4-L6]/[P169-T140-FRA-ET-p4-L12]; [P169-T140-ENG-ET-p5-L4]/[P169-T140-FRA-ET-p5-L10]
[109] [P119-T82-ENG-CT-p33-L24-p34-L2]/[P119-T82-FRA-ET-p34-L2-p34-L5]; [V1-T221-ENG-ET-p9-L12]/[V1-T221-FRA-ET-p10-L16]
[110] [P178-T151-ENG-CT-p9-L8]/[P178-T151-FRA-ET-p10-L3]

coupled or considered cumulatively, sufficiently identify the perpetrators of the attack as MLC troops.

37. Overall, the evidence shows that from the day after their arrival in October 2002 until their departure in March 2003, MLC troops targeted the civilian population and committed near daily acts of rape, murder, and pillaging against the civilian population.[111] MLC troops openly boasted about their widespread attack against the civilian population in the CAR.[112]

B. The attack was pursuant to or in furtherance of an organisational plan or policy[113]

38. The MLC policy was to subject the civilian population to cruel, inhumane and humiliating attacks with the aim of punishing them for their support of Bozizé's rebels and to instil a climate of fear with the hope of effectively destabilising the enemy. The effect of this policy was to render the civilian population powerless.[114] As addressed in chapter 3, the MLC was an organisation with the capability to commit such an attack. The concept of "plan" and "policy" are used interchangeably as the same in this brief.

39. The organisational policy of MLC troops to commit a widespread attack directed against the CAR civilian population is demonstrated by the regular,

[111] [P38-T34-ENG-ET-p39-L1]/[P38-T34-FRA-ET-p44-L11]; [P180-T132-ENG-ET-p41-L7]/ P180-T132-FRA-ET-p44-L8]
[112] [P213-T187-ENG-p50-L6]/[P213-T187-FRA-p51-L6]; [P213-T191-ENG-p37-L8-p39-L25]/[P213-T191-FRA-p38-L28-p41-L21];[D04-0018-T319bis-ENG-ET-p23-L19-p34-L4]/[D04-0018-T319-FRA-ET-p84-L12-p93-L14]; [P213-T187-ENG-p50-L6]/[P213-T187-FRA-p51-L6]; [P213-T191-ENG-p37-L8-p39-L25]/[P213-T191-FRA-p38-L28-p41-L21];[D04-0018-T319bis-ENG-ET-p23-L19-p34-L4]/[D04-0018-T319-FRA-ET-p84-L12-p93-L14]
[113] ICC-01/05-01/08-424 para.81, referring to PTC I, Katanga confirmation Decision, ICC-01/04-01/07-717,para.396: "Indeed, an attack which is planned, directed or organised – as opposed to spontaneous or isolated acts of violence – will satisfy this criterion."
[114] EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0052; [P229-T100-ENG-CT2-p4-L14-p5-L8-and-p8-L4-and-p9-L1]/[P229-T100-FRA-CT-p4-L18-p5-L12-and-p8-L3-and-p8-L27]; [P229-T100-ENG-CT2-p50-L12]/[P229-T100-FRA-CT-p52-L7]

organised and planned nature of the attacks, which followed a consistent pattern; as well as by the manner and circumstances in which the crimes were committed.[115] The policy is proven through an objective inference which is the only reasonable inference that can be drawn from the totality of the evidence. The criminal acts were not isolated or uncoordinated.[116] In each area they controlled, MLC troops automatically organised themselves into small groups and conducted house-to-house operations during which they committed rape and pillaging simultaneously. They also murdered civilians, including as punishment for resisting their attacks or as supporters of Bozizé's rebels.[117]

40. The existence of the MLC policy is further corroborated by the directives of the MLC hierarchy, which gave the MLC troops a license to commit crimes against the CAR civilian population. For instance, P47 and P213, two unconnected witnesses from different countries with separate vantage points, give similar evidence regarding direct instructions given to MLC troops prior to their arrival in the CAR. The MLC troops were told that they had no wives, children or relatives in the CAR where they could kill and destroy.[118] P213 explained that this was understood as a license to attack and therefore pillage, rape, and murder the civilian population.[119] The evidence shows that MLC troops acted accordingly throughout their intervention into the CAR.

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[115] ICC-01/05-01/08-424, para-81: The organisational policy need not be formalised and it can be inferred from a planned, directed or organised attack. See, [P6-T96-ENG-CT-p4-L18-p5-L20]/[P6-T96-FRA-CT-p4-L22-p5-L23]

[116] ICTY, *Prosecutor v. Tadic,* IT-94-I-T, "Opinion and Judgement",7 May 1997, para.653; ICTR, *Prosecutor v. Akayesu,* ICTR-96-4-T, "Judgement", 2 September 1998, para. 580; ICTY, *Prosecutor v. Nikolic*, IT-94-2-R61, "Review of Indictment pursuant to Rule 61", Trial Chamber, 20 October 1995, para.23; 1996 ILC Draft Code, 94. See also Hall, p. 236; [P6-T96-ENG-CT-p45-L8]/[P6-T96-FRA-CT-p43-L21]

[117] [P6-T96-ENG-CT-p4-L18-p5-L20]/[P6-T96-FRA-CT-p4-L22-p5-L23]; [P178-T150-ENG-ET-p73-L7]/[P178-T150-FRA-ET-p75-L28]; [P173-T144-ENG-ET-p28-L8]/[P173-T144-FRA-ET-p29-L4]; [P9-T104-ENG-CT-p7-L22-p8-L3]/[P9-T104-FRA-ET-p8-L25]; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0509-para-5

[118] [P47-T176-ENG-ET-p32-L11-p33-L20]/[P47-T176-FRA-ET-p32-L5-p33-L12];[P47-T178-ENG-ET-p25-L13-p26-L2]/[P47-T178-FRA-ET-p26-L27-p28-L15]; [P213-T186-ENG-ET-p39-L3-p44-L5]/[P213-T186-FRA-ET-p41-L10-p46-L15]

[119] [P213-T186-ENG-CT-p39-L3-p45-L4]/[P213-T186-FRA-CT-p41-L10-p47-L12]

III. The widespread attack in the CAR

41. The Prosecution is only required to prove an attack directed against a large number of civilians either across a large geographical area, or in a small geographical area.[120] The Prosecution proved both. The MLC troops committed multiple acts of rape, murder, and pillaging as they advanced and retreated throughout the CAR over a five month period. The attack was widespread as demonstrated by the large-scale nature of the MLC crimes, which resulted in a multiplicity of civilian victims. The victims were concentrated in several small geographical areas,[121] as well as across a large geographical area in the CAR.[122]

42. As detailed below, the multiple acts of rape, murder, and pillaging by MLC troops in Bangui and PK12 is sufficient to establish the existence of an "attack". In addition, the multiple acts committed in Bangui and PK12, Mongoumba, Bossangoa, Damara, Bossembélé, Sibut, and Bozoum, considered cumulatively, equally meet the threshold for an "attack". The MLC attack was massive, frequent, and carried out collectively with "considerable seriousness".[123] This is demonstrated by factors such as the means, methods, and consequences of the attack on the CAR civilian population.

[120] ICC-01/05-01/08-424, para.83, referencing PTC 1, Katanga decision, ICC-01/04-01/07-717, paras. 395 and 398; ICTR, *The Prosecutor v Akayesu*, ICTR-96-40-T, "Trial Judgment", 2 September 1998, para.580; ICTY, *Prosecutor v Blaskic*, IT-95-14-T, "Trial Judgment", 3 March 2000, para.206; ICTY, *Prosecutor v Kordic and Cerkez*, IT-95-14/2-A, "Appeals Chamber Judgment", 17 December 2004, para.94
[121] [P45-T204-ENG-ET-p14-L25-p15-L12]/[P45-T204-FRA-ET-p16-L26-p17-L15]; [P6-T95-ENG-CT-p22-L8]/[P6-T95-FRA-ET-p21-L3]
[122] [P6-T95-ENG-CT-p22-L8-p24-L10]/[P6-T95-FRA-ET-p21-L3-p22-L28]
[123] [P47-T176-ENG-ET-p32-L11]/[P47-T176-FRA-ET-p32-L5];[P47-T178-ENG-ET-p25-L13-p26-L2]/P47-T178-FRA-ET-p26-L28-p27-L15]; [P213-T186-ENG-ET-p39-L3-p44-L5]/[P213-T186-FRA-ET-p41-L10-p46-L15] ;ICC-01/05-01/08-424, para.83

43. The specific incidents of rape, pillaging and murder, which are addressed in detail in Chapters 4, 5, and 6 below, provide direct primary evidence of the multiple acts committed by MLC troops against the civilian population.[124]

IV. The widespread attack in Bangui

44. The MLC forces arrived in Bangui, in waves, between 26 and 30 October 2002.[125] They immediately launched a widespread attack against the civilian population, which included multiple rapes, killings, and pillaging of numerous civilians in Bangui - from 36 Villas to Fouh, Boy-Rabé, and Gobongo.[126] On the night of 26 October 2002, for instance, MLC troops robbed Gaston Gbowe Ben Doemond at gun-point in his home.[127] The FACA soldiers posted at the home of the Minister of Defence could not defend the 36 Villas neighbourhood from the MLC troops, who went on rampage pillaging the homes of French nationals as well as that of President Patassé's son.[128] Jean-Denis, an MLC perpetrator, boasted about raping the wife of a Patassé government official in 36 villas.[129]

45. On 27 October 2002, with the assistance of MLC troops, the loyalist forces succeeded in pushing Bozizé's rebels back to PK12.[130] The MLC troops occupied the former-rebel held neighbourhoods of Fouh, Boy-Rabé, and Gobongo. Between 28

[124] [P6-T94-ENG-ET-p47-L10]/[P6-T94-FRA-ET-p44-L14]; [P6-T95-ENG-CT-p22-L8]/[P6-T95-FRA-ET-p21-L3]; [P6-T95-ENG-CT-p22-L8-and-p23-L8-p24-L10]/[P6-T95-ET-p21-L3-and-p21-L28-p22-L28]; [P9-T102-ENG-ET-p15-L19-p16-L22]/[P9-T102-FRA-ET-p16-L28-p18-L6]; EVD-T-OTP-00605/CAR-ICC-0001-0066; EVD-T-OTP-00611/CAR-ICC-0001-0070; EVD-T-OTP-00610/CAR-ICC-0001-0073-R01; EVD-T-OTP-00850/CAR-ICC-0001-0102-R01
[125] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1631; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0082
[126] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083; [P6-T94-ENG-ET-p19-L7]/[P6-T94-FRA-ET-p18-L5]; [P38-T33-ENG-ET-p51-L7]/[P38-T33-FRA-ET-p56-L44]; [P173-T147-ENG-ET-p21-L11]/[P173-T147-FRA-ET-p21-L16-p22-L5]
[127] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0085
[128] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0085; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0027-and-0043
[129] [P178-T151-ENG-CT-p7-L7-and-p8-L15-and-p9-L14]/[P178-T151-FRA-ET-p7-L22-and-p9-L11-and-p10-L10]
[130] [P31-T182-ENG-ET-p43-L2]/[P31-T182-FRA-ET-p44-L1]

and 30 October 2002, Le Citoyen reported that MLC troops had committed large-scale rape, murder, and pillaging in those areas.[131] FIDH also reported 27 rapes committed between Fou and Boy-Rabé.[132] AI estimated that, in late 2002, 18 women

were raped in the Mandaba district, while more than 90 were raped in Boy-Rabé.[133] P119, [REDACTED], witnessed the rape of young girls in her area[134] and [REDACTED] from civilians about multiple rapes committed by MLC troops.[135]

46. The MLC troops killed many people in Bangui as they fled, leaving their bodies decomposing out in the open; for example, at Lycée Boganda, Mandaba, and Boy-Rabé.[136] P63, [REDACTED] corroborates their commission of indiscriminate killings.[137] He testified that at the Lycée Miskine road, MLC troops killed approximately five people.[138]

47. P63 observed [REDACTED] the MLC troops pillaging in the 4th arrondissement and transporting the items onto a vehicle.[139] Acts of pillaging committed by MLC troops in the 4th arrondissement, particularly in Mandaba and Boy-Rabé

[131] EVD-T-OTP-00438/CAR-OTP-0011-0293; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0086; EVD-T-OTP-00849/CAR-OTP-0013-0320-at-0321; EVD-T-OTP-00846/CAR-OTP-0004-0874; EVD-T-OTP-00427/CAR-OTP-0008-0413; [P119-T82-ENG-CT-p47-L25-p48-L9]/[P119-T82-FRA-CT-p48-L1]; [P119-T83-ENG-CT2-p4-L16-p5-L1-and-p7-L24-p9-L8]/[P119-T83-FRA-CT2-p4-L26-p5-L5-and-p8-L13-p9-L16]; [P47-T177-ENG-ET-p25-L22-p26-L3]/[P47-T177-FRA-ET-p26-L1] ; [P31-T183-ENG-CT-p20-L5]/[P31-T183-FRA-ET-p21-L8];[P68-T48-ENG-ET-p37-L11]/[P68-T48-FRA-ET-p39-L19]; [P6-T94-ENG-ET-p19-L7-and-p34-L17-and-p47-L10]/[P6-T94-FRA-ET-p18-L5-and-p32-L12-and-p44-L14];[P6-T95-ENG-CT-p22-L8]/[P6-T95-FRA-ET-p21-L3]; [P178-T151-ENG-CT-p15-L18-and-p75-L14]/[P178-T151-FRA-ET-p16-L27-p17-L3-and-p80-L20]; [P29-T80-ENG-ET-p12-L12-p13-L16]/[P29-T80-FRA-ET-p13-L13-p14-L21]
[132] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0051
[133] EVD-T-OTP-00442/CAR-OTP-0011-0503-at 0511
[134] [P119-T82-ENG-CT-p39-L20-p40-L21]/[P119-T82-FRA-CT-p39-L21-p40-L19]; [P119-T84-ENG-ET-p31-L6-and-p32-L2-and-p36-L4]/[P119-T84-FRA-ET-p29-L17-and-p30-L8-and-p34-L2]
[135] [P119-T82-ENG-CT-p53-L3]/[P119-T82-FRA-CT-p52-L25-p53-L19]; [P119-T83-ENG-CT2-p6-L16]/[P119-T83-FRA-CT2-p7-L2]
[136] [P119-T82-ENG-CT-p52-L1]/[P119-T82-FRA-CT-p52-L17]; [P119-T82-ENG-CT-p50-L24-p51-L25]/[P119-T82-FRA-CT-p50-L28-p51-L27]; [P63-T112-ENG-CT-p6-L1]/[P63-T112-FRA-ET-p6-L2];[P119-T82-ENG-CT-p43-L22-p44-L6]/[P119-T82-FRA-CT-p43-L22-p44-L4]; [P119-T84-ENG-CT-p37-L7]/[P119-T84-FRA-ET-p35-L3]; [P63-T108-ENG-ET-p47-L13-and-p48-L2]/[P63-T108-FRA-ET-p48-L27-p49-L17]; See, EVD-T-OTP-00345/CAR-OTP-0039-0058
[137] [P63-T112-ENG-CT-p6-L1]/[P63-T112-FRA-ET-p6-L2]
[138] [P63-T112-ENG-CT-p6-L1]/[P63-T112-FRA-ET-p6-L2]
[139] [P63-T108-ENG-ET-p47-L13-and-p48-L2]/[P63-T108-FRA-ET-p48-L27-p49-L17]; see, EVD-T-OTP-00345/CAR-OTP-0039-0058; [P63-T112-ENG-CT-p8-L10-and-p11-L1]/[P63-T112-FRA-ET-p8-L8-and-p9-L1]

neighbourhoods, are also corroborated by P68[140] and P119.[141] P119 [REDACTED] of pillaging from about 30 residents.[142] This is corroborated by contemporaneous FIDH reports of contemporaneous victim accounts of large-scale pillaging.[143]

48. On 5 December 2002, RFI reported multiple killings, rapes, and pillaging by MLC troops against the civilian population in Gobongo.[144]

V. The widespread attack in PK12

49. The shelling and bombing by Patassé's loyalist forces led to the withdrawal of Bozizé's rebel forces away from PK12, and towards the northern parts of the CAR.[145] Following this retreat, the MLC troops arrived in PK12 on 30 October 2002.[146] During this time, after all enemy forces had abandoned the area, MLC troops committed large-scale rape, murder, and pillaging against numerous civilian victims.[147] As a result, on 1 November 2002, the PK12 civilians protested the continuing and widespread MLC attack.[148]

50. CHM1, [REDACTED], testified that the MLC troops committed multiple acts of rape in Gobongo and PK12.[149] Based on statistics from L'hopital communautaire de

[140] [P68-T48-ENG-ET-p36-L8]/[P68-T48-FRA-ET-p38-L16]; [P68-T48-ENG-ET-p36-L17]/[P68-T48-FRA-ET-p39-L1]
[141] [P119-T82-ENG-CT-p47-L18-and-p48-L20]/[P119-T83-FRA-CT-p47-L20-and-p48-L23]
[142] [P119-T82-ENG-CT-p49-L25-p50-L3]/[P119-T83-FRA-CT-p50-L1]
[143] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050-0051; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423
[144] EVD-T-OTP-00446/CAR-OTP-0013-0082-0031-0099-at-0086-02:29-to-03:12
[145] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0082
[146] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050; EVD-T-OTP-00446/CAR-OTP-0013-0082; CAR-DEF-0002-0001-at-0003
[147] [P6-T94-ENG-ET-p19-L7]/[P6-T94-FRA-ET-p18-L5]; [P38-T33-ENG-ET-p51-L7-p53-L8]/[P38-T33-FRA-ET-p56-L14-p58-L23]
[148] EVD-T-OTP-00849/CAR-OTP-0013-0320-at-0328; EVD-T-OTP-00427/CAR-OTP-0008-0413; EVD-T-OTP-00407/CAR-OTP-0004-0067-at-0669; EVD-T-OTP-00846/CAR-OTP-0004-0874; EVD-T-OTP-00849/CAR-OTP-0013-0320-at-0321,0327; EVD-T-OTP-00413/CAR-OTP-0005-0133; EVD-T-OTP-00847/CAR-OTP-0013-0012
[149] [CHM1-T353-ENG-ET-p63-L18]/[CHM1-T353-FRA-ETp57-L9]

l'amitié, FIDH tallied dozens of civilian deaths and rape victims as young as 8 years of age, which were committed by MLC troops in Bangui.[150]

VI. Multiple acts of rape in PK12

51. The MLC troops maintained a continuous presence and control at the strategic location of PK12 throughout the five month intervention period.[151] P38, [REDACTED] regarding crimes committed by MLC troops against the civilian population in Begoua, PK12, alone.[152] MLC troops committed horrendous incidents of rape daily, publicly and collectively, particularly at their Begoua School base.[153] Some of their victims were girls as young as 8 or 9 years old.[154] The public rape of women and children at Begoua School is corroborated by several testimonies and documentary evidence.[155] The gang rape at the MLC's Begoua School base continued until 15 March 2003.[156] The MLC troops also used the deserted PK12 police station as a rape theatre to victimise many young girls.[157]

52. There were numerous accounts of well-known victims who were raped by the MLC troops.[158] P23, [REDACTED], witnessed rapes committed by MLC troops

[150] EVD-T-OTP-00847/CAR-OTP-0013-0012
[151] [CHM1-T353-ENG-ET-p63-L18]/[CHM1-T353-FRA-ETp57-L9]; [P23-T51-ENG-CT2-p9-L22-and-p17-L3]/[P23-T51-FRA-ET-p10-L5-and-p17-L9]; [P6-T94-ENG-ET-p28-L12]/[P6-T94-FRA-ET-p26-L19]; [P178-T151-ENG-CT-p4-L14]/[P178-T151-FRA-ET-p4-L23]; [P69-T193-ENG-ET-p19-L6]/[P69-T193-FRA-ET-p20-L18]
[152] [P38-T34-ENG-ET-p39-L1]/[P38-T34-FRA-ET-p44-L11]
[153] [P38-T33-ENG-ET-p39-L2]/[P38-T33-FRA-ET-p42-L20] ; [P38-T33-ENG-ET-p60-L13-and-p39-L7]/[P38-T33-FRA-ET-p67-L2-and-p42-L26]; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0511
[154] [P38-T34-ENG-ET-p40-L17]/[P38-T34-FRA-ET-p46-L4]
[155] [P178-T150-ENG-ET-p13-L7-and-p36-L17-p37-L9]/[P178-T150-FRA-ET-p13-L1-p13-L18-and-p37-L22-p38-L15] ; [P178-T150-ENG-ET-p36-L17-p37-L4]/[P178-T150-FRA-ET-p37-L22-p38-L9] ; [P178-T151-ENG-CT-p12-L19-p13-L3]/[p178-T151-FRA-ET-p18-L20-p14-L2] ; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0511 ; [P63-T110-ENG-CT2-p5-L16-p6-L18]/[P63-T110-FRA-ET-p5-L25-p6-L26] ; [P38-T34-ENG-ET-p13-L2]/[P38-T34-FRA-ET-p14-L15] ; [P178-T151-ENG-CT-p 9-L8]/[P178-T151-FRA-ET-p10-L4] ; [P178-T151-ENG-CT-p7-L10]/[P178-T151-FRA-ET-p7-L25-p8-L9]
[156] [P38-T34-ENG-ET-p13-L2]/[P38-T34-FRA-ET-p14-L15]
[157] [P178-T151-ENG-CT-p7-L10]/[P178-T151-FRA-ET-p7-L25-p8-L9]
[158] [P63-T110-ENG-CT2-p5-L16-p6-L18]/[P63-T110-FRA-ET-p5-L25-p6-L26] ; [P110-T127-ENG-ET-p55-L11-p56-L7]/[P110-T127-FRA-ET-p58-L12-p59-L8] ;[P178-T151-ENG-CT-p7-L22-and-p8-L25-p9-L7]/[P178-T151-FRA-ET-p8-L12-and-p9-L17-p10-L2]

against civilians in his neighbourhood.[159] He testified that they were powerless and could not stop the repeated rapes perpetrated by MLC troops in the area.[160] P79 testified that MLC troops raped many victims, including men.[161]

53. The circumstances in which MLC troops committed the multiple rapes demonstrate their direct and widespread attack against the civilian population. They raped victims in public, at home in front of their family members, and sometimes forced one family member to rape another. Wives were raped in front of their husbands and sons were forced to rape their mothers in front of their fathers.[162] For instance, P81, P80 and P69's wives were all raped and their husbands were powerless to prevent the crimes.[163] When rape is committed in the presence of family members or third parties, it is a means to punish the rape victim and humiliate the person who is present.[164]

54. During interviews of victims in Bangui concerning sexual violence, P229 found that MLC troops murdered or assaulted people who tried to prevent the rape of a relative.[165] P80's neighbours in PK12 told her about their rape by MLC troops – "Sometimes they would rape a wife in front of her husband and then rape young girls before their parents, both of them, the dad and the mum. I mean, they weren't hiding. They were doing it quite openly, publicly."[166] Testimonial and contemporaneous audio accounts show that many children were raped in front of

[159] [P178-T151-ENG- CT-p 9-L8]/[P178-T151-FRA-ET-p10-L4]
[160] [P23-T51-ENG-CT2-p26-L25-p27-L3]/[P23-T51-FRA-ET-p28-L9]
[161] [P79-T77-ENG-CT-p23-L6-and-p24-L6-and-p28-L14-and-p37-L19-p38-L1]/[P79-T77-FRA-ET-p23-L26-p24-L2-and-p24-L26-p25-L12-and-p28-L24-and-p38-L24-p39-L3]; [P79-T77-ENG-CT-p37-L8]/[P79-T77-FRA-ET-p38-L12]; [P79-T77-ENG-CT-p23-L10]/[P79-T77-FRA-ET-p24-L3]
[162] [P63-T113-ENG-CT-p-36-L24-p37-L1]/[P63-T113-FRA-ET-p38-L6] ; [P63-T111-ENG-ET-p23-L22]/[P63-T111-FRA-ET-p24-L23] ; [P9-T104-ENG-CT-p44-L3]/[P9-T104-FRA-ET-p48-L18]
[163] See, Chapter 5 below.
[164] [P229-T100-ENG-CT2-p6-L17-p7-L3]/[P229-T100-FRA-CT-p6-L17-p7-L3]
[165] [P229-T100-ENG-CT2-p6-L17-p7-L3-and-p13-L7-and-p37-L5]/[P229-T100-FRA-CT-p6-L17-p7-L3-and-p13-L3-and-p38-L2]
[166] [P80-T61-ENG-CT-p17-L21-p18-L 4-and-p18-L21-and-p28-L11-p29-L1]/[P80-T61-FRA-ET-p17-L26-p18-L7-and-p18-L23-and-p26-L16-p29-L9]

their parents.[167] This is corroborated by an AI report, and other evidence,[168] which found cases where boys were forced by MLC perpetrators to have sex with their mothers, sisters or other female relatives.[169]

55. A 2002 US State Department country report noted that MLC troops killed and raped numerous persons in Bangui and Northern parts of the CAR during the conflict.[170] It reported the commission of 94 rapes in Bangui, and many others in northern CAR.[171] AI, which reported large-scale rape particularly in PK12 and PK22, noted that a women's organisation estimated that as many as 250 women were raped in and around PK12 by MLC troops.[172] The multiple acts of rape committed in the small geographical area of PK12 is even more alarming considering the major challenge of underreporting of sexual violence crimes in the CAR due to cultural, social and religious barriers, which prevented rape victims from coming forward.[173]

56. The evidence shows that the MLC had a culture of rampant rape, which led to multiple acts of rape as part of the widespread attack. P213, one of Bemba's bodyguards, testified that the large-scale rapes of women and children was the result of the license given to the MLC troops by informing them that they were going to the CAR where they had no family or wives and could do anything.[174] For instance, Jean-Denis - one of Mustapha's drivers - was notorious for raping the wives of CAR

[167] [P38-T34-ENG-ET-p10-L 6]/[P38-T34-FRA-ET-p11-L16]; [P38-T33-ENG-ET-p54-L16]/[P38-T33-FRA-ET-p60-L6] ; [P38-T33-ENG-ET-p53-L1-and-p54-L16-p55-L4]/[P38-T33-FRA-ET-p58-L13-and-p60-L4]; [P42-T64-ENG-ET-p18-L5-and-p41-L24-and-p48-L24-and-p48-L10]/[P42-T64-FRA-ET-p20-L13-and-p46-L10-p54-L9-and-p53-L19] ; EVD-T-OTP-00576/CAR-OTP-0031-0099-at-03:00-05:32 (audio) ; EVD-T-CHM-00040/CAR-OTP-0036-0041 (French transcript), CAR-OTP-0056-0287
[168] [P9-T104-ENG-CT-p29-L15-p30-L7]/[P9-T104-FRA-ET-p32-L16-p33-L9]
[169] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0512
[170] EVD-T-OTP-00410/CAR-OTP-0004-0977-at-0979
[171] EVD-T-OTP-00410/CAR-OTP-0004-0977-at-0979
[172] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0510-and-0511; EVD-T-OTP-00576/CAR-OTP-0031-0099-at-05:32-07:48 (audio); EVD-T-CHM-00040/CAR-OTP-0036-0041-(French-transcript)-CAR-OTP-0056-0287
[173] [P229-T99-ENG-CT2-p45-L1]/[P229-T99-FRA-CT-p43-L22]; [P119-T82-ENG-CT-p53-L17]/ [P119-T82-FRA-CT-p53-L10]; [P69-T193-ENG-ET-p29-L19]/[P69-T193-FRA-ET-p32-L12]; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0511
[174] [P213-T187-ENG-ET-p33-L19-p38-L9]/[P213-T187-FRA-ET-p33-L19-p39-L12]

soldiers.[175] The multiple acts of rape and pillaging committed by MLC troops was public knowledge and the CAR authorities were aware of numerous complaints from victims.[176] [REDACTED] complained to Mustapha – the MLC force commander - about the repeated reports of rape and pillaging.[177]

57. Bemba's commanders committed rape and were also physically present while their subordinates committed rape.[178] For example, [REDACTED], was raped by Mustapha in broad daylight.[179] Mustapha and Adolphe, another MLC soldier, raped [REDACTED] in the slaughterhouse annexed to Mustapha's PK12 headquarters, which was where other MLC victims were raped.[180] [REDACTED] subsequently died.[181] P63 explained that younger MLC troops would sometimes take the female captives to their leaders who would then rape that woman or girl.[182]

58. As a result of repeated and multiple rapes in PK12, where MLC troops were stationed throughout the intervention period, many victims fled from the area.[183] P22 met other MLC victims, including three rape victims that confided in her.[184]

59. Many victims also died following their contraction of sexually transmitted diseases ("STDs") from MLC perpetrators of rape.[185] The MLC troops raped and sodomised many civilians, contaminating some of them with HIV, whilst others

[175] [P169-T138-ENG-ET-p40-L10]/[P169-T138-FRA-ET-p39-L15]
[176] [CHM1-T353-ENG-ET-p64-L3-p65-L1]/[CHM1-T353-FRA-ET-p57-L18-p58-L13]; [REDACTED]
[177] [REDACTED]
[178] [V1-T220-ENG-ET-p34-L16-and-p38-L23-p39-L9-and-p39-L21-p40-L14]/[V1-T220-FRA-ET-p34-L18-and-p38-L23-p39-L5-and-p39-L16] ; [P87-T44-ENG-CT-p38-L14-and-p44-L18]/[P87-T44-FRA-ET-p40-L4-and-p40-L13-and-p46-L16]; [P87-T47-ENG-CT2-p35-L25-p36-L23]/[P87-T47-FRA-CT-p37-L18-p38-L19]
[179] [REDACTED]
[180] [REDACTED]
[181] [REDACTED]
[182] [P63-T110-ENG-CT2-p6-L21-p7-L4]/[P63-T110-FRA-ET-p6-L26-p7-L7]
[183] [P22-T41-ENG-CT2-p33-L25-p34-L9-and-p34-L17-and-p35-L3]/[P22-T41-FRA-ET-p37-L5-p37-L15-and-p37-L25-and-p38-L11]; [P22-T43-ENG-ET-p26-L4]/[P22-T43-FRA-ET-p28-L18] ; [P22-T42-ENG-ET-p14-L25-p15-L3-and-p20-L9]/[P22-T42-FRA-CT-p15-L12-and-p21-L10]
[184] [P22-T42-ENG-ET-p14-L25-p15-L3-and-p20-L9]/[P22-T42-FRA-CT-p15-L12-and-p21-L10]
[185] [P80-T61-ENG-CT-p25-L15]/[P80-T161-FRA-ET-p25-L19]

contracted syphilis and other venereal diseases.[186] For example, along the PK12 road to Damara road, an MLC perpetrator named Ngoundele was notorious for targeting and raping only children under the age of 10 because he believed that raping little girls would cure him of HIV.[187] Ngoundele openly discussed this at Mustapha's residence in the presence of an MLC commander, Coup-par-Coup.[188]

60. Based on a sample of personal medical histories of MLC rape victims, P229's scientific research of 2002-2003 rape victims in the CAR found that 10 out of 81 victims contracted HIV as a result of the rape.[189] AI's report corroborates the findings of HIV infections as a result of rape – 65 out of 316 rape victims examined by an international medical charity tested positive for HIV, whereas others tested positive for STDs such as syphilis, gonorrhoea and chlamydia.[190]

VII. Multiple acts of murder in PK12

61. Bemba was present in PK12 and personally observed the corpses of civilian victims murdered by his troops.[191] The MLC troops stationed at PK12 committed several murders in that area.[192] Murders were committed in the vicinity of their Begoua School base.[193] P38 testified about murder incidents of civilian victims who were shot for resisting pillaging by MLC troops or termed as rebels.[194] For instance, a

[186] [P69-T193-ENG-ET-p29-L1-p30-L9]/[P69-T193-FRA-ET-p31-L21-p33-L10]; [P9-T107-ENG-ET-p42-L24-p43-L6]/[P9-T107-FRA-ET-p45-L19-p46-L1]; [P178-T151-ENG-CT-p7-L22-and-p8-L25-p9-L7]/[P178-T151-FRA-ET-p8-L12-and-p9-L17-p10-L2]
[187] [P169-T138-ENG-ET-p3-L3-p4-L4]/[P169-T138-FRA-ET-p3-L4-p4-L1]
[188] [P169-T138-ENG-ET-p3-L3]/[P169-T138-FRA-ET-p3-L4]; [P173-T144-ENG-ET-p16-L1]/[P173-T144-FRA-ET-p16-L5]
[189] [P229-T99-ENG-CT2-p24-L6-and-p24-L19-p25-L3]/[P229-T99-FRA-CT-p23-L15-and-p24-L2]
[190] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0518
[191] [P213-T187-ENG-ET-p19-L16-p20-L16]/[P213-T187-FRA-ET-p20-L12-p21-L12]
[192] [P38-T34-ENG-ET-p41-L1]/[P38-T34-FRA-ET-p46-L14] ; [P173-T144-ENG-ET-p 40-L20]/[P173-T144-FRA-ET-p42-L18] ; [P69-T194-ENG-ET-p22-L16-p24-L4]/[P69-T194-FRA-ET-p23-L13-p24-L2] ; [P33-T159-ENG-ET-p18-L3]/[P33-T159-FRA-ET-p18-L23-p19-L24]
[193] [P178-T151-ENG-ET-p16-L7]/[P178-T151-FRA-ET-p17-L15]
[194] [P38-T34-ENG-ET-p41-L7-p41-L1]/[P38-T34-FRA-ET-p46-L22-p47-L3-and-p46-L14] ; [P38-T33-ENG-ET-p54-L8]/[P38-T33-FRA-ET-p59-L23-p60-L5] ; [P3-T34-ENG-ET-p9-L18]/[P38-T34-FRA-ET-p10-L28-p11-L7] ; [P38-T33-ENG-ET-p54-L22-p55-L15]/[P38-T33-FRA-ET-p60-L13-p61-L9] ; [P38-T36-ENG- CT-

duck breeder was shot in the forehead for resisting the pillaging of his ducks; this incident is corroborated by P73,[195] P23,[196] and P112.[197]

62. P112 assisted with the burial of many civilians who had been killed by the MLC troops.[198] P69 testified that there was no confusion between civilians and soldiers, yet MLC troops killed many civilians in Begoua.[199] This is corroborated by P178, who testified that MLC troops killed several people around the Begoua School and they were buried in a mass grave.[200] He testified that the Red Cross exhumed these bodies a year later and gave them a decent burial.[201]

63. The MLC troops and their commanders took part in the commission of murder. P178 testified that Coup-par-Coup and Ben-el-Aden were known for killing civilians.[202] For instance, Ben-el-Aden killed many civilians at PK 12.[203] P63 testified that he heard MLC commander, Cercueil, ordering the executions of civilians after his brother, Mapao, was killed.[204] Civilians went to the MLC base to enquire about missing children or relatives, but they were informed that they had taken on a "journey".[205] P178 explained that this meant that those individuals had been killed.[206]

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p28-L15]/[P38-T36-FRA-ET-p37-L17] ; [P38-T34-ENG-ET-p41-L3]/[P38-T34-FRA-ET-p46-L14] ; [P178-T151-ENG-CT-p17-L1]/[P178-T151-FRA-ET-p18-L9]
[195] [P73-T71-ENG-ET-p46-L24-and-p47-L1]/[P73-T71-FRA-ET-p49-L7]
[196] [P23-T52-ENG-CT2-p23-L23]/[P23-T52-FRA-CT-p25-L1]
[197] [P112-T129-ENG-CT2-p49-L22-p50-L14]/[P112-T129-FRA-CT-p49-L25-p50-L14]
[198] [P112-T130-ENG-CT-p14-L9]/[P112-T130-FRA-CT-p14-L23]
[199] [P69-T194-ENG-ET-p22-L16-p24-L4]/[P69-T194-FRA-ET-p23-L13-p24-L2]
[200] [P178-T151-ENG-CT-p16-L8-14]/[P178-T151-FRA-ET-p17-L15]
[201] [P178-T151-ENG-CT-p16-L8-14]/[P178-T151-FRA-ET-p17-L15]
[202] [P178-T151-ENG-CT-p10-L1]/[P178-T151-FRA-ET-p10-L25-p11-L13]; [P173-T144-ENG-ET-p16-L1]/[P173-T144-FRA-ET-p16-L5]
[203] [P178-T151-ENG-CT-p24-L20-24]/[P178-T151-FRA-ET-p30-L21]
[204] [P63-T111-ENG-CT-p21-L18-p23-L11]/[P63-T111-FRA-ET-p22-L18-p24-L11]; EVD-T-OTP-00629/CAR-OTP-0035-0213; [P63-T113-ENG-CT-p44-L18-and-p45-L15-p 46-L8]/[P63-T113-FRA-ET-p46-L10-and-p47-L7]
[205] [P178-T151-ENG-CT-p25-L3]/[P178-T151-FRA-ET-p31-L2]
[206] [P63-T113-ENG-CT-p44-L18-and-p45-L15-p46-L8]/[P63-T113-FRA-ET-p46-L10-and-p47-L7]

64. The MLC troops boasted openly about killing civilians. For example, Dragula, one of Mustapha's drivers, was notorious for killing civilians openly.[207] [REDACTED] Mustapha told Dragula that he was committing "too much" [*sic*] killings.[208] P173 testified that as the MLC troops withdrew on 15 March 2003, in Bangui's quartier Sango, an MLC soldier shot and killed a child who had resisted his attempt to pillage bread at the Ysimandji market.[209] This murder happened directly in front of the MLC battalion commander, Yves.[210]

65. The MLC troops themselves informed P178 of widespread killings they had committed. He testified that he was told by an MLC perpetrator who took part in the operation that the people in the mass graves were killed by the MLC troops.[211] P178 explained that the people in the mass grave around the mosque were killed around 5 or 7 November 2002.[212]

66. P173, a former FARC Congolese soldier [REDACTED],[213] corroborates killings by MLC troops as he saw bodies of many civilians at the mosque around PK5.[214]

[207] [P178-T151-ENG-CT-p27-L16]/[P178-T151-FRA-ET-p33-L19]
[208] [REDACTED]
[209] [P169-T137-ENG-ET-p26-L15]/[P169-T137-FRA-ET-p28-L2]
[210] [P169-T137-ENG-ET-p26-L15]/[P169-T137-FRA-ET-p28-L2]; [P178-T151-ENG-CT-p16-L20]/[P178-T151-FRA-ET-p18-L3] ; [P178-T151-ENG-CT-p16-L15]/[P178-T151-FRA-ET-p17-L23-p18-L1]
[211] [P178-T151-ENG-CT-p21-L3-19]/[P178-T151-FRA-ET-p22-L13-p23-L3] ; [P178-T151-ENG-CT-p21-L20-25]/[P178-T151-FRA-ET-p23-L4]
[212] [P178-T151-ENG-CT-p21-L20-25]/[P178-T151-FRA-ET-p23-L4]
[213] [P173-T144-ENG-ET-p9-L7-and-p14-L13-and-p16-L12]/[P173-T144-FRA-ET-p9-L16-and-p14-L18-and-p16-L17]
[214] [P173-T145-ENG-ET-p17-L12]/[P173-T145-FRA-ET-p18-L12]

VIII. Multiple acts of pillaging in PK12

67. As part of the widespread attack against the civilian population, MLC troops committed widespread pillaging in PK12.[215]

68. P38 testified that, in Begoua, the MLC troops broke into people's homes and pillaged items such as radios, cell phones, mattresses, and cushions.[216] This is corroborated by P63's testimony that such items were pillaged from the CAR civilians in PK12.[217] The MLC troops also emptied and destroyed small shops and stores around the weighbridge;[218] they pillaged and took people's motorbikes and cars.[219] P178 testified that he saw many items pillaged by the MLC troops in PK12.[220] On behalf of the inhabitants, [REDACTED] met with Mustapha and other MLC commanders to report the commission of crimes in PK12 by their troops.[221]

69. The pillaging in Begoua, Yembi district of PK12, is corroborated by a contemporaneous internal correspondence from the CAR Defence Ministry, dated 11 December 2002, which reported large-scale pillaging of the civilian population's properties by MLC troops.[222] P38 explained that many people knew that a lot of pillaged items, which amounted to the contents of an entire supermarket, were stored in the house occupied by Mustapha.[223] This is corroborated by other witnesses who testified that MLC troops stored pillaged items at their Begoua School base in

[215] [P38-T34-ENG-ET-p39-L25-p40-L15]/[P38-T34-FRA-ET-p45-L14-p46-L2] ; EVD-T-OTP-00605/CAR-ICC-0001-0066 ; EVD-T-OTP-00611/CAR-ICC-0001-0070 ; EVD-T-OTP-00610/CAR-ICC-0001-0073 ; EVD-T-OTP-00850/CAR-ICC-0001-0102-R01; [P169-T137-ENG-ET-p52-L10]/[P169-T137-FRA-ET-p55-L19]
[216] [P38-T33-ENG-ET-p21-L6-and-p26-L23-and-p27-L1]/[P38-T33-FRA-ET-p22-L14-and-p29-L4]
[217] [P63-T108-ENG-ET-p50-L1]/[P63-T108-FRA-ET-p51-L20-p52-L13]
[218] [P38-T33-ENG-ET-p25-L15]/[P38-T33-FRA-ET-p27-L15]
[219] [P38-T33-ENG-ET-p51-L20-and-p52-L1]/[P38-T33-FRA-ET-p57-L1-p58-L3]
[220] [P178-T150-ENG-ET-p61-L19-and-p62-L1]/[P178-T150-FRA-ET-p63-L14]
[221] [P38-T34-ENG-ET-p17-L25-and-p18-L1]/[P38-T34-FRA-ET-p20-L3]
[222] EVD-T-OTP-00804/CAR-OTP-0042-0246
[223] [P38-T34-ENG-ET-p43-L4]/[P38-T34-FRA-ET-p48-L18-p49-L2]

PK12.[224] FIDH reported contemporaneous victim accounts of pillaging by MLC troops on 31 October 2002[225] and 1 November 2002.[226]

70. MLC officers were fully involved in the organisation of mass pillaging including its sale and distribution for profit.[227] P178 testified that he saw many items pillaged by the MLC troops in PK12.[228]

71. On behalf of the inhabitants, [REDACTED] met with Mustapha and other MLC commanders to report the commission of multiple acts in PK12 by their troops.[229] [REDACTED] testified that pillaged items were stored in a house by the football pitch, which was occupied by Mustapha.[230] They pillaged civilian properties such as foam mattresses, carpets, radios, buckets, axes, firewood etc.[231]

72. MLC officers were fully involved in the attack against the civilian population including the organisation of mass pillaging and the sale and distribution for profit of items taken from the population.[232] P73 corroborates this and states that MLC troops sold the pillaged items to civilians who were forced to buy them.[233]

73. P38 testified that MLC troops extorted money from civilians and those without money had their clothes and shoes pillaged.[234] Civilians were whipped for not giving

[224] [P69-T193-ENG-ET-p35-L17-p36-L11]/[P69-T193-FRA-ET-p39-L6]
[225] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0049; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0422-0423
[226] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423
[227] [P178-T150-ENG-ET-p68-L25-p69-L16]/[P178-T150-FRA-ET-p70-L4-and-p71-L10-p72-L2]; [P169-T136-ENG-ET-p32-L8]/[P169-T136-FRA-ET-p33-L4];[P178-T144-ENG-ET-p31-L10-and-p32-L1]/[P178-T144-FRA-ET-p32-L10-p33-L11]
[228] [P178-T150-ENG-ET-p61-L19-and-p62-L1]/[P178-T150-FRA-ET-p63-L14]
[229] [REDACTED]
[230] [P38-T34-ENG-ET-p42-L10-and-p43-L1]/[P38-T34-FRA-ET-p47-L23-p48-L2-and-p48-L14]
[231] [P42-T64-ENG-ET-p-11-L19]/[P42-T64-FRA-ET-p12-L23]
[232] [P178-T150-ENG-ET-p69-L16]/[P178-T150-FRA-ET-p70-L4-and-p71-L10-p72-L2] ; [P169-T136-ENG-ET-p32-L8]/[P169-T136-FRA-ET-p33-L4]/[P178-T144-ENG-ET-p31-L10-and- p32-L1] ; [P178-T144-FRA-ET-p32-L10-p33-L11]
[233] [P73-T70-ENG-ET-p24-L1-and-p18-L24-and-p19-L1]/[P73-T70-FRA-ET-p25-L6-and-p19-L17]
[234] [P38-T33-ENG-ET-p52-L1]/[P38-T33-FRA-ET-p57-L7-p58-L3]

them money.[235] This is corroborated by P42, who testified that he saw the MLC troops demanding money from civilians, telling them "*pesa ngai mbongo*" which is Lingala for "give me money".[236]

74. P73 corroborates this and states that MLC troops sold the pillaged items to civilians who were forced to buy them.[237] FIDH reported contemporaneous victim accounts of pillaging by MLC troops on 31 October 2002[238] and 1 November 2002.[239]

75. The MLC troops forcefully occupied all houses along Damara road.[240] P69 and P42 testified that the MLC troops occupied people's homes and pillaged their properties, including doors, beds and window that were used as firewood.[241]

IX. Multiple acts of rape, murder, pillaging in PK22 and Damara

76. The MLC soldiers reported that Poudrier B committed multiple acts of rape and pillaging on the Damara-axis.[242] FIDH reported 37 rapes at PK22,[243] whilst AI referred to a third party estimate of 32 rapes in PK22.[244]

77. Witness testimonies report the commission of multiple acts of rape by MLC troops in PK22. P81 testified that MLC troops raped underage girls, men and

[235] [P38-T33-ENG-ET-p52-L1]/[P38-T33-FRA-ET-p57-L7-p58-L3]
[236] [P42-T65-ENG-ET-p33-L14-and-p34-L1]/[P42-T65-FRA-ET-p32-L12-p33-L16]
[237][P73-T70-ENG-ET-p24-L1-and-p18-L24-and-p19-L1]/[P73-T70-FRA-ET-p25-L6-and-p19-L17]
[238] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0049; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0422-0423
[239] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050;EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423
[240] [P63-T108-ENG-ET-p50-L21]/[P63-T108-FRA-ET-p52-L14] ; [P63-T109-ENG-ET-p4-L19]/[P63-T109-FRA-ET-p5-L1]
[241] [P69-T192-ENG-ET-p29-L18]/[P69-T192-FRA-ET-p32-L6] ; [P73-T70-ENG-CT-p23-L9]/[P73-T70-FRA-ET-p24-L16] ; [P69-T192-ENG-ET-p30-L2]/[P69-T192-FRA-ET-p32-L17-p33-L 8] ; [P69-T193-ENG-ET-p42-L1]/[P69-T193-FRA-ET-p46-L10] ; [P69-T192-ENG-ET-p30-L4]/[P69-T192-FRA-ET-p32-L20]
[242] EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0343-and-0344; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0510-and-0511; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0032
[243] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0051
[244] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0511

women.[245] This is corroborated by P68, who heard many accounts of rape in PK22.[246] RFI reported that MLC troops arrived in PK22 and they massacred civilians and raped little girls aged between 7 and 14.[247] On this Damara-axis, P178 met locals in bush taxis who spoke of large-scale rape and pillaging committed by the MLC troops.[248]

78. The MLC commander, Réné Eboma,[249] showed [REDACTED] a mass grave on the Damara road where 32 civilians were buried.[250]

79. P119 testified that upon the local population's return from seeking refuge in the bush, they saw that MLC troops who had control of the area in PK22 had killed many civilians.[251] This is corroborated by civilian population's complaint to the UN Special Representative, General Cissé.[252] The inhabitants complained that the MLC troops came to kill them and rape their wives and children.[253] They stated that once the MLC troops established control over former rebel-held territories, they systematically targeted the civilian population, by conducting house-to-house operations, raping, looting and killing civilians.[254]

80. According to FIDH, hospital statistics show that witnesses attributed the repeated commission of rape, pillaging, and murder to MLC troops.[255] FIDH reported two contemporaneous witness accounts of pillaging by MLC troops at PK22 on 31 October 2002 and 1 November 2002.[256]

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[245] [P81-T55-ENG-CT-p23-L8]/[P81-T55-FRA-CT-p23-L17]
[246] [P68-T48-ENG-ET-p33-L25-p34-L12]/[P68-T48-FRA-ET-p34-L13]
[247] EVD-T-OTP-00576/CAR-OTP-0031-0099-at-07:50-09:00 (audio), EVD-T-CHM-00040/CAR-OTP-0036-0041 (French transcript), CAR-OTP-0056-0287
[248] [P178-T151-ENG-CT-p18-L4]/[P178-T151-FRA-ET-p19-L15]
[249] [REDACTED]
[250] [REDACTED]
[251] [P119-T84-ENG-ET-p8-L23-p9-L3]/[P119-T84-FRA-ET-p8-L12]
[252] [EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0343-and-0344
[253] [EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0344
[254] [EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0344
[255] [EVD-T-OTP-00411/CAR-OTP-0004-1096-at-1102-and-1103
[256] [EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050

X. Widespread attack on the Damara-axis

81. As they progressed further northwards on the Damara-axis, MLC troops went from PK22 to Nguerengou where they continued their widespread attack against the civilian population. P63 testified that the MLC troops occupied a civilian home in Nguerengou as their base;[257] CAR-OTP-0035-0291 is a photograph of the MLC troops at Nguerengou.

82. P75 testified that [REDACTED],[258] where the MLC troops had set up at the market.[259] They committed multiple acts of pillaging against the civilian population.[260] Despite complaints to one of the MLC commanders, no action was taken and the population was powerless.[261]

83. The MLC troops took control of Damara on or about 7 December 2002.[262] P209, [REDACTED],[263] testified that MLC troops launched a widespread attack raping elderly women and young girls who stayed behind or crossed their path as they fled.[264] P-0209 [REDACTED] from husbands whose wives had been raped by the MLC troops.[265] He testified that many families broke up as a result of these rapes.[266] Multiple acts of rape and murder are corroborated by P63 who followed the MLC troops to Damara.[267]

[257] [P63-T109-ENG-CT-p13-L14]/[P63-T109-FRA-ET-p13-L10]
[258] [REDACTED]
[259] [P75-T92-ENG-CT-p11-L5]/[P75-T92-FRA-CT-p12-L4]
[260] [P75-T92-ENG-CT-p11-L3-and-p22-L2]/[P75-T92-FRA-CT-p12-L2-and-p22-L17]
[261] [P75-T92-ENG-CT-p11-L9]/[P75-T92-FRA-CT-p12-L8]
[262] [P209-T117-ENG-ET-p27-L12-p28-L3]/[P209-T117-FRA-ET-p28-L10]
[263] [P209-T117-ENG-ET-p11-L4]/[P209-T117-FRA-ET-p11-L22-p12-L1]
[264] [P209-T122-ENG-CT2-p30-L20-p31-L5]/[P209-T122-FRA-ET-p32-L4] ; [P209-T117-ENG-ET-p27-L2]/[P209-T117-FRA-ET-p27-L26-p28-L5]
[265] [P209-T118-ENG-ET-p14-L19-p15-L19]/[P209-T118-FRA-ET-p15-L6-p16-L9]
[266] [P209-T118-ENG-ET-p14-L19-p15-L19]/[P209-T118-FRA-ET-p15-L6-p16-L9]
[267] [P63-T110-ENG-CT2-p3-L16-p4-L2]/[P63-T110-FRA-ET-p3-L25-p4-L9]

84. P209 testified that civilians were killed by the MLC troops, including at their headquarters in Damara.[268] P63 corroborates the killing of civilians, including Bozizé supporters who appeared like Chadians.[269]

85. P6 testified that there were many cases of individuals that were arrested by MLC troops and then executed after being held in a makeshift prison in Damara.[270] Civilians went to the MLC base to enquire about missing children or relatives, but they were informed that they had been taken on a "journey".[271] However, the MLC troops knew that they had already killed those individuals.[272]

86. Upon their entry into Damara, MLC troops were the only armed group present. They killed many civilians who had not fled from town.[273] This is corroborated by an RFI broadcast in which the journalist spoke to Commander Golf, who identified himself and his men as MLC.[274] It reported that armed MLC troops committed multiple acts of killing and prevented local civilians from speaking to reporters away from their presence.[275] Although civilians told journalists that they were fine in front of the armed MLC troops in spite of "the visible fear in their eyes"; they told a different story of multiple acts of rape, murder and pillaging when the MLC troops

[268] [EVD-T-OTP-00058/CAR-OTP-0057-0128_R02-at-0139 -and-0140
[269] [P63-T110-ENG-CT2-p4-L17]/[P63-T110-FRA-ET-p4-L24]
[270] [P6-T95-ENG-CT-p15-L21]/[P6-T95-FRA-ET-p15-L16-L19] ; [P6-T95-ENG-CT-p16-L1]/[P6-T95-FRA-ET-p15-L20-L27]
[271] [P178-T151-ENG-CT-p25-L3]/[P178-T151-FRA-ET-p31-L2]
[272] [P63-T113-ENG-CT-p44-L18-and-p45-L15-p46-L8]/[P63-T113-FRA-ET-p46-L10-and-p47-L7]; [P6-T95-ENG-CT-p16-L1]/[P6-T95-FRA-ET-p15-L20-L27]; [P178-T151-ENG-CT-p29-L16]/[P178-T151-FRA-ET-p31-L2]
[273] [P68-T49-ENG-ET-p7-L7]/[P68-T49-FRA-CT2-p6-L14]/[P209-T122-ENG-CT2-p30-L20-p31-L5]/[P209-T122-FRA-ET-p32-L4]
[274] EVD-T-OTP-00576/CAR-OTP-0031-0099-at-17:00-20:00 (audio); EVD-T-CHM-00040/CAR-OTP-0036-0041 (French transcript); CAR-OTP-0056-0287 (English transcript))
[275] CAR-OTP-0031-0099-at-17:00-20:00 (audio), CAR-OTP-0036-0041 (French transcript), CAR-OTP-0056-0287

were not present.[276] A similar explanation was provided by V2 in relation to the MLC propaganda Sibut video, which did not reflect the reality on the ground.[277]

87. The MLC troops also pillaged Damara on a large-scale and no property - private or governmental - was spared.[278] P178 also testified that MLC looting in

Damara was worse because the MLC troops conducted a mop up operation after the shelling.[279] They conducted house-to-house operations and threatened people with their guns in order to pillage their properties.[280] The same situation occurred in Bossangoa.[281] This is corroborated by P63's testimony that, "… there wasn't a single shop that went unlooted [*sic*], and all churches, practically all of them, whether catholic or protestant, were plundered…"[282]

88. The MLC troops occupied the home of former minister Mr Serongope, which became their headquarters.[283] P63 testified that items pillaged by the MLC troops were piled on a farm 300-400 metres away from Mustapha's house in Damara.[284]

[276] EVD-T-OTP-00576/CAR-OTP-0031-0099-at-17:00-20:00 (audio); EVD-T-CHM-00040/CAR-OTP-0036-0041 (French transcript) CAR-OTP-0056-0287
[277] [V2-T223-ENG-ET-p52-L16-p55-L7]/[V2-T223-FRA-ET-p55-L15-p57-L26] ; [V2-T223-ENG-ET-p42-L6-p48-L22]/[V2-T223-FRA-ET-p41-L21-p48-L18]
[278] [P209-T118-ENG-CT-p6-L8]/[P209-T118-FRA-ET-p6-L20-p7-L6]
[279] [P178-T150-ENG-ET-p62-L4]/[P178-T150-FRA-ET-p63-L26-p64-L10]
[280] [P178-T150-ENG-ET-p62-L4]/[P178-T150-FRA-ET-p63-L26-p64-L10]
[281] [P178-T150-ENG-ET-p62-L4]/[P178-T150-FRA-ET-p63-L26-p64-L10]; [P209-T117-ENG-ET-p28-L4-and-p32-L20-and-p33-L1]/[P209-T117-FRA-ET-p29-L1-and-p33-L18-p34-L2]
[282] [P63-T110-ENG-CT2-p9-L19]/[P63-T110-FRA-ET-p9-L18]; EVD-T-OTP-00659/CAR-OTP-0035-0355; EVD-T-OTP-00654/CAR-OTP-0035-0324; [P63-T110-ENG-CT2-p39-L3-p40-L2]/[P63-T110-FRA-ET-p40-L20-p41-L16]; [P63-T112-ENG-CT-p41-L6]/[P63-T112-FRA-ET-p42-L23-p43-L21] ; [P209-T117-ENG-ET-p28-L4-and-p32-L20-and-p33-L1]/[P209-T117-FRA-ET-p29-L1-and-p33-L18-p34-L2]; [P209-T122-ENG-CT2-p33-L17-22]/[P209-T122-FRA-ET-p35-L1]; [P63-T113-ENG-CT-p12-L14-p13-L3]/[P63-T113-FRA-ET-p12-L1] ; [P63-T110-ENG-CT2-p39-L3-p40-L2]/[P63-T110-FRA-ET-p40-L20-p41-L16] ;see, also, CAR-OTP-0035-0277; [P63-T112-ENG-CT-p41-L6]/[P63-T112-FRA-ET-p42-L23-p43-L21]
[283] [P209-T122-ENG-CT2-p9-L4-and-p32-L2-and-p58-L13]/[P209-T122-FRA-ET-p9-L23-and-p33-L11-and-p61-L8]; [P209-T124-ENG-CT2-p17-L10]/[P209-T124-FRA-ET-p18-L2] ; [P209-T123-ENG-CT-p7-L16]/[P209-T123-FRA-ET-p7-L20] ; [P209-T117-ENG-ET-p20-L5-and-p22-L15]/[P209-T117-FRA-ET-p23-L25-p24-L6]
[284] [P63-T110-ENG-CT2-p7-L12]/[P63-T110-FRA-ET-p7-L14]

P209's testified that he saw many pillaged items [REDACTED] at the MLC base on 10 December 2002.[285]

89. P209 testified that Bemba visited Damara in an airplane that landed near Mustapha's headquarters, which was loaded with pillaged items such as generators and motorcycles before it departed.[286] This is corroborated by P63's testimony that during the conflict period, Bemba visited Damara in a helicopter that landed near the house occupied by Mustapha.[287]

XI. Widespread attack in Sibut

90. MLC troops, led by Kamisi, arrived in Sibut on 14 February 2003.[288] The MLC troops entered the town firing their weapons indiscriminately despite the fact that Bozizé's rebels had withdrawn to Dékoua and were no longer in Sibut.[289] The armed MLC troops committed multiple acts of rape, murder and pillaging from the day they arrived in Sibut[290] and the civilian population were "at their mercy".[291]

91. P6 and CHM1 testified that MLC troops committed multiple acts of rape, murder, and pillaging in Sibut.[292] On 19 February 2003, witness testimony and RFI witness accounts show that MLC troops committed the crimes; according to RFI,

[285] [P209-T117-ENG-ET-p27-L2]/[P209-T117-FRA-ET-p27-L26-p28-L5] ; [P63-T110-ENG-CT2-p14-L7]/[P63-T110-FRA-ET-p14-L4] ; [P209-T122-ENG-CT2-p32-L2]/[P209-T122-FRA-ET-p33-L11] ; [P209-T117-ENG-ET-p20-L5-and-p22-L15]/[P209-T117-FRA-ET-p23-L25-p24-L6] ; [P209-T118-ENG-CT-p6-L22]/[P209-T118-FRA-ET-p7-L6]
[286] [P209-T119-ENG-CT-p40-L1-and-p41-L4]/[P209-T119-FRA-ET-p40-L2-p41-L1-and-p41-L6]; [P209-T120-ENG-CT-p7-L3-p8-L1]/[P209-T120-FRA-CT-p7-L2-and-p8-L2]
[287] [P63-T110-ENG-CT2-p54-L1]/[P63-T110-FRA-ET-p56-L6]
[288] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58
[289] [V2-T222-ENG-ET-p48-L20-p49-L3]/[V2-T222-FRA-ET-p52-L9] ; [V2-T223-ENG-ET-p29-L7]/[V2-T223-FRA-ET-p28-L16]; [V2-T224-ENG-ET-p49-L22-p50-L1]/[V2-T224-FRA-ET-p56-L6]
[290] [V2-T224-ENG-ET-p23-L19]/[V2-T224-FRA-ET-p27-L16]
[291] [V2-T223-ENG-ET-p23-L9]/[V2-T223-FRA-ET-p23-L2]
[292] EVD-T-OTP-00605/CAR-ICC-0001-0066; EVD-T-OTP-00850/CAR-ICC-0001-0102-R01; [P38-T34-ENG-ET-p39-L25-p40-L15]/[P38-T34-FRA-ET-p45-L14-p46-L2]

UNHCR officials corroborate the same.[293] RFI reported that anyone suspected of helping or giving shelter to General Bozizé's rebels was targeted by MLC troops, and local people of Chadian origin suffered the most.[294]

92. In response, the CAR government spokesperson, Gabriel Koyambounou, acknowledged that there had been some collateral damage.[295]

93. In Sibut, the MLC troops broke down doors, took foam mattresses, kitchen utensils, tore various things down and made a mess of everything.[296] V2 witnessed the MLC pillaging and also saw items of value loaded onto trucks while those of less value were sold to local population by force.[297]

XII. Widespread attack in Bossangoa

94. On 19 February 2003, MLC troops captured Bossangoa.[298] They committed multiple acts of rape.[299] As the hometown of General Bozizé, civilians in Bossangoa were generally targeted for their support of the rebels.[300] Many civilians were killed as MLC troops took vengeance upon the local population.[301] Witnesses saw bodies of dead civilians piled up in a big vehicle.[302] P169 testified that, he saw more than 100

[293] CAR-OTP-0031-0124- at-0405, 00:00-11:47 (audio), CAR-OTP-0057-0344 (French transcript), CAR-OTP-0057-0403 (English translation); CAR-OTP-0031-0120/EVD-T-OTP-00580-at-Track 1, 02:00-02:15, Track 2, 02:39; [V2-T222-ENG-ET-p53-L21-p54-L2]/[V2-T222-FRA-ET-p56-L17] ; [V2-T224-ENG-ET-p23-L4]/[V2-T224-FRA-ET-p27-L1]/[P119-T83-ENG-CT2-p11-L2-and-p12-L24-p13-L9]/[P119-T83-FRA-CT2-p10-L4-and-p12-L23-p13-L5]
[294] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58 (audio); CAR-OTP-0057-0349 (French transcript); CAR-OTP-0057-0393 (English translation)
[295] EVD-T-OTP-00582/CAR-OTP-0031-0124-at-0405, 00:00-11:47 (audio), CAR-OTP-0057-0344 (French transcript), CAR-OTP-0057-0403 (English translation)
[296] [V2-T222-ENG-ET-p52-L15]/[V2-T222-FRA-ET-p55-L15]/[V2-T224-ENG-ET-p4-L7]/[V2-T224-FRA-ET-p4-L15] ; [V2-T223-ENG-ET-p38-L8-and-p39-L1]/[V2-T223-FRA-ET-p37-L24-p38-L18] ; [V2-T224-ENG ET-p4-L7]/[V2-T224-FRA-ET-p4-L15] ; [V2-T224-ENG-ET-p12-L23]/[V2-T224-FRA-ET-p14-L10]
[297] [V2-T224-ENG-ET-p13-L16]/[V2-T224-FRA-ET-p15-L7]
[298] [P169-T136-ENG-ET-p33-L20]/[P169-T136-FRA-ET-p34-L8]
[299] [P178-T151-ENG-CT-p7-L7-and-p8-L15-and-p9-L14]/[P178-T151-FRA-ET-p7-L22-and-p9-L11-and-p10-L10]
[300] [P178-T152-ENG-ET-p36-L6]/[P178-T152-FRA-ET-p37-L20]
[301] [P169-T138-ENG-ET-p5-L1]/[P169-T138-FRA-ET-p4-L24-p5-L1]
[302] [P178-T151-ENG-CT-p19-L3]/[P178-T151-FRA-ET-p20-L15]

dead civilian bodies dressed in *djellabas* worn by Muslims on the roadside in front of the court and at the Bossangoa market as well.[303] P169 saw the body of an Imam at the market and was told by an MLC soldier that they killed him because he supported Bozizé's rebels.[304] This is corroborated by news reports that the government of Chad expressed concerns about the multiple acts of rape, murder and pillaging of Chadians in Bossangoa and other parts of the CAR.[305]

95. The CAR authorities attempted to minimise the outcry of multiple acts of rape, murder and pillaging against the civilian population, particularly Chadians, around the Bossangoa area.[306] Many civilians were murdered, including people that resisted pillaging by the MLC troops.[307]

96. The MLC troops conducted house-to-house operations in Bossangoa and pillaged on a large-scale.[308] P173 testified that the MLC troops committed multiple acts of pillaging in Bossangoa, Bossembélé and Bozoum on the Cameroon-Bangui axis.[309] This is corroborated by P169 [REDACTED].[310] P173 explained that every time the MLC troops occupied a town or village, they would automatically pillage.[311]

[303] [P169-T138-ENG-ET-p4-L17-p5-L17]/[P169-T138-FRA-ET-p4-L15-p5-L13]; [P169-T142-ENG-CT2-p12-L11-p130-L6]/[P169-T142-FRA-ET-p12-L10-p13-L3]; [P169-T137-ENG-ET-p27-L15-p29-L6]/[P169-T137-FRA-ET-p28-L11-p29-L2]
[304] [P169-T142-ENG-CT2-p12-L11]/[P169-T142-FRA-ET-p12-L10]
[305] EVD-T-OTP-00582/CAR-OTP-0031-0124-at-10.50 – 12:00 (audio); CAR-OTP-0057-0403-at-0405 (English translation), CAR-OTP-0057-0344 (French transcript)
[306] EVD-T-OTP- EVD-T-OTP-00582/CAR-OTP-0031-0124-at-10.50–12:00 (audio), CAR-OTP-0057-0403-at-0405(English translation); CAR-OTP-0057-0344 (French transcript)
[307] [P22-T41-ENG-CT2-p36-L3]/[P22-T41-FRA-ET-p39-L11]
[308] [P209-T150-ENG-ET-p62-L4]/[P209-T150-FRA-ET-p63-L26-p64-L9]
[309] [P173-T144-ENG-ET-p35-L15]/[P173-T144-FRA-ET-p37-L2] ; EVD-T-OTP-00801/CAR-OTP-0042-0236; [P178-T150-ENG-ET-p34-L1]/[P178-T150-FRA-ET-p35-L5] ; [P178-T151-ENG-CT-p18-L24-p19-L2]/[P178-T151-FRA-ET-p20-L10]
[310] [P169-T136T136-ENG-ET-p33-L17]/[P169-T136-FRA-ET-p34-L6]; [P169-T137-ENG-ET-p5-L6]/[P169-T137-FRA-ET-p5-L14]
[311] [P169P-T136-ENG-ET-p33-L17]/[P169-T136-FRA-ET-p34-L6]

XIII. Widespread attack in Bossembélé

97. On 12 December 2002, MLC troops reportedly raped and pillaged civilians in Bossembélé.[312] The MLC troops had set up checkpoints within the town and extorted civilians.[313] P6, who witnessed the killing of a person at a checkpoint at the entrance of Bossembélé,[314] corroborates the MLC's extortion of civilians at checkpoints.[315]

98. P6 testified that the investigations revealed that MLC troops committed widespread murder.[316] Local media reports and complaints lodged before the Tribunal de Grande Instance in Bangui and at the CAR national gendarmeries confirmed that MLC troops had committed multiple acts of rape, murder and pillaging against the civilian population in Boali, Bossembélé and Yaloké in November and December 2002.[317] P173 testified that [REDACTED] an MLC soldier based on the Bossango-Bossembélé axis, was notorious for committing the crimes.[318] P169 testified that MLC troops told him that they killed the Imam and other Muslims in Bossembélé.[319]

99. Captain René, one of Mustapha's deputies, had been killed near Bossembélé.[320] [REDACTED], informed P178 that Mustapha had given the order to shoot anything that moved and take revenge for René's death.[321] According to P178, this was a

[312] [P173-T145-ENG-ET-p12-L8]/[P173-T145-FRA-ET-p12-L14-p13-L1] ; EVD-T-OTP-00848/CAR-OTP-0013-0051-at-0051
[313] EVD-T-OTP-00852/CAR-OTP-0013-0052-at-0052
[314] [P6-T95-ENG-CT-p16-L10-p17-L13]/[P6-T95-FRA-ET-p16-L2-p17-L1]
[315] [P6-T95-ENG-CT-p16-L19]/[P6-T95-FRA-ET-p16-L10]
[316] [P6-T95-ENG-CT-p14-L2]/[P6-T95-FRA-ET-p13-L16]
[317] EVD-T-OTP-00854/CAR-OTP-0013-0113; EVD-T-OTP-00848/CAR-OTP-0013-0051;EVD-T-OTP-0085200852/CAR-OTP-0013-0052; EVD-T-OTP-00445/CAR-OTP-0013-0065-at-0066; EVD-T-CHM-00049/CAR-OTP-0013-0098; EVD-T-OTP-00209/CAR-OTP-0001-0405-R01; EVD-T-OTP-00334/CAR-OTP-0002-0115-R01; EVD-T-OTP-00801/CAR-OTP-0042-0236; ; EVD-T-OTP-00803/CAR-OTP-0042-0243; EVD-T-OTP-00804/CAR-OTP-0042-0246; [P169-T137-ENG-ET-p4-L5]/[P169-T137-FRA-ET-p4-L10]; [P178-T157-ENG--ET-p11-L6]/[P178-T157-FRA-ET-p11-L18-p12-L2]
[318] [P173-T144-ENG-ET-p28-L10]/[P173-T144-FRA-ET-p29-L7]
[319] [P169-T142-ENG-CT2-p14-L4]/[P169-T142-FRA-ET-p13-L28-p14-L21]
[320] [P178-T151-ENG-CT-p19-L19-p20-L8]/[P178-T151-FRA-ET-p21-L6]
[321] [P178-T151-ENG-CT-p20-L9]/[P178-T151-FRA-ET-p21-L21-p22-L10]

"terrible thing" for the civilian population in Bossembélé, Bozoum and Bossangoa as MLC troops shot indiscriminately.[322] P213 testified that [REDACTED] Bemba [REDACTED] saw corpses of men and women in civilian clothing in Bossembélé.[323]

100. P173 testified that MLC troops committed large scale pillaging in Bossembélé.[324] According to an internal memo from CAR's Defence Ministry memo, dated 2 December 2002, two truck drivers reported that as a result of multiple acts of pillaging by MLC troops at checkpoints in Bossembélé, truck drivers on the Cameroon-Bangui axis decided to stop their activities from 5 December 2002.[325]

XIV. Widespread attack in Sibut

101. MLC troops, led by Kamisi, arrived in Sibut on 14 February 2003.[326] The MLC troops entered the town firing their weapons indiscriminately despite the fact that Bozizé's rebels had withdrawn to Dékoua and were no longer in Sibut.[327] The armed MLC troops committed multiple acts of rape, murder and pillaging from the day they arrived in Sibut[328] and the civilian population were "at their mercy".[329]

102. P6 and CHM1 testified that MLC troops committed multiple acts of rape, murder, and pillaging in Sibut.[330] On 19 February 2003, witness testimony and RFI witness accounts show that MLC troops committed the crimes; according to RFI,

[322] [P178-T151-ENG-CT-p20-L17]/[P178-T151-FRA-ET-p22-L2]
[323] [P178-T157-ENG-ET-p11-L6]/[P178-T157-FRA-ET-p11-L18-p12-L2]
[324] P173-T144-ENG-ET-p30-L17]/[P173-T144-FRA-ET-p31-L15] ; [P169-T137-ENG-ET-p5-L6]/[P169-T137-FRA-ET-p5-L14]
[325] EVD-T-OTP-00801/CAR-OTP-0042-0236
[326] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58
[327] [V2-T222-ENG-ET-p48-L20-p49-L3]/[V2-T222-FRA-ET-p52-L9] ; [V2-T223-ENG-ET-p29-L7]/[V2-T223-FRA-ET-p28-L16]; [V2-T224-ENG-ET-p49-L22-and-p50-L1]/[V2-T224-FRA-ET-p56-L6]
[328] [V2-T224-ENG-ET-p23-L19]/[V2-T224-FRA-ET-p27-L16]
[329] [V2-T223-ENG-ET-p23-L9]/[V2-T223-FRA-ET-p23-L2]
[330] EVD-T-OTP-00605/CAR-ICC-0001-0066; EVD-T-OTP-00850/CAR-ICC-0001-0102; [P38-T34-ENG-ET-p39-L25-p40-L15]/[P38-T34-FRA-ET-p45-L14-p46-L2]

UNHCR officials corroborate the same.[331] RFI reported that anyone suspected of helping or giving shelter to General Bozizé's rebels was targeted by MLC troops, and local people of Chadian origin suffered the most.[332]

103. In response, the CAR government spokesperson, Gabriel Koyambounou, acknowledged that there had been some collateral damage.[333]

104. In Sibut, the MLC troops broke down doors, took foam mattresses, kitchen utensils, tore various things down and made a mess of everything.[334] V2 witnessed the MLC pillaging and also saw items of value loaded onto trucks while those of less value were sold to the local population by force.[335]

XV. Widespread attack in Bozoum

105. The MLC's 5th battalion, which was led by Yves, captured Bozoum on 15 February 2003.[336] Witnesses testified that MLC troops committed rape, murder and pillaging in Bozoum.[337] This is corroborated by RFI reports of civilian massacres in the town of Bozoum following MLC's control of the town.[338] RFI reported that the

[331] EVD-T-OTP-00582/CAR-OTP-0031-0124-at-0405, 00:00-11:47 (audio), CAR-OTP-0057-0344 (French transcript), CAR-OTP-0057-0403 (English translation); CAR-OTP-0031-0120/EVD-T-OTP-00580-at-Track 1, 02:00-02:15, Track 2, 02:39; [V2-T222-ENG-ET-p53-L21-p54-L2]/[V2-T222-FRA-ET-p56-L17] ;[V2-T224-ENG-ET-p23-L4]/[V2-T224-FRA-ET-p27-L1] ; [P119-T83-ENG-CT2-p11-L2-and-p12-L24-p13-L9]/[P119-T83-FRA-CT2-p10-L4-and-p12-L23-p13-L5]
[332] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58 (audio); CAR-OTP-0057-0349 (French transcript); CAR-OTP-0057-0393 (English translation)
[333] EVD-T-OTP-00582/CAR-OTP-0031-0124-at-0405, 00:00-11:47 (audio), CAR-OTP-0057-0344 (French transcript), CAR-OTP-0057-0403 (English translation)
[334] [V2-T222-ENG-ET-p52-L15]/[V2-T222-FRA-ET-p55-L15] ; [V2-T224-ENG-ET-p4-L7]/[V2-T224-FRA-ET-p4-L15]; [V2-T223-ENG-ET-p38-L8-and-p39-L1]/[V2-T223-FRA-ET-p37-L24-p38-L18] ; [V2-T224-ENG-ET-p4-L7]/[V2-T224-FRA-ET-p4-L15] ; [V2-T224-ENG-ET-p12-L23]/[V2-T224-FRA-ET-p14-L10]
[335] [V2-T224-ENG-ET-p13-L16]/[V2-T224-FRA-ET-p15-L7]
[336] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58.
[337] [P119-T83-ENG-CT2-p11-L2]/[P119-T83-FRA-CT2-p10-L4] ; [P69-T193-ENG-ET-p29-L19]/[P229-T99-FRA-CT-p43-L22] ; [P79-T77-ENG-CT-p29-L2-and-p59-L1]/[P79-T77-FRA-ET-p29-L24-p30-L8-and-p60-L11-p61-L7] ; [P119-T83-ENG-CT2-p12-L24-p13-L9]/[P119-T83-FRA-ET-p12-L23-p13-L5]
[338] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 02:00-02:15, Track 2, 02:39.

MLC troops particularly targeted civilians of Chadian origin on suspicion of being accomplices of Bozizé's rebels.[339]

106. RFI reported large-scale pillaged of stores.[340] According to the RFI, the UNCHR representative in Gore stated that people from Bozoum and Paua arrived in Gore, mainly originally Chad nationals, reported that there had been large-scale pillaging and massacres against the Muslim population following the counter-attack by the loyalist forces.[341]

XVI. Widespread attack in Mongoumba

107. On 5 March 2003, MLC troops launched a direct attack against the civilian population in Mongoumba.[342] MLC troops raped, murdered, and pillaged many civilians.[343] P29 testified that MLC troops committed multiple rapes - "everyone in Mongoumba was aware that young girls had been raped."[344]

108. MLC troops committed large-scale pillaging during house-to-house operations.[345] They pillaged items such as foam mattresses, TV sets, satellite dishes

[339] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0686-and-0689
[340] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 02:00-02:15, Track 2, 02:39.
[341] EVD-T-OTP-00580/CAR-OTP-0031-0122-at-Track 1, 08:40 to 09:50]; [[P6-T95-ENGENG CT-p15-L11]/[P6-T95-FRA-ET-p15-L6-L15]
[341] [V1-T220-ENG-ET-p12-L13-p13-L6-and-p14-L2]/[V1-T220-FRA-ET-p13-L14-and-p14-L6-and-p15-L2]; [P29-T80-ENG-ET-p26-L18]/[P29-T80-FRA-ET-p28-L23]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114 ; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-114
[342] [V1-T220-ENG-ET-p12-L13-p13-L6-and-p14-L2]/[V1-T220-FRA-ET-p13-L14-and-p14-L6-and-p15-L2]; [P29-T80-ENG-ET-p26-L18]/[P29-T80-FRA-ET-p28-L23]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114 ; [P29-T80-ENG-ET-p26-L2-p27-L2]/[P29-T80-FRA-ET-p28-L1]; [P169-T137-ENG-ET-p48-L11-p50-L5]/[P169-T137-FRA-ET-p49-L13-p51-L3] ; [P173-T144-ENG-ET-p32-L16-p33-L1]/[P173-T144-FRA-ET-p33-L20-p34-L15]/[P173-T144-ENG-ET-p32-L16-p33-L1]/[P173-T144-FRA-ET-p33-L20-p34-L15] ; see chapter 5.
[343] [P178-T152-ENG-ET-p5-L23]/[P178-152-FRA-ET-p6-L3]; [P47-T178-ENG-ET-p35-L14]/[P47-T178-FRA-ET-p35-L24-p36-L6]; [V1-T220-ENG-ET-p32-L25-p33-L9]/[V1-T220-FRA-ET-p33-L2]
[344] [V1-T220-ENG-ET-p12-L13-p13-L6-and-p14-L2]/[V1-T220-FRA-ET-p13-L14-and-p14-L6-and-p15-L2]; [P29-T80-ENG-ET-p56-L4-p26-L18]/[P29-T80-FRA-ET-p62-L12]; [P29-T81-ENG-ET-p15-L11]/[P29-T81-FRA-ET-p15-L13-p28-L23]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[345] [P47-T178-ENG-ET-p35-L14]/[P47-T178-FRA-ET-p35-L25-p36-L2] ; [P47-T178-ENG-ET-p34-L4-21]/[P47-T178-FRA-ET-p34-L20-p35-L7] ; [P169-T137-ENG-ET-p49-L20]/[P169-T137-FRA-ET-p50-L22] ;

and radios.[346] V1, who was held captive by MLC troops and forced to act as an interpreter between them and the civilian population, was ordered to follow MLC troops as they committed multiple acts of pillaging in Mongoumba.[347]

XVII. National inquiry and proceedings in the CAR

109. The UN Development Programme ("UNDP") and the CAR Ministry of Social Affairs commissioned a joint inquiry into sexual violence crimes committed during the 2002-2003 armed conflict in the CAR.[348] The report found that multiple acts of rape were committed in Bangui, Bégoua, PK12, PK22, Bossangoa, Bossembélé, Damara, Sibut, Kaga-Bandoro, Bozoum, and Paoua.[349] From a sample of 293 rape victims, 53% of victims were raped at home, 19% of victims were raped at places of refuge, and 28% were raped at public places and roads.[350] The report found that 93% of the multiple rapes were committed by MLC troops.[351] According to the report, 78% of victims were raped in the presence of third parties, whilst 82% were raped by multiple perpetrators.[352]

110. The CAR authorities launched an official judicial inquiry in the 2002-2003 crimes, which was referred by the public prosecutor, P6, and conducted by the investigating judge, P9.[353] They interviewed victims of rape and pillaging and families of those murdered.[354] A dossier consisting of approximately 203 witness

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[P47-T178-ENG-ET-p36-L23-p37-L1]/[P29-T178-FRA-ET-p37-L7] ; [V1-T220-ENG-ET-p27-L2]/[V1-T220-FRA-ET-p27-L9]
[346] [P47-T178-ENG-ET-p36-L6]/[P29-T178-FRA-ET-p49-L20] ; [P169-T137-ENG-ET-p35-L24-p37-L8]/[P169-T137-FRA-ET-p36-L15-p37p50-L22] ; [V1-T220-ENG-ET-p27-L2-11]/[V1-T220-FRA-ET-p27-L9] ; [V1-T220-ENG-ET-p22-L11-p24-L25]/[V1-T220-FRA-ET-p22-L26-p25-L7].
[347] [V1-T220-ENG-ET-p22-L11-p24-L25]/[V1-T220-FRA-ET-p22-L26-p25-L7] ; [P29-T178-ENG-ET-p36-L23-p37-L1]/[P29-T178-FRA-ET-p37-L7]
[348] EVD-T-OTP-00568/CAR-OTP-0030-0002
[349] EVD-T-OTP-00568/CAR-OTP-0030-0002-at-0009
[350] EVD-T-OTP-00568/CAR-OTP-0030-0002-at-0024-and-0025
[351] EVD-T-OTP-00568/CAR-OTP-0030-0002-at-0026
[352] EVD-T-OTP-00568/CAR-OTP-0030-0002-at-0027-and-0028
[353] See, CAR-OTP-PPPP-0006-and-CAR-OTP-PPPP-0009
[354] [P9-T102-ENG-ET-p21-L8]/[P9-T102-FRA-ET-p22-L27-p23-L7]

accounts of multiple acts of rape, murder, and pillaging, committed by MLC troops during the 2002-2003 CAR conflict was authenticated through P9.[355] This provides corroboration for direct testimony of the widespread attack against the civilian population.[356] The victims came from Bangui, Damara, Bossembélé, Sibut, Bossangoa and many other towns. [357] This dossier is reliable and provides credible information that will assist the Chamber in determining the widespread nature of the MLC attack.[358]

XVIII. FIDH and Amnesty International reports

111. CAR-OTP-0001-0034 and CAR-OTP-0004-0409 are FIDH reports that were prepared following investigative missions by the organisation's lawyers conducted in Bangui during the conflict.[359] FIDH noted that "[g]athering testimonies, particularly from children, women and men who are victims of rape, is extremely difficult given the taboos surrounding this crime, the stigmatisation of victims and the dangers they incur if their identity is revealed."[360] The reports, based on information collected in the midst of the conflict, corroborate other evidence of the multiple commission of acts crimes of rape, murder, and pillaging by MLC troops; the modus operandi of MLC attacks against the civilian population, which shows evidence of an organisational policy; contemporaneous information on dates and locations of MLC crimes; identification of MLC troops; and impact of the crimes on

[355] See, EVD-T-OTP-00142/CAR-OTP-0001-0159-to-0547, EVD-T-OTP-00254/CAR-OTP-0002-0002-to--0137[P9-T104-ENG-CT-p7-L22]/[P9-T104-FRA-ET-p8-L25]
[356] ICC-01/05-01/08-2012, para. 70-71
[357] [P9-T102-ENG-ET-p37-L23-p38-L8]/[P9-T102-FRA-ET-p40-L27-p41-L12] ; [P9-T102-ENG-ET-p16-L7]/[P9-T102-FRA-ET-p17]
[358] TC I, Lubanga Judgment, para. 107, and referred to in Ngudjolo Judgment, para. 54: As Trial Chamber I noted, the Chamber's discretion to consider such documentary evidence as proof of acts therein "is particularly necessary given the nature of the cases that will come before the ICC: there will be infinitely variable circumstances in which the court will be asked to consider evidence, which will not infrequently have come into existence, or have been complied or retrieved, in difficult circumstances, such as during particularly egregious instances of armed conflict … or those affected may be untraceable or unwilling – for credible reasons – to give evidence."
[359] EVD-T-OTP-00395/CAR-OTP-0001-0034; EVD-T-OTP-00409/CAR-OTP-0004-0881 (English translation); EVD-T-OTP-00401/CAR-OTP-0004-0409; EVD-T-OTP-00442/CAR-OTP-0011-0503
[360] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0428

the civilian population.[361] Testimonial accounts collected by the FIDH during the events are strikingly similar to accounts of witnesses who have testified before this Chamber, which will prove that specific accounts of witnesses are illustrative of a large attack against a multiplicity of victims.

112. AI's report, CAR-OTP-0011-0503, is the result of one year of research and analysis of interviews collected in Bangui during September 2003.[362] The report is similar to that of FIDH and contains reliable and credible information that corroborates other evidence of MLC crimes of sexual violence against women in the CAR, particularly through multiple acts of rape.[363]

XIX. The perpetrator's' acts were part of the attack (nexus)[364]

113. As described above, the acts of rape and murder were committed by MLC troops as an inherent part of the widespread attack directed against the civilian population in the CAR. The characteristics, aims, nature or consequences of the acts are factors that establish the nexus between the perpetrators' acts and the widespread attack.[365] Bemba's acts and conduct, establishing in particular the nexus requirement under Article 28(a), is addressed below in the section of this brief dealing with the mode of liability.[366]

114. Rape as a weapon of war was part of the attack.[367] As demonstrated above, rape was preceded by, or occurred simultaneously with pillaging of civilian property. The Prosecution is not required to prove that every single act of rape or murder within

[361] ICC-01/05-01/08-2299, paras. 32, 35-37
[362] EVD-T-OTP-00442/CAR-OTP-0011-0503
[363] ICC-01/05-01/08-2299, paras.38-42
[364] O. Triffterer Commentary, atp.125: It is not required that each act such as rape within the attack be widespread or systematic provided that it is part of the acts that form part of a widespread or systematic attack against civilian populations
[365] ICC-01/05-01/08-424, paras.84-and-86.
[366] See, Chapter 6
[367] See above, the widespread attack

the attack was widespread provided that it forms part of the attack against the civilian population.[368] The evidence sufficiently establishes that MLC troops targeted the civilian population and committed the acts at issue in the course of their attack.

115. Murder as a crime against humanity is established by its commission within the context of the widespread attack against the civilian population.[369] The murders committed by MLC perpetrators were not random. Murder was an inherent part of the attack and, in some cases, further enabled the commission of rape and pillaging, and instilled a climate of fear among the civilian population.[370] In addition, the MLC troops specifically targeted and killed supporters of Bozizé's rebels in the course of their attack.[371] Specific incidents of murders are addressed in further detail in chapter 6.

116. That the crimes of rape and murder were perpetrated as part of a widespread attack directed against the civilian population is corroborated by hundreds of victim interviews conducted in the immediate aftermath of the CAR conflict.[372] P-6 explained that the modus operandi of MLC perpetrators was practically always the same for all victims:

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[368] O. Triffterer Commentary, atp.12; Only the attack, not the individual acts of the accused, must be widespread or systematic: ICTY, The Prosecutor v Kordic, Case No.IT-95/14/2-A, ''Judgment, Appeals Chamber'', 17 Dec. 2004, para.94; ICTY, The Prosecutor v. Blaskic, Case No.IT-96-14-A, ''Judgment, Appeals Chamber'', 29 June 204, para.101; ICTY, The Prosecutor v. Kunarac et al, Case No.IT-96-23-A, ''Judgment, Appeals Chamber'', 12 June 2002, para.94

[369] ICTY, The Prosecutor v. Tadic, Case No.IT-94-I-T, ''Opinion and Judgment, Trial Chamber'', 7 May 1997, para649: "Clearly, a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable." See, also, C.Hall "Article 7", Triffeterer (ed). Commentary on the Rome Statute of the International Criminal Court, C. H. Beck, 2008 ("Hall"), p176: "Indeed, the commission of a single act, such as one murder, in the context of a broader campaign against the civilian population, can constitute a crime against humanity", p.234: "… an accused can be held criminally responsible for crimes against humanity for committing a single act, such as a single rape, within a context of a widespread or systematic attack which may involve the commission of various of the enumerated acts""

[370] See above, widespread attack.

[371] [P169-T138-ENG-ET-p5-L1]/[P169-T138-FRA-ET-p4-L24-p5-L1] ; [P38-T33-ENG-ET-p54-L22-p55-L15]/[P38-T33-FRA-ET-p60-L13-p61-L9] ; [P178-T151-ENG-CT-p27-L16]/[P178-T151-FRA-ET-p33-L19] ; [P63-T111-ENG-ET-p21-L18-p23-L11]/[P63-T111-FRA-ET-p21-L15-p24-L11] ; [P178-T151-ENG-CT-p20-L9]/[P178-T151-FRA-ET-p21-L21-p22-L10] ; [P6-T95-ENG CT-p15-L11]/[P6-T95-FRA-ET-p15-L6]

[372] [P6-T95-ENG-CT-p10-L11]/[P6-T95-FRA-ET-p10-L8]

> "As soon as they went into the house, it wasn't just one person; there would be two, three, four or five of them. There could be several of them, even beyond five. And as soon as they got into somebody's home, the very first thing they wanted to do was to go into the various rooms, the bedrooms of the house, and begin searching … If, in the meantime, they would see a woman or a young girl, then one or two soldiers would move in the direction of this woman or this young girl, to force them to have sex with them. If there is any resistance shown, the soldier, or soldiers, would brandish their weapons so as to frighten the victim, or would shoot at the ceiling of the home so as to intimidate the victim, whilst the other soldiers kept searching the other rooms in the house. During that time the rape was being committed. At times, two soldiers could actually lay with one single woman."[373]

XX. The perpetrator's' acts were committed with knowledge of the attack

117. MLC troops knew that their individual acts were part of a broader attack directed against the civilian population.[374] In accordance with Article 30(3), this requirement is satisfied when the MLC perpetrator is aware of the existence of the widespread attack and knew that his actions were part of this attack.[375] Individual MLC perpetrators need not know all the characteristics of the attack or the precise details of the organisational policy.[376]

118. This knowledge is established through the regular and organised group attacks in house-to-house operations, which involved several MLC troops and affected a

[373] [V1-T220-ENG-ET-p27-L2-11]/[V1-T220-FRA-ET-p27-L9]; [P6-T95-ENG-CT-p10-L11]/[P6-T95-FRA-ET-p10-L8]
[374] Bemba's knowledge will be addressed in the mode of liability section
[375] ICC-01/05-01/08-424, para.88
[376] ICC-01/05-01/08-424, para.88

large number of civilian victims across the CAR, as well as the nature of the attack and the MLC's control of the areas where crimes were committed.[377] In some cases, MLC troops carried out repeated attacks on the same home against the same victims in a single day or on different days.[378]

119. In addition, MLC troops were given a license to commit crimes by their hierarchy and therefore knew that there would be a broader attack in the ordinary

course of events.[379] The involvement of MLC commanders in the commission of multiple acts of rape, murder, and pillaging supports a finding that MLC perpetrators were aware of a broader attack against the civilian population in areas under their control and they knowingly participated in the broader attack.[380] Chapters 5 of this brief further addresses the awareness of MLC direct perpetrators for specific incidents.

[377] See above
[378] See, for example, P87,P69,P81
[379] [P169-T136-ENG-ET-p32-L8]/[P169-T136-FRA-ET-p33-L12]; [P173-T144-ENG-ET-p31-L10-and-p32-L1]/[P173-T144-FRA-ET-p32-L10-p33-L11]; [P169-T142-ENG-ET-p7-L19-p8-L20]/[P169-T142-FRA-ET-p7-L22-p8-L20]; [P213-T187-ENG-ET-p33-L19-p38-L9]/[P213-T187-FRA-ET-p34-L21-p39-L12]
[380] [P47-T176-ENG-ET-p32-L11-and-L20]/[P47-T176-FRA-ET-p32-L5-p33-L12]; [P47-T178-ENG-ET-p25-L13-p26-L2]/[P47-T178-FRA-ET-p26-L27-p28-L15]; [P213-T186-ENG-ET-p39-L3-p44-L5]/[P213-T186-FRA-ET-p41-L10-p46-L15]

CHAPTER 3. CONTEXTUAL ELEMENTS OF WAR CRIMES (RAPE, MURDER, AND PILLAGE) LEGAL ELEMENTS FOR WAR CRIMES

120. The Prosecution charged Bemba pursuant to Article 28(a) for the war crimes of rape, murder and pillaging, counts 2, 6 and 8 respectively, in accordance with Articles 8(2)(e)(vi), 8(2)(c)(i) and 8(2)(e)(v) of the Rome Statute. The contextual elements require proof that the acts of rape, murder and pillaging were committed in the context of an armed conflict, not of an international character against the civilian population in CAR on or about from 26 October 2002 to 15 March 2003. Evidence in this case proves beyond reasonable doubt that:

(i) An armed conflict existed during the relevant period to the charges

(ii) The conflict was non-international in character

(iii) The conflict was protracted

(iv) The armed groups involved in the conflict were organised

(v) Perpetrators were aware of the existence of the armed conflict

I. Background

121. There was a protracted armed conflict between 25 October 2002 and 15 March 2003.[381] In this context, the MLC troops committed the crimes of rape, murder and pillaging as part of a plan or policy or on a large scale, within the meaning of Article 8(1) of the Statute.

122. On 25 October 2002, General Bozizé, former FACA Chief of Staff, led his forces towards Bangui in an effort to unseat then President Patassé.[382] Bozizé commanded approximately six hundred (600) troops, which included defectors from FACA,

[381] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0417-and-0418; EVD-T-OTP-00446/CAR-OTP-0013-0082; [P178-T150-ENG-ET-p34-L5-7]/[P178-T150-FRA-ET-p35-L10]
[382] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0418; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083

Chadian and CAR fighters.[383]

123. In response to Bozizé's attack, Patassé mobilized the remaining CAR national armed forces, including 1500 FACA troops, about 500 Miskine troops and at least 100 Libyan troops.[384] To strengthen his counter-offensive troops, Patassé also requested Bemba to provide MLC troops to assist in repelling Bozizé's forces. The first group of MLC troops crossed into the CAR on 26 October 2002.[385] On or about 27 October 2002, there were around 500[386] MLC troops in the CAR and their collective strength quickly rose to over 1500 troops during the conflict.[387]A coordination/operation cell was established at Camp Béal in Bangui to coordinate and provide intelligence information to the pro-Patassé forces.

II. Armed conflict in the CAR

The evidence in this case shows that the crimes occurred during the time of the armed conflict on the territory of the CAR.

Geographical location of the conflict:

124. During this conflict period, Patassé's loyalist forces and Bozizé's rebels engaged in fierce fighting in various towns within the CAR. These towns include Bangui, PK12, P22, PK45, Damara, Sibut, Bossembélé, Bossangoa, Bozoum, Bossemptélé and Mongoumba.[388] The MLC pursued and fought Bozizé forces in these towns as they

[383] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0041; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0084; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0419
[384] FIDH ; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0041 ; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0419
[385] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003
[386] [P31-T182-ENG-CON-ET-p26-L9-12]/[P31-T182-FRA-ET-p26-L24] ; EVD-T-OTP-00822/CAR-OTP-0005-0129; EVD-T-OTP-00823/CAR-OTP-0005-0131; [P65-T170-ENG-ET- p46-L18];/[P65-T170-FRA-CT-P46-L25] ; [D49-T271-ENG-ET-p5-L3]/[D49-T271-FRA-ET-p5-L20]; [P36-T213-ENG-ET-p64-L24-p65-L5]/[P36-T213-FRA-CT-p65-L24-p66-L2]; [D19-T284-ENG ET-p15-L1]/[D19-T284-FRA-ET-p16-L1; EVD-T-OTP-00446/CAR-OTP-0013-0082
[387] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0418; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0031
[388] [P9-T102-ENG-ET-p16-L7]/[P9-T102-FRA-ET-p17-L3]; [P173-T144-ENG-ET-p35-L16-18]/[P173-T144-FRA-ET-p37-L2]

retreated northwards.

125. Patassé's loyalist forces that took part in the conflict were FACA, USP, MLC, Miskine troops, Sarawi, Karakos, *Société Centrafricaine de Protection de Surveillance* (SCPS) and the *Lutte Contre le Terrorisme International* (LCTI) led by French mercenary Paul Barril.[389]

126. The MLC forces arrived in Bangui in waves between 26 and 30 October 2002.[390] On 27 October 2002, the loyalist forces including the MLC attacked Bozizé's forces.[391] There was heavy firing in the 4th arrondisement between the loyalists and Bozizé forces that continued until the next day.[392] Both heavy and small firearms were fired.[393] After two to three days of intense fighting, Bozizé forces retreated towards PK12.[394] As Bozizé forces left Bangui, the MLC moved in and occupied those Bangui neighbourhoods previously occupied by Bozizé forces such as 36 Villas to Fouh, Boy-Rabé, and Gobongo.[395] On 30 October, Mustapha arrived in the CAR and reported to his hierarchy in Gbadolite that a military operation started at 13:00 hours. Mustapha also reported about troop casualties on both sides, weapons, ammunition and the difficulties encountered in the field.[396]

[389] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0419;
[390] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1631; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003; EVD-T-OTP-00446/CAR-OTP-0013-0082
[391] [P31-T182-ENG-ET-p43-L2]/[P31-T182-FRA-ET-p44-L1]; EVD-T-CHM-00024/CAR-OTP-0005-0127;EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083
[392] [P63-T108- ENG-ET-p45-L9-17]/[P63-T108-FRA-ET-p46-L23-p47-L4]
[393] [P63-T108- ENG-ET-p46-L8]/[P63-T108-FRA-ET-p47-L23-p47-L4]
[394] EVD-T-OTP-00438/CAR-OTP-0011-0293-at-0293; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050; EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0672 ; EVD-T-OTP-00821/CAR-OTP-0030-0274; [P31-T182-ENG-ET-p43-L2]/[P31-T182-FRA-ET-p44-L1]
[395] See, EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083; [P6-T94-ENG-ET-p19-L7]/[P6-T94-FRA-ET-p18-L5]; [P38-T33-ENG-ET-p51-L7]/[P38-T33-FRA-ET-p56-L44] ; [P173-T147-ENG-ET-p21-L11]/[P173-T147-FRA-ET-p21-L16-p22-L5]/[P63-T108-CONF-ENG-p47-L22-p48-L9]/[P63-T108-FRA-p49-L12]
[396] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1637 ; [P36-T214-ENG-ET-p28-L5-p29-L5-and-p32-L6-25]/[P36-T214-FRA-CT-p28-L15-p29-L15-and-p32-L23-p33-L17]

127. On 30 October,[397] MLC troops arrived at PK12 and set up several bases in PK12[398]. There were three MLC battalions in the CAR:[399] Poudrier B, [400] and the 28th battalion.[401] The 5th battalion was thereafter deployed in January 2003.[402]

128. From PK12, Bozizé forces retreated along the two axes: the Damara axis that leads towards Chad; and the Bossangoa-Bozoum axis that leads to Cameroon.

129. From PK12, Poudrier B pursued Bozizé forces along the Damara axis through PK22, PK45,[403] Nguerengou[404] and Damara.[405] On 1 November 2002, according to Bemba himself, his MLC troops were more than 20 km away from Bangui.[406]

130. While Mustapha was still at PK12, Bemba ordered him to attack Damara.[407] Mustapha complied with Bemba's order and attacked Damara.[408] On 7 December

[397] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003
[398] [P23-T51-ENG-CT2-p9-L22-and-p17-L3]/[P23-T51-FRA-ET-p10-L5-and-p17-L9] ; [P6-T94-ENG-ET-p28-L12-13]/[P6-T94-FRA-ET-p26-L19] ; [P178-T151-ENG-CT-p4-L14]/[P178-T151-FRA-ET-p4-L23] ; [P69-T193-ENG-ET-p19-L6]/[P69-T193-FRA-ET-p20-L18] ; [D6-T328bis-ENG-ET-p5-L1]/[D56-T328-FRA-ET-p50-L1] ; [P6-T96-ENG-CT-p23-L4]/[P6-T96-FRA-CT-p22-L25-p23-L10] ; [P178-T150-ENG-ET-p34-L1]/[P178-T150-FRA-ET-p35-L5] ; [P31-T183-ENG-CT-p9-L20-p10]/[P31-T183-FRA-ET-p10-L12]
[399] [P213-T186-ENG-ET-p55-L16]/[P213-T186-FRA-ET-p57-L21 ; [P36-T-213-CONF-ENG-ET-p.63-L16-20-and-p64-l.24-p.65-L1]/[P36-T213-FRA-CT-p64-L7-L12-and-p65-L24-L25];[D19-T287-ENG-ET-p21-L13]/[D19-T287-FRA-ET-p20-L27-p21-L2] ; [D19-T290-ENG-ET-p22-L20-p23-L23]/[D19-T292-ENG-ET-p20-L5]; [D53-T231-ENG-ET-p18-L7]/[D53-T231-FRA-ET-p18-L15] ; [P65-T168-ENG-ET-p56-L7]/[P65-T168-FRA-ET-p56-L27]; [D39-T308-ENG-ET-p35-L16-p36-L1]/[D39-T308-FRA-ET-p36-L22-p37-L4] ; [P36-T218-ENG-CT-p60-L14]/[P36-T218-FRA-ET-p63-L26] ; EVD-T-OTP-00394/CAR-DEF-0002-0567-at-0568; [P169-T136-ENG-ET-p24-L15]/[P169-T136-FRA-ET-p25-L15]; [P169-T137-ENG-ET-p4-L20-p6-L3]/[P169-T137-FRA-ET-p4-L28-p6-L8]
[400] [D19-T289-ENG-ET-p16-L6]/[D19-T289-FRA-ET-p17-L22]; [D19-T292-ENG-ET-p31-L17]/[D19-T292-FRA-ET-p31-L28-p32-L2];[D39-T309-ENG-ET-p47-L21]/[D39-T309-FRA-ET-p50-L18]
[401] [D19-T288-ENG-ET-p10-L22]/[D19-T288-FRA-ET-p11-L7]; [D19-T292-ENG-ET-p31-L16]/[D19-T292-FRA-ET-p31-L27-p32-L6] ; [D39-T309-ENG-ET-p47-L21]/[D39-T309-FRA-ET-p50-L18] ; [D13-T350-ENG-ET-p13-L5]/[D13-T350-FRA-ET-p11-L24-L27]
[402] [P169-T136-ENG-ET-p24-L15]/[P169-T136-FRA-ET-p25-L15]; [P169-T137-ENG-ET-p4-L20-p6-L3]/[P169-T137-FRA-ET-p4-L28-p6-L8]
[403] [P63-T115-ENG-ET-p12 -L18-p13-L5]/[P63-T115-FRA-CT-p13-L3]
[404] [P63-T109-ENG-p13-L14]/[P63-T109-FRA-ET-p13-L24]; [REDACTED]
[405] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003; [P42-T64-ENG-ET-p14-L4]/[P42-T64-FRA-ET-p15-L25-L27]; [P42-T63-ENG-ET-p62-L2]/[P42-T63-FRA-ET-p66-L18-p67-L5] ;[P169-T136-ENG-ET-p28-L22]/[P169-T136-FRA-ET-p30-L1]; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0032; FIDH, EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0051; AI, EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0511
[406] EVD-T-OTP-00821/CAR-OTP-0030-0274
[407] [P178-T151-ENG-ET-p53-L4-p54-L21]/[P178-T151-FRA-ET-p60-L9-p62-L11]; [P178-T152-ENG-ET-p17-L11-p18-L17]/[P178-T152-FRA-ET-p18-L22-p19-L22]
[408] [P178-T151-ENG-ET-p53-L4-p54-L21]/[P178-T151-FRA-ET-p60-L9-p62-L11]; [P178-T152-ENG-ET-p17-L11-p18-L17]/[P178-T152-FRA-ET-p18-L22-p19-L22]

2002, the MLC troops captured Damara from Bozizé's forces.[409] The presence of MLC troops in Damara is corroborated by an RFI broadcast in which the journalist spoke to Commander Golf, who identified himself and his men as MLC.[410] In a situation report dated 24 December 2002, the MLC coordinator of operations in Bangui informed his Chief-of-Staff and Bemba that an MLC company was in Damara, and that Mustapha and the Bangui coordinator had gone to Bossembélé to coordinate future action on Bozoum.[411] In Damara, the MLC received a supply of heavy weapons and ammunition that were delivered by a helicopter from Gbadolite.[412]

131. From Damara, the MLC proceeded towards Sibut, which they captured on the 14 February 2003 following a fierce battle with Bozizé's forces.[413] V2 testified that the MLC troops entered the town of Sibut firing their weapons.[414] The presence of MLC troops in Sibut is also corroborated by the presence of Thomas Luhaka in Sibut on 20 February 2003, who had been sent there to establish that the MLC did not commit crimes against civilians in Sibut.[415] The RFI also reported that civilians had been massacred in Sibut following MLC's arrival in the town.[416] By 14 February 2003, the MLC was in control of the entire geographical territory on that axis – from Bangui to Sibut.

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[409] [D19-T289-ENG-ET-p16-L4]/[D19-T289-FRA-ET-p17-L19] ; [D19-T292-ENG-ET-p31-L17]/[D19-T292-FRA-ET-p31-L28-p32-L2] ; [P42-T64-ENG-ET-p56-L2]/[P42-T64-FRA-ET-p62-L7-L13] ; [P209-T117-ENG-ET-p27-L12-p28-L3]/[P209-T117-FRA-ET-p28-L10] ; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1679-Quadrants-C&D-Message-Code 021/OPS/COMDT/BGI/02; [D13-T351-ENG-ET-p68-L9]/[D13-T351-FRA-ET-p62-L6] ; [P63-T109-ENG-ET-p11-L7-p12-L4]/[P63-T109-FRA-ET-p11-L5]; [P75-T92-ENG-CT-p20-L25-p21-L6]/[P75-T92-FRA-CT-p21-L17] ; [P63-T109-ENG-ET-p16-L1-10-and-p17-L15]/[P63-T109-FRA-ET-p16-L4-L13-and-p17-L20]; [P112-T129-ENG-CT2-p46-L4]/[P112-T129-FRA-CT-p46-L3]; CAR-D04-0002-1380

[410] EVD-T-OTP-00576/CAR-OTP-0031-0099-(audio)–17:00-20:00, EVD-T-CHM-00040/CAR-OTP-0036-0041 (French transcript), CAR-OTP-0056-0287 (English transcript)

[411] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1654; [P36-T214-ENG-ET-p34-L7-p35-L6]/[P36-T214-FRA-CT-p35-L1-p36-L3].

[412] [P63-T110-ENG-CT2-p13-L9]/[P63-T110-FRA-ET-p13-L2]

[413] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-track-1,1:58; EVD-T-OTP-00580/CAR-OTP-0031-0120, Track 1, 01:20-01:58; EVD-T-OTP-00825/CAR-V20-0001-0165-at-0168

[414] [V2-T222-ENG-ET-p47-L15]/[V2-T222-FRA-ET-p51-L8]

[415] EVD-T-OTP-00825/CAR-V20-0001-0165-at-0168; EVD-T-D04-00008/CAR-DEF-0001-0832

[416] EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 02:00-02:15, Track 2, 02:39

132. Bemba ordered the MLC troops in the CAR to advance to Bozoum, and Bossembélé. In compliance with Bemba's orders, the MLC troops moved to these locations and reported back on their progress, as the MLC communication logbooks show.[417] The 28th battalion pursued the Bozizé forces on Boali-Bossembélé axis capturing Bossembélé from Bozizé forces on 26 December 2002.[418]

133. On 28 January 2003, Mustapha reported to his hierarchy that Bozizé's forces were returning from Chad along the Cameroon-Bangui and Bozoum-Bangui routes with more troops and equipment.[419] In response, Bemba dispatched the 5th battalion to Bossemptélé and Bozoum to counter Bozizé forces in those locations.[420] On 12 December 2002, the presence of MLC troops was reported in Bossembélé committing crimes against CAR civilians.[421] By 26 December 2002, the MLC's 28th Battalion was in control of Bossembélé having repulsed Bozizé forces from Bossembele.[422]

134. The MLC troops captured Bozoum on 15 February 2003,[423] and on 19 February 2003 they captured Bossangoa.[424] The MLC presence in Bozoum was corroborated by RFI which reported the massacre of civilians in the town of Bozoum following MLC's control of the town.[425] In addition, MLC Commander Richard went 45 km past Bossangoa to an area close to the border. That area was razed by MLC troops because it had enemy forces. After that, a control group was set up to ensure that there was no enemy in that area.[426]

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[417] [P36-T218-ENG-CT-p52-L1-15]/[P36-T218-FRA-ET-p54-L2]; CAR-D04-0002-1654; CAR-D04-0002-1665; [P36-T214-ENG-ET-p34-L7-p35-L6]/[P36-T214-FRA-CT-p35-L1-p36-L3]
[418] EVD-T-OTP-00852/CAR-OTP-0013-0052; EVD-T-OTP-00445/CAR-OTP-0013-0065
[419] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1743
[420] [P169-T144-ENG-ET-p24-L12-24]/[P173-T144-FRA-ET-p37-L2]
[421] EVD-T-OTP-00848/CAR-OTP-0013-0051
[422] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1679
[423] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0685; EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58
[424] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0687; [P169-T136-ENG-ET-p33-L20-21/[P169-T136-FRA-ET-p34-L8-L9]
[425] RFI, EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 02:00-02:15-and-Track 2, 02:39; EVD-T-OTP-00580/CAR-OTP-0031-0120-at-Track 1, 01:20-01:58
[426] [P169-T138-ENG-ET-p5-L7]/[P169-T138-FRA-ET-p5-L2]

135. P29 and V1 testified that, on 5 March 2003, MLC troops launched a direct attack against the civilian population in Mongoumba.[427] The MLC presence in Mongoumba on 5 March 2003 is corroborated by a press article from Le Citoyen.[428]

136. On 8 March 2003, MLC withdrew from Bossemptélé and fled south to Bossembélé, and thereafter to Bagandou near Mbaïki.[429] In an interview with *Jeune-Afrique*, Bemba announced that he had ordered his troops to return to the DRC. He also stated that, by 14 March 2003, less than 250 MLC troops remained in the CAR.[430]

137. The MLC troops eventually withdrew from the CAR on 15 March 2003.[431] The conflict ended when Bozizé's forces entered Bangui in the afternoon of 15 March 2003.[432] The remaining MLC troops fled from PK12.[433]

III. Duration of the armed conflict

138. The conflict in the CAR started on 25 October 2002. The MLC troops deployed to the CAR on 26 October 2002. The MLC troops withdrew from the CAR on 15 March 2003.[434]

139. The deployment of the MLC troops on 26 October 2002, is confirmed by several items of documentary evidence. The MLC communications logbook, which was provided by the Defence, is unequivocal. Commander Rene is reported as having

[427] [V1-T220-ENG-ET-p12-L13-p13-L6-and-p14-L2]/[V1-T220-FRA-ET-p13-L14-and-p14-L6-and-p15-L2] ; [P29-T80-ENG-ET-p26-L18]/[P29-T80-FRA-ET-p28-L23]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[428] EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[429] EVD-T-OTP-00853/CAR-OTP-0013-0090
[430] EVD-T-OTP-00824/CAR-OTP-0010-0471
[431] [P38-T33-ENG-ET-p23-L23]/[P38-T33-FRA-ET-p25-L18]
[432] [P38-T33-ENG-ET-p23-L23]/[P38-T33-FRA-ET-p25-L18]
[433] [P178-T150-ENG-ET-p34-L1]/[P178-T150-FRA-ET-p35-L5]
[434] [P108-T132-ENG-ET-p16-L19]/[P108-T132-FRA-ET-p19-L3]

arrived in Bangui on 26 October 2002 with a company of 151 MLC troops.[435] This is corroborated by another contemporaneous document provided by the Defence - the pillage dossier of proceedings against 8 MLC troops arrested in the CAR and transferred to Gbadolite on Bemba's orders.[436] According to this dossier, Lieutenant Willy Bomengo stated that the CAR operation started on 25 October 2002, a day before his arrival in the CAR.[437] Bomengo went to the CAR as an MLC soldier. Media articles that reported on events at the time also confirm that the MLC entered the CAR as early as 26 October 2002.[438]

140. In Bemba's letter to the Special Representative of the UN Secretary General in the CAR, General Cissé, Bemba states that MLC troops entered the CAR on 27 October 2002 a date closer to the one established by contemporaneous evidence.[439] The MLC troops that arrived in the CAR at the beginning of the conflict, crossed the ferry into Bangui in waves. It was on this day, 27 October 2002, that MLC troops and other loyalist forces launched an attack to push Bozizé's forces out of Bangui to PK12.[440] These documents emanate from different sources that documented the events at the time.

IV. Characterization of the armed conflict

141. The armed conflict in the CAR was non-international in character. At all times relevant to the charges, the protracted armed conflict was confined to the territory of the CAR; and between Patassé's loyalist forces, including the MLC, on the one side, and Bozizé's rebel forces on the other side.

[435] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1631
[436] EVD-T-OTP-00393/CAR-DEF-0002-0001
[437] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003
[438] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0083-and-0085
[439] EVD-T-D04-00034/CAR-DEF-0001-0076-at-para. 1
[440] [P31-T-182-ENG ET-p31-L16-and-p31-L13-25]/[P31-T182-FRA-ET-p31-L25-p32-L1-and-p31-L23-p32-L8]

142. The conflict was not of an international character in that (i) no State armed force was involved in military hostilities against another State army; and (ii) the presence of a limited number of foreign troops on the CAR territory was intended to support the CAR government to counter the armed group led by Bozizé, and was not directed against the State of the CAR and its authorities. There is no evidence of a foreign State occupying the CAR territory or having overall control of Patassé forces, MLC troops or Bozizé forces.

143. An international armed conflict cannot be said to exist unless the armed forces of two or more States are pitted against each other within the context of an armed conflict.[441] In the current proceedings, there was no armed conflict between CAR, Chadian or Libyan government forces, or forces acting on behalf of these countries during the armed conflict which occurred from 25 October 2002 to 15 March 2003. The presence of a limited number of foreign troops on the CAR territory such as Libyan troops, the MLC troops and Chadian mercenaries, was intended to support the CAR government authorities to counter Bozizé's forces, and was not directed against the State of the CAR and its authorities. Moreover the Chadian mercenaries were not acting on behalf of the Chadian government.

Intensity:

144. The 2002-2003 armed conflict in the CAR featured intense violence, involving over 4000 troops. Patassé's loyalist forces and Bozizé's rebels engaged in fierce fighting in various towns, as listed above within the CAR. At PK45, the MLC fired their weapons the whole day as they proceeded to take over Damara.[442] They used all different kinds of weapons.

[441] See ICC-01/04-01/06-2748-Red, paras32-33
[442] [P63-T109-ENG-ET-p16-L12-15]/[P63-T109-FRA-ET-p16-L15]

145. Both the loyalist and Bozizé's forces suffered serious casualties during the conflict. Mustapha first reported to Bemba casualties on both sides as early as 30 October 2002.[443] P47 testified that on several occasions, he transported MLC dead bodies and wounded soldiers to Zongo.[444] Casualties were also reported as the MLC withdrew from the CAR in March 2003.[445] There were casualties in Damara and many people died as well as a result of the conflict.[446] The MLC suffered heavy losses in Bossangoa.[447]

146. The MLC troops murdered, raped and pillaged the properties of many people in the CAR during the five months of conflict against Bozizé's forces. These crimes were committed by MLC troops throughout the conflict period as they moved from location to location. This is demonstrated by the intensity and extensive nature of the crimes committed by the MLC troops in the CAR. As a result, a large number of the CAR population was affected by the conflict as a whole. NGO reports and UN reports corroborate the above evidence.[448]

V. Organised armed groups

147. The armed groups involved were all organised with the identifiable features of conventional armies. The ALC, allied with the FACA and USP of the CAR national army, all comprised the loyalist forces. The Libyans provided small units detached

[443] [P63-T109-ENG-ET-p18-L12-14]/[P63-T109-FRA-ET-p18-L19]; [P31-T182-ENG-ET-p28-L14-25]/[P31-T182-FRA-ET-p28-L24-p29-L9]EVD-T-OTP-00702/CAR-D04-0002-1514-at-1637; [P36-T214-ENG-ET-p28-L5-p29-L5-and-p32-L6-25]/[P36-T214-FRA-CT-p28-L15-p29-L15-and-p32-L23-p33-L17].
[444] [P47-T176-ENG-ET-p46-L6-21]/[P47-T176-FRA-ET-p45-L16-p46-L5]
[445] [P42-T64-ENG-ET-p14-L3-17]/[P42-T64-FRA-ET-p15-L24-p16-L18]
[446] [P63-T109-ENG-ET-p18-L16-19]/[P63-T109-FRA-ET-p19-L25-p20-L5]
[447] [P42-T64-ENG-ET-p14-L3-17]/[P42-T64-FRA-ET-p15-L24-p16-L18]
[448] AI report, "Central African Republic, Five months of war against women", 10 November 2004, EVD-P-00045-at-0507; FIDH report, "Crimes de Guerre en République Centrafricaine, 'Quand les 'éléphants se battent, c'est l'herbe qui souffre'", 1 February 2003, EVD-P-00001-at-0041; FIDH report, "Central African Republic, Forgotten, stigmatized: the double suffering of victims of international crimes", 1 October 2006, EVD-P-00014-at-0418; UNRC, "Central African Republic Weekly Humanitarian Update 17 November 2002", EVD-P-02093-at-0658; UNRC, "Humanitarian Update Central African Republic -17 December 2002", EVD-P-00018-at-0654; UNRC, "Humanitarian Update Central African Republic 07 March 2003", EVD-P-00017-at-0645

from the Libyan army.[449]. The Bozizé forces were comprised of units and individual soldiers from the FACA who had defected. All forces involved in the conflict were organized with recognizable command and staff structures.

148. The ALC, which was the military wing of the MLC, comprised of approximately 20,000 troops.[450] The ALC was divided into brigades, which were sub-divided into battalions, and then sub-divided into companies and platoons that in turn were also divided into sections.[451]P-36 explained that:

> "There was the commander in chief. There was the general military headquarters, and [REDACTED] there were the brigades.[452]" He also testified that all these Gs, G1, G2, G3, G4, had their corresponding person at brigade and battalion levels;, and that at the brigade and battalion levels they were called S: S1, S2, S3, S4.[453] This is further corroborated by P32, P33 and P45[454].

149. P219 a military expert in this case, testified that "the overall command of MLC forces borrowed heavily from the conventional military structure and chain of command"[455].

150. P33 testified that the MLC troops deployed in the CAR during the 2002-2003 conflict maintained this structure. He stated that "[a]t different levels within the units there were the brigades, there were the battalions, companies, platoons,

[449] EVD-T.OTP-00401/CAR-OTP-0004-0409-at-0419
[450] [P36-T213-ENG-ET-p25-L3]/[P36-T213-FRA-CT-p25-L22-p26-L19]
[451] [P36-T213-ENG-ET-p26-L3]/[P36-T213-FRA-CT-p26-L20-p27-L1]; [P33-T161-ENG-ET-p12-L1]/[P33-T161-FRA-CT-p12-L24-p13-L21]
[452] [P36-T213- ENG-ET-p23-L20-25]/[P36-T213-FRA-CT-p24-L12]
[453] [P36-T213-ENG-ET-p29-L18]/[P36-T213-FRA-ET-p30-L10]
[454] Article 16 of the MLC Statute, EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0365; [P45-T201-ENG-ET-p32-L15-p33-L5]/[P45-T201-FRA-ET-p35-L27-p36-p16] ; [P32-T165-ENG-ET-p29-L1]/[P32-T165-FRA-ET-p29-L3] ; [P36-T213-ENG-ET-p17-L1-8]/[P36-T213-FRA-CT-p17-L23-18-L3] ; [P36-T217-ENG-ET-p23-L-7]/[P36-T217-FRA-ET-p25-L22-p26-L2] ; [P33-T158-ENG-ET-p26-L14-p27-L2]/[P33-T158-FRA-ET-p25-L15-p26-L2]
[455] [P219-T197-ENG-ET-p51-L16]/[P219-T197-FRA-ET-p57-L4]

sections… these were well-structured units that had their own main staff."[456]

151. Approximately 1500 ALC troops were present in the CAR during the period relevant to the charges.[457] These troops consisted of one Brigade named Brigade Echo, which was composed of three battalions[458], namely, "Poudrier B" led by Major Kamisi[459], the 28th battalion, led by Major Seguin[460] and the 5th battalion, led by Major Yves.[461] Mustapha had overall command of all the MLC troops in the CAR.[462] These commanders reported directly to their hierarchy in Gbadolite.[463] Other commanders reported to Mustapha who then communicated their reports to Gbadolite.

152. The MLC in the CAR had a radio communications system through which they maintained contact with their hierarchy in Gbadolite throughout the conflict.[464] In addition to the radio system, Mustapha and the MLC battalion commanders in the CAR had Thuraya phones which they used to contact Gbadolite.[465]

153. The MLC troops crossed into the CAR with their own weapons including both individual and heavy weapons.[466] In Gbadolite, Libya supplied the MLC with some

[456] [P33-T158-ENG-ET-p47-L25-p48-L11]/[P33-T158-FRA-ET-p45-L28-p46-L10]
[457] [P36-213-ENG-ET-p64-L24-and-p65-L1]/[P36-T213-FRA-ET-p66-L2]
[458] [P36-T213-ENG-ET-p63-L13]/[P36-T213-FRA-ET-p64-L10]
[459] [D19-T289-ENG-ET-p16-L6]/[D19-T289-FRA-ET-p17-L22]; [D19-T292-ENG-ET-p31-L17]/[D19-T292-FRA-ET-p31-L28-p32-L2]; [D39-T309-ENG-ET-p47-L21]/[D39-T309-FRA-ET-p50-L18]
[460] [D19-T288-ENG-ET-p10-L22]/[D19-T288-FRA-ET-p11-L7]; [D19-T292-ENG-ET-p31-L6]/[D19-T292-FRA-ET-p31-L15-L16]; [D39-T309-ENG-ET-p47-L21]/[D39-T309-FRA-ET-p50-L18]; [D13-T350-ENG-ET-p13-L5]/[D13-T350-FRA-ET-p11-L24-L27]
[461] [P169-T136-ENG-ET-p24-L15]/[P169-T136-FRA-ET-p25-L14]; [P169-T137-ENG-ET-p4-L20-and-p6-L3]/[P169-T137-FRA-ET-p4-L28-p6-L8]
[462] [P169-T136-ENG-ET-p24-L15]/[P169-T136-FRA-ET-p25-L14]; [P169-T137-ENG-ET-p4-L20-and-p6-L3]/[P169-T137-FRA-ET-p4-L28-p6-L8]
[463] [P36-T-213-ENG-ET-p49-L1]/[P36-T213-FRA-CT-p49-L12] ; [P36-T214-ENG-ET-p28-and-p29-L5]/[P36-T214-FRA-ET-p28-L16]
[464] [P36-T-213-ENG-ET-p49-L1]/[P36-T213-FRA-CT-p49-L12] ; [P36-T214-ENG-ET-p28-and-p29-L5]/[P36-T214-FRA-ET-p28-L16]
[465] [P36-T213-ENG-ET-p47-L6]/[P36-T213-FRA-ET-p47-L13
[466] [P36-T213-ENG-ET-p65-L10]/[P36-T213-FRA-CT-p64-L10]; EVD-T-OTP-00702/CAR-D04-0002-1514-at-1629-Quadrant-C-Entry-of-25/10/2002 ; [P63-T112-ENG-ET-p33-L20-23]/[P63-T112-FRA-ET-p34-L27-p35-L3] ; [P47-T176-ENG-ET-p44-L19-p45-L2]/[P47-T176-FRA-ET-p44-L6]; [P36-T213-ENG-ET-p28-L11-and-p66-L13]/[P36-T213-FRA-CT-p67-L10]; [P36-T215-ENG-ET-p47-L22-p48-L16]/[P36-T215-FRA-ET-p45-L17-p47-L11]

of the weapons and ammunitions that were used in the Bangui operation.[467] While in the CAR, Mustapha requisitioned and received more ammunition and supplies from his hierarchy in Gbadolite.[468] The CAR authorities supplied the MLC troops in the CAR with vehicles which facilitated their movements in the CAR.[469] The ALC in the CAR relied on logistical support from Gbadolite throughout the conflict.[470]

154. Mustapha provided instructions, plans, and the strategies that the MLC troops were to implement at the battle front.[471] Mustapha also reported up the command chain to his superiors in Gbadolite details regarding: (i) the enemy, (ii) strength and weapons of the enemy, (iii) intentions of enemy, (iv) enemy reinforcements, and (v) tactics employed by the enemy.[472] This information enabled Bemba to make operational decisions and issue orders to Mustapha and other subordinates on how the CAR operation should be carried out.

155. The MLC provided military training to its soldiers. The training lasted four to five months in the case of new recruits.[473]

156. Each ALC unit possessed the power to enforce discipline among the ALC troops in the CAR.[474] In addition, the ALC hierarchy in Gbadolite also had authority

[467] [P36-T213-ENG-ET-p66-L13-p67-L2]/[P36-T213-FRA-CT-p67-L16]
[468] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1726; [P36-T213-ENG-ET-p65-L14-25]/[P36-T213-FRA-CT-p66-L11]; [P36-T214-ENG-ET-p21-L21-p22-L18]/[P36-T214-FRA-CT-p21-L23-p22-L21]
[469] [P31-T182- ENG-ET-p43-L5-16]/[P31-T182-FRA-ET-p44-L5]
[470] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1634-Quadrant-D-Message-Code-016/EMCOMDT/SECT/MGL/RTE/2002; CAR-D04-0002-1514-at-1637-Quadrants-B&C-Message-Code-001/EMCOMDT/OPS/BANGI/2; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1706-and-1707-Quadrants-D&A-Message-Code-011/COORDOPS/3; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1712-Quadrant-B-Message-Code-012/EM/OPS/COMDT/03; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1726-Quadrants-B&C-Message-Code-015/EMCOMDT/OPS/RCA/2003; EVD-T-OTP-00585/CAR-OTP-0045-0002; EVD-T-OTP-00845/CAR-OTP-0073-0768-at-0814; EVD-T-OTP-00844/CAR-OTP-0073-0674-at-0731
[471] [P169-T136-ENG-ET-p37-L1]/[P169-T136-FRA-ET-p37-L14]
[472] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1702-and-1706-and-1707
[473] [P36-T213-ENG-ET-p50-L12]/[P36-T213-FRA-CT-p50-L25-p51-L14]
[474] [P36-T214-ENG-ET-p51-L2]/[P36-T214-FRA-ET-p50-L27] ; [P36-T213-ENG-ET-p49-L16-p50-L1]/[P36-T213-FRA-ET-p50-L3]

to discipline ALC forces in the CAR.[475] For example, Bemba ordered the arrest and trial of seven ALC soldiers accused of committing crimes in the CAR.[476]

157. The above evidence shows that the MLC troops were organised in a manner that enabled them to plan and carry out simultaneous and sustained military operations in various towns in the CAR.

VI. FACA/USP

158. The FACA and USP were units of the CAR military, which was a hierarchically organized and well-structured conventional army.[477]

159. CHM 1 testified that:

> "The command structure of the FACA, we had the Chief of General Staff of the armies, and under his orders, you had the Central African FACA forces, they were the battalion, infantry battalion, BIT, BIT 2, BIT 3, infantry battalion, territorial infantry battalions. You also had the BIMA, the Mixed Intervention Battalion. There was also the amphibious battalion for river operations. There was the air force for the small airplanes that there were in the army. And you also had the health service of the army as well. So there were battalions, infantry, navy, mixed battalion, mixed intervention, the air force. Those were the units that were placed under the command of the Chief of General Staff of the armies."[478]

[475] [P36-T214-ENG-ET-p48-L20-25]/[P36-T214-FRA-CT-p48-L28-p49-L5]; [P36-T215-ENG-ET-p6-L12-15]/[P36-T215-FRA-ET-p6-L19]; [P36-T218-ENG-CT-p35-L14-23]/[P36-T218-FRA-ET-p37-L4]
[476] CAR-DEF-0001-0076; [P33-T159-ENG-ET-p5-L18-22]/[P33-T159-FRA-ET-p5-L28-p6-L5]
[477] [CHM1-T353-ENG-ET-p45-L11]/[CHM1-T353-FRA-ET-p41-L7]/
[478] [CHM1-T353-ENG-ET-p45-L11]/[CHM1-T353-FRA-ET-p41-L7]

160. FACA had about 1500 soldiers during the period relevant to the charges.[479] During the conflict period, FACA were based in Bangui, the centre-east and centre-west of the CAR. They occupied places where there was no fighting going on.[480] FACA did not play an active role in fighting Bozizé's forces because Patassé did not trust them to fight their former chief of staff who was leading the rebellion against him.[481]

161. The USP was a special military unit that was primarily responsible for protecting Patassé. USP was under the direct authority of Patassé. The USP was headed by a Director General. During the period relevant to the charges, General Ferdinand Bombayake held this position.[482] The USP and MLC were involved in repelling Bozizé's forces from taking over Bangui.[483] The USP conducted only one joint operation in Bangui with the MLC on the first day, which lasted a few hours.[484]

VII. Bozizé Forces

162. Bozizé's forces had logistical means and were equipped with heavy weapons. They were also organized in a manner that enabled them to plan and carry out sustained military operations. This can be inferred from their control over large parts of the CAR territory, as well as their ability to conduct continuous and concerted operations for a prolonged period of time. This organization enabled them to successfully seize power on 15 March 2003, after five months of an intense armed conflict.

[479] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0041
[480] [CHM1-T353-ENG-ET-p48-L1]/[CHM1-T353-FRA-ET-p43-L12]
[481] [CHM1-T353-ENG-ET-p52-L12]/[CHM1-T353-FRA-ET-p47-L8]
[482] [CHM1-T353-ENG-ET-p46-L23-and-p47-L1]/[CHM1-T353-FRA-ET-p42-L14]
[483] [CHM1-T353-ENG-ET-p48-L8-13]/[CHM1-T353-FRA-ET-p43-L18]
[484] [P31-T182-ENG-ET-p43-L5-16]/[P31-T182-FRA-ET-p44-L5]

163. Bozizé's forces were comprised of former FACA soldiers who had defected from the CAR military either with General Bozizé or former CAR President Kolingba.[485] There were also Chadians and CAR fighters who joined Bozizé's forces.[486] This was confirmed in the book published in 2006 by D65, the spokesperson for President Patassé at the time of the events, who was abducted by Bozizé's rebels and travelled around with them for a period of about 38 days.[487] D65 wrote his book at a time when he did not expect to testify.[488] This evidence is also corroborated by D56.[489] P151 testified that some FACA soldiers deserted the army and joined Bozizé's troops,[490] while P31 testified that the mutineers were former soldiers for President Kolingba.[491] CHM 1 also confirmed that former FACA soldiers had joined Bozizé rebels.[492]

164. Bozizé's forces had within their ranks well trained FACA soldiers with the capability to plan and execute military operations as well as instil discipline within their forces. General Francois Bozizé was the overall leader of the Bozizé forces. Bozizé was a very experienced soldier who held the position of Chief of Staff of the CAR military, at the time of his departure from FACA.

165. There was a staff headquarters at Sido. The Chief of General Staff was Sabate, his deputy was called Neboho. Bozizé's son, Francis Bozizé, was in-charge of logistics, while Otenge was in-charge of operations, and Mbayi was in-charge of transmissions.[493] They also had a spokesperson, Parfait Mbay, who briefed the media

[485] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0434
[486] [P38-T35-ENG-ET-p22-L19-24]/[P38-T35-FRA-ET-p24-L6] ; [P209-T121-ENG-ET-p34-L16]/[P209-T121-FRA-CT-p35-L17]
[487] [D65-T245-ENG-ET-p28-L8]/[D65-T245-FRA-ET-p28-L10] ; [D65-T245-ENG-ET-p33-L1]/[D65-T245-FRA-ET-p33-L8] ; [D65-T245-ENG-ET-p35-L18]/[D65-T245-FRA-ET-p34-L27]
[488] EVD-T-OTP-00827/CAR-DEF-0002-0108-at-0184-and-0234-and-0238-and-0208-and-0342-and-0223; [D65-T245-ENG-ET-p49-L23-25]/[D65-T245-FRA-ET-p52-L4]
[489] [D56-T313-ENG-ET-p20-L4]/[D56-T313-FRA-ET-p21-L18]
[490] [P151-T172-ENG-ET-p18-L23-p19-L1]/[P151-T172-FRA-ET-p19-L12]
[491] [P31-T182-ENG-ET-p14-L5]/[P31-T182-FRA-ET-p14-L18]
[492] [CHM1-T353-ENG-ET-p46-L19]/[CHM1-T353-FRA-ET-p42-L10]
[493] [D56-T313-ENG-ET-p19-L25]/[D56-T313-FRA-ET-p21-L12]

regularly.[494]

166. Bozizé had about 600 soldiers.[495] These were divided into command units that were led by commanding officers. The units were structured into companies which were commanded by Lieutenants.[496] D65 also testified that Bozizé's rebels had commanders such as Lieutenant Sangbate[497] and that the highest officers were Lieutenants or Second Lieutenants.[498] This is also corroborated by his book.[499]

167. Bozizé forces had the ability to plan and carry out military operations. P9, a CAR Investigating Judge, testified that Bozizé's rebellion began in the north where provincial towns were first taken over before they reached Bangui on 22 October 2002.[500] D56 testified that the attack that culminated into the attack on Bangui, started with their attack and takeover of Sido which is on the CAR border with Chad.[501] After controlling Sido, Bozizé's forces attacked Damara which they also took over.[502] The battle for Damara lasted several weeks.[503] When the MLC intervened in the CAR, Bozizé's forces made a tactical retreat. D-56 stated; "[t]he attack was quite strong, and it was more vigorous than previous attacks. Had it not been for that intervening force, we would have taken over all of Bangui."[504] In spite of retreating from Bangui, Bozizé's forces continued to engage the MLC in various locations in the CAR, for a period of about five months before taking over Bangui on 15 March 2003.[505]

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[494] EVD-T-OTP-00583/CAR-OTP-0031-0136-(Audio); EVD-T-OTP-00717/CAR-OTP-0036-0055-at-0062-(Transcript-FRA); EVD-T-OTP-00734/CAR-OTP-0056-0300-at-0307-(Transcript-ENG)
[495][D56-T313-ENG-ET-p17-L17]/[D56-T313-FRA-ET-p19-L2]; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0419
[496] [D56-T-313-ENG-ET-p22-L20]/[D56-T313-FRA-ET-p24-L11]
[497] D65-T246-ENG-ET-p16-L23]/[D65-T246-FRA-ET-p15-L16]
[498] D65-T245-ENG-ET-p38-L18]/[D65-T246-FRA-ET-p-39-L6]
[499] EVD-T-OTP-00827/CAR-DEF-0002-0108-at-0223
[500] [P9-T107-ENG-ET-p18-L15]/[P9-T107-FRA-ET-p20-L8]
[501] [D56-T313-ENG-ET-p23-L21]/[D56-T313-FRA-ET-p25-L7]
[502] [D56-T313-ENG-ET-p24-L1]/[D56-T313-FRA-ET-p25-L14]
[503] [D56-T313-ENG-ET-p24-L6]/[D56-T313-FRA-ET-p25-L26]
[504] [D56-T313-ENG-ET-p31-L21]/[D56-T313-FRA-ET-p34-L7]
[505] ICC-01/04-01/06-803-tEN-para.234; See also, ICC-01/04-01/06-803-OEN, para.232.; ICC-01/04-01/06-2842-para.537

168. Bozizé's forces also possessed the necessary military equipment to carry out prolonged military operations. D65 testified that they had RPG-7 rockets, heavy weapons,[506] AKs, automatic weapons, 55-millimetre weapons, 81-millimetre rocket launchers,[507] and grenades.[508] Bozizé's forces had a number of lorries and Toyota vehicles for transportation.[509] D56 testified that they used Chadian jeeps, as well as vehicles and equipment captured from FACA.[510]

169. Bozizé fighters also had the necessary communications equipment such as satellite phones, radios and military communication equipment necessary to carry out sustained combat operations. D65 testified that Bozizé's rebels had satellite phones, which they used to communicate with their hierarchy.[511] While in the hands of his abductors in Sido, D65 saw Bozizé's son, Francis Bozizé, with a satellite phone that he used to speak with his father.[512] [REDACTED].[513] D56 testified that General Bozizé led the rebellion from Lomé and Paris.[514] In spite of the distance between Lomé and France, Bozizé's communications system worked efficiently and enabled him to command and issue orders to his forces in the CAR.[515]

170. Bozizé's forces received intelligence from deserting FACA soldiers and CAR civilians.[516] Bozizé's forces also received accelerated training to prepare civilians who enlisted to join the rebel force.[517]

[506] [D65-T245-ENG-ET-p34-L11]/[D65-T246-FRA-ET-p-34-L20]
[507] [D56-T313-ENG-ET-p21-L10-11]/[D56-T313-FRA-ET-p22-L26]
[508] [D65-T245-ENG-ET-p38-L1]/[D65-T245-FRA-ET-p38-L17]
[509] [D65-T245-ENG-ET-p35-L8-17]/[D65-T245-FRA-ET-p35-L18-p36-L2]
[510] [D56-T313-ENG-ET-p28-L3]/[D56-T313-FRA-ET-p29-L26]
[511] [D65-T245-ENG-ET-p37-L15]/[D65-T245-FRA-ET-p38-L3]
[512] [D56-T246-ENG-ET-p9-L13]/[D65-T246-FRA-ET-p10-L10]
[513] [REDACTED]
[514] [D56-T315-ENG-ET-p21-L24-p22-L23]/[D56-T315-FRA-ET-p20-L6]
[515] [D56-T315-ENG-ET-p21-L24-p22-L23]/[D56-T315-FRA-ET-p20-L6]
[516] [D56-T313-ENG-ET-p31-L4]/[D56-T313-FRA-ET-p33-L9]
[517] [D56-T313-ENG-ET-p21-L1]/[D56-T313-FRA-ET-p22-L6]

VIII. Perpetrator's awareness of the existence of the armed conflict

171. The Prosecution must prove that the direct perpetrators that committed war crimes were aware of the factual circumstances that established the existence of an armed conflict.[518] The evidence shows that the MLC troops present on the CAR territory to support the CAR government were fully aware of the existence of an armed conflict. The MLC troops were sent to the CAR upon the request of Patassé, to defend his presidency against an attempted coup d'etat carried out by an armed organized group led by General Bozizé.[519] In his letter to General Cissé, Bemba stated "At the request of His Excellency Mr. Ange-Félix PATASSÉ, President-Elect of the Central African Republic, the MLC troops intervened in this country as of 27 October 2002 to protect the Institutions threatened with destabilisation by an attempted coup and to rescue a President-Elect and the members of his family who were in danger."[520]

172. The primary objective of the MLC troops in the CAR was to engage in armed combat and to counter attacks from Bozizé's forces.[521] The CAR authorities requested the MLC to fight Bozizé forces within the CAR.[522] Bemba addressed MLC troops in PK12, stating that their mandate was to "wage the war as if it was their war".[523] Having taken part in the armed conflict, the MLC troops were aware of its existence.

[518] ICC-01-/05-01/08-424-para.263
[519] CAR-DEF-0001-0076-at-para.1
[520] CAR-DEF-0001-0076-at-para.1
[521] [REDACTED]
[522] [REDACTED]
[523] [REDACTED]

CHAPTER 4. RAPE AS A CRIME AGAINST HUMANITY AND WAR CRIME: COUNTS 1 AND 2

> "… **attackers enjoyed total impunity, whilst victims were reduced to silence.**"[524]

173. The Prosecution's evidence proves beyond reasonable doubt Bemba's guilt under Article 28(a) of the Statute for two counts of rape as charged in the DCC.[525] The contextual elements for rape as a crime against humanity and a war crime are addressed above in chapters 2 and 3, respectively. Therefore this chapter will focus solely on the specific elements of rape, including the direct perpetrator's requisite mental element, as established by the evidence of this case.

174. In accordance with Articles 7(1)(g) and 8(2)(e)(vi) of the Elements of Crimes, the Prosecution has proved beyond reasonable doubt that the *actus reus* of rape was committed by MLC troops through sexual penetration and invasion by force, or threat of force or coercion[526] of the vagina, anus, or mouth of numerous female and male victims in the CAR, during the five months of armed conflict. With respect to crimes against humanity, the Prosecution has also proved that rape was committed as part of a widespread attack directed against the CAR civilian population, and the MLC perpetrators were aware of such an attack as they committed crimes in areas

[524] EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0052; [P229-T100-ENG-CT2-p50-L4]/[P229-T100-FRA-CT-p52-L1][Emphasis added]
[525] ICC-01/05-01/08-950-CONF-AnxA-p33-and-34: The OTP sought to bring cumulative charges in order to fairly reflect the severity and multi-faceted character of sexual violence and enunciate the range of sexual and gender crimes supported by the evidence in the Bemba Case. However, the Pre-Trial Chamber II declined to confirm the Prosecution's charges of outrages upon personal dignity and torture through acts of rape and other forms of sexual violence on the basis of cumulative charging as it opined that the facts presented were fully subsumed by the count of rape: ICC-01/05-01/08-424-paras.197-205-and-307-313.
[526] ICC-01/04-01/07-3436, *Jugement rendu en application de l'article 74 du Statut*, 7 March 2014, para964: "*Le deuxième élément constitutif énumère les circonstances et les conditions dans lesquelles doit s'être produite la prise de possession du corps de la victime et qui lui confèrent un caractère criminel.*"

under their control.[527] For war crimes, it was established that rape took place in the context of, and was associated with, an armed conflict not of an international character; and that the MLC perpetrators were aware of the factual circumstances establishing the existence of the armed conflict that they were actively engaged in.[528]

175. As the MLC troops committed rapes in former-rebel held territories under their control, the existence of the armed conflict and their military presence and authority sufficiently establish the coercive circumstances that undermined any possibility of genuine consent on the part of their powerless victims.[529] The existence of factors such as force, threat of force or coercion is clear evidence of non-consent, which is not per se a required element of rape.[530]

176. As shown in more detail below with respect to specific incidents of rape, the Prosecution has proved beyond reasonable doubt the *actus reus* of rape as well as the MLC perpetrators' intent and knowledge, as required under Article 30 of the Statute.[531] In accordance with Articles 30(2) and (3), the perpetrator must: (i) either intend to effect sexual penetration, or is aware that sexual penetration will occur in the ordinary course of events; and (ii) know that this occurs with force, the threat of force, or coercion.[532] The evidence in this case, as detailed below through the testimonies of 14 witnesses and victims as well as two gender experts, proves

[527] See, Elements of crimes, Article 7(1)(g)
[528] See, Elements of crimes, Article 8(2)(e)(vi)
[529] ICC-01/05-01/08-424-para.162, citing a similar interpretation in, ICTR, *The Prosecutor v Akayesu*, Case No. IT-96-4-T, "Judgment", 2 September 1998, para.688. [Emphasis added]
[530] Prosecutor v. Charles Gankay Taylor, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, para.416.
[531] Katanga CH Decision, paras.163-and-284*: "With regard to the mental element, the perpetrator must have committed the act of rape with intent and knowledge within the meaning of article 30 of the Statute."; ICC-01/04-01/07-3436, Jugement rendu en application de l'article 74 du Statut, 7 March 2014, para. 970: "Elle considère donc qu'en l'espèce, s'agissant des articles 7-1-g-1-1 et 8-2-e-vi-1-1 des Éléments des crimes, l'auteur matériel doit avoir intentionnellement pris possession du corps de la victime. Cette intention sera caractérisée s'il est démontré que l'auteur a délibérément agi ou omis d'agir 1° afin qu'il y ait pénétration ou 2° alors qu'il était conscient qu'une telle conséquence surviendrait dans le cours normal des événements. De plus, conformément à l'article 30-3 du Statut, l'auteur devra avoir été conscient du fait que l'acte a été commis par la force, la menace de la force, la coercition ou encore à la faveur de l'existence d'un environnement coercitif ou enfin « en profitant de l'incapacité [dans laquelle se trouvait la victime] de donner son libre consentement ».*" [Footnotes omitted]
[532] ICC-01/05-01/08-424-para.163; and Katanga CH Decision, para.441.

beyond reasonable doubt the MLC troops' intention to inflict sexual penetration and invasion as well as their knowledge that they were doing so using force, the threat of force, or coercion.

177. It is important to recall, when assessing evidence on rape that special rules apply. Fundamentally, the Rules of Procedure and Evidence (Rules) provide important provisions regarding corroboration, consent, and other sexual behaviour, which are designed to protect victims or witnesses of sexual and gender based crimes. Rule 63(4) states that corroboration is particularly not required for crimes of sexual violence. Therefore victims are not required to produce medical evidence to corroborate their rapes. In accordance with Rule 70 details, the Prosecution does not have to prove the absence of consent for sexual and gender based crimes.[533]

178. Additionally, subject to Article 69(4), rule 71 states that evidence of prior or subsequent sexual conduct is not admissible.[534] Throughout the trial, the Defence failed to invoke the strict procedure under rule 72 that requires formal notification and prior *in camera* discussion before introducing or eliciting specific types of evidence, such as victim consent, words, conduct, silence or lack of resistance. Therefore, none of these factors can have a bearing on victim or witness credibility in this case.

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[533] [P80-T61-ENG-CT-p14-L8]/[P80-T61-FRA-ET-p14-L14]; Presiding Judge Steiner: "the Chamber denied the legal representative the right to question another witness about whether the witness resisted or not, … in the scenario with weapons and threats, there is no need for this kind of question that can be seen even as offensive by the witness."

[534] ICC-01/04-01/07-3436, *Jugement rendu en application de l'article 74 du Statut*, 7 March 2014, para.965: *"**La Chambre constate que, sous réserve de la situation très spécifique de la personne dont on «[profite] de l'incapacité», les Éléments des crimes ne font pas référence à l'absence de consentement donné par la victime et celle-ci n'aura donc pas à être démontrée.** Ils entendent en effet clairement sanctionner tout acte de pénétration dès lors qu'il est commis en usant de la menace de la force ou de la coercition, telle que celle que causent la menace de violences, la contrainte, la détention, des pressions psychologiques, un abus de pouvoir ou, plus généralement encore, tout acte de pénétration commis à la faveur d'un environnement coercitif. **L'établissement de l'existence d'au moins une des circonstances ou des conditions de nature coercitive énumérées dans ce deuxième élément suffira donc, à elle seule, à faire de la pénétration un viol au sens des articles 7-1-g et 8-2-e-vi du Statut.**"* [Emphasis added]

179. During the trial, this Chamber reminded the parties and participants to avoid intrusive, embarrassing and unnecessary questions, particularly when questioning vulnerable witnesses.[535] Where possible, and in order to avoid posing unnecessarily intrusive questions, the Prosecution sought and received Defence agreement to the element of sexual penetration after eliciting sufficient details in each circumstances.

I. Rape was used as a weapon of war during the 2002-2003 CAR conflict

180. Dr. André Tabo (''P229''), a specialist in adult psychiatry,[536] has qualifications in forensic psychiatry[537] and has served as a court expert since 2006.[538] P229 has expertise and considerable experience in scientific research and treatment of sexual violence victims, particularly victims of the 2002-2003 conflict in the CAR.[539] P229, and Dr Sepou who treated many CAR victims of sexual violence including some witnesses in this case, have co-published a number of scientific articles with others based on their work with victims of sexual violence in Bangui.[540]

181. P229, a jointly instructed expert,[541] submitted a report and testified on the use of sexual violence as a weapon of war and the impact of sexual violence following the 2002-2003 CAR conflict.[542] P229's competence and expertise, as well as his methodology and findings are sufficiently detailed in his report, CV

[535] [P68-T49-ENG-ET-p16-L4]/[P68-T49-FRA-CT2-p16-L15-p17-L1]
[536] [P229-T99-ENG-CT2-p20-L1-and-L16-and-L22-and-p23-L23-p24-L7-and-p47-L25]/[P229-T99-FRA-CT-p19-L15-and-p20-L3-and-L9-and-p23-L8-and-p46-L17]
[537] [P229-T99-ENG-CT2-p21-L23-p22-L6-and-p24-L13]/[P229-T99-FRA-CT-p21-L12-and-p23-L23]; EVD-T-OTP-00606/CAR-OTP0054-0961
[538] [P229-T99-ENG-CT2-p31-L7]/[P229-T99-FRA-CT-p30-L13-p31-L3]
[539] [P229-T99-ENG-CT2-p44-L7]/[P229-T99-FRA-CT-p42-L28-p43-L4]
[540] [P229-T99-ENG-CT2-p28-L1-and-p29-L2-and-p29-L24-p30-L1]/[P229-T99-FRA-CT-p27-L10-p28-L9-and-p28-L12-and-p29-L7]
[541] ICC-01/05-01/08-768, Submission of Joint Instructions to Experts by the Prosecution and the Office of Public Counsel for Victims, 7 May 2010; ICC-01/05-01/08-928., Decision on the Prosecution's Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report, 7 October 2010.
[542] EVD-T-OTP-00686/CAR-OTP-0065-0043; EVD-T-OTP-00607/CAR-OTP-0065-0023

and testimony.[543]

182. The scientific evidence from studies and interviews conducted by P229 and his colleagues highlighted four possible motivations for rapes committed by the MLC troops against the civilian population in the CAR: (i) Victims were seen as defenceless and therefore equivalent to war booty or spoils of war; (ii) Victims were punished for allegedly supporting the enemy, particularly in former rebel strongholds; (iii) To destabilise enemy troops by raping their loved ones or neighbours; and (iv) Sexual release, which is linked to the first motivation.[544]

183. Specifically, P229 explained that MLC troops may have "hoped that by raping Central African women they could destabilise the enemy army and tighten control of the territory they had captured."[545] Raping a woman is a way of attacking and undermining the honour of her family.[546] The majority of the women raped by MLC troops were below 30 years old; whilst a high number of married women were subjected to sexual violence.[547] Rape is also a weapon of war used by troops to seek revenge on the enemy and to punish women that resisted their advances.[548]

184. Rapes were also committed with the aim of punishing the CAR victims living in places seen as former-rebel strongholds, for having supposedly helped the enemy's troops.[549] AI found that MLC troops committed rapes in part to punish the women for their alleged assistance to Bozize's rebels, and as a deliberate tactic to

[543] EVD-T-OTP-00606/CAR-OTP-0054-0961; EVD-T-OTP-00686/CAR-OTP-0065-0043; EVD-T-OTP-00607/CAR-OTP-0065-0023
[544] [P229-T100-ENG-CT2-p4-L14-p5-L8-and-p8-L4-and-p9-L1]/[P229-T100-FRA-CT-p4-L18-p5-L11-and-p8-L3-and-p8-L27-p9-L5]
[545] EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0052; [P229-T100-ENG-CT2-p15-L3]/[P229-T100-FRA-CT-p14-L23]
[546] EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0052
[547] [P229-T100-ENG-CT2-p17-L1]/[P229-T100-FRA-CT-p16-L26-p17-L6]
[548] EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0052
[549] [P229-T100-ENG-CT2-p9-L8]/[P229-T100-FRA-CT-p9-L8]; EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0052

humiliate men and demonstrate their powerlessness to protect their families.[550]

185. In addition, P229 stated that:

> "it clearly appears that raping a man in the time of conflict is humiliating him. It is first and foremost the need to humiliate that trumps the other considerations. Humiliating a man also means that you have humiliated his family and the people close to him, so there's also that concept of punishment associated with the rape of men."[551]

186. P229 concluded that:

> "[t]he large-scale rapes perpetrated by armed men during the armed conflicts in the Central African Republic in 2002-2003 are a new phenomenon in Central African society, an ill introduced from elsewhere, for which the whole population is seeking an explanation."[552]

II. Identification of MLC troops by rape victims/ witnesses

187. In general, victims, witnesses and the CAR population distinguished the MLC troops from other armed groups present in the CAR during the conflict period through their clothing, language, control of the area, self-identification, and behaviour towards the civilian population.

[550] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0509
[551] [P229-T100-ENG-CT2-p11-L21-p12-L1]/[P229-T100-FRA-CT-p11-L23]; [P69-T193-ENG-ET-p26-L1-and-p25-L20]/[P69-T193-FRA-ET-p28-L14-and-p28-L-6]; [P23-T51-ENG-CT2-p35-L2]/[P23-T51-FRA-ET-p37-L8]
[552] EVD-T-OTP-00686/CAR-OTP-0065-0043-at-0056

A. Control of area

188. All witnesses stated categorically that Bozizé's rebels had retreated before MLC troops arrived and took control of their areas.[553] They testified that upon the MLC's arrival, no armed group was present in their areas.[554] The defence did not cast any doubt on the credibility and reliability of this evidence, which is further supported by other witness accounts and documentary evidence on record.[555]

B. Uniform

189. MLC troops were easily distinguishable from both CAR soldiers and Bozizé's rebels through their clothing. The evidence shows that MLC troops, who always operated in small groups, wore a mix of military uniform and civilian clothing; whereas CAR soldiers wore complete military uniforms. According to P29, the civilian population easily recognize CAR soldiers.[556] P75 described the CAR soldiers as Sango-speaking troops that wore military uniforms, military headgear, and ranger shoes.[557] V1 testified that unlike MLC troops, CAR soldiers had stripes on their uniforms.[558]

[553] [P80-T61-ENG-CT-p17-L10]/[P80-T61-FRA-ET-p17-L14]; [P87-T46-ENG-CT-p46-L24-p47-L5]/[P87-T46-FRA-ET-p47-L1]
[554] [P81-T55-ENG-CT-p25-L16]/[P81-T55-FRA-CT-p25-L23]; [P87-T46-ENG-CT-p35-L6]/[P87-T46-FRA-ET-p34-L25-p35-L18]; [P69-T193-ENG-ET-p26-L1-and-p25-L20]/[P69-T193-FRA-ET-p28-L14-and-p28-L6]
[555] [P79-T77-ENG-CT-p40-L24-p41-L2]/[P79-T77-FRA-ET-p42-L6]; [P87-T47-ENG-CT2-p12-L15]/[P87-T47-FRA-CT-p12-L28-p13-L6]; [P47-T177-ENG-ET-p24-L12]/[P47-T177-FRA-ET-p24-L18]; [P9-T104-ENG-CT-p7-L22-p8-L3]/[P9-T104-FRA-ET-p8-L25-p9-L6]; [P6-T96--ENG-CT-p7-L3]/[P6-T96-FRA-CT-p7-L2-L14]; [P69-T193-ENG-ET-p27-L3-and-p28-L1-and-p35-L3-p58-L22]/[P69-T193-FRA-ET-p29-L22-p30-L1-and-p30-L18-p31-L13-and-p38-L17-and-p63-L25]; [P229-T100-ENG-CT2-p50-L12]/[P229-T100-FRA-ET-p52-L7]; EVD-T-OTP-00686-at-0052/CAR-OTP-0065-0043; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0422-to-0427; EVD-T-OTP-00446/CAR-OTP-0013-0082 -at-0082; EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0344
[556] [P29-T80-ENG-ET-p27-L21]/[P29-T80-FRA-ET-p29-L28-p30-L4]
[557] [P75-T92-ENG-CT-p16-L14-and-p17-L1-and-p17-L17-and-p18-L10-and-p21-L16]/[P75-T92-FRA-CT-p17-L10-and-p17-L22-and-p18-L9-and-p18-L28-p19-L15-and-p22-L7]
[558] [V1-T220-ENG-ET-p22-L1]/[V1-T220-FRA-ET-p22-L18]; [V1-T221-ENG-ET-p8-L20-25]/[V1-T221-FRA-ET-p9-L23-p10-L2]

190. The MLC troops in contrast were dressed, as P75 testified, in mixed military and civilian clothing: military green or blue T-shirts, military trousers, ranger boots, civilian shoes and flip-flops.[559] Although some of the MLC troops wore military uniforms, others amongst them wore flip-flops or sport shoes. P68 testified that unlike the FACA, MLC troops wore ordinary shoes and did not have hats or headgear.[560] P29 did not see them wearing any berets or insignia.[561] V1 also saw them wearing both military uniforms and traditional clothing.[562] P6 confirmed that unlike the FACA, the MLC troops wore ordinary shoes and did not have hats or headgear.[563] All this is corroborated by P42, who stated that unlike the CAR soldiers, the MLC troops were dressed in mixed clothing[564] with:

> "all kinds of different clothes. You could see somebody wearing a military shirt and a civilian's trousers, and vice-versa. Some of them were wearing trousers, other were wearing shorts … Some of them were wearing slippers, plastic sandals, boots; all kinds of clothes and shoes. That's what I saw."[565]

191. P87 observed that the MLC troops that came to her home wore the same uniform as the CAR presidential guard, but some wore boots while others wore worn-out trainers or flip-flops.[566] P22 believed that the GP uniforms worn by the MLC troops must have been brand new because one of them said that President Patassé provided them with clothing.[567]

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[559] [P75-T92-ENG-CT-p19-L15-p20-L4]/[P75-T92-FRA-CT-p20-L4]; [P75-T93-ENG-CT-p11-L1]/[P75-T93-FRA-ET-p11-L17]
[560] [P68-T49-ENG-ET-p11-L13-and-p13-L12]/[P68-T49-FRA-CT2-p11-L20-p12-L7-and-p13-L21]
[561] [P29-T80-ENG-ET-p34-L1]/[P29-T80-FRA-ET-p36-L18]
[562] [V1-T220-ENG-ET-p14-L8-and-p15-L14]/[V1-T220-FRA-ET-p15-L17-and-p16-L11]
[563] [P68-T49-CONF-ENG-ET-p11-L13-and-p13-L12]/[P68-T49-FRA-CT2-p11-L20-p12-L7-and-p13-L21]
[564] [P42-T63-ENG-ET-p62-L18]/[P42-T63-FRA-ET-p67-L10]; [P42-T66-ENG-CT-p10-L18]/[P42-T66-FRA-ET-p11-L19]
[565] [P42-T63-ENG-ET-p65-L16-p66-L2]/[P42-T63-FRA-ET-p70-L18-p71-L5]
[566] [P87-T44-ENG-CT-p34-L7]/[P87-T44-FRA-ET-p35-L17]; [P87-T44-ENG-CT-p21-L23-p22-L12]/[P87-T44-FRA-ET-p22-L28-p23-L15]
[567] [P22-T41-ENG-CT2-p16-L21-p17-L2-and-p33-L7]/[P22-T41-FRA-ET-p18-L14-and-p36-L15-p37-L3]

192. As for Bozizé's rebels, they also wore a mix of military and civilian clothing, but they had other distinctive features, such as yellow armbands or turbans. P23 described Bozizé's rebels as wearing military uniforms or civilian clothing with yellow armbands, berets or turbans worn by Muslims.[568] P80 saw Bozizé's rebels in PK12;[569] some of them wore military uniforms whereas others wore civilian clothing.[570] P22 corroborates Bozizé's rebels' yellow armbands and turbans worn by Muslims.[571] In addition, P23,[572] P22,[573] and P68[574] testified that Bozizé's rebels, comprised of former FACA soldiers and Muslims recruited from Chad.

C. Language

193. The MLC troops were the only armed group that spoke Lingala to the Sango-speaking CAR population during the armed conflict. Bozizé's rebels, who were CAR and Chadian citizens, spoke Arabic, Sara and Sango; P79 heard them speaking Sango.[575] P47, a Lingala and Sango speaker who interacted with MLC troops,[576] confirmed that they spoke Lingala in the CAR.[577] P87 also testified that the MLC troops spoke Lingala.[578] P81's husband, a Congolese from the DRC,[579] spoke to the

[568] [P23-T51-ENG-CT2-p7-L11-and-p8-L12]/[P23-T51-FRA-ET-p7-L21]
[569] [P80-T61-ENG-CT-p4-L10]/[P80-T61-FRA-ET-p4-L11]
[570] [P80-T61-ENG-CT-p41-L9]/[P80-T61-FRA-ET-p42-L2]
[571] [P22-T40-ENG-ET-p14-L18-p15-L14-and-p16-L14]/[P22-T40-FRA-ET-p15-L24-p16-L22-and-p17-L22]; [P22-T42-ENG-ET-p35-L14]/[P22-T42-FRA-CT-p38-L6]
[572] [P23-T51-ENG-CT2-p7-L11]/[P23-T51-FRA-ET-p7-L21]
[573] [P22-T42-ENG-ET-p32-L13]/[P22-T42-FRA-CT-p34-L22]
[574] [P68-T49-ENG-ET-p10-L4-p11-L8]/[P68-T49-FRA-CT2-p10-L11-p11-L13]
[575] [P79-T77-ENG-CT-p4-L21-p5-L9]/[P79-T77-FRA-ET-p5-L6]; [P79-T78-ENG-ET-p23-L9-and-p24-L1]/[P79-T78-FRA-ET-p24-L20-p25-L5-and-L11]
[576] [P47-T176-ENG-ET-p23-L1-and-p34-L22-p35-L18-and-p36-L19-p38-L17-and-p44-L12-and-p45-L16]/[P47-T176-FRA-ET-p23-L3-and-p34-L14-p35-L11-and-p36-L9-p38-L5-and-p43-L27-p44-L5-and-p45-L3]
[577] [P47-T176-ENG-ET-p31-L6-and-L15-and-p39-L9]/[P47-T176-FRA-ET-p31-L3-and-L12-and-p38-L21]; [P47-T178-ENG-ET-p35-L7]/[P47-T178-FRA-ET-p35-L16]
[578] [P87-T47-ENG-CT2-37-L4]/[P87-T47-FRA-CT-p38-L25]; [P87-T46-ENG-CT-p52-L17]/[P87-T46-FRA-ET-p52-L10]; [P87-T47-ENG-CT2-37-L4]/[P87-T47-FRA-CT-p38-L25]; [P87-T46-ENG-CT-p52-L17]/[P87-T46-FRA-ET-p52-L10]
[579] [P80-T61-ENG-CT-p15-L1-and-p29-L2-and-p32-L1]/[P80-T61-FRA-ET-p15-L6-and-p29-L10-and-p32-L14]

MLC troops in French and Lingala.[580] P82[581] and P80[582] could recognise Lingala because people in their neighbourhood spoke the same language. Some inhabitants of P69's neighbourhood, who were originally from the DRC, told him that the language the MLC troops were speaking was Lingala.[583] V1, a Lingala-speaker herself, heard the MLC troops speaking Lingala and served as an interpreter between them and some of the population in Mongoumba.[584]

194. According to P75, the MLC troops spoke Lingala, a language that most of the victims did not understand but could identify because of widespread knowledge that people from the other side of the river spoke Lingala.[585] P80 testified that the MLC troops did not speak to them in Sango, which was the language spoken by everyone from CAR, including the CAR soldiers and Bozizé's rebels.[586] CHM1 confirmed that CAR forces comprised of CAR citizens only and they all spoke Sango.[587]

195. P23 testified that the MLC troops spoke Lingala, rather than Sango;[588] but he can identify it even though he does not understand it.[589] P68 recognized Lingala from her trading activities and interaction with Congolese female traders.[590] P42 testified that, although he does not speak Lingala, he understands a few words and can

[580] [P81-T55-ENG-CT-p10-L11-and-p12-L11-and-p12-L22]/[P81-T55-FRA-CT-p10-L15-and-p12-L11-and-L22]; [P81-T56-ENG-CT2-p36-L8]/[P81-T56-FRA-ET-p39-L3]
[581] [P82-T58-ENG-CT-p30-L20]/[P82-T58-FRA-CT-p33-L21]
[582] [P80-T62-ENG-CT-p33-L2]/[P80-T62-FRA-ET-p35-L18]
[583] [P69-T192-ENG-ET-p28-L1]/[P69-T192-FRA-ET-p30-L15-p31-L8]
[584] [V1-T220-ENG-ET-p16-L21]/[V1-T220-FRA-ET-p17-L18]
[585] [P75-T93-ENG-CT-p13-L12]/[P75-T93-FRA-ET-p12-L25-p13-L13]
[586] [P80-T61-ENG-CT-p16-L3-and-p17-L2]/[P80-T61-FRA-ET-p16-L7-p17-L2-and-p17-L5]
[587] [CHM1-T354-ENG-ET-p45-L11-p47-L2]/[CHM1-T354-FRA-ET-p39-L12-p40-L20]
[588] [P23-T51-ENG-CT2-p30-L12]/[P23-T51-FRA-ET-p32-L6]
[589] [P23-T52-ENG-CT2-p47-L23-p48-L4]/[P23-T52-FRA-CT-p51-L28-p52-L8]
[590] [P68-T48-ENG-ET-p20-L2]/[P68-T48-FRA-ET-p21-L25-p22-L11]; [P68-T49-ENG-ET-p18-L25-p19-L18]/[P68-T49-FRA-CT2-p19-L11-p20-L3]; [P68-T50-ENG-ET-p4-L12-p7-L6]/[P68-T50-FRA-ET-p4-L18-p7-L9]

clearly identify it because there are Congolese in his neighbourhood who work odd jobs in Bangui, and he used to travel to the DRC.[591]

196. P42 explained that the MLC troops tried to communicate with him in broken French because none of them spoke Sango.[592] However, the little French that they could string along was different and had a "Lingala accent".[593] The MLC troops spoke French differently from that spoken in the CAR.[594] P29 testified that:

> "when our soldiers speak even in French, we know, but those who came, the way in which they spoke, it was different. They didn't speak French well. They didn't speak Sango … we knew it was them, particularly given that the way in which they spoke French. It was different the way in which Central Africans spoke French. We knew very well that it was the Banyamulenge."[595]

197. The MLC troops used words that CAR civilians could identify as Lingala. For instance, P79 heard the MLC troops say words that she recognised as Lingala, such as, "*Yaka, Yaka*."[596] This is corroborated by P75, [REDACTED], "*Yaka. Yaka.*"[597] P22 recalled that one MLC perpetrator said, "*Yaka*", which she understood to mean "[g]ive me money" in that context because one of them said it in French.[598] She testified that, "I know that "*yaka*" is Lingala" because the MLC troops "spoke in the same way that our brother used to speak. That is why I said that they had the accent

[591] [P42-T64-ENG-ET-p28-L5]/[P42-T64-FRA-ET-p30-L28-p31-L14]; [P42-T65-ENG-ET-p14-L11-and-p34-L13]/[P42-T65-FRA-ET-p13-L21-p14-L1-and-p33-L12]
[592] [P42-T64-ENG-ET-p28-L14-and-p42-L19-p43-L5]/[P42-T64-FRA-ET-p31-L15-and-p47-L8]
[593] [P42-T64-ENG-ET-p27-L21-p28-L5]/[P42-T64-FRA-ET-p30-L26-p31-L6]
[594] [P42-T64-ENG-ET-p27-L21-p28-L5]/[P42-T64-FRA-ET-p30-L26-p31-L6]
[595] [P29-T80-ENG-ET-p13-L20-p14-L3]/[P29-T80-FRA-ET-p14-23-p15-L8]; [D60-T243-ENG-ET-p33-L13-p35-L6-and-p36-L22]/[D60-T243-FRA-ET-p32-L5-p33-L25-and-p35-L14]; [D60-T244-ENG-ET-p50-L15-21]/[D60-T244-FRA-p51-L15]
[596] [P79-T77-ENG-CT-p6-L17-p7-L1]/[P79-T77-FRA-ET-p7-L1]
[597] [P75-T92-ENG-CT-p8-L17-and-p19-L5]/[P75-T92-FRA-CT-p9-L10-and-p-19-L22-p20-L3]; [P75-T93-ENG-CT-p13-L2]/[P75-T93-FRA-ET-p13-L18]
[598] [P22-T41-ENG-CT2-p7-L5]/[P22-T41-FRA-ET-p7-L28-p8-L4]

of people from the other side of the river."[599] When P119 pushed a large stone, which struck one of the MLC troops, he instinctively cried out – "*Mama Kofi (phon)*" in Lingala.[600] P42 explained that the MLC troops spoke Lingala, and "they would say to people "*pesa ngai mbongo*".[601] The evidence in this case, including testimony from the Prosecution's linguistic expert, corroborates the fact that these words were Lingala.[602]

198. The witness accounts are supported by the Defence linguistic expert on Lingala, D60. He confirmed that the CAR population are exposed to Lingala in a number of ways,[603] such as: i) the existence of Lingala-speaking communities in the CAR;[604] ii) through neighbours, relatives, hearing the language on radio, including through music;[605] and iii) through interaction and economic trade as far back as the 1800s.[606] D60 similarly acknowledged the ability to differentiate between a Central African speaking Lingala and a Congolese speaking Lingala based on accents.[607] He confirmed that it is also possible for a French-speaking CAR national to identify a Congolese speaking with a French accent.[608] D60 acknowledged that Sango, as the contact language, would have been used by the CAR forces to communicate with the local population as it is the language used by both the CAR soldiers and the civilian population.[609]

[599] [P22-T41-ENG-CT2-p7-L9]/[P22-T41-FRA-ET-p8-L5]; [P22-T42-ENG-ET-p20-L16-p21-L3]/[P22-T42-FRA-CT-p21-L18-p22-L3]; [P22-T43-ENG-ET-p8-L1]/[P22-T43-FRA-ET-p8-L13]
[600] [P119-T83-ENG-CT2-p5-L2]/[P119-T83-FRA-CT2-p5-L9]
[601] [P42-T64-ENG-ET-p25-L12-and-p55-L3]/[P42-T64-FRA-ET-p28-L18-and-p61-L5]
[602] [P169-T41-ENG-CT2-p47-L10-and-p48-L1-and-p50-L3]/[P169-T41-FRA-CT-p52-L23-and-p53-L17-p54-L11-and-p55-L19-p56-L7]; [P222-T89-ENG-ET-p47-L20-p48-L10]/[P222-T89-FRA-CT-p45-L5]; [P73-T70-ENG-CT-p36-L13-23]/[P73-T70-FRA-CT-p38-L9]; [P38-T33-ENG-ET-p51-L20-and-p52-L17]/[P38-T33-FRA-ET-p56-L28-and-p58-L3]
[603] [D60-T243-ENG-ET-p8-L3]/[D60-T243-FRA-ET-p8-L3]
[604] [D60-T244-ENG-ET-p17-L24-p18-L4]/[D60-T244-FRA-ET-p18-L7]
[605] [D60-T244-ENG-ET-p37-L2]/[D60-T244-FRA-ET-p37-L24-p38-L1]
[606] [D60-T244-ENG-ET-p46-L20-p47-L4]/[D60-T244-FRA-ET-p47-L17]
[607] [D60-T243-ENG-ET-p33-L13-p35-L6-and-p36-L22]/[D60-T243-FRA-ET-p32-L3-p33-L26-and-p35-L14]
[608] [D60-T244-ENG-ET-p50-L15]/[D60-T244-FRA-ET-p51-L14]
[609] [D60-T244-ENG-ET-p23-L8-p24-L1]/[D60-T244-FRA-ET-p23-L12-p24-L1]

D. Self-identification

199. The MLC troops identified themselves to their victims either as Bemba's men or MLC troops from the DRC. An MLC commander self-identified them when he told P119 that, "Papa Bemba had asked us to come and to apply Article 15".[610] V1 specifies that, "after my arrest they shot and they said the name of their president … which I remember to this day. They stated the name of Mr Bemba."[611] Other similar instances of self-identification by MLC troops are corroborated by other sources.[612]

E. Behaviour

200. Unlike the MLC troops, Bozizé's rebels and the CAR soldiers did not perpetrate large-scale crimes of rape, murder and pillaging against the civilian population. P42 explained that the rebels were more interested in seizing power, rather than harming the population.[613] P22[614] and P68[615] testified that Bozizé's rebels did not harm the people. P80 corroborates this by stating that they did not commit any crimes in her neighbourhood.[616] P75 stated that, the CAR soldiers gave them water for their children and told them to seek refuge behind the hill away from the stray bullets.[617] Similarly, P29 testified that the CAR soldiers in Mongoumba "did not commit any acts of violence or abuse against the civilian population. They did not mistreat the population. They did not commit any crimes. They ensured the safety of the population."[618]

[610] [P119-T82-ENG-CT-p34-L1]/[P119-T82-FRA-CT-p34-L4]
[611] [V1-T221-ENG-ET-p9-L12]/[V1-T221-FRA-ET-p10-L16]
[612] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0086; [V2-T222-ENG-CT-p53-L21-p54-L2]/[V2-T222-FRA-ET-p56-L17]; EVD-T-OTP-00646/CAR-OTP-0035-0291; EVD-T-OTP-00576/CAR-OTP-0031-0099-(17:00-20:00); EVD-T-CHM-0040/CAR-OTP-0036-0041 ;CAR-OTP-0056-0287
[613] [P42-T64-ENG-ET-p52-L7]/[P42-T64-FRA-ET-p57-L25-p58-L9]
[614] [P22-T40-ENG-ET-p16-L17]/[P22-T40-FRA-ET-p17-L26-p18-L6]; [P22-T41-ENG-CT2-p4-L9-and-p5-L18]/[P22-T41-FRA-ET-p4-L21-p5-L5-and-p6-L7]
[615] [P68-T49-ENG-ET-p10-L4-p11-L8]/[P68-T49-FRA-CT2-p10-L11-p11-L13]
[616] [P80-T61-ENG-CT-p17-L7]/[P80-T61-FRA-ET-p17-L11]
[617] [P75-T92-ENG-CT-p8-L10]/[P75-T92-FRA-CT-p9-L3]
[618] [P29-T80--ENG-ET,p28-L14]/[P29-T80-FRA-ET-p30-L17]

III. Specific incidents of Rape

1. *[REDACTED] : [REDACTED]*

201. [REDACTED] was raped by MLC troops. A CAR civilian woman, [REDACTED] was a resident in the Fouh neighbourhood of the 4th arrondissement of Bangui during the 2002-2003 events.[619] [REDACTED] that upon the arrival of MLC troops in October 2002,[620] a woman fleeing from Boy-Rabé with other civilians reported that "in Boy-Rabé the Banyamulenge are raping the women and looting."[621] The shooting and stray bullets prompted [REDACTED] to flee towards [REDACTED] with one of her children.[622] In PK22, [REDACTED] heard another similar warning from a man coming in the opposite direction saying, "[g]o into the bush because the Banyamulenge are already looting and raping women."[623]

202. PK22 is located on the road to Damara, while [REDACTED], which is on the same road, is after PK22.[624] Whilst seeking refuge in the bush in PK22 with her baby strapped to her back,[625] [REDACTED] was intercepted by the MLC troops: three men and one woman carrying weapons.[626] [REDACTED] identified MLC troops based on their uniform[627] and language.[628] [REDACTED] that she did not recall the date.[629] Nevertheless, according to various sources including Bemba himself, some MLC

[619] [P75-T92-ENG-CT-p5-L18-and-p6-L20-and-p40-L11]/[P75-T92-FRA-CT-p6-L8-and-p7-L9-and-p40-L12]
[620] [P75-T92-ENG-CT-p14-L13]/[P75-T92-FRA-CT-p15-L10]
[621] [P75-T92-ENG-CT-p7-L21-p8-L7-and-p14-L2]/[P75-T92-FRA-CT-p8-L7-and-p15-L1]
[622] [P75-T92-ENG-CT-p8-L4]/[P75-T92-FRA-CT-p8-L19-p9-L2]
[623] [P75-T92-ENG-CT-p8-L13]/[P75-T92-FRA-CT-p9-L7]
[624] [P75-T93-ENG-CT-p25-L17]/[P75-T93-FRA-CT-p25-L21]
[625] [P75-T92-ENG-CT-p8-L17]/[P75-T92-FRA-CT-p9-L10]
[626] [P75-T92-ENG-CT-p8-L18]/[P75-T92-FRA-CT-p9-L15]
[627] [P75-T92-ENG-CT-p19-L15-p20-L4]/[P75-T92-FRA-CT-p20-L4]; [P75-T93-ENG-CT-p11-L1]/[P75-T93-FRA-ET-p11-L17]
[628] [P75-T92-ENG-CT-p8-L17-and-p19-L5]/[P75-T92-FRA-CT-p9-L10-and-p-19-L22-p20-L3]; [P75-T93-ENG-CT-p13-L2]/[P75-T93-FRA-ET-p13-L18] ; [P75-T93-ENG-CT-p13-L12]/[P75-T93-FRA-ET-p12-L25-p13-L13] ; [P75-T93-ENG-CT-p14-L4]/[P75-T93-FRA-ET-p14-L16] ; [P75-T93-ENG-CT-p14-L17-and-p19-L1]/[P75-T93-FRA-ET-p14-L28-p15-L14-and-p19-L8]
[629] [P75-T93-ENG-CT-p5-L3]/[P75-T93-FRA-ET-p5-L12]

troops were already more than 20 km away from Bangui by 1 November 2002.[630]

203. [REDACTED] her successive rape by all three armed MLC men in PK22,[631] which was then under the control of MLC troops. During the rape, the female MLC soldier took her baby away and threatened her with an iron bar.[632] [REDACTED] that "[REDACTED] knew full well from their gestures that, if [REDACTED] didn't give in, if [REDACTED] tried to resist, she would use that iron bar to introduce it in [REDACTED] vagina and this is why [REDACTED] had to give in".[633] The woman "was doing everything to help her companions sleep with [REDACTED]."[634]

204. The first MLC perpetrator "took his man's part out", pushed her, and spoke in Lingala.[635] He kicked her and threw her onto the ground.[636] [REDACTED] how this first perpetrator "slept with [REDACTED]first in [REDACTED] vagina, then he turned [REDACTED] around and he penetrated [REDACTED] anus:[637]

> "the man who took off his hat, took out his man's part and he put his man's part in [REDACTED] mouth. He was speaking but [REDACTED] didn't understand what he was saying. When [REDACTED] closed [REDACTED] mouth, he beat [REDACTED], he hit [REDACTED], he grabbed [REDACTED] hair, he pulled at [REDACTED] hair and the others who were armed were pointing the guns at [REDACTED] and they were speaking a language [REDACTED] didn't understand. [REDACTED] was so frightened. And he put his man's part within [REDACTED] mouth, and he was speaking to [REDACTED] and [REDACTED] didn't understand what he was saying, but I understood that he wanted [REDACTED] to lick his man's part. And he tore

[630] EVD-T-OTP-00821/CAR-OTP-0030-0274-at-0274; EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0082
[631] [P75-T92-ENG-CT-p9-L13-and-p10-L3]/[P75-T92-FRA-CT-p10-L10-and-p10-L18]
[632] [P75-T92-ENG-CT-p9-L16-and-p9-L24-and-p10-L1-and-p10-L6]/[P75-T92-FRA-CT-p10-L15-and-p10-L25-and-p10-L27-p-11-L6]
[633] [P75-T92-ENG-CT-p10-L1-and-p9-L16]/[P75-T92-FRA-CT-p10-L-14-and-L26]
[634] [P75-T92-ENG-CT-p10-L10]/[P75-T92-FRA-CT-p10-L9]
[635] [P75-T92-ENG-CT-p9-L1]/[P75-T92-FRA-CT-p9-L24]
[636] [P75-T92-ENG-CT-p9-L2]/[P75-T92-FRA-CT-p9-L25]
[637] [P75-T92-ENG-CT-p9-L21]/[P75-T92-FRA-CT-p10-L20]

my clothes apart. One of them tore [REDACTED] clothes apart whereas another one was sleeping with [REDACTED]. When he stopped sleeping with [REDACTED], he put his man's part in [REDACTED] mouth and asked [REDACTED] to lick it and he wiped his man's part on [REDACTED] face".[638]

205. This perpetrator penetrated [REDACTED]'s mouth, vagina and anus with his penis.[639] [REDACTED] that "after having ejaculated he got up and he wiped his man's part on [REDACTED] face."[640] The second MLC perpetrator "then also slept with [REDACTED] and did the same thing as the first man."[641] [REDACTED] how "[h]e took his clothes off. He showed his man's part. He introduced his man's part into [REDACTED] woman's part. In other words, he was laying with [REDACTED]."[642] When the second perpetrator had finished, he got up, "spread his sperm all over [REDACTED] and then put his clothes back on."[643] Thereafter, "[t]he third took [REDACTED] bag, opened it and took a piece of clothing that was within and cleaned [REDACTED] vagina with it"[644] and "this is how the third person after having wiped the -- [REDACTED] woman's part then slept with [REDACTED]. All of this was while [REDACTED] was being beaten, kicked, all over. They even spread [REDACTED] legs apart by force and they treated [REDACTED] so badly. They manhandled [REDACTED] in such a way that [REDACTED] had no strength left in [REDACTED], and the woman with the iron rod brutalised [REDACTED] and they continued doing everything they had the intention of doing."[645]

206. The Defence agreed that the element of sexual penetration and invasion was

[638] [P75-T92-ENG-CT-p9-L4]/[P75-T92-FRA-CT-p9-L28-p10-L13]
[639] GUEK Eav KAING alias Duch Judgment, Case 001, 26 July 2010, para. 362 referring to Kunarac Appeals Judgment, para. 127; and *Prosecutor v. Sesay*, Kallon, Gbao (RUF) Trial Judgment, paras. 145-146
[640] [P75-T92-ENG-CT-p27-L10]/[P75-T92-FRA-CT-p27-L24]
[641] [P75-T92-ENG-CT-p9-L14]/[P75-T92-FRA-CT-p10-L12]
[642] [P75-T92-ENG-CT-p27-L17]/[P75-T92-FRA-CT-p28-L8]
[643] [P75-T92-ENG-CT-p28-L4]/[P75-T92-FRA-CT-p28-L16]
[644] [P75-T92-ENG-CT-p9-L22]/[P75-T92-FRA-CT-p10-L22]
[645] [P75-T92-ENG-CT-p10-L3]/[P75-T92-FRA-CT-p10-L28-p11-L7]; [P75-T92-ENG-CT-p27-L10-p28-L12]/[P75-T92-FRA-CT-p27-L24-p28-L3]

sufficiently established.[646] In addition, [REDACTED] was hit with an iron bar,[647] as well as being beaten, pushed, kicked and slapped.[648] The MLC perpetrators were assisted by each other and their female accomplice.[649] [REDACTED] "thought [that] they were going to kill [REDACTED]."[650]

207. After her rape, [REDACTED] continued to her parents' home in [REDACTED]. When she arrived, she was too ashamed to tell her father about her rape.[651] She only told her mother and they both cried at the thought of possible disease contamination and consequential impact.[652] For almost a month, her mother treated her injuries and pains every night.[653] [REDACTED] the additional consequence of being abandoned by her husband if he knew of her rape by MLC troops:

> "[REDACTED]."[654]

208. [REDACTED]'s rape caused her considerable physical and psychological harm. She had physical pain in her legs and pelvis, and she subsequently received treatment [REDACTED].[655] As a consequence of her rape, she had no sexual desire and gave her husband excuses to avoid sexual contact.[656] [REDACTED] faced the constant fear and multiple trauma of dealing with the effects of her rape, concealing the rape from her husband and avoiding discrimination from her community. By testifying about her rape, [REDACTED] risked revealing this information and consequently, she faced the certainty that her husband would abandon her and their children, and her community would stigmatise her. She explained her motivation:

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[646] [P75-T92-ENG-CT-p28-L12]/[P75-T92-FRA-CT-p28-L25-p29-L1]
[647] [P75-T92-ENG-CT-p25-L24-p26-L2]/[P75-T92-FRA-CT-p26-L15]
[648] [P75-T92-ENG-CT-p25-L9]/[P75-T92-FRA-CT-p25-L28-p26-L11]
[649] [P75-T92-ENG-CT-p26-L13-and-p26-L21]/[P75-T92-FRA-CT-p27-L1]
[650] [P75-T92-ENG-CT-p20-L9]/[P75-T92-FRA-CT-p20-L25-p21-L2]
[651] [P75-T92-ENG CT-p10-L18-and-p30-L3]/[P75-T92-FRA-CT-p11-L19-and-p30-L13]
[652] [P75-T92-ENG-CT-p10-L24-and-p11-L1]/[P75-T92-FRA-CT-p11-L24-and-p11-L27]
[653] [P75-T92-ENG-CT-p11-L17]/[P75-T92-FRA-CT-p12-L16]
[654] [P75-T92-ENG-CT-p11-L21-p12-L15]/[P75-T92-FRA-CT-p12-L20-p13-L16][Emphasis added]
[655] [P75-T92-ENG-CT-p30-L10-p31-L14]/[P75-T92-FRA-CT-p30-L22-p31-L26]
[656] [P75-T92-ENG-CT-p33-L3-p39-L24-p40-L4]/[P75-T92-FRA-CT-p33-L12-and-p40-L1]

"everything [REDACTED]'ve said here doesn't have to do with [REDACTED], it also has to do with the other victims [REDACTED], so it's on their behalf that [REDACTED] have given all this testimony."[657]

2. *CAR-OTP-PPPP-0023 (''P23''): [REDACTED]*

209. [REDACTED] (P23), also known as [REDACTED], a CAR civilian was a resident of Begoua in the [REDACTED] of Bangui.[658] Begoua is located within PK12, Bangui.[659] During the 2002-2003 events, P23 was, and still remains, [REDACTED].[660] [REDACTED].[661] There is compelling evidence that P23, his wife and daughters were all raped by MLC troops.

210. P23 testified that the day after Bozizé's rebels withdrew from PK12, on 7 or 8 November 2002, the MLC troops arrived.[662] Upon their arrival, the MLC troops took control of P23's neighbourhood.[663] They created a base near the Begoua School and spent six months at PK12.[664] P23 is mistaken as to the exact date of the MLC troops' arrival in PK12, which independent evidence puts about a week earlier, on 30 October 2002.[665] Considering the considerable passage of time between the incident that occurred over 10 years ago and his testimony, P23's mistake regarding the arrival of MLC troops does not affect his recollection of the incident itself.[666] In

[657] [P75-T93-ENG-CT-p29-L1]/[P75-T93-FRA-ET-p29-L5]
[658] [P23-T50-ENG-CT-p53-L11-and-p53-L20]/[P23-T50-FRA-ET-p55-L9-and-p55-L20]
[659] [P23-T53-ENG-CT-p28-L15]/[P23-T53-FRA-CT-p29-L7]
[660] [P23-T50-ENG-CT-p53-L14-and-p55-L1]/[P23-T50-FRA-ET-p55-L11-and-p56-L27-p57-L8]; [P23-T51-ENG-CT2-p30-L6]/[P23-T51-FRA-ET-p31-L25]
[661] [P23-T50-ENG-CT-p55-L12]/[P23-T50-FRA-ET-p57-L11]; [P23-T51-ENG-CT2-p31-L4]/[P23-T51-FRA-ET-p31-L24]
[662] [P23-T50-ENG-CT-p9-L8]/[P23-T50-FRA-ET-p9-L16]; [P23-T53-ENG-CT-p35-L11]/[P23-T53-FRA-CT-p36-L10]
[663] [P23-T51-ENG-CT2-p9-L4-and-p30-L10]/[P23-T51-FRA-ET-p9-L14-and-p32-L2]; [P23-T53-ENG-CT-p32-L6]/[P23-T53-FRA-CT-p32-L22]
[664] [P23-T51-ENG-CT2-p9-L22-and-p17-L1]/[P23-T51-FRA-ET-p10-L2-and-p17-L6]
[665] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050;EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0082
[666] [P229-T100-ENG-CT2-p39-L1]/[P229-T100-FRA-CT-p40-L1]

particular, his identification of the MLC troops and his testimony that Bozizé's rebels had withdrawn from PK12 before the arrival of MLC troops is compelling and supported by other witness accounts and documentary evidence on record.[667]

211. Specifically, P23 testified that, the day after the arrival of MLC troops,[668] gun shots forced him to go outside his home,[669] which was located [REDACTED].[670] The MLC troops found one of their own who spoke some French in order to communicate with P23.[671] P23 told them that "the rebels were no longer in the neighbourhood, they had all left"; only the population remained.[672] P23 identified MLC troops based on their control of area,[673] language,[674] and uniform.[675] The MLC troops asked P23, "Who are you to intervene in such a way?" He replied that [REDACTED].[676] This response prompted them to return with more troops.[677]

212. Eight MLC troops came back inside P23's compound and asked him to repeat his statement. He explained that [REDACTED].[678] The MLC troops accused him of complicity in "push[ing] the children to rebellion and […] to attack President Patassé."[679] The French speaking MLC asked him to lie down[680] and they told him

[667] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0422-to-0427; EVD-T-OTP-00446/CAR-OTP-0013-0082; EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0344
[668] [P23-T51-ENG-CT-p13-L3]/[P23-T51-FRA-ET-p13-L7]; [P23-T53-ENG-CT-p26-L9-p27-L21]/[P23-T53-FRA-CT-p27-L4-p28-L14]
[669] [P23-T51-ENG-CT2-p30-L10]/[P23-T51-FRA-ET-p32-L3]
[670] [P23-T51-ENG-CT2-p9-L12]/[P23-T51-FRA-ET-p9-L22]
[671] [P23-T51-ENG-CT2-p30-L12]/[P23-T51-FRA-ET-p32-L6]
[672] [P23-T51-ENG-CT2-p30-L19-and-p8-L23-p9-L3]/[P23-T51-FRA-ET-p32-L12-and-p9-L9]; [P23-T53-ENG-CT-p27-L25-p28-L5]/[P23-T53-FRA-CT-p28-L18]
[673] [P23-T51-ENG-CT2-p30-L19-and-p8-L23-p9-L3]/[P23-T51-FRA-ET-p32-L12-and-p9-L9]; [P23-T53-ENG-CT-p27-L25-p28-L5]/[P23-T53-FRA-CT-p28-L18] ; [P23-T51-ENG-CT2-p9-L4-and-p30-L10]/[P23-T51-FRA-ET-p9-L14-and-p32-L2]; [P23-T53-ENG-CT-p32-L6]/[P23-T53-FRA-CT-p32-L22] ; [P23-T51-ENG-CT2-p30-L19-and-p8-L23-p9-L3]/[P23-T51-FRA-ET-p32-L12-and-p9-L9]; [P23-T53-ENG-CT-p27-L25-p28-L5]/[P23-T53-FRA-CT-p28-L18]
[674] [P23-T51-ENG-CT2-p30-L12]/[P23-T51-FRA-ET-p32-L6] ; [P23-T52-ENG-CT2-p47-L23-p48-L4]/[P23-T52-FRA-CT-p51-L28-p52-L8]
[675] [P23-T51-ENG-CT2-p7-L11]/[P23-T51-FRA-ET-p7-L21] ; [P23-T51-ENG-CT2-p7-L11-p8-L12]/[P23-T51-FRA-ET-p7-L21-p8-L26]
[676] [P23-T51-ENG-CT2-p31-L1]/[P23-T51-FRA-ET-p32-L22]
[677] [P23-T51-ENG-CT2-p31-L5-and-p31-L13]/[P23-T51-FRA-ET-p32-L26-and-p33-L10]; [P23-T52-ENG-CT2-p37-L20]/[P23-T52-FRA-CT-p40-L10]
[678] [P23-T51-ENG-CT2-p31-L4]/[P23-T51-FRA-ET-p32-L25]
[679] [P23-T51-ENG-CT2-p31-L8-and-p31-L17]/[P23-T51-FRA-ET-p33-L3-and-p33-L15]

that people like him were "stubborn" and "instigators of the rebellion against President Patassé"; therefore they "had to be punished for that."[681]

213. P23 explained that he was then raped by three MLC troops in turn,[682] for three to four hours, although he did not have a watch to know the exact time.[683] P23 described how:

> "the ones on the other side of the river, the soldiers, the Banyamulenge, Bemba's soldiers … sodomised me. They treated me as if I were a woman and – as even if I were a woman. The way they brutalised me, even if I were a woman, I would be entitled to some rest, but the abuse was severe."[684]

214. P23 explained that by sodomy, he meant that "they penetrated me from behind. They forced me to have anal relations with them. My anus was swollen and I had to get traditional treatment".[685] P23 thus suffered extreme physical pain: "[t]he first, when he sodomised me, he ejaculated; the second did the same thing; and so did the third, but it was the rape of the first Banyamulenge that inflicted the most pain on me."[686] The Defence accepted that the sexual penetration element of rape had been established.[687] In addition, each MLC perpetrator ejaculated inside him.[688]

215. P23's testimony is illustrative of the MLC's use of rape as a weapon of war to punish members of the CAR civilian population for their perceived support of the

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[680] [P23-T51-ENG-CT2-p31-L20-p32-L1]/[P23-T51-FRA-ET-p33-L18]
[681] [P23-T51-ENG-CT2-p31-L20]/[P23-T51-FRA-ET-p33-L18]
[682] [P23-T51-ENG-CT2-p36-L4]/[P23-T51-FRA-ET-p38-L11]
[683] [P23-T51-ENG-CT2-p38-L15]/[P23-T51-FRA-ET-p40-L27-p41-L3]
[684] [P23-T51-ENG-CT2-p35-L2]/[P23-T51-FRA-ET-p37-L7]
[685] [P23-T51-ENG-CT2-p35-L10]/[P23-T51-FRA-ET-p37-L19]
[686] [P23-T51-ENG-CT2-p37-L24-p38-L3]/[P23-T51-FRA-ET-p40-L5]
[687] [P23-T51-ENG-CT2-p35-L16]/[P23-T51-FRA-ET-p37-L24-p38-L1]
[688] [P23-T51-ENG-CT2-p36-L4]/[P23-T51-FRA-ET-p38-L11]

rebels.[689] P23 was specifically targeted by MLC troops because he was [REDACTED]. They informed him that he would be punished and proceeded to accomplish this by raping him out in the open.[690]

216. P23 was raped behind his house in an open space of his compound, which was visible to his neighbours.[691] He testified that no-one could come to his assistance while he was being raped because they were scared and preferred to remain inside their homes, watching powerlessly through their windows.[692] P23's testimony shows how the act of rape made not only him helpless, but other people in the community as well, which created a climate of fear amongst the population.[693] He testified that during MLC's presence, even the CAR soldiers could not assist the population.[694]

217. P23 described the psychological and social impact of his assault: "When they began to rape, well, it's very, very hard. It's very hard to consider that you are being sodomised by another man. It was very hard for me to tolerate that a man like myself could penetrate my anus."[695] P229 explained that rape of a man, which is closely linked to punishment, is designed first and foremost to humiliate him as well as his family.[696] This can be seen from the reaction of P23's second wife - "once they had sodomised me, she said to me, "You are no longer a man. You are a woman like myself, so I cannot live with you. I have to leave you.""[697]

[689] [P229-T100-ENG-CT2-p4-L25-p5-L2-and-p9-L8]/[P229-T100-FRA-CT-p5-L2-and-p9-L6]
[690] [P23-T51-ENG-CT2-p37-L4]/[P23-T51-FRA-ET-p39-L11]
[691] [P23-T50-ENG-CT-p36-L23-p37-L16]/[P23-T51-FRA-ET-p39-L5]
[692] [P23-T51-ENG-CT2-p37-L4]/[P23-T51-FRA-ET-p39-L11]
[693] [P23-T51-ENG-CT2-p21-L25-p25-L3-and-p22-L13-and-p27-L1]/[P23-T51-FRA-ET-p22-L27-p26-L12]
[694] [P23-T51-ENG-CT2-p37-L16]/[P23-T51-FRA-ET-p39-L24]; [P229-T100-ENG-CT2-p50-L7]/[P229-100-FRA-CT-p52-L4]
[695] [P23-T51-ENG-CT2-p37-L24-p38-L3]/[P23-T51-FRA-ET-p40-L6]
[696] [P229-T100-ENG-CT2-p11-L21-p12-L1-and-p12-L21-p13-L6]/[P229-T100-FRA-CT-p11-L23-and-p12-L20-p13-L2]
[697] [P23-T51-ENG-CT2-p41-L23-p42-L2-and-p32-L9]/[P23-T51-FRA-ET-p44-L11-and-p34-L9]; [P23-T52-ENG-CT2-p35-L5]/[P23-T52-FRA-CT-p37-L13]; [P23-T52-ENG-CT2-p44-L2]/[P23-T52-FRA-CT-p47-L17]

218. P23's community knew of his rape and some people made a mockery of him.[698] P23 was apologetic for being overwhelmed with emotion as he recounted his rape during his testimony; after taking a break, he told the Court: "I apologise. This event offended me greatly and so I cried earlier."[699]

219. On the same day of P23's rape, other members of his family were also raped by the same group of MLC troops.[700] They raped his wife, [REDACTED] (P80),[701] by using "their penis and introduced it into her body."[702] As a result of the rape, "[s]he has problems in her pelvis and still today there is no treatment for her."[703] In addition, four of his daughters - [REDACTED][704] - were also raped.[705] The MLC troops forcefully penetrated his daughters sexually.[706] P23 emphasised that his daughters did not consent to this.[707] Even his 11 year old daughter, "[t]hey didn't even feel any pity for that small girl"[708] and "her case was the one that really upset me … I simply couldn't stand it. It was really terrible."[709]

220. P23 described his helplessness, as well as that of the CAR authorities: "if our soldiers had not been disarmed, the fighting would have continued. Unfortunately, they were disarmed. When we went to the gendarmerie to complain, they told us that they were disarmed. They couldn't do anything."[710] The MLC troops targeted the population and raped numerous people in P23's neighbourhood: "[t]hey slept

[698] [P23-T52-ENG-CT2-p34-L15-and-p34-L22-p35-L4]/[P23-T52-FRA-CT-p36-L20-and-p37-L22]; [P229-T100-ENG-CT2-p12-L21-p13-L6]/[P229-T100-FRA-CT-p11-L23-p13-L2]; [P119-T82-ENG-CT-p54-L1]/[P119-T82-FRA-CT-p53-L22]
[699] [P23-T51-ENG-CT2-p35-L1]/[P23-T51-FRA-ET-p37-L6]
[700] [P23-T51-ENG-CT2-p39-L17-p40-L14-and-p43-L22-and-p44-L16-and-p45-L17]/[P23-T51-FRA-ET-p42-L1-and-p46-L11-and-p47-L6-and-p48-L15]
[701] [P23-T52-ENG-CT2-p43-L20-p44-L1]/[P23-T52-FRA-CT-p47-L6]
[702] [P23-T51-ENG-CT2-p39-L17-p40-L5]/[P23-T51-FRA-ET-p42-L1]
[703] [P23-T51-ENG-CT2-p39-L17]/[P23-T51-FRA-ET-p42-L1]
[704] [P23-T52-ENG-CT2-p44-L6]/[P23-T52-FRA-CT-p47-L23-p48-L2]
[705] [P23-T51-ENG-CT2-p43-L5-p44-L21]/[P23-T51-FRA-ET-p45-L18-p47-L13]; [P69-T193-ENG-ET-p43-L6]/[P69-T193-FRA-ET-p47-L21-p48-L5]; [P69-T194-ENG-ET-p47-L6]/[P69-T194-FRA-ET-p51-L24]
[706] [P23-T51-ENG-CT2-p43-L19-p44-L1]/[P23-T51-FRA-ET-p46-L8]
[707] [P23-T51-ENG-CT2-p44-L7]/[P23-T51-FRA-ET-p46-L23]
[708] [P23-T51-ENG-CT2-p43-L7]/[P23-T51-FRA-ET-p45-L22]
[709] [P23-T51-ENG-CT2-p43-L11]/[P23-T51-FRA-ET-p45-L28-p46-L1]
[710] [P23-T51-ENG-CT2-p48-L7]/[P23-T51-FRA-ET-p51-L13]

even with small girls, with men. They did everything that they wanted to do with anyone. Nobody could protest against this behaviour."[711]

3. *CAR-OTP-PPPP-0081 (''P81''): [REDACTED]*

221. [REDACTED] (P81), daughter of P23, is a CAR civilian and [REDACTED] who resided in PK12, Bangui, during the 2002-2003 conflict.[712] She too, was raped, like her father, mother and sisters by MLC troops on the same day.

222. P81 testified that the MLC troops came from DRC and their leader was Bemba.[713] After their arrival in her neighbourhood, the MLC troops were the only armed group present.[714] P81 was able to identify MLC troops based on their control of the area,[715] and their language ([REDACTED]).[716] The MLC troops came to her home on the same day that her father and other family members were raped.[717] There were several of them, including two leaders and three bodyguards.[718] Within their compound or courtyard, they had separate homes.[719] The MLC troops that came to P81's home were each armed with Kalashnikovs.[720] P81's husband spoke to the MLC troops in French and Lingala informing them that P81 was his wife and that she had just given birth.[721] Although her husband tried to prevent the MLC troops from

[711] [P23-T52-ENG-CT2-p42-L11]/[P23-T52-FRA-CT-p46-L4]
[712] [P81-T54-ENG-CT-p54-L9-p55-L22]/[P81-T54-FRA-ET-p60-L20-p62-L5]
[713] [P81-T55-ENG-CT-p5-L13]/[P81-T55-FRA-CT-p5-L21-p6-L4]
[714] [P81-T55-ENG-CT-p25-L16]/[P81-T55-FRA-CT-p25-L23]
[715] [P81-T55-ENG-CT-p25-L16]/[P81-T55-FRA-CT-p25-L23] ; [P81-T55-ENG-CT-p14-L-6]/[P81-T55-FRA-CT-p14-L1]
[716] [P80-T61-ENG-CT-p15-L1-and-p29-L2-and-p32-L1]/[P80-T61-FRA-ET-p15-L6-and-p29-L10-and-p32-L14] ; [P81-T55-ENG-CT-p10-L11-and-p12-L11-and-p12-L22]/[P81-T55-FRA-CT-p10-L15-and-p12-L11-and-p12-L22]; [P81-T56-ENG-CT2-p36-L8]/[P81-T56-FRA-ET-p39-L3] ; [P81-T55-ENG-CT-p13-L18]/[P81-T55-FRA-CT-p13-L14]
[717] [P81-T55-ENG-CT-p13-L21-and-p14-L1-and-p14-L16]/[P81-T55-FRA-CT-p13-L17-and-p13-L21-and-p14-L13] ; [P81-T57-ENG-CT-p28-L11]/[P81-T57-FRA-ET-p31-L18]
[718] [P81-T55-ENG-CT-p10-L3]/[P81-T55-FRA-CT-p10-L6]
[719] [P81-T56-ENG-CT2-p35-L16]/[P81-T56-FRA-ET-p38-L11]
[720] [P81-T55-ENG-CT-p10-L6]/[P81-T55-FRA-CT-p10-L9]; [P81-T56-ENG-CT2-p35-L16]/[P81-T56-FRA-ET-p38-L11]
[721] [P81-T55-ENG-CT-p10-L11-and-p12-L11-and-p12-L22]/[P81-T55-FRA-CT-p10-L15-and-p12-L11-and-L22]; [P81-T56-ENG-CT2-p36-L8]/[P81-T56-FRA-ET-p39-L3]

raping P81, "[t]hey said they just wanted a woman, and I was a woman."[722] They threatened to kill her husband and he decided to take the baby and remain outside while they raped his wife.[723] Her brother tried to intervene to prevent them from raping her but he was overpowered and beaten by the MLC troops.[724]

223. The tallest MLC perpetrator held his weapon threateningly and forced her to take off her clothes.[725] He was the first to rape P81 as "[h]e put his penis into my body, into the female part of my body [vagina]."[726] All four MLC perpetrators that raped her did the same thing.[727] The fifth man did not rape her because she was bleeding.[728] While a perpetrator was raping her, he would give his weapon to one of the other MLC troops present.[729] She stated that "[m]y pelvis hurt after the injuries of giving birth because I just – I was powerless. I just had two hands [underneath] my head and they did what they wanted to do."[730]

224. The MLC troops "had spread out in the neighbourhood, in the entire neighbourhood, my husband tried to tell about what happened … my father said that the same thing had happened to them."[731] As a result of the rape, the following day, P81's husband took her children away and never returned: "He said nothing. He didn't provide me with a reason of any kind … I said it's because of the sexual intercourse the Banyamulenge had with me. He thought that the Banyamulenge had sullied me."[732]

[722] [P81-T55-ENG-CT-p10-L13]/[P81-T55-FRA-CT-p10-L17]
[723] [P81-T55-ENG-CT-p13-L4]/[P81-T55-FRA-CT-p12-L28-p13-L13]
[724] [P81-T55-ENG-CT-p15-L2]/[P81-T55-FRA-CT-p14-L24-p15-L16]
[725] [P81-T55-ENG-CT-p10-L18]/[P81-T55-FRA-CT-p10-L22]
[726] [P81-T55-ENG-CT-p10-L21-p11-L6]/[P81-T55-FRA-CT-p10-L26-p11-L7]
[727] [P81-T55-ENG-CT-p11-L13]/[P81-T55-FRA-CT-p11-L17]
[728] [P81-T55-ENG-CT-p6-L7-and-p11-L9]/[P81-T55-FRA-CT-p3-L13-and-p11-L10]
[729] [P81-T55-ENG-CT-p11-L17]/[P81-T55-FRA-CT-p11-L21]
[730] [P81-T55-ENG-CT-p12-L13]/[P81-T55-FRA-CT-p12-L14]
[731] [P81-T55-ENG-CT-p14-L6]/[P81-T55-FRA-CT-p14-L1]
[732] [P81-T55-ENG-CT-p16-L8]/[P81-T55-FRA-CT-p16-L3]; [P169-T137-ENG-ET-p56-L8]/[P169-T137-FRA-ET-p56-L20-p57-L5]

225. P81 explained that, "I haven't seen my children again, not up until this day, and when I think about that I do not feel well at all."[733] Due to her rape, P81 continues to suffer abdominal pain and is unable to get pregnant.[734] She testified that "[e]ven if I could find a partner, he wouldn't want me because I can't have children."[735] She received traditional treatment because she could not afford proper medical care.[736]

226. The MLC troops raped P81 on the same day, at the same time as the rest of her family.[737] When members of the family say that they were present during the rape of each other, they subsequently clarify when asked whether they were an eye-witness or present elsewhere in one of the homes in their compound - "when you say in Sango that you are present that doesn't mean that you're an eyewitness, but I was present in my house."[738] Subsequently after their rapes, P81 and her sisters were obliged to cook and serve the same MLC troops that returned and stayed at their home for two weeks – "We had practically become their slaves."[739] Their names were "[REDACTED]", which she learnt when the MLC troops addressed each other.[740]

227. As a consequence of the rape, P81 testified that "we were ostracised. The young boys would insult us, point us out, and I had to take refuge in [REDACTED], and sometimes I go back to Bangui to visit my father and sometimes after that I would go back to [REDACTED]."[741] These young boys would point to them and say, "you let the Banyamulenge sleep with you and we don't want to have sex with you

[733] [P81-T55-ENG-CT-p46-L20-p47-L8]/[P81-T55-FRA-CT-p48-L14]
[734] [P81-T55-ENG-CT-p31-L4]/[P81-T55-FRA-CT-p31-L20-p32-L7]; [P81-T57-ENG-CT-p16-L17-and-p17-L2]/[P81-T57-ET-p18-L13-and-p18-L26-p19-L2]
[735] [P81-T55-ENG-CT-p32-L17]/[P81-T55-FRA-CT-p33-L12]
[736] [P81-T55-ENG-CT-p32-L1]/[P81-T55-FRA-CT-p32-L19]
[737] [P81-T55-ENG-CT-p13-L21-and-p14-L1-and-p14-L16]/[P81-T55-FRA-CT-p13-L17-and-p14-L12]; [P81-T57-ENG-CT-p28-L11]/[P81-T57-FRA-ET-p31-L11]; [P81-T55-ENG-CT-p34-L10]/[P81-T55-FRA-CT-p35-L11]
[738] [P81-T57-ENG-CT-p28-L1]/[P81-T57-FRA-CT-p31-L6]
[739] [P81-T55-ENG-CT-p16-L23-p17-L2-and-p18-L12]/[P81-T55-FRA-CT-p16-L19-and-p18-L10]; [P81-T57-ENG-CT-p12-L8]/[P81-T57-FRA-ET-p13-L12]
[740] [P81-T55-ENG-CT-p20-L21-p21-L20]/[P81-T55-FRA-CT-p20-L22-p21-L2]; [P81-T56-ENG-CT2-p37-L10]/[P81-T56-FRA-ET-p40-L13]; ICC-01/05-01/08-2222-Conf-AnxA, Submissions on Defence evidence, 28 May 2012, p45
[741] [P81-T55-ENG-CT-p32-L7]/[P81-T55-FRA-CT-p32-L27-p33-L6]

anymore."[742]

4. *CAR-OTP-PPPP-0082 (''P82''): [REDACTED]*

228. [REDACTED] (P82), who was about 12 years old during the 2002-2003 CAR conflict,[743] is the youngest rape victim to testify in this case.[744] She is a Central African Republic civilian and granddaughter of [REDACTED], who is P23's wife.[745]

229. P82 testified that, the MLC troops came from Zongo, which is on "the other side of the river".[746] P82 identified MLC troops based on language.[747] Although P82 stated that she was told that the MLC troops had arrived on 7 October 2002,[748] she expressly stated that she was raped at the same time as her family members, by the same group of MLC troops.[749]

230. The MLC troops positioned P82 in a curved position and two of them raped her.[750] Although she tried to run away from them, "they seized me by force."[751] Her screams alerted her father who wanted to intervene but the MLC troops threatened him with their weapons.[752] They had batons, which they used to injure her legs and knees.[753] She testified that both MLC perpetrators "penetrated my vagina with their

[742] [P81-T55-ENG-CT-p32-L12]/[P81-T55-FRA-CT-p33-L7]
[743] [P82-T58-ENG-CT-p12-L25-p13-L6]/[P82-T58-FRA-CT-p14-L8]
[744] See, Elements of Crimes, Footnotes 15, 16, 50 and 51: By virtue of an age-related incapacity, a person may be incapable of giving genuine consent. In the Central African Republic, section 197(2) of the *Code Penalé* stipulates that sexual relations with a person below the age of 15 years constitutes rape. In addition, the Rome Statute in defining what constitutes a "children" for the status of child soldier also stipulates someone under the age of 15 years.
[745] [P82-T58-ENG-CT-p8-L8-and-p9-L20-and-p25-L5]/[P82-T58-FRA-CT-p9-L4-and-p10-L16-and-p27-L15]; [P69-T194-ENG-ET-p48-L5]/[P69-T194-FRA-ET-p50-L9]
[746] [P82-T58-ENG-CT-p13-L7]/[P82-T58-FRA-CT-p14-L18]
[747] [P82-T58-ENG-CT-p29-L23-p30-L16]/[P82-T58-FRA-CT-p32-L26] ; [P82-T-58-ENG-CT-p30-L20]/[P82-T58-FRA-CT-p33-21]
[748] [P82-T58-ENG-CT-p14-L13-and-p31-L3]/[P82-T58-FRA-CT-p15-L28-p16-L7-and-p34-L3]
[749] [P82-T58-ENG-CT-p20-L4]/[P82-T58-FRA-CT-p22-L7]
[750] [P82-T58-ENG-CT-p14-L19-and-p17-L20-and-p18-L1]/[P82-T58-FRA-CT-p16-L7-and-p19-L22-and-p20-L1]
[751] [P82-T58-ENG-CT-p18-L19-and-p22-L22-p23-L5]/[P82-T58-FRA-CT-p20-L22-p21-L1-and-p24-L26-p25-L6]
[752] [P82-T58-ENG-CT-p18-L21]/[P82-T58-FRA-CT-p20-L25-p21-L2]
[753] [P82-T58-ENG-CT-p19-L2]/[P82-T58-FRA-CT-p21-L4]

penis and it was for that reason that I was bleeding."[754] Each perpetrator slung his rifle and arrow over his shoulders while he raped her.[755] She testified that, "When they took me, they really assaulted me sexually very violently. They took me by force and they put my arms behind me, they bent me over and they did these horrific things to me and that's the reason why I ended up with these terrible injuries."[756] She explained that, "I was a minor at the time, so I can't remember how long it took place for."[757]

231. When MLC troops raped her, P82 stated that, "I was still a virgin and they deprived me of my virginity."[758] As a result of the rape, she sustained a lot of serious injuries in her vagina, which caused her to bleed.[759] P82 could not go to the hospital; her family prepared traditional potions in order to treat her injuries.[760] P82 explained that, "[g]iven that I was assaulted, I am no longer able to associate with the other girls. Everybody makes fun of me."[761] Her sister, P81, testified that although she did not see the MLC troops rape P82, "[w]hen [REDACTED] was raped, she wasn't walking well."[762]

232. P82 testified that the MLC troops also raped her grandmother, [REDACTED], and her older sisters.[763] They too sustained injuries as a result of the rape and her father looked for traditional medicines to treat them.[764] The MLC troops also raped other people in her neighbourhood, such as her aunt's children and her neighbours.[765]

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[754] [P82-T58-ENG-CT-p15-L10-and-p16-L2-and-p17-L23-and-p22-L1]/[P82-T58-FRA-CT-p16-L28-p17-L8-and-p17-L20-and-p19-L25-and-p24-L5]
[755] [P82-T58-ENG-CT-p18-L13]/[P82-T58-FRA-CT-p20-L16]
[756] [P82-T58-ENG-CT-p21-L12]/[P82-T58-FRA-CT-p23-L17]
[757] [P82-T58-ENG-CT-p18-L11]/[P82-T58-FRA-CT-p20-L13]
[758] [P82-T58-ENG-CT-p13-L7-and-p15-L4]/[P82-T58-FRA-CT-p14-L18-and-p16-L20]
[759] [P82-T58-ENG-CT-p21-L8-and-p22-L1]/[P82-T58-FRA-CT-p23-L12-and-p23-L27-p24-L1]
[760] [P82-T58-ENG-CT-p21-L8]/[P82-T58-FRA-CT-p23-L12-p24-L2]
[761] [P82-T58-ENG-CT-p27-L1-and-p28-L20]/[P82-T58-FRA-CT-p29-L18-and-p31-L18]
[762] [P82-T58-ENG-CT-p25-L22-p26-L26]/[P82-T58-FRA-CT-p28-L11-p29-L17]
[763] [P82-T58-ENG-CT-p19-L19-and-p25-L8]/[P82-T58-FRA-CT-p21-L24-p22-L1-and-p27-L20]
[764] [P82-T58-ENG-CT-p22-L15]/[P82-T58-FRA-CT-p24-L16]
[765] [P82-T58-ENG-CT-p21-L1]/[P82-T58-FRA-CT-p23-L5]

233. P82 was subjected to multiple rapes.[766] In acknowledging this, P82 herself stated that, "[r]egarding the events that I was subjected to, I simply remembered the most important aspects."[767] P82 was particularly vulnerable because she was a minor at the time of the incident.

5. *CAR-OTP-PPPP-0080 (''P80''): [REDACTED]*

234. [REDACTED] (P80), a CAR civilian residing in PK12, is the mother of [REDACTED] children ([REDACTED] are deceased) and wife of P23.[768] She too was raped by MLC troops, the same day they raped her husband and her daughters.

235. P80 testified that when the MLC troops arrived in PK12, Bozizé's rebels had already retreated towards Damara.[769] P80 identified MLC troops based on uniform,[770] control of area,[771] and language.[772] Although P80 estimated that the MLC troops arrived on Saturday, 17 October 2002 or 17 November 2002, she recalled that they invaded her neighbourhood in groups and committed a lot of violence against women.[773] P80 accepted that the events happened a long time ago and, as a result of the passage of time, she cannot remember the exact date.[774] Nevertheless, her testimony was categorical that Bozizé's rebels withdrew prior to the arrival of the MLC troops. This is corroborated by independent sources and testimonies from

[766] [P82-T58-ENG-CT-p31-L3]/[P82-T58-FRA-CT-p34-L1]; [P221-T39-ENG-ET-p9-L23-p10-L2]/[P221-T39-FRA-ET-p9-L16]
[767] [P82-T58-ENG-CT-p26-L10]/[P82-T58-FRA-CT-p28-L25-p29-L9]
[768] [P80-T60-ENG-CT-p58-L2-and-p59-L1]/[P80-T60-FRA-ET-p62-L26-and-p63-L7-and-p63-L12-and-p63-L24-and-p63-L25]
[769] [P80-T61-ENG-CT-p17-L10]/[P80-T61-FRA-ET-p17-L14]
[770] [P80-T61-ENG-CT-p42-L4]/[P80-T61-FRA-ET-p42-L23-p43-L5]
[771] [P80-T61-ENG-CT-p17-L10]/[P80-T61-FRA-ET-p17-L14]
[772] [P80-T61-ENG-CT-p8-L25-p9-L6]/[P80-T61-FRA-ET-p8-L27-p9-L6] ; [P80-T61-ENG-CT-p9-L4-and-p14-L18]/[P80-T61-FRA-ET-p9-L5-and-p14-L26-p15-L4] ; [P80-T61-ENG-CT-p16-L3-and-p17-L2]/[P80-T61-FRA-ET-p16-L7-p17-L2-and-p17-L5] ;[P80-T61-ENG-CT-p19-L12]/[P80-T62-FRA-ET-p20-l28-P21-L7] ; [P80-T61-ENG-CT-p15-L1-and-p29-L2-and-p32-L1]/[P80-T61-FRA-ET-p15-L9-p16-L2-and-p29-L6-and-p32-L14] ; [P80-T62-ENG-CT-p33-L2]/[P80-T62-FRA-ET-p35-L18]
[773] [P80-T61-ENG-CT-p5-L23-p6-L7]/[P80-T61-FRA-ET-p5-L25-p6-L6]; [P80-T62-ENG-CT-p21-L20]/[P80-T62-FRA-ET-p23-L18]
[774] [P80-T61-ENG-CT-p22-L10]/[P80-T62-FRA-ET-p24-L8]

other witnesses from PK12.[775]

236. P80 explained when they came to her compound, three of the MLC troops raped her, whilst others went to her daughter's home (P81).[776] The MLC troops took her baby out of her arms and threw him on the ground before proceeding to rape her one after the other.[777] P80 was raped inside the house and her husband was raped outside.[778]

237. The first MLC perpetrator threw P80 on the ground and used his penis to penetrate "the feminine part of my body."[779] The third one raped her but then "he got up because I started to bleed. Three was a lot."[780] All three MLC perpetrators penetrated P80 vaginally[781] and she bled as a result.[782] The Defence agreed that the element of sexual penetration was sufficiently established.[783] P80 stated that "when I tried to resist, [the first Banyamulenge] slapped me."[784] While the first MLC perpetrator was raping her, "the two others were standing up, pointing their weapons at me."[785] P80 explained that, "[a] woman does not have the same strength as a man. They pushed me, I fell over. That's how they slept with me. I did not consent. My husband tried to intervene, and I said I did not consent."[786]

238. P80 testified that, "I have back problems and I have headaches, as a result of what happened to me, and even to date I continue to suffer from those effects."[787] She

[775] EVD-T-OTP-00438/CAR-OTP-0011-0293-at-0293; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050; EVD-T-OTP-00446-at-0082/CAR-OTP-0013-0082
[776] [P80-T61-ENG-CT-p6-L7]/[P80-T61-FRA-ET-p6-L6]
[777] [P80-T61-ENG-CT-p6-L9]/[P80-T61-FRA-ET-p6-L7]
[778] [P80-T61-ENG-CT-p12-L6]/[P80-T61-FRA-ET-p12-L10]
[779] [P80-T61-ENG-CT-p6-L15-p7-L19]/[P80-T61-FRA-ET-p6-L14-p7-L16]
[780] [P80-T61-ENG-CT-p8-L7]/[P80-T61-FRA-ET-p8-L15]
[781] [P80-T61-ENG-CT-p8-L7]/[P80-T61-FRA-ET-p8-L15]
[782] [P80-T61-ENG-CT-p8-L15]/[P80-T61-FRA-ET-p8-L18]
[783] [P80-T61-ENG-CT-p7-L11]/[P80-T61-FRA-ET-p7-L9]
[784] [P80-T61-ENG-CT-p8-L3-and-p14-L1]/[P80-T61-FRA-ET-p8-L5-and-p14-L6-and-p14-L22]
[785] [P80-T61-ENG-CT-p6-L15-and-p12-L18-p13-L7]/[P80-T61-FRA-ET-p6-L14-and-p12-L25-p13-L12]
[786] [P80-T61-ENG-CT-p12-L13]/[P80-T61-FRA-ET-p12-L19]
[787] [P80-T61-ENG-CT-p26-L1]/[P80-T61-FRA-ET-p26-L2]

continues to have pain in her pelvis and eye problems as a result of the MLC troops slapping her forcefully.[788] She refused to see a doctor about her rape because "I was afraid that the doctor might find signs of a deadly disease, and in that case, I would have died thinking about that".[789]

239. Apart from her and her husband, the armed MLC troops also raped her children on the same day – [REDACTED].[790] After they returned from [REDACTED], her family had to cook for the MLC troops.[791] As a result of the rape, people in their neighbourhood pointed at her family and made fun of them.[792] They are stigmatised by their community and she hears people talking about their rape when she walks by.[793] P80 testified that men are afraid of her daughters because they do not want to contract diseases.[794] Her daughter [REDACTED] is unable to conceive despite various treatments, another young daughter was raped, and another was raped while she was pregnant.[795]

6. *CAR-OTP-PPPP-0087 (''P87''): [REDACTED]*

240. [REDACTED] (P87) was raped by MLC troops. A CAR civilian and [REDACTED], P87 was born in [REDACTED].[796] Between October 2002 and March 2003, she was a [REDACTED] residing in Boy-Rabé in the 4th arrondissement of Bangui.[797] P87 testified that Bozizé's rebels had withdrawn to their base at PK22 prior

[788] [P80-T63-ENG-ET-p31-L22-p32-L13]/[P80-T63-FRA-ET-p32-L26-p33-L14]
[789] [P80-T63-ENG-ET-p28-L18-and-p29-L1-p31-L12-and-p33-L9-p34-L7]/[P80-T63-FRA-ET-p29-L17-and-p29-L25-p32-L15-and-p34-L10-p35-L14]
[790] [P80-T61-ENG-CT-p9-L14-and-p11-L8-and-p12-L1-and-p13-L8]/[P80-T61-FRA-ET-p9-L14-and-p11-L13-and-p12-L4-and-p13-L13]; [P80-T62-ENG-CT-p24-L10]/[P80-T62-FRA-CT-p26-L10]
[791] [P80-T61-ENG-CT-p20-L9-p21-L3]/[P80-T61-FRA-ET-p20-L11-p21-L4]
[792] [P80-T61-ENG-CT-p24-L20-p25-L3]/[P80-T61-FRA-ET-p24-L23]
[793] [P80-T61-ENG-CT-p26-L7]/[P80-T61-FRA-ET-p20-L9-p21-L4]
[794] [P80-T61-ENG-CT-p25-L4]/[P80-T61-FRA-ET-p24-L23-p25-L5]
[795] [P80-T61-ENG-CT-p11-L18-p12-L12-and-p25-L9-and-p28-L1]/[P80-T61-FRA-ET-p26-L10-and-p25-L6-and-p28-L5]
[796] [P87-T44-ENG-CT-p9-L14-and-p21-L8]/[P87-T44-FRA-ET-p10-L2-and-p22-L11]
[797] [P87-T44-ENG-CT-p10-L14-and-p11-L13-and-p12-L16-and-p17-L5-and-p17-L21-p18-L5]/[P87-T44-FRA-ET-p11-L1-and-p11-L26-and-p13-L5-and-p18-L1]

to the arrival of MLC troops in Boy-Rabé.[798] After Bozizé's rebels withdrew, only the MLC troops were in her neighbourhood.[799] The presence of MLC troops in Boy-Rabé is corroborated by other evidence.[800]

241. P87 identified MLC troops based on control of area,[801] uniform,[802] and language.[803]At around 9 am on 30 October 2002,[804] seven armed MLC troops arrived at her home.[805] They spoke to each other in Lingala.[806] One of them spoke to her in French, asking if there were rebels there; she told them to go towards the market and they left.[807]

242. That same day, around 7 pm, a group of three MLC troops arrived at P87's home and pillaged their property.[808] Subsequently, around 9 pm that same evening, another group of four MLC troops came to P87's home – one stayed outside and the other three went inside.[809] She explained that although she may have forgotten the precise date, her rape and her brother's death occurred on the same day.[810] The MLC troops carried flashlights in their left hands, weapons in their right hands, and spoke

[798] [P87-T44-ENG-CT-p13-L3-and-p17-L21-p18-L1]/[P87-T44-FRA-ET-p13-L19-and-p18-L19]
[799] [P87-T46-ENG-CT-p31-L12]/[P87-T46-FRA-ET-p31-L1]
[800] EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0082-and-0083; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423-0425; EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0514
[801] [P87-T44-ENG-CT-p13-L14-and-p21-L19-and-p23-L1]/[P87-T44-FRA-ET-p14-L4-and-p22-L24-and-p24-L1]; [P87-T44-ENG-CT-p13-L3-and-p17-L21-p18-L1]/[P87-T44-FRA-ET-p13-L19-and-p18-L19]; [P87-T46-ENG-CT-p35-L6]/[P87-T46-FRA-ET-p34-L25-p35-L18]
[802] [P87-T44-ENG-CT-p21-L23-p22-L12]/[P87-T44-FRA-ET-p22-L28-p23-L15] ; [P87-T46-ENG-CT-p46-L2]/[P87-T46-FRA-ET-p46-L4] ; [P87-T44-ENG-CT-p34-L7]/[P87-T44-FRA-ET-p35-L17]
[803] [P87-T44-ENG-CT-p22-L19-and-p25-L3]/[P87-T44-FRA-ET-p23-L21-and-p26-L7]; [P87-T47-ENG-CT2-p41-L10]/[P87-T47-FRA-CT-p43-L10]; [P87-T46-ENG-CT-p56-L1]/[P87-T46-FRA-ET-p55-L21] ; [P87-T47-ENG-CT2-37-L4]/[P87-T47-FRA-CT-p38-L25]; [P87-T46-ENG-CT-p52-L17]/[P87-T46-FRA-ET-p52-L10] ; [P87-T46-ENG-CT-p31-L12]/[P87-T46-FRA-ET-p31-L1] ; [P87-T46-ENG-CT-p46-L24-p47-L5]/[P87-T46-FRA-ET-p47-L1]/
[804] [P87-T44-ENG-CT-p12-L22-and-p13-L3-and-p17-L11]/[P87-T44-FRA-ET-p13-L11-and-p13-L19-and-p13-L29-p14-L5-and-p18-L8]; [P87-T45-ENG-ET-p5-L20-p6-L1]/[P87-T45-FRA-ET-p6-L4]
[805] [P87-T-44-ENG-CT-p13-L12]/[P87-T44-FRA-ET-p13-L28-p14-L3]
[806] [P87-T44-ENG-CT-p22-L13]/[P87-T44-FRA-ET-p23-L17]
[807] [P87-T44-ENG-CT-p13-L14-and-p21-L19-and-p23-L1]/[P87-T44-FRA-ET-p14-L4-and-p22-L24-and-p24-L1]
[808] [P87-T44-ENG-CT-p14-L3-and-p27-L16-and-p35-L21]/[P87-T44-FRA-ET-p14-L20-and-p28-L24-p29-L6-and-p37-L3]
[809] [P87-T44-ENG-CT-p28-L1-and-p33-L10-and-p35-L9]/[P87-T44-FRA-ET-p29-L8-and-p34-L19-and-p36-L18]
[810] [P87-T46-ENG-CT-p27-L7]/[P87-T46-FRA-ET-p27-L3]

Lingala.[811] Despite the darkness, P87 saw the MLC troops clearly because of the torches and oil lamps.[812]

243. P87 was raped by three MLC perpetrators, one after the other; additionally, they ejaculated inside her.[813] Each perpetrator put his weapon on the ground and kept one hand on the weapon while he raped her:[814] "The barrel of the rifle was pointing towards me, towards my leg. It was pointed towards my arm and the rest towards my leg."[815] P87 was also restrained with the leg of one perpetrator in order to keep her on the ground for the next perpetrator to rape her.[816] P87 testified that one MLC perpetrator that raped her was referred to as "*mon commandant*" by the two other perpetrators.[817]

244. P87 described how three MLC troops raped her:

> "Next to the house, there are the latrines. There is a small veranda and he pushed me. He took off my underwear and he had his firearm in his right hand, a torch in his left hand, but he had put that down, and he took off his belt and took off my underwear and he got out his penis and he penetrated me and he started to sleep with me and I had my hand on my head. When he finished he ejaculated, and he got up and he stood up before me and he closed his belt and he called one of his companions who had done the same thing as the first. And the

[811] [P87-T44-ENG-CT-p33-L17-and-p37-L14-and-p44-L3]/[P87-T44-FRA-ET-p34-L28-p35-L3-and-p38-L27-p39-L11-and-p45-L26-p46-L15];[P87-T46-ENG-CT-p57-L8]/[P87-T46-FRA-ET-p56-L25]
[812] [P87-T44-ENG-CT-p36-L2]/[P87-T44-FRA-ET-p37-L11]; [P87-T46-ENG-p46-L13]/[P87-T46-FRA-ET-p46-L18]
[813] [P87-T44-ENG-CT-p28-L6-and-p39-L5-and-p40-L19-and-p41-L7]/[P87-T44-FRA-ET-p29-L14-and-p40-L22-and-p42-L14-and-p42-L24]
[814] [P87-T44-ENG-CT-p39-L19-and-p40-L4-and-p40-L25-p41-L6-and-p41-L16]/[P87-T44-FRA-ET-p41-L10-and-p42-L17-and-p43-L9]
[815] [P87-T44-ENG-CT-p42-L1]/[P87-T44-FRA-ET-p43-L19]
[816] [P87-T44-ENG-CT-p42-L5]/[P87-T44-FRA-ET-p43-L25]
[817] [P87-T44-ENG-CT-p38-L14-and-p44-L18]/[P87-T44-FRA-ET-p40-L4-and-p40-L13-and-p46-L16]; [P87-T47-ENG-CT2-p35-L25-p36-L23]/[P87-T47-FRA-CT-p37-L18-p38-L19]

second, when he finished, he called the third person, who was in the house, and the third person came and he did the same thing as the two previous ones did. After the third person had finished, he went back into the house. At that time I was angry and I threw my underwear away, and when I stood up the liquid was running out of my vagina. I was angry."[818]

245. As a result of her rape, P-0087 testified that:

"I had a lot of pain, headaches. I had problems with regards to my sight and also my teeth, and other parts of my body, and I had spots come out on my body. My pelvis hurt as well. I also had -- I also had nightmares with regards to everything that happened to me. Personally, I said three raped me, but I had never seen such a thing in my life. When I think of all these events, I really don't feel well. I think that -- I didn't want to live anymore and that's what I reflected on at the time … After the events, after what happened to me, it was after that that I started to have nightmares."[819]

246. P87 did not go the neighbours about her rape because "these are very shameful events"[820] and "[a]t that time, the Banyamulenge were the ones who controlled everything in the *quartier*. Who could I turn to?"[821] She explained that she told her uncle about her rape but this was rather shameful to talk about and her uncle chose not to mention it in his formal complaint to the government.[822] She testified that she

[818] [P87-T44-ENG-CT-p14-L13-and-p28-L19-and-p38-L6-and-p39-L22-and-p40-L15]/[P87-T44-FRA-ET-p15-L3-and-p30-L3-and-p39-L18-and-p41-L13-and-p42-L6]; [P87-T47-ENG-CT-p47-L21]/[P87-T47-FRA-CT-p50-L23]
[819] [P87-T44-ENG-CT-p45-L12-and-p47-L19-p48-L22][Emphasis added]/[P87-T44-FRA-ET-p47-L12-and-p49-L25-p51-L3]
[820] [P87-T47-ENG-CT2-p10-L3]/[P87-T47-FRA-CT-p10-L8]
[821] [P87-T47-ENG-CT2-p12-L15]/[P87-T47-FRA-CT-p12-L28-p13-L6]
[822] [P87-T45-ENG-CT-p18-L1]/[P87-T45-FRA-ET-p19-L7]

cannot speculate as to why her uncle chose not to include this.[823] No evidence has been proffered to contradict her statement that she informed her uncle of the rape, let alone demonstrate the significance of her uncle's omission.

7. *CAR-OTP-PPPP-0069 (''P69''): [REDACTED]*

247. [REDACTED] (P69), a CAR civilian [REDACTED], is married to [REDACTED].[824] Both P69 and his wife were raped the same day, in their home, by MLC troops. [REDACTED] in Begoua, PK12.[825] [REDACTED] the Begoua School, which was an MLC base in Bangui.[826] Between 2002 and 2003, P69's [REDACTED].[827] [REDACTED],[828] [REDACTED].[829]

248. P69 testified that, on 8 November 2002, the MLC troops arrived in the [REDACTED], Begoua neighbourhood.[830] The MLC troops that P69 saw carried one or two weapons each.[831] After their arrival, the MLC troops "occupied the entire neighbourhood of Begoua" and "there weren't any other troops in the town of Begoua. There were no other troops, neither in [REDACTED], nor in the surrounding areas. The only troops that were present were the Banyamulenge, and they were recognisable because they spoke Lingala."[832] P69 identified MLC troops based on

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[823] [P87-T45-ENG-CT-p18-L22]/[P87-T45-FRA-ET-p20-L2]:"Presiding Judge Steiner: Mr Kaufman, do you want the witness to speculate the reasons why her uncle did something or did not do something?"
[824] [P69-T192-ENG-ET-p10-L25-p11-L8]/[P69-T192-FRA-ET-p12-L13]; [P69-T196-ENG-ET-p43-L6-p44-L15]/[P69-T196-FRA-ET-p45-L7-p46-L17]; [P69-T194-ENG-ET-p41-L4]/[P69-T194-FRA-ET-p43-L3]
[825] [P69-T192-ENG-ET-p12-L1-and-p13-L7]/[P69-T192-FRA-ET-p13-L14-p14-L15-and-p14-L23]
[826] [P69-T192-ENG-ET-p12-L3-and-p18-L8-and-p24-L9]/[P69-T192-FRA-ET-p13-L16-and-p20-L11-and-p26-L20]
[827] [P69-T192-ENG-ET-p12-L25-p13-L1]/[P69-T192-FRA-ET-p14-L16]; [P69-T193-ENG-ET-p43-L6]/[P69-T193-FRA-ET-p47-L21]; [P69-T194-ENG-ET-p47-L6-and-p48-L21-p49-L2]/[P69-T194-FRA-ET-p49-L10-and-p50-L28-p51-L6]
[828] [P69-T194-ENG-ET-p48-L21-p49-L14]/[P69-T194-FRA-ET-p50-L28-p51-L18]
[829] [P69-T193-ENG-ET-p43-L15]/[P69-T193-FRA-ET-p47-L21]; [P69-T194-ENG-ET-p6-L3-and-p11-L15]/[P69-T194-FRA-ET-p6-L14-and-p6-L5]
[830] [P69-T192-ENG-ET-p20-L9-and-p22-L20]/[P69-T192-FRA-ET-p22-L20-and-p25-L6]
[831] [P69-T192-ENG-ET-p27-L10-and-p30-L18]/[P69-T192-FRA-ET-p29-L26-p30-L3-and-p33-L8]
[832] [P69-T192-ENG-ET-p25-L14-and-p29-L7]/[P69-T192-FRA-ET-p28-L4-and-p31-L22]; [P69-T194-ENG-ET-p17-L15]/[P69-T194-FRA-ET-p18-L2]; [P69-T195-ENG-ET-p36-L36-p37-L6-and-p38-L5]/[P69-T195-FRA-ET-p41-L18]; [P69-T196-ENG-ET-p22-L23-p23-L9-and-p28-L8]/[P69-T196-FRA-ET-p24-L11-and-p29-26-and-p30-L15]

their control of area and language.[833]

249. After the MLC troops killed P69's sister in November 2002, he fled to PK22 where he sought refuge with his wife for five days and thereafter they went to Gobongo for about two weeks before returning to their home in Begoua.[834] Around 8 am one morning in November 2002, six armed MLC troops arrived at P69's home.[835] P69 watched helplessly as the MLC troops forcibly dragged his wife out of the kitchen and threw her onto the floor.[836] He was restrained by two armed MLC troops under the mango tree where his sister was killed.[837] His wife was taken into a room by four MLC troops.[838] They could do nothing – "We no longer had the strength to resist individuals who were armed with rifles."[839]

250. All four MLC troops raped P69's wife, one after the other.[840] His wife was penetrated both vaginally and anally.[841] At that time, the hospitals in Bangui were closed.[842] P69 tried to ease his wife's pain with warm water after the incident[843] - "as I massaged her the semen of her attackers was leaking out of her vagina."[844] His wife also confirmed that she was raped by four perpetrators.[845] As a result of the rape, she

[833] [P69-T192-ENG-ET-p25-L14-and-p29-L7]/[P69-T192-FRA-ET-p28-L4-and-p31-L22]; [P69-T194-ENG-ET-p17-L15]/[P69-T194-FRA-ET-p18-L2]; [P69-T195-ENG-ET-p36-L36-p37-L6-and-p38-L5]/[P69-T195-FRA-ET-p41-L18]; [P69-T196-ENG-ET-p22-L23-p23-L9-and-p28-L8]/[P69-T196-FRA-p24-L11-and-p29-26-and-p30-L15] ; [P69-T192-ENG-ET-p28-L1]/[P69-T192-FRA-ET-p30-L15-p31-L8] ; [P69-T196-ENG-ET-p25-L4]/[P69-T196-FRA-ET-p26-L19]; [P69-T192-ENG-ET-p47-L14]/[P69-T192-FRA-ET-p57-L19]
[834] [P69-T192-ENG-ET-p51-L11-p52-L13]/[P69-T192-FRA-ET-p55-L18-p56-L22]
[835] [P69-T192-ENG-ET-p46-L24-p47-L2-and-p51-L7]/[P69-T192-FRA-ET-p50-L24-and-p55-L18-and-p55-L21]
[836] [P69-T192-ENG-ET-p47-L2]/[P69-T192-FRA-ET-p50-L26-p51-L6]
[837] [P69-T192-ENG-ET-p47-L10]/[P69-T192-FRA-ET-p51-L6]
[838] [P69-T192-ENG-ET-p47-L10]/[P69-T192-FRA-ET-p51-L6]; [P69-T193-ENG-ET-p12-L12-and-p11-L6]/[P69-T193-FRA-ET-p13-L14-and-p12-L5]
[839] [P69-T193-ENG-ET-p12-L20]/[P69-T193-FRA-ET-p13-L25-p14-L3]
[840] [P69-T193-ENG-ET-p12-L12]/[P69-T193-FRA-ET-p13-L14]
[841] [P69-T192-ENG-ET-p48-L13-and-p54-L24-p55-L3-and-p55-L10]/[P69-T192-FRA-ET-p52-L13-and-p59-L4-and-p59-L15]
[842] [P69-T192-ENG-ET-p55-L17-and-p56-L16]/[P69-T192-FRA-ET-p59-L24-and-p60-L22]
[843] [P69-T192-ENG-ET-p48-L13-and-p54-L24-p55-L3-and-p55-L10]/[P69-T192-FRA-ET-p52-L13-and-p59-L4-and-p59-L15]
[844] [P69-T192-ENG-ET-p48-L13-and-p54-L24-p55-L3-and-p55-L14-and-p56-L25-p57-L3]/[P69-T192-FRA-ET-p52-L13-and-p59-L4-and-p59-L19-and-p61-L8]; [P69-T194-ENG-ET-p13-L24-p14-L2]/[P69-T194-FRA-ET-p14-L10]
[845] [P69-T192-ENG-ET-p56-L8]/[P69-T192-FRA-ET-p60-L12]

underwent a medical operation,[846] but P69 worried about how much longer she will survive.[847]

251. [REDACTED] corroborates the rape of P69's wife; he explained that they were neighbours whose homes were visible to each other because there was no fence between their homes.[848] He testified that the MLC troops raped P69's wife because "[t]hey wanted to show the population that they were the ones that were the true men."[849] This illustrates how MLC soldiers generally used rape as a weapon of war to disempower the CAR civilian population and instil a climate of fear.

252. While his wife was being raped, two other armed MLC troops grabbed P69, took him into one of the bedrooms and threw him onto the ground.[850] They forced him to open his mouth in order to penetrate it with their penis.[851] He explained that:

> "[a]ll of them behaved in exactly the same way. The person that was raping me couldn't do that while holding his weapon. That's why he -- he put his weapon next to the wall, and his colleague stood guard so that he could do what he wanted to do … They sodomised me. I'm ready to take my clothes off to show you the wounds that I received in my anus."[852]

[846] [P69-T192-ENG-ET-p42-L11]/[P69-T192-FRA-ET-p45-L15]; [P69-T193-ENG-ET-p13-L17]/[P69-T193-FRA-ET-p14-L29-p15-L2]
[847] [P69-T194-ENG-ET-p13-L25-p14-L2]/[P69-T194-FRA-ET-p14-L11]
[848] [REDACTED]
[849] [REDACTED]
[850] [P69-T192-ENG-ET-p47-L21]/[P69-T192-FRA-ET-p51-L21]; [P69-T193-ENG-ET-p11-L5]/[P69-T193-FRA-CT-p12-L3-and-p12-L15]
[851] [P69-T193-ENG-ET-p24-L13]/[P69-T193-FRA-CT-p26-L25-p27-L7]
[852] [P69-T193-ENG-ET-p12-L17-and-p20-L6]/[P69-T193-FRA-CT-p13-L20-and-p22-L1-and-p21-L20-p22-L7]; [P69-T194-ENG-ET-p25-L6]/[P69-T194-FRA-ET-p26-L7]

253. The MLC perpetrator "used his penis in order to rape me"[853] and "my anus was ripped apart ..."[854]

254. P69 had [REDACTED].[855] Therefore the MLC troops must have known that [REDACTED] in Begoua.[856] P69 testified that unlike the CAR citizens, the MLC troops had no respect for [REDACTED].[857] He believes that the six MLC troops raped them as punishment because there was nothing to pillage in his home as it had already been pillaged by a previous MLC group.[858]

255. P69 described the impact of being forced to watch helplessly as the MLC troops raped his wife:[859] "If she has been raped by somebody who you don't know, well, then it's less painful, but if your wife is assaulted and raped before your very eyes what can you say? It was horrible. It was unbearable …"[860] P69 also testified that, "Bemba's men humiliated me"[861] and they "had no respect at all for Central African Republic citizens."[862] He suffered abdominal pain as a result of the rape.[863]

256. P69 testified that [REDACTED] was also raped by the MLC troops.[864] He explained that:

> "Maybe in their country no distinction is made between a man and a woman; however, in the Central African Republic this is taboo. This is

[853] [P69-T193-ENG-ET-p24-L5]/[P69-T193-FRA-CT-p26-L12]
[854] [P69-T192-ENG-ET-p48-L5]/[P69-T192-FRA-ET-p52-L3]
[855] [P69-T194-ENG-ET-p6-L15-and-p8-L4-and-p9-L10-and-p10-L1]/[P69-T194-FRA-CT-p7-L1-and-p8-L17-p9-L13-and-p10-L14-and-p11-L2]
[856] [P69-T194-ENG-ET-p6-L15-and-p8-L4-and-p9-L10-and-p10-L1]/[P69-T194-FRA-CT-p7-L1-and-p8-L17-p9-L13-and-p10-L14-and-p11-L2]
[857] [P69-T194-ENG-ET-p6-L18-and-p10-L20-and-p11-L6]/[P69-T194-FRA-ET-p7-L5-and-p11-L7]
[858] [P69-T193-ENG-ET-p19-L20]/[P69-T193-FRA-CT-p21-L4]
[859] [P229-T100-ENG-ET-p7-L1-and-p13-L7-and-p37-L5]/[P229-T100-FRA-CT-p6-L28-p7-L3-and-p13-L3-and-p38-L2]
[860] [P69-T192-ENG-ET-p56-L13]/[P69-T192-FRA-ET-p60-L19]
[861] [P69-T192-ENG-ET-p48-L5]/[P69-T192-FRA-ET-p52-L3]
[862] [P69-T194-ENG-ET-p7-L21]/[P69-T194-FRA-ET-p8-L11]
[863] [P69-T194-ENG-ET-p14-L14]/[P69-T194-FRA-ET-p15-L1]
[864] [P69-T193-ENG-ET-p43-L6]/[P69-T193-FRA-ET-p47-L21]

> an unknown entity. It is the Banyamulenge of Mr Bemba who brought this practice to our country and today, today people make fun of those who were victims of rape. Mr Bemba humiliated us. We no longer have any real values in the Central African Republic. How can one imagine a man raping another man? Many people lived through this experience of rape. Many of my neighbours were also raped. You know, this is really impossible to bear."[865]

257. P69's neighbours knew about his rape and that of his wife, which resulted in some people stigmatising and making a mockery of them.[866] He stated, "I see myself as a dead man ..."[867] After their rapes, "I could not abandon her, and she also could not abandon me. I was with her right up to her last operation."[868] After their rape, "[w]e are wondering what we are going to do in order to recover our dignity."[869] P69 stated that, "Bemba is accountable. He should explain why I was sodomised, why my wife was raped."[870]

258. P69 stated that, the MLC troops "dominated the entire neighbourhood. They held absolute power there ... The policemen fled, everybody who was stationed at the barrier. There was nobody in the police station and there was no established authority left. The authorities were almost, so to speak, invisible."[871] The CAR victims were reduced to silence because there was no-one to turn to.

[865] [P69-T193-ENG-ET-p26-L1-and-p25-L20]/[P69-T193-FRA-ET-p28-L14-and-p28-L6]
[866] [P69-T194-ENG-ET-p13-L2]/[P69-T194-FRA-ET-p13-L15]
[867] [P69-T194-ENG-ET-p14-L10]/[P69-T194-FRA-ET-p14-L25-and-p15-L1]
[868] [P69-T194-ENG-ET-p39-L2]/[P69-T194-FRA-ET-p40-L23]
[869] [P69-T194-ENG-ET-p13-L2]/[P69-T194-FRA-ET-p13-L15]
[870] [P69-T192-ENG-ET-p49-L7]/[P69-T192-FRA-ET-p53-L8-and-p53-L23]
[871] [P69-T193-ENG-ET-p27-L3-and-p28-L1-and-p35-L3-p58-L22]/[P69-T193-FRA-ET-p29-L22-p30-L1-and-p30-L18-p31-L13-and-p38-L17-and-p63-L25]; [P0229-T100-ENG-CT2-p50-L12]/[P229-T100-FRA-ET-p52-L7]; EVD-T-OTP-00686-at-0052/CAR-OTP-0065-0043

8. *CAR-OTP-PPPP-0029 (''P29''): [REDACTED]*

259. [REDACTED] (P29), a CAR civilian [REDACTED] and mother of [REDACTED], was born in [REDACTED] in the [REDACTED] prefecture.[872] P29 was raped by MLC troops during their invasion of Mongoumba and attack against the local population. During the 2002-2003 events, she was a resident of the [REDACTED] in the South of Bangui, CAR, but [REDACTED].[873] Mongoumba is a border town located between the DRC and Congo-Brazzaville.[874]

260. In February 2003, P29 went to her parents' home in Mongoumba.[875] From Bangui, Mongoumba is accessible by crossing the Lobaye River or by road.[876] P29 testified that about four or five days prior to 5 March 2003, she heard people saying that the MLC troops were withdrawing from Bangui and arriving in Mongoumba with large canoes of various items.[877] Although she was not present, P29 heard that upon arrival at the port, the CAR soldiers based in Mongoumba confiscated the bags of money carried by MLC troops.[878] The MLC troops were unhappy and promised to return.[879]

261. On 5 March 2003, MLC troops returned to Mongoumba and spread throughout the entire town.[880] The attack on Mongoumba is corroborated by P169 and media

[872] [P29-T80-ENG-ET-p7-L13-p8-L2]/[P29-T80-FRA-ET-p8-L4]
[873] [P29-T80-ENG-ET-p8-L15-and-p14-L20-and-p10-L1-and-p26-L24-p27-L1]/[P29-T80-FRA-ET-p9-L4-and-p16-L3-and-p10-L22-and-p29-L2]
[874] [P29-T80-ENG-ET-p14-L13-and-p15-L20-p16-L1]/[P29-T80-FRA-ET-p15-L21-and-p16-L5-and-p17-L9]
[875] [P29-T80-ENG-ET-p14-L13-and-p15-L20-p16-L1]/[P29-T80-FRA-ET-p15-L21-and-p16-L5-and-p17-L9]
[876] [P29-T80-ENG-ET-p16-L3]/[P29-T80-FRA-ET-p17-L17-p18-L5]
[877] [P29-T80-ENG-ET-p25-L21-p26-L1-and-p28-L20]/[P29-T80-FRA-ET-p27-L27-p28-L26-and-p30-L25-p31-L1]
[878] [P29-T80-ENG-ET-p26-L2-and-p27-L2]/[P29-T80-FRA-ET-p28-L1-and-p29-L5]; [P169-T137-ENG-ET-p48-L11-p50-L5]/[P169-T137-FRA-ET-p49-L13-p51-L3]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[879] [P29-T80-ENG-ET-p26-L7]/[P29-T80-FRA-ET-p28-L8]; [P0169-T137-ENG-ET-p48-L11-p50-L5]/[P169-T137-FRA-ET- p49-L13-p51-L3]
[880] [P29-T80-ENG-ET-p26-L18]/[P29-T80-FRA-ET-p28-L23]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114

reports.[881] Around 4:30 or 5am,[882] she heard people yelling, "It's the Banyamulenge coming, flee, flee."[883] The fishermen at the river saw the MLC troops arriving and quickly alerted the population.[884] They came from Libenge, DRC, and crossed the river in a pirogue.[885] Although P29's parents and [REDACTED] had fled into the bush, she delayed in order to hide various possessions before she left.[886] As she was locking the door of their home, she saw many MLC troops in her neighbourhood.[887] Three of them separated from the main group and headed towards her; one gestured for her to stop, he pushed and banged on the door, and gestured for her to enter her house.[888] P29 identified MLC troops based on uniform,[889] language,[890] behaviour,[891] and control of area.[892]

262. In her parents' living room, the tallest of the three MLC troops gestured for her to lie down on the floor.[893] P29, who did not want to obey the instructions, pretended not to understand.[894] She was kicked and fell onto the ground; her clothes, the *banya* cloth around her waist, was ripped off.[895] As she lay on her back looking upwards,[896] the first MLC perpetrator:

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[881] EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114; [P169-T137-ENG-ET-p48-L11-p50-L5]/[P169-T137-FRA-ET-p49-L13-p51-L3]
[882] [P29-T80-ENG-ET-p20-L8]/[P29-T80-FRA-ET-p22-L6]
[883] [P29-T80-ENG-ET-p17-L19]/[P29-T80-FRA-ET-p19-L8]
[884] [P29-T80-ENG-ET-p20-L15-and-p24-L14]/[P29-T80-FRA-ET-p22-L14-and-p26-L15]
[885] [P29-T80-ENG-ET-p24-L17-and-p33-L16-and-p36-L8]/[P29-T80-FRA-ET-p26-L18-and-p36-L7-and-p39-L2]
[886] [P29-T80-ENG-ET-p17-L24-p18-L5]/[P29-T80-FRA-ET-p19-L15]
[887] [P29-T80-ENG-ET-p18-L5]/[P29-T80-FRA-ET-p19-L22]
[888] [P29-T80-ENG-ET-p18-L6-and-p20-L23-p24-L1-and-p29-L2]/[P29-T80-FRA-ET-p19-L25-p20-L3-and-p22-L23-and-p31-L4]
[889] [P29-T80-ENG-ET-p34-L1]/[P29-T80-FRA-ET-p36-L18]; [P29-T80-ENG-ET-p34-L1]/[P29-T80-FRA-ET-p36-L18]
[890] [P29-T80-ENG-ET-p13-L20-p14-L3]/[P29-T80-FRA-ET-p14-23-p15-L8]; [D60-T243-ENG-ET-p33-L13-p35-L6-and-p36-L22]/[D60-T243-FRA-ET-p32-L5-p33-L25-and-p35-L14]; [D60-T244-ENG-ET-p50-L15-21]/[D60-T244-FRA-p51-L15]/[P29-T80-ENG-ET-p27-L12]/[P29-T80-FRA-ET-p29-L17]
[891] [P29-T80-ENG-ET-p28-L14]/[P29-T80-FRA-ET-p30-17]
[892] [P29-T80-ENG-ET-p18-L5]/[P29-T80-FRA-ET-p19-L22] ; [P29-T80-ENG-ET-p26-L18]/[P29-T80-FRA-ET-p28-L23]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114.
[893] [P29-T80-ENG-ET-p18-L14]/[P29-T80-FRA-ET-p20-L5]
[894] [P29-T80-ENG-ET-p21-L3]/[P29-T80-FRA-ET-p23-L2]
[895] [P29-T80-ENG-ET-p21-L8]/[P29-T80-FRA-ET-p23-L6]
[896] [P29-T80-ENG-ET-p32-L9]/[P29-T80-FRA-ET-p34-L24-p35-L2]

> "ripped off my underwear and I wanted to get up, but I was faced with a man who was stronger than me. He pushed my legs apart and started to penetrate me. It hurt. It I felt the pain. I cried, but they just carried on as if they had heard nothing. They continued to sleep with me and the two others who were standing up were speaking in their language. I didn't understand what they were saying, and after having ejaculated he got up. He wasn't totally undressed. He had just dropped or undid his flies and slept with me and having ejaculated he got up and then he closed his fly again, and it was only afterwards that the second threw himself on me and started to sleep with me. I was crying, but they didn't care, and then the others were speaking in their language that I didn't understand and I didn't understand what they were saying between them. The second slept with me and after got back up and he also closed his fly, and the third also threw himself on me to sleep with me and thereafter got up and when he wanted to get dressed again there was an explosion. It was the first explosion and after that explosion he was afraid and they left, and after they left I stayed in the house."[897]

263. All three MLC troops penetrated P29 vaginally.[898] The Defence agreed that sexual penetration was sufficiently established.[899] In addition, all three perpetrators ejaculated inside P29.[900] After the MLC troops left, P29 found the strength to get up and flee in order to avoid further victimisation by other MLC troops in her neighbourhood[901] - "I had to get up and I brushed away the liquid from their bodies

[897] [P29-T80-ENG-ET-p21-L10-and-p30-L1]/[P29-T80-FRA-ET-p23-L8]
[898] [P29-T80-ENG-ET-p31-L1-and-p32-L4-and-p32-L21-and-p39-L9]/[P29-T80-FRA-ET-p33-L8-and-p34-L18-p35-L10-p42-L19]
[899] [P29-T80-ENG-ET-p31-L9]/[P29-T80-FRA-ET-p33-L17-p34-L2]
[900] [P29-T80-ENG-ET-p39-L15]/[P29-T80-FRA-ET-p42-L26]
[901] [P29-T80-ENG-ET-p21-L25-p22-L2]/[P29-T80-FRA-ET-p23-L26]

that was running between my legs."[902]

264. The fact that P29 testified that the MLC troops were not carrying weapons is only one factor in determining whether the perpetrators acted with force or coercion.[903] The coercive environment inherent in the armed conflict and the MLC's military presence and control of her neighbourhood is clear evidence of coercion and threat of force.[904] In addition, the MLC troops used force to sexually penetrate P29.[905] While one perpetrator raped P29, the other two remained standing.[906] In these circumstances, the presence and close proximity of all three MLC men against P29 alone is coercive.

265. After pillaging the town of Mongoumba, MLC troops took the pillaged items to Libenge, DRC.[907] P29's testimony is categorical - "I did not observe any other armed group."[908] Her testimony is corroborated by V1.[909] The MLC troops stayed in Mongoumba for one day.[910]

266. As a result of her rape, P29 testified, "I thought I was going to die, because it was difficult to deal with. I didn't expect to have sexual relations with such men, and it wasn't just one. The first came; and the second, he threw himself on me; and then another one […] It was very hard to take."[911] P29 stated that "when you suffer such an event, I think one hour might seem ten hours."[912]

[902] [P29-T80-ENG-ET-p22-L2]/[P29-T80-FRA-ET-p24-L1]
[903] [P29-T80-ENG-ET-p50-L23]/[P29-T80-FRA-ET-p55-L27-p56-L2]
[904] [P29-T80-ENG-ET-p22-L6-and-p50-L12]/[P29-T80-FRA-ET-p24-L5-and-p55-L11]
[905] [P29-T80-ENG-ET-p51-L2]/[P29-T80-FRA-ET-p56-L7]
[906] [P29-T80-ENG-ET-p32-L15-and-p33-L7]/[P29-T80-FRA-ET-p35-L3-and-p35-L23-p36-L6]
[907] [P29-T81-ENG-ET-p27-L18-and-p28-L6]/[P29-T81-FRA-ET-p27-L26-p28-L11]
[908] [P29-T80-ENG-ET-p39-L25-p40-L2]/[P29-T80-FRA-ET-p43-L9]
[909] [V1-T220-ENG-ET-p19-L14-and-p21-L1-and-p22-L11]/[V1-T220-FRA-ET-p20-L5-and-p21-L21-and-p22-L26-p23-L1]; [V1-T221-ENG-ET-p8-L20]/[V1-T221-FRA-p9-L23-p10-L2]
[910] [P29-T81-ENG-ET-p5-L9]/[P29-T81-FRA-ET-p5-L20]
[911] [P29-T80-ENG-ET-p33-L1]/[P29-T80-FRA-ET-p35-L16]
[912] [P29-T80-ENG-ET-p36-L21]/[P29-T80-FRA-ET-p39-L18]

267. P29 suffered from multiple fevers and malaria after her rape.[913] She insisted on taking an HIV test at the Institute Pasteur even though she did not reveal her rape to the doctor.[914] She explained that "[w]hen you're raped by three men that you have never met before, men that aren't even worthwhile men, who used no protection, no condom, how could I identify the person who infected me? Might it have been the first one, the second one or the third?"[915] She stated that "I didn't want to reveal that secret since – you see, it's shameful, a lady like me, to talk about such a thing. It's very shameful, so I didn't want to talk to the doctor about it."[916] After ten days of waiting for her results, P29 learnt that she was HIV-positive.[917]

9. *CAR-V20-PPPP-0001(''V1''): Pulchérie Makiandakama*

268. Pulchérie Makiandakama (V1), a native of Mongoumba, is an unemployed mother of three children.[918] During the 2002-2003 conflict, V1 was a trader residing in Mongoumba.[919] V1 was brutally raped by several MLC troops during their invasion of Mongoumba and attack against the local population there.

269. On 5 March 2003, around 5 a.m., a relative who was fleeing knocked on their door and advised them to flee because armed soldiers were arriving in their neighbourhood.[920] This relative explained that the armed men "were soldiers who had come from the other side of the river."[921] As V1 and her family fled, she saw the armed MLC troops in her area.[922]

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[913] [P29-T80-ENG-ET-p46-L1]/[P29-T80-FRA-ET-p50-L8]
[914] [P29-T80-ENG-ET-p46-L11-and-p47-L3]/[P29-T80-FRA-ET-p50-L21-p51-L7-and-p51-L13]
[915] [P29-T80-ENG-ET-p48-L15]/[P29-T80-FRA-ET-p53-L3]
[916] [P29-T80-ENG-ET-p49-L1-and-p47-L11]/[P29-T80-FRA-ET-p53-L19-and-p51-L23]
[917] [P29-T80-ENG-ET-p41-L6-and-p46-L23-p47-L11-and-p47-L23-p48-L3]/[P29-T80-FRA-ET-p44-L23-p45-L7-and-p51-L8-p51-L23-and-p52-L12]
[918] [V1-T220-ENG-ET-p10-L5-p11-L1-p12-L1]/[V1-T220-FRA-ET-p11-L8-and-p12-L3-p13-L2]
[919] [V1-T220-ENG-ET-p12-L10-and-p35-L19]/[V1-T220-FRA-ET-p13-L12-and-p35-L19]; [V1-T222-ENG-ET-p11-L3]/[V1-T222-FRA-ET-p12-L7]
[920] [V1-T220-ENG-ET-p12-L13-and-p13-L6]/[V1-T220-FRA-ET-p13-L15-and-p14-L6]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[921] [V1-T220-ENG-ET-p14-L2]/[V1-T220-FRA-ET-p15-L2]
[922] [V1-T220-ENG-ET-p12-L13-p13-L9]/[V1-T220-FRA-ET-p13-L14-p14-L9]

270. V1 took a different direction from her family members, and went along the river in order to get behind the hospital.[923] At the hospital, V1 joined other women and children who had also fled to seek refuge in the hospital.[924] As a result of the gunfire and heavy weapons outside, they decided to lie under the hospital beds.[925] However, the MLC troops heard the cries of a baby that was strapped to her mother's back and knew that there were people inside the room.[926]

271. V1 heard the MLC troops speaking Lingala and knew then that "they were soldiers from the other side of the river who had taken over our town – invaded our town."[927] V1 understands and speaks Lingala because she learnt it from her trips to the DRC for trading purposes.[928] As a trader, V1 began traveling to Libenge in the DRC at the age of 14.[929] She went there three times per month, which is how she learned Lingala.[930] V1 can easily differentiate between a CAR and a Congolese person speaking Lingala.[931] V1 identified MLC troops based on uniform,[932] language,[933] and control of area.[934]

[923] [V1-T220-ENG-ET-p14-L7]/[V1-T220-FRA-ET-p15-L7]
[924] [V1-T220-ENG-ET-p15-L18]/[V1-T220-FRA-ET-p16-L15]
[925] [V1-T220-ENG-ET-p16-L2]/[V1-T220-FRA-ET-p16-L25-p17-L10]
[926] [V1-T220-ENG-ET-p16-L15]/[V1-T220-FRA-ET-p17-L11]
[927] [V1-T220-ENG-ET-p16-L21]/[V1-T220-FRA-ET-p17-L18]
[928] [V1-T220-ENG-ET-p17-L1-and-p18-L6]/[V1-T220-FRA-ET-p17-L23-and-p19-L2]
[929] [V1-T222-ENG-ET-p11-L3]/[V1-T222-FRA-ET-p12-L7-p13-L9]
[930] [V1-T221-ENG-ET-p6-L18-p7-L4-and-p30-L16]/[V1-T221-FRA-ET-p7-L19-p8-L4-and-p32-L27-p33-L7]; [V1-T222-ENG-ET-p13-L7]/[V1-T222-FRA-ET-p14-L24]
[931] [V1-T221-ENG-ET-p7-L20]/[V1-T221-FRA-ET-p8-L23]
[932] [V1-T220-ENG-ET-p14-L8-and-p15-L14]/[V1-T220-FRA-ET-p15-L17-and-p16-L11] ; [V1-T220-ENG-ET-p14-L8-and-p15-L14]/[V1-T220-FRA-ET-p15-L17-and-p16-L11] ; [V1-T220-ENG-ET-p18-L21]/[V1-T220-FRA-ET-p19-L17] ; [V1-T220-ENG-ET-p22-L1]/[V1-T220-FRA-ET-p22-L18]; [V1-T221-ENG-ET-p8-L20-25]/[V1-T221-FRA-ET-p9-L23-p10-L2]
[933] [V1-T220-ENG-ET-p18-L3]/[V1-T220-FRA-ET-p18-L27-p19-L1] ; [V1-T220-ENG-ET-p17-L7]/[V1-T220-FRA-ET-p18-L4] ; [V1-T221-ENG-ET-p7-L20]/[V1-T221-FRA-ET-p8-L23] ; [V1-T220-ENG-ET-p17-L2-and-p51-L19-p52-L23]/[V1-T220-FRA-ET-p17-L24-p50-L26-p52-L1]; [V1-T222-ENG-ET-p32-L3]/[V1-T222-FRA-ET-p34-L24-p35-L2] ; [V1-T220-ENG-ET-p33-L24-p34-L6]/[V1-T220-FRA-ET-p33-L25-p34-L7]
[934] [V1-T220-ENG-ET-p16-L21]/[V1-T220-FRA-ET-p17-L18] ; [V1-T221-ENG-ET-p9-L1]/[V1-T221-FRA-ET-p10-L3] ; [V1-T220-ENG-ET-p21-L8]/[V1-T220-FRA-ET-p21-L28-p22-L8]

272. The armed MLC troops spoke to them in Lingala and asked them to get out so that they could pillage their items.[935] A lady standing beside V1 asked her to translate the orders of the MLC troops.[936]

273. The MLC troops in the locality were numerous but those that came into the hospital were about 20 men.[937] The MLC troops singled-out V1 because she spoke Lingala and asked her to accompany them to the riverbank.[938] V1 responded in Lingala and pretended that she was Congolese because she thought that would make them merciful towards her.[939] At the river port, V1 saw that there were no longer any CAR soldiers stationed at the usual post or in the town where she had seen them the day before.[940] Only the MLC troops were present in the area.[941]

274. The MLC troops told her that, "the president of their country had asked them to come and shoot at everyone and not to spare anyone …"[942] This is corroborated by similar accounts from other witnesses and sources unconnected to V1.[943] She stated that, "after my arrest they shot and they said the name of their president. They didn't say the name of Patassé, or Bozizé, no. They just gave the name of their president, which I remember to this day. They stated the name of Mr Bemba."[944]

275. That same day, on 5 March 2003, the MLC troops took V1 around

[935] [V1-T220-ENG-ET-p17-L7]/[V1-T220-FRA-ET-p18-L4]
[936] [V1-T220-ENG-ET-p18-L6]/[V1-T220-FRA-ET-p19-L2]
[937] [V1-T220-ENG-ET-p18-L16]/[V1-T220-FRA-ET-p19-L11]
[938] [V1-T220-ENG-ET-p19-L1-and-p19-L13]/[V1-T220-FRA-ET-p19-L22-and-p20-L5]
[939] [V1-T220-ENG-ET-p19-L6]/[V1-T220-FRA-ET-p19-L27-p20-L5]
[940] [V1-T221-ENG-ET-p8-L20-and-p24-L12]/[V1-T221-FRA-ET-p9-L23-and-p26-L15]
[941] [V1-T220-ENG-ET-p19-L14-and-p21-L1-and-p22-L11]/[V1-T220-FRA-ET-p20-L8-and-p21-L20-and-p22-L26-p23-L1]; [V1-T221-ENG-ET-p8-L20]/[V1-T221-FRA-ET-p9-L23-p10-L2]
[942] [V1-T220-ENG-ET-p21-L19]/[V1-T220-FRA-ET-p22-L12]
[943] [P29-T80-ENG-ET-ENG-p26-L2-and-p27-L2]/[P29-T80-ENG-ET-FRA-p27-L28-and-p29-L5]; [P169-T137-ENG-ET-p48-L11-p50-L5]/[P169-T137-FRA-ET-p49-L12-p51-L3]; [P173-T144-ENG-ET-p32-L1-p33-L9]/[P173-T144-FRA-ET-p32-L28-p34-L15]; [P173-T144-ENG-ET-p32-L16-p33-L9]/[P173-T144-FRA-ET-p33-L23-p34-L15]; [P169-T136-ENG-ET-p34-L1-25]/[P169-T136-FRA-ET-p34-L26-p35-L28]; EVD-T-OTP-00820/CAR-OTP-0013-0114-at-0114
[944] [V1-T221-ENG-ET-p9-L12]/[V1-T221-FRA-ET-p10-L16]

Mongoumba and used her as an interpreter as they committed crimes.[945] They made V1 carry various items which they had pillaged.[946] Her ability to speak Lingala was sufficient enough for her to translate for the MLC troops. This group of 20 MLC men threatened V1 in Lingala, but they did not engage her in general conversation.[947] After going around Mongoumba with them, loading and offloading pillaged items, the MLC troops threatened V1 to show them the border in exchange for saving her life.[948]

276. V1 was raped outside the CAR military camp by two MLC troops from that group of 20 men.[949] V1 did not see any CAR soldiers, police or gendarme in the locality of Mongoumba that day.[950] She explained that, "Central Africans know their soldiers through their dignity. They speak in French and in Sango… They are disciplined and they behave with dignity."[951] When the two MLC troops approached V1, she sat down and began to cry – "I was wondering whether my life was coming to an end this way, and how my children were going to fare."[952] One of them asked her to undress but she refused to comply.[953] This perpetrator "took two bottles and broke them before me in order to frighten me and, yes, I was indeed frightened."[954]

277. V1 described the first rape incident by two MLC troops, which took place in public under a tree next to the river:[955]

[945] [V1-T220-ENG-ET-p24-L4-and-p27-L21-and-p31-L17-and-p32-L11]/[V1-T220-FRA-ET-p24-L14-and-p27-L28-p28-L7-and-p31-L24-p32-L2-and-p32-L15]
[946] [V1-T220-ENG-ET-p24-L4-and-p27-L21-and-p31-L17-and-p32-L11]/[V1-T220-FRA-ET-p24-L14-and-p27-L28-p28-L7-and-p31-L24-p32-L2-and-p32-L15]
[947] [V1-T222-ENG-ET-p15-L17]/[V1-T221-FRA-ET-p17-L20-p18-L2]
[948] [V1-T220-ENG-ET-p28-L20-p29-L20]/[V1-T220-FRA-ET-p29-L3]
[949] [V1-T221-ENG-ET-p39-L13-p40-L3]/[V1-T221-FRA-ET-p42-L17-p43-L6]
[950] [V1-T221-ENG-ET-p9-L1]/[V1-T221-FRA-ET-p10-L3]
[951] [V1-T221-ENG-ET-p9-L7]/[V1-T221-FRA-ET-p10-L9]
[952] [V1-T220-ENG-ET-p29-L21]/[V1-T220-FRA-ET-p29-L11]
[953] [V1-T220-ENG-ET-p29-L23-and-p30-L1]/[V1-T220-FRA-ET-p29-L11]
[954] [V1-T220-ENG-ET-p29-L24]/[V1-T220-FRA-ET-p29-L14]
[955] [V1-T220-ENG-ET-p8-L14-and-p14-L20-and-p30-L12-and-p38-L13]/[V1-T220-FRA-ET-p9-L14-and-p15-L22-and-p30-L20-and-p38-L13]

> "So he took off my pair of trousers, and all that was left on me were my undergarments and my panties. He took off my pair of trousers and while he did so I tried to fight him off, and then one of them kicked me in the -- kicked me, kicked my feet, and then I fell to the ground and then one of them slept with me and then another one slept with me again while the others looked on. My trousers were forcibly removed and all I had was my undergarments, and so after they had done what they were doing I got up, picked up my undergarments and sat down and then they asked us to leave."[956]

278. In addition to the force and coercion, V1 was raped as the other soldiers looked on, cheering and shooting their weapons in the air.[957]

279. That same day,[958] V1 was raped a second time by a gang of about 12 MLC troops from the group of 20 that were by the river.[959] She was raped outside in the confines of the CAR military base.[960] One MLC perpetrator grabbed her hair and threw her on the ground – "when I fell he demanded that I take my clothes off, which I refused to do, and he used his knife to rip off my trousers and my shorts."[961] V1 stated that, "I was raped by the river. During all this time I was completely naked. They slept with me by force using violence, threatening me. A human being can't behave that way."[962] V1 testified that:

> "[B]efore I fainted, I looked around and I saw that two people had just slept with me, and then a third person came and a forth. Afterwards I

[956] [V1-T220-ENG-ET-p30-L3]/[V1-T220-FRA-ET-p30-L8]
[957] [V1-T220-ENG-ET-p29-L8-and-p30-L16]/[V1-T220-FRA-ET-p29-L17]
[958] [V1-T220-ENG-ET-p35-L2-and-p36-L4]/[V1-T220-FRA-ET-p35-L3-and-p36-L3]
[959] [V1-T220-ENG-ET-p35-L16-and-p36-L6]/[V1-T220-FRA-ET-p35-L17-and-p36-L5] ; [V1-T221-ENG-ET-p14-L20-and-p39-L13-p40-L3]/[V1-T221-FRA-ET-p17-L2-p42-L17-p43-L6]
[960] [V1-T221-ENG-ET-p10-L8]/[V1-T221-FRA-ET-p11-L13]
[961] [V1-T220-ENG-ET-p35-L9]/[V1-T220-FRA-ET-p35-L9]
[962] [V1-T220-ENG-ET-p35-L16]/[V1-T220-FRA-ET-p35-L17]

> saw that there were a lot of people who were around me, and who raped me. I reckon there were 12 of them … [s]ome of them held me to the ground. One was on my arm, others on my feet, and it was at that time that they started sleeping with me. Afterwards, they returned and they turned over and they slept with me in the anus, in the vagina and even in the mouth, and it was after that that I started vomiting and lost consciousness … They used their penises to sleep with me and I was bleeding from my vagina."[963]

280. V1 stated, "[t]hey took turns freely, as they wished."[964] Each MLC perpetrator was armed with a rifle or arrow, which they still carried while raping V1.[965] She explained that the MLC troops who pulled her by the hair was called "Kovo", which was the name other soldiers called him; he appeared to be the leader of the rape gang as he gave the signals and was the most "worked up".[966] V1 was raped out in the open in spite of the presence of an MLC commander.[967] This commander intervened after her rape and said that since he was a commander and had not benefitted from the pillaging campaign, he would take V1 to help him carry various items.[968] After they left, the MLC commander released V1 but because she was tired, vomiting and bleeding, she began to crawl and then lay in the bush for hours.[969]

281. V1 was rescued by pygmies who took her to their camp where a lady who knew V1's mother prepared some traditional potions to treat her and sent a message to her mother.[970] In differentiating the MLC troops from people from Congo-Brazzaville, V1 explained that, "[i]f only it was soldiers from Congo-Brazzaville, then

[963] [V1-T220-ENG-ET-p36-L8-and-p38-L18]/[V1-T220-FRA-ET-p36-L7-p38-L18]
[964] [V1-T220-ENG-ET-p38-L22]/[V1-T220-FRA-ET-p38-L23]
[965] [V1-T220-ENG-ET-p36-L24-p37-L3]/[V1-T220-FRA-ET-p36-L25-and-p37-L1]
[966] [V1-T220-ENG-ET-p39-L14]/[V1-T220-FRA-ET-p39-L10]
[967] [V1-T220-ENG-ET-p34-L16-and-p38-L23-p39-L9-and-p39-L21-p40-L14]/[V1-T220-FRA-ET-p34-L20-and-p38-L23-p39-L5-and-p39-L16-p40-L3]
[968] [V1-T220-ENG-ET-p39-L6]/[V1-T220-FRA-ET-p38-L28-p39-L5]
[969] [V1-T220-ENG-ET-p40-L22-p41-L9]/[V1-T220-FRA-ET-p40-L22-p40-L27]
[970] [V1-T220-ENG-ET-p41-L9-p42-L1-and-p43-L2]/[V1-T220-FRA-ET-p40-L25-p41-L11-and-p42-L20]

we would have known that they were from Congo-Brazzaville because they have a particular accent when they speak, and they speak Lingala, and that is a determining factor. We know that it was them, and why? I speak Lingala."[971] She understood this difference from her own interaction as well as from Congolese wives of CAR men.[972]

282. In addition, as a result of the Banyamulenge's invasion of Mongoumba, V1 stated that "[m]y mother had sought refuge at the border with the Republic of Congo-Brazzaville, and she was with her brother."[973] They did not flee to the DRC, which is where the MLC troops originated from. V1 returned to Congo-Brazzaville with her mother for about one week.[974] She explained that, "[m]any Central African nationals, many of them were there. You see, it was the only area where we could

feel safe; that is, on the other side of the border of Congo-Brazzaville, and from that position the Congolese soldiers could not attack us."[975]

283. The MLC troops only stayed in Mongoumba for one day.[976] When V1 and her mother returned to Mongumba a week later, they only saw CAR soldiers – "[t]hese were our fellow countrymen, so they spoke to us in the same language which we could all understand; namely, Sango."[977]

284. V1 testified that as a result of her rape, she refused to let Médecins Sans Frontières ("MSF") doctors touch her "because I was in great pain and not even the small finger could be put into my vagina. It was so painful. And so the doctors consulted me. I was traumatised. I had pain all over my body. I had been forced to

[971] [V1-T220-ENG-ET-p17-L2-and-p51-L19-p52-L23]/[V1-T220-FRA-ET-p17-L24-p50-L26-p52-L1]; [V1-T222-ENG-ET-p32-L3]/[V1-T222-FRA-ET-p34-L24-p35-L2]
[972] [V1-T220-ENG-ET-p33-L24-p34-L6]/[V1-T220-FRA-ET-p33-L25-p34-L7]
[973] [V1-T220-ENG-ET-p43-L6]/[V1-T220-FRA-ET-p42-L25-p43-L9]
[974] [V1-T220-ENG-ET-p44-L4]/[V1-T220-FRA-ET-p43-L20-and-p44-L10]
[975] [V1-T220-ENG-ET-p44-L15]/[V1-T220-FRA-ET-p44-L5]
[976] [V1-T220-ENG-ET-p43-L19-p44-L3]/[V1-T220-FRA-ET-p43-L10]
[977] [V1-T220-ENG-ET-p45-L2]/[V1-T220-FRA-ET-p44-L16-p45-L8]

carry several items. I had been raped."[978] However, they gave her pills that caused her to sleep and after that she "began gradually to recognise people and think straight."[979]

285. V1 explained that she suffered physical and psychological harm – "I just can't keep control of my feelings, or keep myself under control as a human being. I have psychological problems, disturbances, headaches, sometimes I even have hallucinations, and all of this is because I was involved in these massacres and all these other atrocities committed by these men. I also have problems with my lungs, because I was struck. I received blows."[980] She described her stigmatisation:

> "I was a human being, but I was treated like an animal, a burden, and that is why I cannot live normally. I cannot live with -- calmly and live as all other girls of my age do … Before these events I was a woman with dignity. I could have a family with dignity, but I lost my dignity. I was forced to change the man in my life … Really, I suffered humiliating treatment, degrading treatment and inhuman treatment … You know, I have to live in peace, without any concerns in my country, and be able to make a household with a man that I love, but now if I speak to somebody, or I have problems with somebody, everything that's said to me goes back to what the Banyamulengue did to me. They say, "You're not a human being. The Banyamulengue humiliated you. Can you stand before me and say anything?" And sometimes people spit on me, so that's how I'm stigmatised. … I filed a complaint before I was transferred to Bangui because of the illness. I fought with somebody and the mother of that person said to me, "You, you are a Banyamulengue wife. You have AIDS. How can you dare to

[978] [V1-T220-ENG-ET-p49-L16-p50-L2]/[V1-T220-FRA-ET-p48-L26-p49-L10]
[979] [V1-T220-ENG-ET-p49-L25-p50-L2]/[V1-T220-FRA-ET-p49-L7]
[980] [V1-T221-ENG-ET-p3-L25-p4-L8]/[V1-T221-FRA-ET-p4-L7]

speak to my daughter like that?" I was so upset, humiliated …"[981]

286. As a result of her rape, V1's partner abandoned her.[982] Since then, "when I meet a man in my life people begin to talk about it and rumours begin to fly, and so the man also gets stigmatised and there are accusations about being HIV positive, and so on and so forth, and that is how I am struggling to live without a man in my life."[983]

10. *CAR-OTP-PPPP-0022 (''P22''): [REDACTED]*

287. [REDACTED] (P22),[984] a Central African civilian,[985] was raped by MLC troops after they captured and occupied PK12. She [REDACTED] as a result. P22 was residing at her uncle's home in PK12 during the 2002-2003 conflict in the CAR.[986] She testified that on Friday, 26 October 2002, at around 1 pm prayer time, Bozizé's rebels entered PK12 and other parts of Bangui.[987] P22 explained that she may be mistaken as to the date because of the passage of time, but she is certain that it happened on a Friday around 1 pm: "This was a day of prayer for us and it was on that day that they arrived."[988] Bozizé's rebels launched their coup d'état and entered Bangui on 25 October 2002 – which was a Friday, as P22 testified.[989]

288. P22 heard that Bozizé's rebels stayed for two or three days but were not able to take control of the town of Bangui and were pushed back.[990] This is corroborated by

[981] [V1-T220-ENG-ET-p53-L6-p54-L24]/[V1-T220-FRA-ET-p.52-L11]; [V1-T221-ENG-ET-p5-L11]/[V1-T221-FRA-ET-p.6-L3]
[982] [V1-T221-ENG-ET-p28-L19]/[V1-T221-FRA-ET-p31-L2]
[983] [V1-T221-ENG-ET-p29-L13]/[V1-T221-FRA-ET-p31-L19]
[984] [P22-T40-ENG-ET-p9-L20]/[P22-T40-FRA-ET-p10-L18]
[985] [P22-T40-ENG-ET-p13-L24]/[P22-T40-FRA-ET-p15-L4]
[986] [P22-T40-ENG-ET-p10-L1-and-p11-L16]/[P22-T40-FRA-ET-p11-L12-and-p12-L24-p13-L1]
[987] [P22-T40-ENG-ET-p14-L15-p15-L2-and-p16-L17-and-p17-L14]/[P22-T40-FRA-ET-p15-L24-p16-L9-and-p17-L12-and-p18-L21]
[988] [P22-T42-ENG-ET-p26-L4-and-p41-L8]/[P22-T42-FRA-CT-p27-L21-p28-L4-and-p44-L6]; [P22-T40-ENG-ET-p15-L15]/[P22-T40-FRA-ET-p16-L25-p17-L3]
[989] EVD=T-OTP-00446/CAR-OTP-00130082-at-0082
[990] [P22-T40-ENG-ET-p18-L5]/[P22-T40-FRA-ET-p19-L12]; [P22-T41-ENG-CT2-p4-L19]/[P22-T41-FRA-ET-p5-L7]

other testimonial evidence.[991] When the MLC troops arrived, they occupied neighbourhoods such as "Bas-ville (phon), Fou, Boira, up until PK12."[992] Her uncles, who went out the neighbourhood, informed them that the MLC troops "raping people" and "doing whatever they wanted to do":[993] "They told us the Banyamulenge had come and that they had occupied the entire neighbourhood of PK12: The hospital, the market and all the surrounding areas."[994]

289. Approximately one week after the MLC troops arrived in PK12,[995] they arrived at P22's uncle's home around 4 or 5 am one rainy day.[996] She heard them break down the back door and enter the house.[997] Since it was already daylight, she saw the MLC troops clearly.[998] Six of them entered P22's bedroom where she was with her child.[999] P22 identified MLC troops based on uniform,[1000] behaviour,[1001] control of area,[1002] and language.[1003]

290. The first MLC perpetrator "started speaking in Lingala and he mixed in a bit

[991] [P31-T182-ENG-ET-p26-L4-and-p35-L13-16]/[P31-T182-FRA-ET-p26-L20-and-p35-L26-p36-L4]
[992] [P22-T40-ENG-ET-p18-L10]/[P22-T40-FRA-ET-p19-L18]
[993] [P22-T40-ENG-ET-p18-L15]/[P22-T40-FRA-ET-p19-L23-p20-L5]
[994] [P22-T40-ENG-ET-p18-L12]/[P22-T40-FRA-ET-p19-L21]; [P22-T41-ENG-CT2-p5-L7]/[P22-T41-FRA-ET-p5-L22-p6-L4]
[995] [P22-T41-ENG-CT2-p9-L16-p10-L3]/[P22-T41-FRA-ET-p11-L4]
[996] [P22-T40-ENG-ET-p18-L23-p19-L1]/[P22-T40-FRA-ET-p20-L7]; [P22-T43-ENG-ET-p10-L16-and-p11-L24-p12-L1]/[P22-T43-FRA-ET-p11-L4-and-p11-L16]
[997] [P22-T40-ENG-ET-p19-L1-and-p23-L25-p24-L1]/[P22-T40-FRA-ET-p20-L11-and-p25-L26]
[998] [P22-T42-ENG-ET-p15-L25-p16-L5-and-p36-L19]/[P22-T42-FRA-CT-p16-L19-and-p39-L19]
[999] [P22-T40-ENG-ET-p19-L1]/[P22-T40-FRA-ET-p20-L10]; [P22-T41-ENG-CT2-p8-L1]/[P22-T41-FRA-ET-p8-L27-p9-L1]; [P22-T42-ENG-ET-p47-L10]/[P22-T42-FRA-CT-p50-L28-p51-L7]
[1000] [P22-T40-ENG-ET-p14-L18-p15-L14-and-p16-L14]/[P22-T40-FRA-ET-p15-L24-p16-L22-and-p17-L22]; [P22-T42-ENG-ET-p35-L14]/[P22-T42-FRA-CT-p38-L6]; [P22-T42-ENG-ET-p32-L13]/[P22-T42-FRA-CT-p34-L22] ; [P22-T41-ENG-CT2-p16-L1-and-p33-L2]/[P22-T41-FRA-ET-p17-L18-p18-L12-and-p36-L10-p37-L2] ; [P22-T41-ENG-CT2-p16-L21-p17-L2-and-p33-L7]/[P22-T41-FRA-ET-p18-L14-and-p36-L15-p37-L3]
[1001] [P22-T40-ENG-ET-p16-L17]/[P22-T40-FRA-ET-p17-L26-p18-L6]; [P22-T41-ENG-CT2-p4-L9-and-p5-L18]/[P22-T41-FRA-ET-p4-L21-p5-L5-and-p6-L7]
[1002] [P22-T40-ENG-ET-p23-L2]/[P22-T40-FRA-ET-p24-L21] ; [P22-T40-ENG-ET-p18-L12]/[P22-T40-FRA-ET-p19-L21]; [P22-T41-ENG-CT2-p5-L7]/[P22-T41-FRA-ET-p5-L22-p6-L4]
[1003] [P22-T40-ENG-ET-p19-L7]/[P22-T40-FRA-ET-p20-L17] ; [P22-T41-ENG-CT2-p7-L9]/[P22-T41-FRA-ET-p8-L5]; [P22-T42-ENG-ET-p20-L16-p21-L3]/[P22-T42-FRA-CT-p21-L18-p22-L3]; [P22-T43-ENG-ET-p8-L1]/[P22-T43-FRA-ET-p8-L13] ; [P22-T42-ENG-ET-p20-L21]/[P22-T42-FRA-CT-p21-L23] ; [P22-T41-ENG-CT2-p14-L23-p15-L8]/[P22-T41-FRA-ET-p16-L15] ; [P22-T41-ENG-CT2-p15-L18]/[P22-T41-FRA-ET-p17-L9] ; [P22-T41-ENG-CT2-p33-L21]/[P22-T41-FRA-ET-p37-L1]

of French. I was just trying to understand the French he used to speak to me."[1004] They spoke to each other in Lingala.[1005] P22 wore "a small pair of shorts, a jacket and I had a wrap around me."[1006] One MLC perpetrator pointed his weapon at her and threw her on the bed.[1007] He pressed his Kalashnikov gun against her neck with his two hands.[1008] P22 testified that:

> "[h]e pulled out a small knife, tore off my shorts and my underwear and threw it away, then he forcibly spread my legs and then he slept with me. While he was sleeping with me, the others were also in the room … When the one who had been sleeping with me finished, he stood up and left. Another replaced him and slept with me. After him, there was another one who slept with me. So out of the six of them who had entered my room, three of them slept with me."[1009]

291. P22 further explained that "[t]hey slept with me the way a man sleeps with a woman" and that "they penetrated my body with the male part of their body."[1010] None of the three MLC troops used condoms and each one ejaculated in her.[1011] The weapon was in the same position – against her neck – during all three rapes.[1012] The other MLC troops held their weapons; the weapon slung around each perpetrator's neck was pushed towards the back in order to sleep with P22.[1013]

292. As a result of her rape by the MLC troops, P22 stated: "I wanted to commit

[1004] [P22-T41-ENG-CT2-p14-L23-p15-L8]/[P22-T41-FRA-ET-p16-L15]
[1005] [P22-T41-ENG-CT2-p15-L18]/[P22-T41-FRA-ET-p17-L9]
[1006] [P22-T40-ENG-ET-p19-L12]/[P22-T40-FRA-ET-p20-L24]
[1007] [P22-T40-ENG-ET-p19-L12]/[P22-T40-FRA-ET-p20-L24]; [P22-T41-ENG-CT2-p13-L21]/[P22-T41-FRA-ET-p15-L12]
[1008] [P22-T41-ENG-CT2-p14-L1-and-p15-L3-and-p17-L9]/[P22-T41-FRA-ET-p15-L8-p16-L3-and-p16-L20-and-p19-L2]
[1009] [P22-T-40-ENG-ET-p19-L13]/[P22-T40-FRA-ET-p20-L26]
[1010] [P22-T42-ENG-ET-p13-L11]/[P22-T42-FRA-CT-p13-L18-and-p14-L2]
[1011] [P22-T41-ENG-CT2-p13-L3]/[P22-T41-FRA-ET-p14-L20-p15-L11]; [P22-T42-ENG-ET-p13-L20]/[P22-T42-FRA-CT-p14-L2]
[1012] [P22-T41-ENG-CT2-p14-L5-10]/[P22-T41-FRA-ET-p15-L22]
[1013] [P22-T41-ENG-CT2-p17-L22-p18-L19]/[P22-T41-FRA-ET-p19-L18-p20-L13]

suicide."[1014] She testified that:

> "On that day, after everything that had happened, I was thinking about killing myself. Why did I think that? Because at the time that they were raping me, [REDACTED]. It was -- I had -- or, rather, [REDACTED]. After those events, [REDACTED] that during the events the Banyamulengue had raped me. [REDACTED] called me later to cross-check the information, and I told [REDACTED] that it was true. When [REDACTED] called me, I was really sad. I wanted to commit suicide. During that time, [REDACTED]. After that, [REDACTED] asked me to go and do some medical tests. I told [REDACTED] that after the events my [REDACTED] had given me money to go and undergo the medical tests. At the hospital, I was asked to do the [REDACTED] and the [REDACTED]. Regarding the other tests, I was asked to go and wait for two months. I was compelled to wait for those three months, to go and do those tests. Then after that, I went and I did the tests and [REDACTED]. I told [REDACTED] about that, and immediately afterwards [REDACTED]."[1015]

293. P22 [REDACTED] from the MLC troops that raped her because prior to the rape, [REDACTED].[1016] Her [REDACTED] at the time of her rape and she could not have [REDACTED] from anyone other than the MLC troops because she did not have sexual relations from the time of her rape to[REDACTED].[1017] In sum, she could have [REDACTED] only from the MLC troops. They raped her and [REDACTED]

[1014] [P22-T41-ENG-CT2-p17-L12]/[P22-T41-FRA-ET-p19-L6]
[1015] [P22-T41-ENG-CT2-p39-L1]/[P22-T41-FRA-ET-p42-L10]; [P22-T43-ENG-ET-p18-L22-p19-L7]/[P22-T43-FRA-ET-p20-L16]
[1016] [P22-T41-ENG-CT2-p40-L20-p42-L6]/[P22-T41-FRA-ET-p44-L5-p45-L22]
[1017] [P22-T41-ENG-CT2-p42-L11]/[P22-T41-FRA-ET-p45-L28-p46-L14]; [P22-T43-ENG-ET-p17-L1-p18-L1-and-p18-L22-p19-L7]/[P22-T43-FRA-ET-p20-L16-and-p18-L13-p19-L21]

with the [REDACTED]. In a [REDACTED], P22's [REDACTED] observed that "[REDACTED]."[1018]

11. *CAR-OTP-PPPP-0079 (''P79''): [REDACTED]*

294. [REDACTED] (P79) and her 11 years old daughter were both raped in their home by MLC troops during their occupation of PK12 and attack against the population there. P79 is a Central African Republic civilian and mother of [REDACTED].[1019] P79, whose husband was killed during the events, is also responsible for [REDACTED].[1020] During the 2002-2003 conflict, P79 was residing [REDACTED], Bangui, which is located at the PK12 [REDACTED] that leads from the city of Bangui leading to the province.[1021]

295. One Wednesday afternoon in PK12, during the 2002-2003 CAR conflict, P79 heard gunshots and saw Bozizé's rebels shooting in the air.[1022] She explained that, "I remember all those events, except that I can't remember all the dates, but I think I do remember the events well."[1023] Two days after the arrival of the rebels in PK12, P79 saw airplanes bombing and shelling.[1024] The following Wednesday, P79 watched as the rebels withdrew from PK12 and Bangui, onto the PK22 road and the provinces.[1025] After the rebels withdrew, there was no other armed group in PK12.[1026]

[1018] [P22-T43-ENG-ET-p11-L2]/[P22-T43-FRA-ET-p11-L22-p12-L6]; EVD-T-OTP-00125/CAR-OTP-0004-0316; EVD-T-OTP-00128/CAR-OTP-0007-0569
[1019] [P79-T76-ENG-ET-p46-L8-and-p47-L18]/[P79-T76-FRA-ET-p50-L2-and-p50-L10-and-p51-L13]
[1020] [P79-T76-ENG-ET-p46-L21-and-p47-L18]/[P79-T76-FRA-ET-p50-L15-and-p51-L13]
[1021] [P79-T76-ENG-ET-p48-L18-p49-L10]/[P79-T76-FRA-ET-p52-L10-p53-L5]
[1022] [P79-T76-ENG-ET-p50-L16-and-p51-L5-and-p-52-L8-and-p54-L10]/[P79-T76-FRA-ET-p54-L21-and-p55-L12-p56-L2-and-L15-and-p58-L18]; [P79-T77-ENG-CT-p3-L25-p4-L4-and-p39-L22-p40-L6]/[P79-T77-FRA-ET-p4-L12-and-p41-L5]
[1023] [P79-T76-ENG-ET-p50-L19]/[P79-T76-FRA-ET-p54-L25]; [P79-T78-ENG-ET-p9-L8]/[P79-T78-FRA-ET-p10-L3]
[1024] [P79-T76-ENG-ET-p52-L11-and-L17-and-p56-L14]/[P79-T76-FRA-ET-p56-L17-and-L23-and-p60-L26-p61-L3]; [P79-T77-ENG-CT-p4-L15-16]/[P79-T77-FRA-ET-p4-L28-p5-L1]; [P79-T78-ENG-ET-p12-L1]/[P79-T78-FRA-ET-p13-L4]
[1025] [P79-T76-ENG-ET-p56-L18-and-p57-L6]/[P79-T76-FRA-ET-p61-L3-and-L18-p62-L9]
[1026] [P79-T77-ENG-CT-p7-L12-and-p53-L19]/[P79-T77-FRA-ET-p7-L22-and-p55-L11]

On the Wednesday that Bozizé's rebels withdrew,[1027] the MLC troops - Bemba's men from DRC who had been sent to the CAR - arrived in PK12.[1028]

296. The following day, on Thursday, the MLC troops who were deployed in PK12 and some other neighbourhoods, began "threatening the population and carrying out violent acts against the population."[1029] She saw their base at the Begoua School and dispensary.[1030] The MLC troops used a few of their countrymen who resided in Bangui as unarmed scouts.[1031]

297. The following Saturday, P79 and her family were mourning the death of her husband who had just been killed on Thursday, when the MLC troops broke into their home.[1032] The MLC troops were in control of her neighbourhood at that time.[1033] P79 identified MLC troops based on control of area,[1034] uniform,[1035] behaviour,[1036] and language.[1037] She described how she and her 11 year old daughter, [REDACTED],[1038]

[1027] [P79-T77-ENG-CT-p7-L12-and-p8-L11]/[P79-T77-FRA-ET-p7-L22-and-p8-L19]
[1028] [P79-T77-ENG-CT-p5-L10-and-p6-L1]/[P79-T77-FRA-ET-p5-L20-p6-L2-and-L9]
[1029] [P79-T77-ENG-CT-p8-L12]/[P79-T77-FRA-ET-p8-L20]
[1030] [P79-T77-ENG-CT-p27-L20]/[P79-T77-FRA-ET-p28-L17]; [P79-T78-ENG-ET-p52-L20]/[P79-T78-FRA-ET-p54-L1]
[1031] [P79-T77-ENG-CT-p43-L3]/[P79-T77-FRA-ET-p44-L7]
[1032] [P79-T77-ENG-CT-p11-L12-and-p40-L19]/[P79-T77-FRA-ET-p11-L21-and-p42-L1]
[1033] [P79-T77-ENG-CT-p40-L24-p41-L2]/[P79-T77-FRA-ET-p42-L6]
[1034] [P79-T76-ENG-ET-p53-L1]/[P79-T76-FRA-ET-p57-L4]; [P79-T78-ENG-ET-p15L1]/[P79-T78-FRA-ET-p16-L10]/ [P79-T76-ENG-ET-p52-L1]/[P79-T76-FRA-ET-p56-L8] ; [P79-T76-ENG-ET-p56-L18-and-p57-L6]/[P79-T76-FRA-ET-p61-L3-and-L18-p62-L9] ; [P79-T77-ENG-CT-p7-L12-and-p53-L19]/[P79-T77-FRA-ET-p7-L22-and-p55-L11] ; [P79-T77-ENG-CT-p7-L14]/[P79-T77-FRA-ET-p7-L23]; [P79-T78-ENG-ET-p41-L17-and-p42-L13]/[P79-T78-FRA-ET-p43-L4-and-L27-p44-L8] ; [P79-T77-ENG-CT-p40-L24-p41-L2]/[P79-T77-FRA-ET-p42-L6]
[1035] [P79-T76-ENG-ET-p53-L1]/[P79-T76-FRA-ET-p57-L4]; [P79-T78-ENG-ET-p15L1]/[P79-T78-FRA-ET-p16-L10]
[1036] [P79-T76-ENG-ET-p51-L9]/[P79-T76-FRA-ET-p55-L17] ; [P79-T76-ENG-ET-p55-L1-and-p55-L10-and-p57-L2]/[P79-T76-FRA-ET-p59-L9-and-L23-p60-L10-and-p61-L15]
[1037] [P79-T77-ENG-CT-p4-L21-p5-L9]/[P79-T77-FRA-ET-p5-L6]; [P79-T78-ENG-ET-p23-L9-and-p24-L1]/[P79-T78-FRA-ET-p24-L20-p25-L5-and-L11] ; [P79-T77-ENG-CT-p6-L17-p7-L1]/[P79-T77-FRA-ET-p7-L1] ; [P79-T78-ENG-ET-p21-L2-and-p22-L4]/[P79-T78-FRA-ET-p22-L8-and-p23-L14] ; [P79-T77-ENG-CT-p14-L5-and-p15-L15]/[P79-T77-FRA-ET-p14-L14-and-p15-L25-p16-L6-and-L13]; [P79-T78-ENG-ET-p45-L15]/[P79-T78-FRA-ET-p47-L5] ; [P79-T77-ENG-CT-p16-L6]/[P79-T77-FRA-ET-p16-L21]; [P79-T78-ENG-ET-p22-L13-and-p46-L21-and-p48-L1-and-p49-L23-p50-L3]/[P79-T78-FRA-ET-p23-L24-p24-L8-and-p48-L12-and-p49-L14-and-p51-L7]
[1038] [P79-T77-ENG-CT-p36-L24-p37-L1]/[P79-T77-FRA-ET-p38-L2]; [P79-T79-ENG-CT2-p32-L16]/[P79-T79-FRA-CT-p34-L23-p35-L4]

were both raped by the MLC troops in their home:[1039]

> "On the Saturday night, I was sleeping; I was with my children. I spent the night in the living room, and my children and the children I was responsible for were in the bedroom. At about 8 p.m. people knocked at the door. When I got up, they'd already broken down the door. After that, they entered the house. I got up. I was very frightened. There were five of them. There was no electricity; everything was dark, but they had – they had flashlights, and they pulled me from the bed and threw me down to the ground, and they threw me on the ground and then they undressed me. One of them first slept with me; the other one had his gun pointed at my temple. And the first one, after he'd slept with me, got up and then left. Then a second man took his place. And two others entered the bedroom where one of my daughters was sleeping. She was 11 years old. She was deflowered; she was raped. This girl who was underage was raped. The other children who were in the bedroom wanted to show, to cry and shout out, and the soldiers said, "Don't make a noise or we will shoot you.""[1040]

298. All five MLC troops were armed.[1041] They grabbed P79 brutally and threw her to the ground; one of the perpetrators pointed his gun at her.[1042] The two MLC troops that raped her kept their arms slung over their shoulders during the rape.[1043] P79 felt "powerless" and could not even summon the courage to speak to them.[1044] P79 testified that each perpetrator used "the male part of his body" to sleep with "the

[1039] [P79-T77-ENG-CT-p9-L22]/[P79-T77-FRA-ET-p10-L2]
[1040] [P79-T77-ENG-CT-p8-L25-p9-L13-and-p17-L14]/[P79-T77-FRA-ET-p9-L6-and-p18-L3]; [P79-T78-ENG-ET-p50-L10]/[P79-T78-FRA-ET-p51-L20]
[1041] [P79-T77-ENG-CT-p10-L2]/[P79-T77-FRA-ET-p10-L8]
[1042] [P79-T77-ENG-CT-p10-L10-and-p16-L15]/[P79-T77-FRA-ET-p10-L17-p11-L2-and-p17-L4]
[1043] [P79-T77-ENG-CT-p14-L2]/[P79-T77-FRA-ET-p14-L12]
[1044] [P79-T77-ENG-CT-p16-L10]/[P79-T77-FRA-ET-p16-L25-p17-L3]

female parts of my body."[1045] As a result of the rape, "I felt pain everywhere, including in my vagina. My vagina was injured."[1046] After the rape, "I tried to get up but I was dizzy, and when I – when I regained consciousness, I realised my daughter was crying and there was blood flowing between her legs. I picked her up and laid her on the bed. It was difficult."[1047] P79's daughter told her that she was raped by one perpetrator.[1048] P79's daughter was crying and bleeding from "the female part of her body."[1049] The Defence accepted that sexual penetration was sufficiently established.[1050] P79's daughter was raped in front of the younger children.[1051] P79 stated that, "With regards to my daughter, I spoke to nobody because, you know, with the Muslims, such news, when an under-age daughter is deflowered, it runs counter to our customs. I couldn't talk about it. I just massaged her with a mixture. And if I were to tell people about what happened, then it would be very, very difficult for that girl to find a husband, and that's why I preferred to keep the news of her rape secret."[1052]

299. P79's testimony illustrates how the stigma of being raped can reduce a victim to silence and therefore contribute to the underreporting of rape crimes.[1053] P79 explained that, "I was really traumatised, deeply troubled, by what had occurred."[1054] P79 received some medical assistance from MSF and, even though she could not take her daughter and risk revealing her rape, she shared her medication

[1045] [P79-T77-ENG-CT-p10-L21-p11-L11]/[P79-T77-FRA-ET-p11-L3]
[1046] [P79-T77-ENG-CT-p11-L19-and-p12-L3]/[P79-T77-FRA-ET-p11-L27-p12-L1-and-L10]
[1047] [P79-T77-ENG-CT-p11-L21]/[P79-T77-FRA-ET-p12-L1]
[1048] [P79-T77-ENG-CT-p18-L12]/[P79-T77-FRA-ET-p18-L27-p19-L4]
[1049] [P79-T77-ENG-CT-p18-L2]/[P79-T77-FRA-ET-p18-L17]
[1050] [P79-T77-ENG-CT-p12-L13-p13-L11]/[P79-T77-FRA-ET-p12-L23-p13-L20]
[1051] [P79-T77-ENG-CT-p34-L14]/[P79-T77-FRA-ET-p35-L15]
[1052] [P79-T77-ENG-CT-p18-L18-p19-L2]/[P79-T77-FRA-ET-p19-L5]; [P79-T76-ENG-ET-p47-L21]/[P79-T76-FRA-ET-p51-L16]; [P79-T79-ENG-CT2-p5-L2]/[P79-T79-FRA-CT-p5-L6]. On a previous occasion, TC III stated: "It's on many times the Chamber was aware of problems created by the line of Defence questioning for not taking into account many factors, such as the level of literacy of the witness, the fact that she's a woman living in a community – living in a Muslim community – in which women has a very specific role maybe different than the one from which other persons come. So please take into account what the Prosecution has just said, because the Chamber endorses the Prosecution's concerns in this respect.":[P42-T63-ENG-ET-p41-L21-p42-L2]/[P42-T63-FRA-ET-p43-L27-p44-7]
[1053] See, EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0510
[1054] [P79-T77-ENG-CT-p34-L17]/[P79-T77-FRA-ET-p35-L18]

with daughter.[1055] P79's daughter subsequently had fever and was hospitalised.[1056]

300. P79 received medical treatment from [REDACTED], who ran tests and provided her with medication.[1057] As a result of her rape, her health has deteriorated as she suffers from various illnesses, such as high blood pressure, gastric problems and hypertension;[1058] as well as psychological problems with nightmares and a constant state of worry.[1059] After the events, P79 moved to [REDACTED] and she believes that people must be saying that she fled PK12 because she was raped by the MLC troops.[1060]

12. *CAR-OTP-PPPP-0068 ("P68"): [REDACTED]*

301. [REDACTED] (P68), and her sister-in-law were both raped the same day by MLC troops. P68, a Central African civilian was a resident of the fourth arrondissement of Bangui, CAR during the 2002-2003 conflict.[1061] She is responsible for [REDACTED].[1062] The events began when Bozizé's rebels attacked Bangui on 25 October 2002.[1063] On 27 October 2002, a contemporaneous RFI interview of General Bozizé quoted him as saying – "Nous sommes á environ 500 métres, 1 kilométre de la residence du chef de l'Etat …"[1064] P68 testified that she listened to Radio Bangui, which reported in Sango that the rebels were 200 metres from the residence of the

[1055] [P79-T77-ENG-CT-p19-L4-and-p33-L9]/[P79-T77-FRA-ET-p19-L17-and-p34-L7]; [P79-T79-ENG-CT2-p3-L19-and-p4-L4]/[P79-T79-FRA-CT-p3-L24-p4-L4-and-L8-p4-L3]
[1056] [P79-T77-ENG-CT-p34-L9]/[P79-T77-FRA-ET-p35-L9]
[1057] [P79-T77-ENG-CT-p33-L24-p34-L8]/[P79-T77-FRA-ET-p34-L24-p35-L8]; [P79-T79-ENG-CT2-p5-L14-and-p9-L14-p12-L19-and-p18-L22-p19-L25]/[P79-T79-FRA-CT-p5-L18-and-p9-L24-p13-L13-and-p19-L15-p20-L19]
[1058] [P79-T77-ENG-CT-p34-L23-p35-L3]/[P79-T77-FRA-ET-p35-L24-p36-L1]
[1059] [P79-T77-ENG-CT-p35-L14]/[P79-T77-FRA-ET-p36-L13]
[1060] [P79-T77-ENG-CT-p35-L4]/[P79-T77-FRA-ET-p36-L2]
[1061] [P68-T48-ENG-ET-p8-L7-and-p9-L15]/[P68-T48-FRA-ET-p9-L21-and-p11-L1].
[1062] [P68-T48-ENG-ET-p8-L14]/[P68-T48-FRA-ET-p9-L28-p10-L4]
[1063] [P68-T49-ENG-ET-p9-L10-and-p10-L22-p11-L2]/[P68-T49-FRA-CT2-p9-L21-p10-L2-and-p11-L2]
[1064] CAR-OTP-0013-0082/EVD-T-OTP-00446-at-0082.

Head of State.[1065]

302. On 27 October 2002, P68 heard heavy shooting and shelling.[1066] The radio broadcast reported that the MLC troops had come to support President Patassé.[1067] P68 explained that the 4th arrondissement, which is where Boy-Rabé and Bandoro (a quartier in Fouh) are located, is about six kilometres from the centre of Bangui.[1068] That afternoon,[1069] P68 and her sister-in-law[REDACTED][1070] were frightened by the shelling and decided to flee during the lull.[1071] They took the inner roads through the neighbourhood towards Miskine intending to go to kilometre 5.[1072] At the intersection going towards Miskine Lycée,[1073] on the Demazu (phon) road in the Bondoro neighbourhood,[1074] they met soldiers who they initially thought were Central African soldiers because of their uniforms.[1075] P68 however was able to identify them as MLC troops based on language,[1076] control of area,[1077] uniform,[1078]

[1065] [P68-T48-ENG-ET-p12-L4-and-p13-L16-and-p15-L3]/[P68-T48-FRA-ET-p13-L20-p14-L17-and-p15-L8-and-p16-L19-p17-L4]; [P68-T49-ENG-ET-p36-L5-and-L24]/[P68-T49-FRA-CT2-p37-L1-and-p37-L21]; EVD-T-OTP-00446/ CAR-OTP-0013-0082-at-0083
[1066] [P69-T48-ENG-ET-p10-L22-p11-L2]/[P68-T48-FRA-ET-p12-L13];[P69-T49-ENG-ET-p10-L1-and-p26-L4-and-p34-L2]/[P68-T49-FRA-CT2-p10-L8-and-p26-L22-and-p35-L5]
[1067] [P69-T48-ENG-ET-p13-L21-and-p14-L18-p15-L2-and-p15-L18]/[P68-T48-FRA-ET-p15-L13-and-p16-L8-and-L26-p17-L13]; [P68-T49-ENG-ET-p18-L10-and-p27-L13]/[P68-T49-FRA-CT2-p18-L23-p19-L1-and-p28-L2]
[1068] [P68-T50-ENG-ET-p16-L14-p17-L5-and-p20-L3]/[P68-T50-FRA-ET-p16-L24-p17-L13-and-p20-L14]
[1069] [P68-T48-ENG-ET-p18-L20-p19-L3]/[P68-T48-FRA-ET-p20-L16]
[1070] [P68-T49-ENG-ET-p7-L12]/[P68-T49-FRA-CT2-p7-L20-p8-L1]
[1071] [P68-T48-ENG-ET-p11-L4]/[P68-T48-FRA-ET-p12-L20]; [P68-T49-ENG-ET-p28-L20]/[P68-T49-FRA-CT2-p29-L10]
[1072] [P68-T48-ENG-ET-p11-L4]/[P68-T48-FRA-ET-p12-L20]; [P68-T49-ENG-ET-p28-L20]/[P68-T49-FRA-CT2-p29-L10]
[1073] [P68-T48-ENG-ET-p19-L4]/[P68-T48-FRA-ET-p20-L26-p21-L5]
[1074] [P68-T48-ENG-ET-p21-L24-p22-L6]/[P68-T48-FRA-ET-p23-L27-p24-L7]
[1075] [P68-T48-ENG-ET-p20-L16]/[P68-T48-FRA-ET-p22-L16]; [P68-T49-ENG-ET-p11-L1]/[P68-T49-FRA-CT2-p11-L5-p12-L7]
[1076] [P68-T48-ENG-ET-p11-L19-and-p19-L25-p20-L1]/[P68-T48-FRA-ET-p13-L11-and-p21-L22]; [P68-T49-ENG-ET-p29-L13-and-p47-L20]/[P68-T49-FRA-CT2-p30-L7-and-p49-L14]; [P68-T50-ENG-ET-p47-L6]/[P68-T50-FRA-ET-p48-L11] ; [P68-T48-ENG-ET-p20-L2]/[P68-T48-FRA-ET-p21-L25-p22-L11]; [P68-T49-ENG-ET-p18-L25-p19-L18]/[P68-T49-FRA-CT2-p19-L11-p20-L3]; [P68-T50-ENG-ET-p4-L12-p7-L6]/[P68-T50-FRA-ET-p4-L18-p7-L9] ; [P68-T49-ENG-ET-p21-L9-and-p49-L4]/[P68-T49-FRA-CT2-p21-L27-p22-L12-and-p50-L23] ; [P68-T49-ENG-ET-p12-L1]/[P68-T49-FRA-CT2-p12-L8] ; [P68-T49-ENG-ET-p49-L10]/[P68-T49-FRA-CT2-p51-L1]
[1077] [P68-T48-ENG-ET-p22-L12]/[P68-T48-FRA-ET-p24-L16]; [P68-T49-ENG-ET-p13-L24-p14-L1]/[P68-T49-FRA-CT2-p14-L6]
[1078] [P68-T49-ENG-ET-p11-L13-and-p13-L12]/[P68-T49-FRA-CT2-p11-L20-p12-L7-and-p13-L21] ; [P68-T49-ENG-ET-p10-L4-p11-L8]/[P68-T49-FRA-CT2-p10-L11-p11-L13]

and behaviour.[1079] These soldiers were pushing a car out of a compound.[1080]

303. The MLC troops spoke to each other in Lingala;[1081] and were the only armed group present in that neighbourhood.[1082] FIDH corroborates contemporaneous accounts of rape committed by MLC troops in Fouh.[1083] P68 testified that one MLC perpetrator seized her and another one seized her sister-in-law, and forced them into separate adjacent compounds.[1084] Inside the compound, P68 testified that the MLC troops "began to undress me, sexually assault me, and they spoke amongst themselves while they were assaulting me."[1085]

304. Two of the three MLC troops raped P68.[1086] She wore a two piece traditional dress and wrap, which the first perpetrator took off along with her underpants when she fell to the ground.[1087] The two MLC troops that raped her took off their trousers but they kept the upper part of their clothing.[1088] One perpetrator held her to the ground while the other perpetrator seized both of her arms and stepped on them in order to keep her back on the ground.[1089] The MLC troops put their weapons on the ground in order to rape her.[1090] While she was being raped, the third perpetrator restrained her by keeping his feet on her two arms and threatening her with his

[1079] [P68-T49-ENG-ET-p10-L4-p11-L8]/[P68-T49-FRA-CT2-p10-L11-p11-L13]
[1080] [P68-T48-ENG-ET-p11-L15-and-p18-L14-and-p9-L11]/[P68-T48-FRA-ET-p13-L7-and-p20-L10-and-p21-L6]
[1081] [P68-T48-ENG-ET-p11-L19-and-p19-L25-p20-L1]/[P68-T48-FRA-ET-p13-L11-and-p21-L22]; [P68-T49-ENG-ET-p29-L13-and-p47-L20]/[P68-T49-FRA-CT2-p30-L7-and-p49-L14]; [P68-T50-ENG-ET-p47-L6]/[P68-T50-FRA-ET-p48-L11]
[1082] [P68-T48-ENG-ET-p22-L12]/[P68-T48-FRA-ET-p24-L16]; [P68-T49-ENG-ET-p13-L24-p14-L1]/[P68-T49-FRA-CT2-p14-L6]
[1083] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0051
[1084] [P68-T48-ENG-ET-p11-L22-and-p31-L6]/[P68-T48-FRA-ET-p13-L15-and-p33-L14]; [P68-T48-ENG-ET-p22-L15]/[P68-T48-FRA-ET-p24-L19]
[1085] [P68-T48-ENG-ET-p11-L24-p12-L1-and-p18-L10-and- p22-L24]/[P68-T48-FRA-ET-p13-L17-and-p20-L6-and-p25-L1]
[1086] [P68-T48-ENG-ET-p23-L1]/[P68-T48-FRA-ET-p25-L4]
[1087] [P68-T48-ENG-ET-p23-L5-and-p25-L12-p26-L7]/[P68-T48-FRA-ET-p25-L9-and-p27-L17-p28-L10]
[1088] [P68-T48-ENG-ET-p26-L8]/[P68-T48-FRA-ET-p28-L11]
[1089] [P68-T48-ENG-ET-p26-L11]/[P68-T48-FRA-ET-p28-L15]
[1090] [P68-T48-ENG-ET-p26-L23]/[P68-T48-FRA-ET-p28-L26]

gun.[1091]

305. The first perpetrator penetrated "[t]he feminine part of my body"[1092] with "[t]he masculine part of his body".[1093] She explained that, "[t]he masculine part of the body is the part of a man's body that he uses on a woman" and "[t]he feminine part of a woman, well, God created that part so as to allow men to use it."[1094] In addition, both perpetrators ejaculated inside her.[1095] P68 stated that "[t]hey had this courage, determination, to rape me."[1096] While they raped her, they spoke to each other in Lingala.[1097] P68 testified that during the rapes, "I was being threatened with a weapon. I was crying. I was in a terrible state, so I cannot remember exactly how long these things lasted."[1098] At one point in the beginning, she lost consciousness but then she could feel the pain of what they were doing to her.[1099] After the second MLC perpetrator raped her, they gestured in a dismissive way – "… the signs that people make when they want to get rid of you."[1100]

306. The MLC troops in that same group took P68's sister-in-law and dragged her into the adjacent compound.[1101] P68 could clearly hear her sister-in-law yelling out in fear even though she could not see her.[1102] Upon her return to the house a few hours later, P68's sister-in-law came back crying and told her that three of the MLC troops had raped her.[1103] Her sister-in-law suffered many health problems with her

[1091] [P68-T48-ENG-ET-p26-L21-and-p27-L2-and-L17-and -p29-L7]/[P68-T48-FRA-ET-p28-L24-and-p29-L2-and-L23-and-p31-L14]; [P68-T49-ENG-ET-p14-L6]/[P68-T49-FRA-CT2-p14-L14]
[1092] [P68-T48-ENG-ET-p24-L4]/[P68-T48-FRA-ET-p24-L9]
[1093] [P68-T48-ENG-ET-p23-L25-p24-L3]/[P68-T48-FRA-ET-p26-L4]
[1094] [P68-T48-ENG-ET-p24-L1]/[P68-T48-FRA-ET-p26-L5]
[1095] [P68-T48-ENG-ET-p24-L9-and-p25-L5]/[P68-T48-FRA-ET-p26-L14-and-p27-L9]
[1096] [P68-T48-ENG-ET-p27-L23]/[P68-T48-FRA-ET-p30-L3]
[1097] [P68-T48-ENG-ET-p28-L1]/[P68-T48-FRA-ET-p30-L7]
[1098] [P68-T48-ENG-ET-p24-L15]/[P68-T48-FRA-ET-p26-L20]
[1099] [P68-T48-ENG-ET-p14-L8-p15-L3]/[P68-T49-FRA-CT2-p14-L28-p15-L10]; [P68-T48-ENG-ET-p27-L21]/[P68-T48-FRA-ET-p29-L28-p30-L6]
[1100] [P68-T49-ENG-ET-p13-L6]/[P68-T49-FRA-CT2-p13-L13]
[1101] [P68-T48-ENG-ET-p31-L6]/[P68-T48-FRA-ET-p33-L14-p34-L3]
[1102] [P68-T48-ENG-ET-p31-L7-and-p32-L2]/[P68-T48-FRA-ET-p33-L15-and-p34-L13]
[1103] [P68-T48-ENG-ET-p31-L6-and-p32-L11]/[P68-T48-FRA-ET-p33-L14-and-p34-L24]

abdomen and she died in 2005.[1104]

307. As a result of the rape, "I was injured. I was hurting. I had injuries in the area of my vagina. After that, I had pain in my stomach."[1105] She went to Médecins Sans Frontières ("MSF") who sent her to [REDACTED], where [REDACTED] carried out some blood tests and they discovered that she had HIV/AIDS.[1106] An ultrasound revealed her swollen spleen and belly pain, whilst the vaginal swab revealed some germs.[1107] MSF gave her some medication for her stomach, and she began treatment for HIV/AIDS.[1108] P68's credibility is further demonstrated by the fact that she did not immediately attribute her HIV/AIDs infection to the MLC troops.[1109]

308. P68 testified that, "My spirits and my mental state are poor. I'm – I have a tendency to depression, and when I see a soldier, or a man with a weapon, I'm afraid. Even on public transit I am very, very afraid even today … At first I had nightmares. I would re-experience the events and I slept poorly."[1110]

309. After her rape, P68 was afraid and decided to take another path.[1111] At the Changi road, P68 met about 50 young CAR men who said that they had been taken to the 4th arrondissement by the MLC troops.[1112] These men explained that one of the MLC troops called their chief who asked them which locality the young men were from.[1113] The young men stated that they lived in Fouh, in the Changi area and the MLC leader said that they could be released "but if they're from Boy-Rabé you'll

[1104] [P68-T48-ENG-ET-p33-L17]/[P68-T48-FRA-ET-p35-L28-p36-L3]
[1105] [P68-T48-ENG-ET-p27-L3-and-L19-and-p38-L3]/[P68-T48-FRA-ET-p29-L3-and-L26-p30-L6-and-p40-L10]
[1106] [P68-T50-ENG-CT-p22-L7-24-and-p24-L1-3]/[P68-T50-FRA-ET-p22-L21-p23-L14-and-p24-L17];See, also, MSF certificate: EVD-T-OTP-00129/CAR-OTP-0020-0442
[1107] [P68-T48-ENG-ET-p38-L9-and-p39-L9]/[P68-T48-FRA-ET-p40-L15-p41-L6-and-L18-p42-L6]
[1108] [P68-T48-ENG-ET-p38-L16]/[P68-T48-FRA-ET-p40-L22]
[1109] [P68-T49-ENG-ET-p20-L1]/[P68-T49-FRA-CT2-p20-L13]
[1110] [P68-T48-ENG-ET-p40-L16]/[P68-T48-FRA-ET-p43-L1]; [P68-T49-ENG-ET-p15-L4]/[P68-T49-FRA-CT2-p15-L11]
[1111] [P68-T48-ENG-ET-p21-L3]/[P68-T48-FRA-ET-p23-L1]
[1112] [P68-T48-ENG-ET-p21-L7]/[P68-T48-FRA-ET-p23-L6]
[1113] [P68-T48-ENG-ET-p21-L11]/[P68-T48-FRA-ET-p-23-L13]

have to kill them because they're rebels."[1114] P68's testimony shows that the MLC troops targeted people from so-called rebel stronghold, such as Boy-Rabé, which was Bozize's neighbourhood.

13. *CAR-OTP-PPPP-0119 ("P119"): [REDACTED]*

310. [REDACTED] (P119) was an eye-witness to the rape of two young girls, aged 12 and 13 years, by MLC troops in her neighbourhood. P119, a Central African Republic civilian, is a [REDACTED].[1115] Appointed in [REDACTED], P119 is still [REDACTED] the 4th arrondissement of Bangui, CAR.[1116] As [REDACTED].[1117]

311. On 28 October 2002, after the rebels withdrew and the bombing ceased, the MLC troops arrived in P119's neighbourhood.[1118] P119 identified MLC troops based on language,[1119] self-identification,[1120] and control of area.[1121] The MLC leader also self-identified themselves when he told P119 that "Papa Bemba had asked us to come and to apply Article 15" and asked her where Boy-Rabé, a popular neighbourhood in the CAR, was located.[1122] He asked her to sit down under a straw hut next to a canal;[1123] shortly after, she heard two girls screaming.[1124]

312. From her position behind some flowers, about a metre away from the incident, P119 had an unobstructed view of a big group of MLC troops who had taken two

[1114] [P68-T48-ENG-ET-p21-L13]/[P68-T48-FRA-ET-p23-L15]; [P68-T50-ENG-ET-p8-L7]/[P68-T50-FRA-ET-p8-L16-p9-L2]
[1115] [P119-T82-ENG-CT-p7-L1]/[P119-T82-FRA-CT-p7-L12]
[1116] [P119-T82-ENG-CT-p8-L4-p9-L2-and-p10L1]/[P119-T82-FRA-CT-p8-L8-and-p10-L1]
[1117] [P119-T82-ENG-CT-p11-L7-p12-L21]/[P119-T82-FRA-CT-p11-L8-p12-L21]
[1118] [P119-T82-ENG-CT-p24-L8-and-p25-L10-and-p27-L3]/[P119-T82-FRA-CT-p24-L19-p25-L5-and-L18-and-p27-L9]; [P119-T83-ENG-CT2-p4-L21-p5-L1]/[P119-T83-FRA-CT2-p5-L3]
[1119] [P119-T83-ENG-CT2-p5-L2]/[P119-T83-FRA-CT2-p5-L9]; [P119-T82-ENG-CT-p29-L20]/[P119-T82-FRA-CT-p29-L24-p30-L2];[P119-T84-ENG-ET-p5-L7-p6-L2]/[P119-T84-ENG-ET-p5-L5]
[1120] [P119-T82-ENG-CT-p34-L1]/[P119-T82-FRA-CT-p34-L4]
[1121] [P119-T82-ENG-CT-p31-L7-L25-and-p44-L7]/[P119-T82-FRA-CT-p31-L8-p44-L5]
[1122] [P119-T82-ENG-CT-p34-L1]/[P119-T82-FRA-CT-p34-L4]
[1123] [P119-T82-ENG-CT-p39-L3-and-p40-L5]/[P119-T82-FRA-CT-p39-L3]
[1124] [P119-T82-ENG-CT-p39-L18]/[P119-T82-FRA-CT-p39-L19].

young girls into the shallow canal and were raping them.[1125] While some of the MLC troops lined up inside the canal, others stood outside the canal, awaiting their turn.[1126] P119 stated that, "[w]hat I saw was that there were two who were on top of the two girls, one on one of the girls and one on the other girl …"[1127] She saw the two girls lying down in the canal, and the head of one girl was against the head of the other.[1128] The two MLC troops that were raping the girls, "only dropped their trousers as far as to their knees. They put their weapons down before they took their positions upon the girls."[1129] P119 was even able to observe that one of the two MLC troops without underwear had pimples on his buttocks.[1130] The other MLC troops inside and outside the canal carried their arms as they waited.[1131]

313. The girls, struggling and screaming at the same time, said in Sango, "[m]other, I'm dead. I'm dead. They've killed me. I'm dead."[1132] One girl wore a *pagne* and an undergarment whilst the other wore a dress.[1133] P119 stated that "the two of them used the girl's dress to – and put the dress on the girl's face before sleeping with her. The other one hid the girl's face before sleeping with her and, when he was having sex with the girls, the girls were bleeding and there were traces of blood on their clothing."[1134] These two girls were bleeding from the vaginas.[1135] P119 explained that the two MLC troops that she saw raping the girls "used their masculine part of their body."[1136] The Defence agreed that the element of sexual penetration had been established.[1137]

[1125] [P119-T82-ENG-CT-p39-L20-p40-L21]/[P119-T82-FRA-CT-p39-L21-p40-L19]; [P119-T84-ENG-ET-p31-L6-and-p32-L2-and-p36-L4]/[P119-T84-FRA-ET-p29-L17-p30-L3-and-L8-and-p34-L2]
[1126] [P119-T82-ENG-CT-p40-L8]/[P119-T82-FRA-CT-p40-L4]
[1127] [P119-T82-ENG-CT-p41-L1]/[P119-T82-FRA-CT-p40-L24]
[1128] [P119-T82-ENG-CT-p39-L20]/[P119-T82-FRA-CT-p39-L21]
[1129] [P119-T82-ENG-CT-p41-L7]/[P119-T82-FRA-CT-p41-L3]
[1130] [P119-T82-ENG-CT-p43-L6]/[P119-T82-FRA-CT-p43-L2]
[1131] [P119-T82-ENG-CT-p41-L11]/[P119-T82-FRA-CT-p41-L8]
[1132] [P119-T82-ENG-CT-p41-L15-and-p42-L24-p43-L1/[P119-T82-FRA-CT-p41-L12-and-p42-L20]
[1133] [P119-T82-ENG-CT-p42-L1][P119-T82-FRA-CT-p41-L23]
[1134] [P119-T82-ENG-CT-p42-L5]/[P119-T82-FRA-CT-p41-L26-p42-L4]
[1135] [P119-T82-ENG-CT-p42-L11]/[P119-T82-FRA-CT-p42-L5]
[1136] [P119-T82-ENG-CT-p46-L1]/[P119-T82-FRA-CT-p45-L28-p46-L6]
[1137] [P119-T82-ENG-CT-p44-L20-p45-L22]/[P119-T82-FRA-CT-p44-L19-p45-L21]

314. P119 pushed a large stone that rolled towards one of the MLC soldiers who instinctively cried out – "*Mama Kofi (phon)*" in Lingala[1138] - when the stone hit him.[1139] The other MLC troops yelled and ran in all directions whilst others pulled the trapped MLC perpetrator out of the canal.[1140] P119 then took the girls to her home and washed them; they told her that they were 12 and 13 years old.[1141] They were fleeing from abuses committed by MLC troops in their neighbourhood of Mandaba.[1142] One of the girls informed her that "the Banyamulenge had gone into their house, raped her mother, raped her sisters."[1143] The girls were crying and blood was flowing, so she gave them soap and cleaned them.[1144] P119 stated that "[t]hese girls were still virgins and, as the Banyamulenge they took them by force, they were deflowered. That's why the blood was running."[1145] They told P119 that the MLC troops raped them and that they were afraid because they controlled the area.[1146] The two girls were raped in a coercive environment as a result of the MLC's military presence and control of the area, as well as the close proximity of other armed MLC troops and additional threat of their weapons.

14. *CAR-OTP-PPPP-0042 ("P42"): [REDACTED]*

315. [REDACTED] (P42), a CAR civilian and [REDACTED], is a married man and father of [REDACTED] children.[1147] During the 2002-2003 CAR conflict, P42 lived in Begoua, PK12 in Bangui.[1148] P42's older daughter aged 10 years was raped by armed MLC's troops in their home, while P42 was hit and brutally pushed to lay on the

[1138] [P119-T83-ENG-CT2-p5-L2]/[P119-T83-FRA-CT2-p5-L9]
[1139] [P119-T82-ENG-CT-p43-L11]/[P119-T82-FRA-CT-p43-L9]
[1140] [P119-T82-ENG-CT-p43-L11]/[P119-T82-FRA-CT-p43-L9]
[1141] [P119-T82-ENG-CT-p43-L2]/[P119-T82-FRA-CT-p42-L25-p43-L1]
[1142] [P119-T82-ENG-CT-p43-L22-p44-L6]/[P119-T82-FRA-CT-p43-L22-p44-L4]
[1143] [P119-T82-ENG-CT-p43-L24-p44-L2]/[P119-T82-FRA-CT-p43-L25]
[1144] [P119-T82-ENG-CT-p44-L7]/[P119-T82-FRA-CT-p44-L5]
[1145] [P119-T82-ENG-CT-p44-L15-and-p45-L7]/[P119-T82-FRA-CT-p44-L14-and-p45-L4].
[1146] [P119-T82-ENG-CT-p44-L7]/[P119-T82-FRA-CT-p44-L5]
[1147] [P42-T63-ENG-ET-p56-L24-p57-L24]/[P42-T63-FRA-ET-p60-L26-p61-L26]
[1148] [P42-T63-ENG-ET-p58-L7]/[P42-T63-FRA-ET-p62-L8]

ground, powerlessly.

316. P42 testified that, on 6 November 2002, Bozizé's rebels kidnapped the CAR government spokesman, Prosper, and retreated towards PK22 with him.[1149] As a result, around 3 or 4 pm the next day, MLC troops arrived in PK12.[1150] According to Prosper Ndouba's testimony (D65), he was held by the rebels at the northern exit of Bangui from 25 to 29 October 2002.[1151] Although P42 is mistaken as to the date, based on D65's testimony regarding his kidnapping, P42's testimony would mean that the MLC troops arrived in PK12 on or about 30 October 2002. That MLC troops arrived in PK12 on 30 October 2002 is supported by other independent sources and documentary evidence.[1152] P42 further identified MLC troops based on control of area,[1153] language,[1154] and uniform.[1155]

317. Upon the arrival of MLC troops in PK12, Bozizé's rebels were no longer there.[1156] P42 and other inhabitants of PK12 stood beside the main road and watched as the MLC troops arrived, walking in columns.[1157] P42 testified that, subsequently, Bemba visited his men in PK12.

[1149] [P42-T64-ENG-ET-p13-L1-and-p52-L16]/[P42-T64-FRA-ET-p14-L12-and-p58-L9]
[1150] [P42-T63-ENG-ET-p60-L23-p61-L12]/[P42-T63-FRA-ET-p65-L10];[P42-T64-ENG-ET-p13-L5]/[P42-T64-FRA-ET-p13-L17]; [P42-T66-ENG-CT-p19-L17-p20-L5]/[P42-T66-FRA-ET-p20-L20-p21-L6]
[1151] [D65-T245-ENG-ET-p29-L8]/[D65-T245-FRA-ET-p29-L18]
[1152] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0050; EVD-T-OTP-00446/CAR-OTP-0013-0082; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003
[1153] [P42-T66-ENG-CT-p6-L18-and-p9-L1]/[P42-T66-FRA-ET-p7-L8-and-p9-L24-p10-L1]/
[1154] [P42-T64-ENG-ET-p25-L12-and-p55-L3]/[P42-T64-FRA-ET-p28-L18-and-p61-L5] ; [P42-T64-ENG-ET-p28-L14-and-p42-L19-p43-L5]/[P42-T64-FRA-ET-p31-L15-and-p47-L8] ; [P42-T64-ENG-ET-p27-L21-p28-L5]/[P42-T64-FRA-ET-p30-L26-p31-L6] ; [P42-T64-ENG-ET-p29-L19]/[P42-T64-FRA-ET-p32-L21] ; [P42-T64-ENG-ET-p18-L10-and-p42-L2]/[P42-T64-FRA-ET-p20-L24-p21-L10-and-p46-L14]; [P42-T66-ENG-CT-p17-L12-p18-L17]/[P42-T66-FRA-ET-p18-L12-p19-L15]
[1155] [P42-T63-ENG-ET-p62-L18]/[P42-T63-FRA-ET-p67-L10]; [P42-T66-ENG-CT-p10-L18]/[P42-T66-FRA-ET-p11-L19] ; [P42-T63-ENG-ET-p65-L16-p66-L2]/[P42-T63-FRA-ET-p70-L18-p71-L5]
[1156] [P42-T66-ENG-CT-p6-L18-and-p9-L1]/[P42-T66-FRA-ET-p7-L8-and-p9-L24-p10-L1].
[1157] [P42-T63-ENG-ET-p64-L21-p65-L15]/[P42-T63-FRA-ET-p69-L19-p70-L17]; [P42-T64-ENG-ET-p3-L20-p4-L4]/[P42-T64-FRA-ET-p4-L4]; [P42-T63-ENG-ET-p65-L1]/[P42-T63-FRA-ET-p69-L25-p70-L3]

318. One Saturday afternoon, in November 2002,[1158] there was an altercation between P42's son who was a trader and an MLC soldier regarding spices.[1159] Following gunshots in the air, other MLC troops invaded P42's compound.[1160] There were many of them.[1161] The MLC troops beat his son and accused him of being a rebel before taking him away.[1162] P42 was at home with his wife and children.[1163] One MLC soldier hit P42 with the butt of his weapon and pushed him on the ground.[1164] The MLC troops took them inside the house, and made P42 and his wife lie face-down on the floor.[1165]

319. Although P42 could not see what was happening, he knew that the MLC troops had one of his daughters because she was screaming.[1166] He heard his 10 year old daughter, [REDACTED],[1167] screaming, "Papa, they are taking me away" and "Papa, they are undressing me".[1168] P42 states, "I was powerless."[1169]

320. After the MLC troops left, P42's wife went to their daughter who told her that she had been raped by two MLC perpetrators.[1170] P42 explained that, "for us Africans, it's not easy for a daughter to come and talk about such matters to her father. She would far prefer to confide in her mum."[1171] His wife informed him that his daughter had been raped outside near the shed in his compound.[1172] P42 testified

[1158] [P42-T64-ENG-ET-p25-L23-p26-L7-and-p24-L25-p25-L3]/[P42-T64-FRA-ET-p29-L2-and-p28-L5]
[1159] [P42-T64-ENG-ET-p15-L22-p17-L13]/[P42-T64-FRA-ET-p17-L26-p19-L25]
[1160] [P42-T64-ENG-ET-p15-L22-p17-L13]/[P42-T64-FRA-ET-p17-L26-p19-L25]
[1161] [P42-T64-ENG-ET-p26-L13-and-p30-L10]/[P42-T64-FRA-ET-p29-L18-p30-L3-and-p33-L11]
[1162] [P42-T64-ENG-ET-p17-L2]/[P42-T64-FRA-ET-p19-L10]
[1163] [P42-T64-ENG-ET-p17-L14-and-p39-L2]/[P42-T64-FRA-ET-p19-L27-p20-L6-and-p43-L1]
[1164] [P42-T64-ENG-ET-p17-L16-and-p47-L12]/[P42-T64-FRA-ET-p20-L1-and-p52-L20-p53-L2]
[1165] [P42-T64-ENG-ET-p17-L18]/[P42-T64-FRA-ET-p20-L3]
[1166] [P42-T64-ENG-ET-p17-L20-and-p18-L5]/[P42-T64-FRA-ET-p20-L6-and-p21-L16]; [P42-T66-ENG-CT-p17-L5]/[P42-T66-FRA-ET-p18-L4]
[1167] [P42-T64-ENG-ET-p39-L6]/[P42-T64-FRA-ET-p43-L6]
[1168] [P42-T64-ENG-ET-p18-L5-and-p41-L24-and-p48-L24-and-p48-L10]/[P42-T64-FRA-ET-p20-L16-and-p46-L10-and-p54-L9-p53-L19]
[1169] [P42-T64-ENG-ET-p18-L6]/[P42-T64-FRA-ET-p20-L17]
[1170] [P42-T64-ENG-ET-p46-L14-p47-L4]/[P42-T64-FRA-ET-p51-L20-p52-L11]; [P42-T65-ENG-ET-p54-L1]/[P42-T65-FRA-ET-p51-L27-p52-L8]
[1171] [P42-T64-ENG-ET-p48-L18]/[P42-T64-FRA-ET-p54-L2]
[1172] [P42-T65-ENG-ET-p51-L3]/[P42-T65-FRA-ET-p49-L1]; EVD-T-OTP-00601/CAR-ICC-0001-0009

that:

> "[s]he was a ten-year-old girl. She was a virgin. But there was obvious traces, there were obviously traces of blood, so she was aware that her daughter had been raped … on that day she was wearing underpants. They tore it off, and after her rape you could see the blood running down her legs and also blood on the dress she was wearing that day … The blood was running out from the female part of the body."[1173]

321. P42's daughter, who was 10 years old at the time, was incapable of giving consent. In all events, the coercive environment inherent to the armed conflict and the occupation of the area by the MLC troops, the use and threat of force leave no doubt that the sexual penetration was committed by force. Since they could not afford medical treatment and the hospitals in Bangui were closed, P42 treated his daughter at home using traditional medicine.[1174] This involved medicinal plants that are boiled and the person sits in it to stop the bleeding and heal wounds.[1175]

322. The rape of P42's daughter is corroborated by [REDACTED]. He testified that she and [REDACTED] daughter, who were nine or ten years old, were raped by the MLC troops – "Those young girls were deflowered and those young girls are now considered like their slaves."[1176] He explained that he meant that they "slept with these children until – until blood flew – flowed out of their vaginas. It was only with warm water in which some concoctions were placed, with liquid we treated these children so that they could heal."[1177]

[1173] [P42-T64-ENG-ET-p48-L25-p49-L8]/[P42-T64-FRA-ET-p54-L10]
[1174] [P42-T64-ENG-ET-p49-L9]/[P42-T64-FRA-ET-p54-L19-p55-L10]
[1175] [P42-T64-ENG-ET-p49-L16-and-p50-L1]/[P42-T64-FRA-ET-p54-L28-p55-L2-and-p50-L10]
[1176] [REDACTED]
[1177] [REDACTED]

323. The MLC troops in P42's compound were armed with Kalashnikovs;[1178] they spoke to each other in Lingala.[1179] P42's [REDACTED], who spoke perfect Lingala and knew the MLC troops, intervened to ask them to release P42 and his family.[1180] The MLC leader and [REDACTED] spoke in Lingala; shortly after, the MLC troops left P42's compound.[1181]

324. P42 recalls his emotional state regarding his daughter's rape:[1182]

> "[a]s you know, 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 Banyamulenge's wife, and so on and so forth – so she dropped out of school 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. So she cannot do anything because she had dropped out of school."[1183]

325. The day after their victimization, P42 [REDACTED] in PK12; but no measures were taken.[1184]

[1178] [P42-T64-ENG-ET-p39-L24-p40-L19]/[P42-T64-FRA-ET-p44-L2]
[1179] [P42-T64-ENG-ET-p27-L12]/[P42-T64-FRA-ET-p30-L17]
[1180] [P42-T64-ENG-ET-p18-L10-and-p42-L2]/[P42-T64-FRA-ET-p20-L24-p21-L10-and-p46-L14]; [P42-T66-ENG-CT-p17-L12-p18-L17]/[P42-T66-FRA-ET-p18-L12-p19-L15]
[1181] [P42-T64-ENG-ET-p18-L11]/[P42-T64-FRA-ET-p20-L25-p26-L10]
[1182] [P42-T64-ENG-ET-p20-L25-p21-L6]/[P42-T64-FRA-ET-p23-L19]
[1183] [P42-T64-ENG-ET-p21-L7]/[P42-T64-FRA-ET-p21-L1]
[1184] [P42-T64-ENG-ET-p19-L2]/[P42-T64-FRA-ET-p21-L16]

IV. The MLC perpetrators had the required intent and knowledge

326. In all the witness accounts detailed above, the circumstances only lead to the objective conclusion that MLC troops both intended to sexually penetrate their victims and they were aware that this would occur in the ordinary course of their actions. The MLC perpetrators knew that they had the power to do so by using force, coercion and the threat of force, against their victims in areas under their control and authority.

327. Firstly, MLC perpetrators knew that they were able to rape their victims as a result of the coercive environment inherent to the armed conflict,[1185] and the MLC's military presence and control of the neighbourhood where the rapes were committed.[1186] Furthermore, armed MLC troops operated in small groups and assisted each other, using force and the threat of additional force with or without their weapons.[1187] The presence of other perpetrators in close proximity during each of the rapes described above, often helping each other by holding, kicking or threatening the victims and taking turn, is coercive in itself.[1188] In addition, the MLC troops used actual force to sexually penetrate their victims. Irrespective of the use of force or coercion, strict liability attaches to the rape of minors as they are incapable of giving consent.

328. The MLC perpetrators were aware of the widespread attack and the armed conflict. This can be inferred objectively from the circumstances. The primary objective of the MLC troops in the CAR was to engage in armed combat with Bozizé's rebels, and dislodge them in order to regain territory. Therefore they knew that the commission of rapes was in the context of, or in associated with, the armed

[1185] [P81-T55-ENG-CT-p12-L3]/[P81-T55-FRA-CT-p12-L4]
[1186] [P29-T80-ENG-ET-p22-L6-and-L17-and-p50-L12]/[P29-T80-FRA-ET-p24-L4-and-L16-and-p55-L12]
[1187] [P23-T51-ENG-CT2-p36-L19]/[P23-T51-FRA-ET-p28-L27-p39-L4]
[1188] [P29-T80-ENG-ET-p51-L2]/[P29-T80-ENG-ET-p56-L8]

conflict.

329. In addition, upon regaining former-rebel held territory, MLC troops were in control of the areas where they committed the crimes. This is demonstrated by the nature of the attack, which was widespread, regular and organised. MLC troops divided themselves into small groups and conducted house-to-house operations, raping a large number of victims across the CAR. Furthermore, the MLC troops were aware of an organisation policy that condoned such acts.[1189] The MLC commanders' commission of multiple acts of rape is further evidence of the perpetrators' awareness of a broader attack.[1190] In addition, MLC troops were given a license to commit this attack against the CAR civilian population.

V. Nexus Requirement for Specific incidents of Rape1191

330. As described in chapter 2 of this brief, MLC troops committed acts of rape as an inherent part of the attack against the civilian population from on or about 26 October to 2002 to 15 March 2003. Rape, which was used as a weapon of war, was an essential part of the attack. It was preceded by, or occurred simultaneously with pillaging of civilian property. The witness testimonies described above demonstrate an organised pattern of acts in the course of the attack against the civilian population.

331. As described in chapter 4 of this brief, MLC troops committed rape in the context of, and in association with, the armed conflict against Bozizé's rebels. After engaging in battle with Bozizé's rebels and regaining former rebel-held territory,

[1189] [P47-T176-ENG-ET-p32-L11-p33-L20]/[P47-T176-FRA-ET-p32-L5-p33-L12]; [P47-T178-ENG-ET-p25-L13-p26-L2]/[P47-T178-FRA-ET-p26-L28-p27-L15]; [P213-T186-ENG-ET-p39-L3-p44-L5]/[P213-T186-FRA-ET-p41-L10-p46-L16]
[1190] [P169-T136-ENG-ET-p32-L8-18]/[P169-T136-FRA-ET-p33-L4]; [P-173-T144-ENG-ET-p31-L10-p32-L7]/[P-173-T144-FRA-ET-p32-L10-p33-L11]; [P169-T142-ENG-CT2-p7-L19-p8-L20]/[P169-T142-FRA-ET-p7-L22-p8-L19]; [P213-T187-ENG-ET-p33-L19-p38-L9]/[P213-T187-FRA-ET-p34-L21-p39-L12]
[1191] ICC-01/05-01/08-424, paras. 188 and 288.

MLC troops committed rape in public or during house-to-house operations. Their commission of rape was directly associated with, or in the context of, the armed conflict.

VI. General reliability and credibility of rape victims/ witnesses

332. The victim witnesses of rape described above provided clear and compelling accounts of their own victimisation and experience. Their conduct during their testimonies showed their readiness and willingness to answer difficult questions concerning their traumatic experiences. Victim accounts were internally consistent, clear, precise, and plausible. In addition, their experiences were very similar to other accounts in the record of the case. For instance, P75's testimony is illustrative of the different types of rape committed by MLC victims during the 2002-2003 CAR conflict;[1192] whilst P23's testimony demonstrates the use of rape as a weapon of war to punish members of the CAR civilian population that were considered rebel supporters. The victim witnesses provided credible and reliable information, based on the indicia of identification, to demonstrate that their perpetrators were MLC troops.

333. It suffices to note at this stage that the Defence did not raise any material inconsistencies that affect the overall credibility and reliability of the witness testimonies. In all incidents of rape described above, the witness testimony provided sufficient evidence to establish that: rape was committed through sexual penetration using force, the threat of force, or coercion; MLC troops were the perpetrators based on the indicia of control of area, uniform, language, self-identification, and/ or behaviour of troops; MLC perpetrators had intent to commit rape or knew that rape would occur in the ordinary course of events; and there was a nexus between the incidents of rape and the contextual elements of crimes against humanity and war

[1192] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423-and-0426-and-0427

crimes. Although not legally required, particularly for rape crimes, victim accounts were sometimes corroborated.

VII. Gender Experts: CAR-OTP-PPPP-0221 and CAR-OTP-PPPP-0229

334. Notwithstanding the impact of rape and potential post-traumatic stress disorder (PTSD) suffered by victims or witnesses, their testimonies leave no doubt that they were raped by MLC troops during the 2002-2003 CAR conflict. Based on their expertise and interviews of CAR victims, the two gender experts that testified in this case come to similar findings and conclusions with regard to both the impact of rape and PTSD.

335. P229 concluded that trauma suffered from rape does not affect memory of that experience because recollection of the rape remains intact.[1193] As a result of PTSD, counselling psychologist Dr. Adeyinka Moronke AKINSULURE-SMITH ("P221")[1194] explained that, for example, "the declarative memory, which is the memory that is associated with recalling for example facts and lists, so that while the person may have fragments of memories, they may get chronological events confused. They may have difficulty remembering exact things."[1195]

336. P221 has considerable experience treating victims of war and human rights abuses, such as torture,[1196] and dealing with psychological trauma, sexual violence and HIV/AIDS patients.[1197] P221 was jointly instructed to produce an expert report

[1193] [P229-T100-ENG-CT2-p39-L1]/[P229-T100-FRA-CT-p40-L1]
[1194] [P221-T38-ENG-ET-p11-L22-and-p12-L8-p13-L3]/[P221-T38-FRA-ET-p11-L24-and-p12-L7-p13-L2]; EVD-T-OTP-00598/CAR-OTP-0054-0943.
[1195] [P221-T39-ENG-ET-p6-L7]/[P221-T39-FRA-ET-p6-L6].
[1196] [P221-T38-ENG-ET-p11-L22-and-p12-L8-p13-L3]/[P221-T38-FRA-ET-p11-L24-and-p12-L7-p13-L2]; EVD-T-OTP-00598/CAR-OTP-0054-0943
[1197] [P221-T38-ENG-ET-p12-L17-p14-L9-and-p16-L11-p18-L25-and-p19-L14]/[P221-T38-FRA-ET-p12-L16-p14-L5-and-p16-L9-p18-L20-and-p19-L7]

on gender crimes and PTSD.[1198] The Defence does not dispute her evidence, which they consider "substantially uncontroversial".[1199] P221 concluded that, "there was extensive sexual violence that involved the majority of women, but also men, and the types of sexual violence involved multiple gang rapes of at least two if not more perpetrators towards an individual. The type of sexual violence involved anal, vaginal, oral penetration, and, I guess if one could argue being a witness, witnessing acts of sexual violation against another individual."[1200]

337. P229, who conducted victim and family interviews of sexual violence victims,[1201] explained that rape victims generally suffered from four main types of impact: (i) medical; (ii) psychological; (iii) psychiatric; and (iv) social consequences.[1202] P221 described the severe impact of rape from a physical and psychological perspective, as well as social impact for the individual, their family and their communities.[1203] This includes: tissue tears of the vaginal, bladder and rectum area; uterine prolapse; extensive damage to the reproductive system resulting in complications associated with miscarriage; the stigma and shame associated with carrying pregnancy due to rape and risks associated with attempts to self-induce abortions; as well as depressive and anxiety-related symptoms associated with PTSDs.[1204]

338. P221 explained that the effect of rape was different depending on the victim's gender: "[u]sually for men, it's shame; it's seen as being made to be a woman in a negative way. There's fear of being viewed as homosexual".[1205] For women, "there's

[1198] [P221-T38-ENG-ET-p22-L4]/[P221-T38-FRA-ET-p21-L19]; EVD-T-OTP-0003/CAR-OTP-0064-0560; ICC-01/05-01/08-768, Submission of Joint Instructions to Experts by the Prosecution and the Office of Public Counsel for Victims, 7 May 2010.
[1199] [P221-T38-ENG-ET-p5-L19-p6-L10]/[P221-T38-FRA-ET-p5-L26-p6-L16]
[1200] [P221-T38-ENG-ET-p23-L6]/[P221-T38-FRA-ET-p22-L21-p23-L12]
[1201] [P229-T99-ENG-CT2-p22-L17]/[P229-T99-FRA-CT-p22-L5]
[1202] [P229-T99-ENG-CT2-p23-L23-p24-L3]/[P229-T99-FRA-CT-p23-L8]
[1203] [P221-T38-ENG-ET-p24-L2]/[P221-T38-FRA-ET-p23-L17]
[1204] [P221-T38-ENG-ET-p24-L16-p25-L4]/[P221-T38-FRA-ET-p24-L2]
[1205] [P221-T38-ENG-ET-p25-L5]/[P221-T38-FRA-ET-p24-L16]

also the stigma, you know, of having been used, being seen as damaged goods".[1206]

339. P229 stated that the impact was multi-fold, "[f]irst there was the personal impact, whereby the woman who was raped was stigmatised and marginalised. There was also the impact on the children, who bear stigma, who are taunted in the – at school and in their own area, but there's also the impact on the families because the man, the spouse, the husband, was shown up as a well-known individual … Some women were quite simply rejected by their spouse after they found out about the rape."[1207] Sometimes rape was seen as tantamount to adultery and the woman was no longer able to participate in the normal functioning of society or the family unit.[1208] According to P221, parents forced to watch their children suffer big psychological impact, whilst children who witness the rape of their parents are affected profoundly because they are still forming cognitively.[1209]

340. Stigmatisation involves the taunting, talking about a victim with the goal of casting this person aside or rejecting him or her from the normal social structure.[1210] P229's interviews of CAR rape victims revealed that the "feeling of shame and guilt is indeed a major component in what the victims say about themselves."[1211] During P221's recent interviews in Bangui, victims discussed issues of shame, guilt and blaming the victim often associated with sexual violence.[1212] Some victims even blame themselves.[1213] These women were hugely fearful that people would find out that they had been raped and there would be repercussions for them as well as their families.[1214] Others feared being rejected by their partners as a result of the rape and

[1206] [P221-T38-ENG-ET-p25-L5]/[P221-T38-FRA-ET-p24-L16]
[1207] [P229-T99-ENG-CT2-p20-L15-p21-L3-and-p37-L9]/[P229-T99-FRA-CT-p20-L2-and-p36-L11]
[1208] [P229-T99-ENG-CT2-p22-L1]/[P229-T99-FRA-CT-p21-L15]
[1209] [P221-T39-ENG-ET-p9-L23-p10-L2]/[P221-T39-FRA-ET-p9-L16].
[1210] [P229-T99-ENG-CT2-p21-L18-p22-L5]/[P229-T99-FRA-CT-p21-L5]
[1211] [P229-T99-ENG-CT2-p22-L6]/[P229-T99-FRA-CT-p21-L21-p22-L5]
[1212] [P221-T38-ENG-ET-p25-L15]/[P221-T38-FRA-ET-p24-L26-p25-L2]; [P221-T38-ENG-ET-p13-L1-and-L16]/[P221-T39-FRA-ET-p12-L6-and-p12-L21-p13-L3]
[1213] [P221-T39-ENG-ET-p14-L1]/[P221-T39-FRA-ET-p13-L3]
[1214] [P221-T39-ENG-ET-p13-L8]/[P221-T39-FRA-ET-p12-L13]

the additional feelings of shame for everyone.[1215] Consequently, there was much underreporting as victims have many reasons not to come forward.[1216]

341. In addition, psychological disorders suffered on account of rape affected the victims to the extent that they were afraid,[1217] stigmatised,[1218] and lost self-confidence.[1219] The stigma of rape led to broken marriages or families; in some instances a male spouse would break marital ties with a woman who had been raped as he was of the opinion that she was no longer worthy of being his spouse,[1220] or children were taken away from mothers who were rape victims.[1221]

342. Stigma associated with rape was further accentuated by social ostracism; spouses of rape victims were called names,[1222] while female rape victims were blamed for the crime they suffered[1223] and referred to as "women of the Banyamulengue".[1224] Some victims exhibited various reactions following their rape, including disgust, particularly towards their spouses and that this in turn affected their family and sex life.[1225]

343. P221 explained that, in various African communities, psychological issues are stigmatised and often seen as resulting from something the person or their family has done and the victim is seen as the problem.[1226] In addition, P221 explained that

[1215] [P221-T39-ENG-ET-p14-L6]/[P221-T39-FRA-ET-p13-L9]
[1216] [P221-T39-ENG-ET-p14-L5]/[P221-T39-FRA-ET-p13-L6]
[1217] [P68-T48-ENG-ET-p40-L16]/[P68-T48-FRA-p43-L1]; [P68-T49-ENG-ET-p15-L4]/[P68-T49-FRA-CT2-p15-L11]
[1218] [P229-T100-ENG-CT2-p30-L25-p31-L5]/[P229-T100-FRA-CT-p31-L12]
[1219] [P229-T100-ENG-CT2-p31-L5]/[P229-T100-FRA-CT-p31-L20]
[1220] [P229-T100-ENG-CT2-p35-L3]/[P229-T100-FRA-CT-p35-L23-p36-L5]
[1221] [P229-T100-ENG-CT2-p35-L3]/[P229-T100-FRA-CT-p35-L23-p36-L5]
[1222] [P229-T100-ENG-CT2-p37-L22-p38-L2]/[P229-T100-FRA-CT-p38-L23-p39-L1]
[1223] [P229-T100-ENG-CT2-p39-L21-p40-L8]/[P229-T100-FRA-CT-p40-L21-p41-L7
[1224] [V1-T220-ENG-ET-p54-L5]/[V1-T220-FRA-ET-p53-L13]; [P119-T82-ENG-CT-p54-L3]/[P119-T82-FRA-CT-p53-L23]; [P42-T64-ENG-ET-p21-L7]/[P42-T64-FRA-ET-p24-L1]
[1225] [P229-T101-ENG-CT-p7-L17]/[P229-T101-FRA-ET-p7-L21]; [P75-T92-ENG-CT-p11-L21-p12-L15]/[P75-T92-FRA-CT-p12-L22-p13-L16]
[1226] [P221-T39-ENG-ET-p12-L6]/[P221-T39-FRA-ET-p11-L14-p12-L3]

HIV/AIDS as a result of rape is associated with stigma.[1227] Victims are often rejected, laughed at and ostracised from their communities, and some victims are unwilling to get tested as a result of this fear and limited availability of medical assistance.[1228]

344. P221 explained that PTSD is a diagnostic mental health disorder, comes from experiencing or witnessing an actual, threatened or perceived incident that involves a reaction of intense fear, horror or helplessness.[1229] As a result, the patient adopts one or all of the three cluster responses.[1230] Re-experiencing, which includes flashbacks or intrusive memories of the incident; recurrent nightmares; possible hallucinations; and feelings of trauma as though the event is happening again and again.[1231] Avoidance and numbing, which involves attempts to forget the incident by avoiding thinking, talking or remembering the incident; disassociation from others; confused memories; as well as difficulty feeling their own bodies or emotions.[1232] Psychological arousal, which includes exaggerated startled responses as normal events remind them of the incident; sleep disturbances; headaches; muscle tension; nausea; and difficulties with concentration, which is often followed by irritability and outbursts of anger.[1233]

345. Similarly, P229 explained that the symptoms of PTSD exhibited by CAR sexual violence victims that he examined included the symptoms of recollection and re-experiencing the rape incident.[1234] These symptoms can last for months or remain continuous depending on the type of support system and treatment available.[1235] P221 testified that survivors of sexual violence continue to experience the

[1227] [P221-T39-ENG-ET-p5-L6]/[P221-T39-FRA-ET-p5-L3]
[1228] [P221-T39-ENG-ET-p5-L11]/[P221-T39-FRA-ET-p5-L10]
[1229] [P221-T38-ENG-ET-p25-L20-p26-L1]/[P221-T38-FRA-ET-p25-L3]
[1230] [P221-T38-ENG-ET-p26-L7]/[P221-T38-FRA-ET-p25-L13]; [P221-T39-ENG-ET-p10-L3-and-p11-L6]/[P221-T39-FRA-ET-p9-L21-p10-L1-and-L19]
[1231] [P221-T38-ENG-ET-p26-L10]/[P221-T38-FRA-ET-p25-L16]
[1232] [P221-T38-ENG-ET-p26-L18-p27-L6]/[P221-T38-FRA-ET-p25-L21-p26-L6]
[1233] [P221-T38-ENG-ET-p27-L7-and-L19]/[P221-T38-FRA-ET-p26-L7-and-L18]; [P221-T39-ENG-ET-p14-L21-p15-L8]/[P221-T39-FRA-ET-p13-L23-p14-L7]
[1234] [P229-T100-ENG-CT2-p32-L13]/[P229-T100-FRA-CT-p33-L2]
[1235] [P221-T38-ENG-ET-p27-L12]/[P221-T38-FRA-ET-p26-L12]

devastating negative, psychological and social consequences of their experience.[1236]

346. P229 explained that the CAR victims had difficulty talking about the ordeal they had experienced and suppressed memories that were very difficult to discuss.[1237] P221 explained that, "[m]en are less likely initially to report sexual violence."[1238] P229 concurred and concluded that the male victims displayed a greater number of symptoms in comparison to the female victims.[1239]

347. P221 explained that talking about sexual violence can be deeply traumatising and shameful, not to mention testifying in court, which can be re-traumatising for victims:[1240] "It's very stressful to have to come and speak in great detail, or as much detail as possible, about this type of traumatic experience, I can't emphasise enough."[1241] In fact, "[t]he younger the victim, the more devastating and the more problematic."[1242]

CHAPTER 5. PILLAGING

348. The evidence presented in this case establishes beyond reasonable doubt that from on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed war crimes through the pillaging of villages and towns in the Central African Republic, in violation of [article]8(2)(e)(v) and 28(a) of the Rome Statute.[1243] The pillaging was perpetrated by Bemba's MLC troops against CAR civilians in various locations within the CAR in the context of an armed conflict not of an international character as they engaged Bozize forces in fighting. These locations include but not

[1236] [P221-T39-ENG-ET-p8-L14-p9-L1]/[P221-T39-FRA-ET-p8-L10]
[1237] [P229-T100-ENG-CT2-p40-L8]/[P229-T100-FRA-CT-p41-L6]
[1238] [P221-T38-ENG-ET-p18-L19]/[P221-T38-FRA-ET-p18-L12]
[1239] [P229-T100-ENG-CT2-p38-L3]/[P229-T100-FRA-CT-p39-L2]
[1240] [P221-T39-ENG-ET-p15-L9]/[P221-T39-FRA-ET-p14-L8]
[1241] [P221-T39-ENG-ET-p16-L16]/[P221-T39-FRA-ET-p15-L16]
[1242] [P221-T39-ENG-ET-p11-L20-p12-L5]/[P221-T39-FRA-ET-p11-L2]
[1243] ICC-01/05-01/08-950-CONF-AnxA-p35

limited to Bangui, PK 12, Fou, Mongoumba, Bossangoa, Damara, Bossembele, Sibut, Bozoum and Bossemptele.

I. Specific Elements of the crime of pillaging

349. The contextual elements of the war crime of pillaging are discussed elsewhere. This chapter will therefore focus solely on the specific elements of pillaging, including the direct perpetrator's requisite mental element.

A. Actus reus

350. With regard to Article 8(2)(e)(v) of the Statute, the Elements of Crimes of pillaging require that:

(1) The perpetrator appropriated certain property;

(2) The appropriation was without the consent of the owner.

B. Mens rea

351. With regard to the mental element the perpetrator must have removed certain property from the possession of another rightful owner without his or her consent with intent and knowledge pursuant to article 30 of the Statute.[1244]

352. In addition to the intent pursuant to article 30 of the Statute, the perpetrator must have specifically intended to deprive the owner of the property and to appropriate it for private or personal use.[1245]

[1244] ICC-01/05-01/08-424-para.319
[1245] ICC-01/05-01/08-424-para.320

C. Nexus requirement

353. The Prosecution must demonstrate that acts of pillaging took place in the context of and were associated with an armed conflict not of an international character.

354. In addition, to the extent possible, a description of the "expropriated" property is required in order to ascertain whether indeed "certain property" was appropriated without the consent of the rightful owner.[1246]

II. Individual/specific witness accounts of pillaging by the MlC in the CAR

355. The victims, witnesses and the CAR population distinguished the MLC troops from other armed groups present in the CAR during the conflict period, in general, through their clothing, their language, control of the area, self-identification, and behaviour towards the civilian population.

1. *Witness P108*

356. P108 is the Director of the Cabinet of the Constitutional Court. In 2000-2003 he held the position of senior investigation Judge at the *Tribunal de Grand instance* in Bangui.[1247]

357. P108 testified that on 1 November his [REDACTED] called him on phone and informed him that the gate of his house had been broken down and that the MLC were pillaging property from his house.[1248] His wife also called him and told him that there were rumours in their neighbourhood that there were foreign troops that were

[1246] ICC-01/05-01/08-424-para.318
[1247] [P108-T132-ENG-ET-p11-L1]/[P108-T132-FRA-ET-p12-L9]
[1248] [P108-T132-ENG-ET-p20-L15]/[P108-T132-FRA-ET-p23-L3]

raping women. He advised his wife to call [REDACTED], to come and take care of their home and advised her to take children and flee from there.[1249]

358. P108 saw the MLC for the first time on 1st November 2002 and they were going towards PK 12.[1250] P108 sufficiently identified the MLC using clothing, language, control of area and behaviour towards civilians[1251]. Moreover, the MLC documents recovered from his house immediately they left, linked the occupants of his house to the MLC.[1252]

359. Regarding the pillaging of his house, he testified that his house was occupied by the MLC chief called [REDACTED] from 2 November 2002 until mid-February 2003.[1253] He testified that the MLC literally emptied his house. They took clothes, electronic goods, domestic appliances, mattresses, emptied the wall unit, destroyed the beds and many other things as listed in his report.[1254] The witness made reference to CAR-OTP-0037-0126[1255] which was a report of the things pillaged by the MLC from his house. The document was prepared by the witness in 2003. He listed the items pillaged as; magistrates gown valued at 800,000 CFA, 12 suits valued at 3 million, wife's clothing valued at 2,400,000, his wife's wax wraps valued at 1.5 million, shoes, children's clothing, freezer, refrigerator, microwave, coffee maker, washing machine, dishes, audio equipment, television, computers, children games, sofa sets were destroyed, batteries, generators, beauty shop goods, children bicycles, his hunting weapon etc.[1256]

[1249] [P108-T132-ENG-ET-p20-L5]/[P108-T132-FRA-ET-p22-L23-p23-L2]
[1250] [P108-T132-ENG-ET-p22-L4]/[P108-T132-FRA-ET-p24-L25-p25-L9]
[1251] [P108-T132-ENG-ET-p23-L1]/[P108-T132-FRA-ET-p25-L22] ; [P108-T132-ENG-ET-p23-L6]/[P108-T132-FRA-ET-p25-L28-p26-L4]; [P108-T132-ENG-ET-p25-L13-p26-L16]/[P108-T132-FRA-ET-p28-L10-p29-L14]; [P108-T132-ENG-ET-p26-L2]/[P108-T132-FRA-ET-p28-L26-p29-L14]
[1252] P108-T132-ENG-ET-p42-L4-and-p43-L1-and-p44-L1]/[P108-T132-FRA-ET-p45-L3-and-p46-L1-and-p47-L6];[P108-T132-ENG-ET-p43-L22-p44-L1]/[P108-T132-FRA-ET-p46-L19-p47-L1] ; [P108-T132-ENG-ET-p43-L6]/[P108-T132-FRA-ET-p46-L6]
[1253] [P108-T132-ENG-ET-p29-L12]/[P108-T132-FRA-ET-p32-L18]
[1254] [P108-T132-ENG-ET-p30-L7]/[P108-T132-FRA-ET-p33-L12]
[1255] The witness made reference to EVD-T-OTP-00349/CAR-OTP-0037-0126-at-0128-and-0129
[1256] [P108-T132-ENG-ET-p34-L6-p35-L13]/[P108-T132-FRA-ET-p37-L8-p38-L14]

360. P108 testified that he was informed by [REDACTED] who was in the house when the Banyamulenge pillaged it, that it was the Banyamulenge who occupied and pillaged his house.[1257] It cost about 10 million CFA to refurbish the house after it was pillaged by the Banyamulenge.[1258]

361. P108 was deprived the use of his house during the period it was occupied by the MLC. He testified that he went to the house within an hour after the MLC left the house.[1259] He also testified that he could not return to his house during the period it was occupied by the MLC because he was afraid for his life.[1260] The MLC occupied the house without P108 consent. P108 sought intervention of [REDACTED], a senior military official in the CAR army to assist him recover the house from the MLC but after a while he realised that [REDACTED] was himself helpless.[1261] P108 has never been compensated for the property he lost. He has also never been compensated for the damages caused to his house by the MLC.[1262] Moreover no single item looted from his house was ever returned by the MLC.[1263]

362. P108 also testified that he recovered a document CAR-OTP-0037-0092 in his house.[1264] This document is an MLC training manual for basic and advanced weapons.[1265] He also recovered military reports prepared by MLC soldiers to be sent to their superiors.[1266] These documents were recovered by the witness immediately the MLC left his house and were kept by him until they were handed over to the

[1257] [P108-T132-ENG-ET-p36-L19-p37-L8]/[P108-T132-FRA-ET-p39-L20-p40-L10]
[1258] [P108-T132-ENG-ET-p39-L4]/[P108-T132-FRA-ET-p42-L6]
[1259] [P108-T132-ENG-ET-p39-L23-p40-L12]/[P108-T132-FRA-ET-p42-L25-p43-L13]
[1260] [P108-T132-ENG-ET-p40-L13]/[P108-T132-FRA-ET-p43-L14]
[1261] [P108-T133-ENG-ET-p8-L5]/[P108-T133-FRA-ET-p8-L15]
[1262] [P108-T132-ENG-ET-p39-L18]/[P108-T132-FRA-ET-p42-L18]
[1263] [P108-T132-ENG-ET-p39-L7]/[P108-T132-FRA-ET-p42-L9]
[1264] [P108-T132-ENG-ET-p42-L4-and-p43-L1-and-p44-L1]/[P108-T132-FRA-ET-p45-L3-and-p46-L1-and-p47-L6]
[1265] [P108-T132-ENG-ET-p43-L22-p44-L1]/[P108-T132-FRA-ET-p46-L19-p47-L1]
[1266] [P108-T132-ENG-ET-p43-L6]/[P108-T132-FRA-ET-p46-L6]

prosecution.[1267] The recovery of these MLC documents in P108 house shortly after departure of the MLC from P108 house corroborates the evidence of [REDACTED] who testified that P108 house was occupied by the MLC.

363. The evidence on record shows that Banyamulenge occupied P108 house without his consent. Moreover they looted his property that was in the house. P108 attempted to use [REDACTED], a senior CAR military official at the time to get back his house but even [REDACTED] was helpless in the face of the MLC who occupied P108 house. Both [REDACTED] testified that the MLC pillaged P108 house, loaded his goods onto a truck which transported them away. At the time of pillaging the Banyamulenge were armed with rifles. When they entered the compound, they even [REDACTED]. P108 evidence is corroborated by [REDACTED] who witnessed the pillaging. These two witnesses sufficiently identify the MLC as perpetrators of the pillaging that took place in the house of P108. The above evidence satisfies the elements of the crime of pillaging.

2. *Witness P110*

364. P110 testified that she was a neighbour to [REDACTED].[1268] She explained that she was the MLC towards the end of October 2002 at about 4-5 in the evening.[1269] While at her house, she saw the MLC approach the compound of her neighbour [REDACTED].[1270] These MLC were armed with weapons.[1271]

365. P110 testified that the MLC pillaged her property. She testified that after breaking into [REDACTED] house, the MLC also came to her house. At that time she

[1267] [P108-T132-ENG-ET-p44-L13]/[P108-T132-FRA-ET-p47-L12]
[1268] [P110-T125-ENG-CT-p8-L16]/[P110-T125-FRA-CT-p9-L2]
[1269] [P110-T125-ENG-CT-p11-L9]/[P110-T125-FRA-CT-p11-L23]
[1270] [P110-T125-ENG-CT-p11-L1]/[P110-T125-FRA-CT-p11-L14]
[1271] [P110-T125-ENG-CT-p11-L22-p12-L2]/[P110-T125-FRA-CT-p12-L8-and-p12-L13]

was behind her house in the bush.[1272] The MLC stayed in her house for enough time to loot everything. They left at about 6 in the evening.[1273] The house of [REDACTED] and her house were looted simultaneously by two groups of the MLC.[1274] After the Banyamulenge left, she went to the living room of her house to close the door and she noticed that they had taken away all they could take.[1275] They took everything that was in the living room and other valuables including her father's suitcase which was in her father's bedroom.[1276]

366. P110 explained that she also witnessed the pillaging that took place in the house of P108. She testified that when Banyamulenge entered the compound of [REDACTED], they started looting and taking away [REDACTED] properties.[1277] She was in her father's room and she observed the MLC through the window when they broke into [REDACTED] house.[1278] She saw about 9 MLC outside the compound of [REDACTED] at that time[1279] and all of them were armed with guns.[1280] She explained that the MLC occupied [REDACTED] house from end of October 2002 to mid-February 2003.[1281] This is corroborated by [REDACTED], the owner of the house. In addition she testified that at the time the MLC occupied P108 house, the only person at home was the [REDACTED], who testified under the [REDACTED].[1282] Again this is corroborated by [REDACTED].

367. In addition, P110 testified that she observed the MLC who looted [REDACTED]'s property load it onto a military vehicle.[1283] She later learnt from

[1272] [P110-T125-ENG-CT-p23-L6]/[P110-T125-FRA-CT-p23-L23]
[1273] [P110-T125-ENG-CT-p23-L15]/[P110-T125-FRA-CT-p24-L5]
[1274] P110-T125-ENG-CT-p24-L2]/[P110-T125-FRA-CT-p24-L20]
[1275] [P110-T125-ENG-CT-p25-L4]/[P110-T125-FRA-CT-p25-L23
[1276] [P110-T125-ENG-CT-p25-L7]/[P110-T125-FRA-CT-p25-L27-p26-L1]
[1277] [P110-T125-ENG-CT-p16-L3]/[P110-T125-FRA-CT-p16-L14]
[1278] [P110-T125-ENG-CT-p17-L12]/[P110-T125-FRA-CT-p17-L24]
[1279] [P110-T125-ENG-CT-p17-L15]/[P110-T125-FRA-CT-p17-L28-p18-L6]
[1280] [P110-T125-ENG-CT-p17-L25-and-p18-L2]/[P110-T125-FRA-CT-p18-L11]
[1281] [P110-T125-ENG-CT-p16-L15]/[P110-T125-FRA-CT-p18-L11]
[1282] [P110-T125-ENG-CT-p-18-L3]/[P110-T125-FRA-CT-p18-L14]
[1283] [P110-T125-ENG-CT-p18-L17-and-p20-L25-p21-L1]/[P110-T125-FRA-CT-p18-L27-p-19-L4]

[REDACTED] that one of the MLC who occupied [REDACTED] house was a "[REDACTED]".[1284] She also testified that [REDACTED] informed her that the MLC pointed their guns to his throat, ordered him to obey their orders and told him to remain around so that he can work for them.[1285] She also testified that [REDACTED] lived opposite their house.[1286] This is as well corroborated by [REDACTED].
P110 identified the MLC on the basis of clothing, language, control of area and their behaviour towards civilians.[1287]

368. P110 also testified that apart from her and her neighbour's house, they looted many other houses.[1288] The Banyamulenge fired their weapons in the air, in the ground and they also shot a woman who was fleeing.[1289] Their pillaged items were never returned to them and therefore depriving them of their use.[1290]

369. Lack of consent can be inferred from the coercive environment. When she saw armed MLC, she went into hiding behind their house to protect herself. The MLC just broke into their house and carried away their property without their permission. This shows that there was no consent for the MLC to break into the house and take away their property.

370. The above evidence shows that pillaging was committed by armed MLC troops. They pillaged P110 items from their living room and a suit case that belonged to her father without their consent. The pillaged items were taken away by the MLC.

[1284] [P110-T125-ENG-CT-p21-L8]/[P110-T125-FRA-CT-p21-L21]
[1285] [P110-T125-ENG-CT-p23-L2]/[P110-T125-FRA-CT-p23-L18]
[1286] [P110-T125-ENG-CT-p22-L6]/[P110-T125-FRA-CT-p22-L19]
[1287] [P110-T125-ENG-CT-p12-L17]/[P110-T125-FRA-CT-p13-L2]; [P110-T125-ENG-CT-p13-L8]/[P110-T125-FRA-CT-p13-L19]; [P110-T125-ENG-CT-p14-L20-and-p15-L1]/[P110-T125-FRA-CT-p15-L9]; [P110-T125-ENG-CT-p15-L15]/[P110-T125-FRA-CT-p15-L28-p16-L11]; [P110-T125-ENG-CT-p11-L15]/[P110-T125-FRA-CT-p12-L1] ; [P110-T125-ENG-CT-p12-L7]/[P110-T125-FRA-CT-p12-L19]
[1288] [P110-T125-ENG-CT-p27-L3]/[P110-T125-FRA-CT-p27-L23-p28-L3]
[1289] [P110-T125-ENG-CT-p28-L2]/[P110-T125-FRA-CT-p28-L23-p29-L10]
[1290] [P110-T125-ENG-CT-p27-L1]/[P110-T125-FRA-CT-p27-L21]

The looted items were never returned. P110 has never been compensated for these items. The above evidence shows that MLC pillaged property of P112.

3. *Witness P112*

371. P112 testified that he was working as a [REDACTED] during the conflict period.[1291] He explained that he saw the MLC in Begoua in November 2002.[1292] In his testimony he sufficiently identified the MLC using clothing, self-identification, language, control of area and behaviour towards civilians.[1293]

372. The MLC were armed with A 52 guns, rocket launchers, MAS 36 rifles, grenades and other heavy weapons.[1294]

373. P112 testified that he was in [REDACTED] compound when about five MLC troops broke [REDACTED] gate, entered the compound and brandished their weapons at him. The MLC beat him up and after that they broke the door to the house and entered [REDACTED] house. Once inside the house they took various items. Among the items mentioned are the [REDACTED] and hat, [REDACTED] etc[1295]. He was beaten up using the butts of the guns.[1296] The MLC also looted the houses of other people in the neighbourhood.[1297] This evidence shows that MLC used force to occupy and loot the house of [REDACTED] without his consent.

[1291] [P110-T128-ENG-ET-p42-L12]/[P110-T128-FRA-CT-p44-L3]
[1292] P110-T128-ENG-ET-p47-L1]/[P110-T128-FRA-CT-p48-L18]
[1293] [P110-T128-ENG-ET-p48-L21]/[P110-T128-FRA-CT-p50-L9]; [P110-T128-ENG-ET-p50-L3]/[P110-T128-FRA-CT-p51-L16]; [P112-T129-ENG-ET-p4-L1]/[P112-T129-FRA-CT-p4-L7]; [P112-T131-ENG-CT-p14-L10]/[P112-T131-FRA-CT-p14-L13]; [P112-T131-ENG-CT-p14-L10]/[P112-T131-FRA-CT-p14-L13]; [P112-T131-ENG-CT-p16-L3]/[P112-T131-FRA-CT-p16-L7]
[1294] [P110-T128-ENG-ET-p49-L20]/[P110-T128-FRA-CT-p51-L7]
[1295] [P112-T129-ENG-ET-p5-L4-p6-L6]/[P112-T129-FRA-CT-p5-L10-p6-L11]
[1296] [P112-T129-ENG-ET-p6-L7]/[P112-T129-FRA-CT-p6-L15]
[1297] [P112-T129-ENG-ET-p13-L12]/[P112-T129-FRA-CT-p13-L9] He testified that Banyamulenge looted the houses of [REDACTED]

374. P112 also testified that the MLC troops fired shots, broke people's doors and looted civilian properties.[1298] The MLC commander who was giving orders was called major.[1299]

375. P112 also explained that he stayed with the MLC for a period of 10 days before he fled.[1300] During that period, the MLC had taken over the entire neighbourhood.[1301] He also explained that Major received looted items. While still at [REDACTED], MLC soldiers showed P112 certain looted items that they claimed were set aside for the major.[1302] The looted items that major received included TV, furniture, travel bags, women attires and items of value.[1303]

376. P112 also testified that the MLC looted the following items from his house; large radio set, foam mattress, clothes, bed, cassava mill, sewing machine, house doors that were used as firewood, plates, kitchen utensils etc.[1304] He explained that his house was pillaged while he was at [REDACTED], but he believes that it was looted by the Banyamulenge since it was just across the road where [REDACTED] was.[1305] The Banyamulenge controlled the whole of this area at the time his house was pillaged.

377. P112 also testified that the MLC loaded the looted items on vehicles and transported them away.[1306] The looted goods were neither returned nor was the witness or any other victim compensated.[1307] This evidence shows that P112 and [REDACTED] as the real owners of the properties looted by the MLC were deprived the use of their property.

[1298] [P112-T128-ENG-ET-p50-L14]/[P112-T128-FRA-CT-p50-L15]
[1299] [P112-T128-ENG-ET-p50-L17-and-p51-L1]/[P112-T128-FRA-CT-p50-L17-and-p 51-L12]
[1300] [P112-T129-ENG-ET-p30-L13]/[P112-T129-FRA-CT-p30-L8]
[1301] [P112-T129-ENG-ET-p40-L1]/[P112-T129-FRA-CT-p39-L25-p40-L1]
[1302] [P112-T129-ENG-ET-p41-L18]/[P112-T129-FRA-CT-p41-L16]
[1303] [P112-T129-ENG-ET-p41-L11]/[P112-T129-FRA-CT-p41-L8]
[1304] [P112-T129-ENG-ET-p27-L2]/[P112-T129-FRA-CT-p27-L2]
[1305] [P112-T129-ENG-ET-p14-L11-and-p15-L3]/[P112-T129-FRA-CT-p14-L6-and-p14-L25]
[1306] [P112-T129-ENG-ET-p28-L8]/[P112-T128-FRA-CT-p28-L8]
[1307] [P112-T129-ENG-ET-p28-L14]/[P112-T128-FRA-CT-p28-L13]

378. P112 never saw the MLC and FACA together.[1308] He explained that Major was the most senior MLC soldier in PK 12.[1309] P112 knew [REDACTED], [REDACTED][1310]. He testified that [REDACTED].[1311] This is corroborated by P81 when she testified that when the MLC attacked them, [REDACTED][1312].

379. The above evidence shows that the MLC appropriated the property of [REDACTED] without his consent. In addition, they occupied the House of [REDACTED] from November 2002 to Mid-February 2003 against his wish and forcing him to rent another house for his family. During this period, [REDACTED] could not access his house. The properties that they looted were transported on trucks and taken away. None of the looted items has ever been recovered. [REDACTED] has never received any compensation for the loss of property that he suffered. The above evidence satisfies the elements of the crime of pillaging.

4. *Witness P119*

380. P119 [REDACTED] within the 4th arrondisement[1313] during the conflict period.[1314] She lives in Boy-Rabe.[1315] Among her responsibilities [REDACTED].[1316]

381. P119 testified that the MLC arrived in her neighbourhood at about 3 p.m. on 28 October 2002[1317] after Bozize rebels had withdrawn.[1318] While in her house praying she heard a woman's voice crying out "I am dead". When she came out she met

[1308] [P112-T130-ENG-ET-p6-L19]/[P112-T130-FRA-ET-p6-L28-P7-L7]
[1309] [P112-T130-ENG-ET-p41-L6]/[P112-T130-FRA-ET-p42-L23]
[1310] [P112-T131-ENG-ET-p4-L1-p5-L25]/[P112-T131-FRA-CT-p4-L9-p6-L4]
[1311] [P112-T131-ENG-ET-p6-L6]/[P112-T131-FRA-CT-p6-L10]
[1312] [P81-T55-ENG-CT-P34-L2]/[P81-T55-FRA-CT-P35-L2]
[1313] [P119-T82-ENG-CT-p10-L1]/[P119-T82-FRA-ET-p10-L1]
[1314] [P119-T82-ENG-CT-p8-L12]/[P119-T82-FRA-ET-p8-L13]
[1315] [P119-T82-ENG-CT-p8-L19]/[P119-T82-FRA-ET-p8-L21]
[1316] [P119-T82-ENG-CT-p12-L5]/[P119-T82-FRA-ET-p12-L3]
[1317] [P119-T83-ENG-CT2-p4-L1-p5-L1]/[P119-T83-FRA-CT2-p4-L10-p5-L8]
[1318] [P119-T82-ENG-CT-p27-L7]/[P119-T82-FRA-ET-p27-L14]

MLC soldiers who brandished their weapons at her.[1319] P119 sufficiently identified the MLC using language, clothing, control of area and behaviour towards the CAR civilians.[1320]

382. Moreover, one MLC soldier told her that Patassé had given money to Bemba who in turn had asked them to come and apply article 15 in the CAR.[1321] Being a CAR national she didn't understand what article 15 meant. The MLC also asked her where Boy Rabe and the rebels were.[1322] Totality of this evidence shows that the troops that were in her neighbourhood at the time were the MLC. These are the same troops that committed crimes against the civilians including pillaging her properties.

383. P119 testified that the MLC pillaged her property. She testified that on the same day the MLC arrived, they also broke down her door and stole her radio and mattress. She saw the Banyamulenge who pillaged her items.[1323]

> "You know, the Banyamulengue, there were so many of them, they took over thewhole neighbourhood. They committed atrocities. They went through there. When we came back from the market and arrived at my home, they had already broken down the door. I didn't know who had broken down the door, but they took they took the clock. I saw the Banyamulengue leaving with these things when they broke down the door."[1324]

[1319] [P119-T82-ENG-CT-p17-L1-p18-L20]/[P119-T82-FRA-ET-p17-L8-p19-L9]
[1320] P119-T82-ENG-CT-p28-L14]/[P119-T82-FRA-ET-p28-L19] ; [P119-T82-ENG-CT-p29-L20]/[P119-T82-FRA-ET-p29-L24]; [P119-T84-ENG-ET-p5-L7]/[P119-T84-FRA-ET-P5-L5]
[1321] [P119-T82-ENG-CT-p33-L24]/[P119-T82-FRA-ET-p34-L2]
[1322] [P119-T82-ENG-CT-p36-L11]/[P119-T82-FRA-ET-p36-L9]
[1323] [P119-T82-ENG-CT-p46-L8-p49-L1]/[P119-T82-FRA-ET-p46-L10]; [P119-T84-ENG-ET-p39-L6]/[P119-T84-FRA-ET-p36-L27-p37-L7] [REDACTED] was with her and is the one who informed her that Banyamulenge looted her radio and alarm clock.
[1324] [P119-T82-ENG-CT-p47-L2]/[P119-T82-FRA-ET-p47-L3]

384. P119 also testified that the pillaged items were taken to Boy Rabe market where they were guarded by the MLC who were armed with guns.[1325] The owners of these items could not recover them because the MLC guarding the looted items were ready to shoot them.[1326] At the Boy Rabe market she saw foam mattresses, freezers, clothes, shoes and many other items wrapped up in sheets.[1327] While at the market they also saw MLC from Mandaba neighbourhood bringing additional looted items on their heads.[1328] About 30 residents [REDACTED] that MLC looted their items.[1329] When the CAR civilians attempted to push back the MLC, some MLC shot at the civilians before going away with looted goods.[1330] The pillaged items were never returned to them neither were the owners compensated.[1331] The looted items were eventually transported across Ubangi River.[1332] They were transported using military vehicles that transported troops.[1333] It was announced on radio that people can go to the port to recover their looted items. However, when P119 went to the port, she did not find any of her looted items.[1334]

385. The above evidence establishes that the MLC pillaged the property of P119. The MLC took away her property without her consent. When P119 and other residents of her neighbourhood attempted to recover their looted property at the Boy-Rabe market, the MLC shot at them and therefore scaring them away. Eventually their looted property was transported towards the river. P119 never recovered her property that was pillaged. The above evidence satisfies the elements of the crime of pillaging. Moreover, the witness sufficiently identifies the MLC as perpetrators of the pillaging. The pillaging took place during the period relevant to the charges.

[1325] [P119-T82-ENG-CT-p47-L18]/[P119-T82-FRA-ET-p47-L20]
[1326] [P119-T82-ENG-CT-p47-L18-and-p48-L10]/[P119-T82-FRA-ET-p47-L20-and-p48-L12]
[1327] [P119-T82-ENG-CT-p48-L1]/[P119-T82-FRA-ET-p48-L1]
[1328] [P119-T82-ENG-CT-p49-L12]/[P119-T82-FRA-ET-p49-p14]
[1329] [P119-T82-ENG-CT-p50-L1-3]/[P119-T82-FRA-ET-p50-L1]
[1330] [P119-T82-ENG-CT-p54-L21-p55-L1]/[P119-T82-FRA-ET-p54-L14]
[1331] [P119-T83-ENG-ET-p7-L12]/[P119-T83-FRA-CT2-p7-L26-p8-L12]
[1332] [P119-T83-ENG-ET-p8-L2]/[P119-T83-FRA-CT2-p8-L16]
[1333] [P119-T83-ENG-ET-p8-L6]/[P119-T83-FRA-CT2-p8-L19-p9-L5]
[1334] [P119-T85-ENG-ET-p37-L1-p38-L1]/[P119-T85-FRA-ET-p33-L20-p35-L4]

5. *Witness P87*

386. P87 [REDACTED] within Bangui during the conflict period.[1335] P87 testified that Bozize rebels withdrew from Boy-Rabe to PK 22 on 29 October 2002.[1336] The MLC arrived in her neighbourhood on 30 October 2002.[1337] When MLC arrived, there were no rebels in the area except the MLC soldiers.[1338]

387. P87 sufficiently identified the MLC using control of area, language, clothing and behaviour towards civilian population.[1339] P87 testified that at about 9 o'clock in the morning, seven MLC came to her home and asked her where the rebels were.[1340] All of them were armed with guns.[1341] At about 2 o'clock, she saw the MLC coming from the market while carrying pillaged goods such as TVs, radios, mattresses etc.[1342]

388. P87 also testified that at about 1900 hrs, four MLC came to her house and three just entered her house and took their TV, radio, mattresses and went away with them.[1343] P87, and her cousins [REDACTED] were in the house when the MLC pillaged these items but simply watched.[1344] in fear. Three MLC troops returned again at 9 o'clock, broke the bedroom door, the safe and took away money.[1345] They took from their house 600,000 Francs that belonged to her parents and 67000 Francs that belonged to her.[1346]

[1335] [P87-T44-ENG-ET-p11-L13-p12-L16]/[P87-T44-FRA-CT-p11-L26]
[1336] [P87-T44-ENG-ET-p12-L20-p13-L1]/[P87-T44-FRA-CT-p12-L2-p13-L27]
[1337] [P87-T44-ENG-ET-p17-L11-p6-L1]/[P87-T44-FRA-CT-p18-L8]
[1338] [P87-T44-ENG-ET-p17-L21]/[P87-T44-FRA-CT-p22-L24-p23-L3]; [P87-T45-ENG-CT-p4-L7]/[P87-T45-FRA-ET-p4-L13]
[1339] [P87-T44-ENG-ET-p22-L1]/[P87-T44-FRA-CT-p23-L4]
[1340] [P87-T44-ENG-ET-p13-L12]/[P87-T44-FRA-CT-p13-L28-p14-L5]
[1341] [P87-T44-ENG-ET-p13-L14]/[P87-T44-FRA-CT-p14-L2]
[1342] P87-T44-ENG-ET-p13-L17]/[P87-T44-FRA-CT-p14-L6]; [P87-T47-ENG-CT2-p7-L19]/[P87-T47-FRA-CT-p7-L26-p8-L3]
[1343] [P87-T44-ENG-ET-p14-L1-and-p27-L19]/[P87-T44-FRA-CT-p14-L16-and-p28-L27-p29-L6]
[1344] [P87-T44-ENG-ET-p14-L4]/[P87-T44-FRA-CT-p14-L20]
[1345] [P87-T44-ENG-ET-p14-L8-and-p15-L1]/[P87-T44-FRA-CT-p14-L26-p15-L20]
[1346] [P87-T44-ENG-ET-p43-L6]/[P87-T44-FRA-CT-p45-L3]

389. P87 also testified that all the MLC were armed with AKs. Those who came in the morning as well as those who came in the evening in their house were armed.[1347] She also explained that the MLC controlled the area at that time and when her brother was shot no one came out to help her since people feared the MLC.[1348]

390. The above evidence shows that MLC pillaged their property without consent. At the time they pillaged and raped her they were armed with guns. Moreover, at that time the MLC were in control of her neighbourhood and people were scared to come out to help her when her brother was shot by the MLC. The items that the MLC pillaged were never returned. The pillaging was committed during the period relevant to these charges. The above evidence satisfies the elements of the crime of pillaging.

6. *Witness P68*

391. P68 lived in the fourth arrondisement during the conflict period.[1349] She testified that on 27 October 2002 her and her sister-in-law met a group of the MLC who were pushing a car. They were many.[1350] All of them were armed.[1351] They beckoned her and her sister-in-law to go towards them.[1352] When they went, they immediately seized them and took their belongings away and grabbed them by their hands.[1353] They took her sister-in-law in a compound beside that which she was taken.[1354] Both her and the sister-in-law were raped by the MLC. The rape and pillaging happened in Bondoro neighbourhood, on Demazu road.[1355]

[1347] [P87-T44-ENG-ET-p22-L4]/[P87-T44-FRA-CT-p23-L7]
[1348] [P87-T47-ENG-CT2-p12-L15]/[P87-T47-FRA-CT-p12-L28-p13-L8]
[1349] [P68-T48-ENG-ET-p9-L15]/[P68-T48-FRA-ET-p11-L1]
[1350] [P68-T48-ENG-ET-p19-L17]/[P68-T48-FRA-ET-p21-L14]
[1351] [P68-T48-ENG-ET-p20-L24]/[P68-T48-FRA-ET-p22-L26]
[1352] [P68-T49-ENG-ET-p47-L3]/[P68-T49-FRA-CT-p48-L1]
[1353] [P68-T49-ENG-ET-p48-L1]/[P68-T49-FRA-CT-p49-L22-P50-L2]
[1354] [P68-T48-ENG-ET-p31-L10]/[P68-T48-FRA-ET-p33-L19]
[1355] [P68-T48-ENG-ET-p22-L1]/[P68-T48-FRA-ET-p24-L1]

392. In explaining what was pillaged from her, P68 testified that her bag which was taken away by the MLC contained her valuables such as radio, clothes, food, sheets etc.[1356] Her sister-in law bag also contained her valuables.[1357] Their bags were taken away by the MLC without their consent.[1358] P68 sufficiently identified the MLC who pillaged her property using language, clothing, control of area and behaviour towards the CAR civilian population.[1359]

393. P68 also testified that her house was also looted. They took suitcases, mattresses, clothes, shoes etc.[1360] They took her properties without her consent.[1361] Her sister-in-law did not consent to her properties being pillaged as well.[1362] The pillaged items were never returned by the Banyamulenge.[1363]

394. The above evidence shows that MLC took away the property of P68 and her sister-in-law without their consent. The properties taken were never returned to the owners. The properties were taken during the conflict period. The elements of the crime of pillaging are satisfied.

7. *Witness P69*

395. P69 was [REDACTED], which is located in PK 12 during the period relevant to the charges.[1364] He testified that the MLC arrived on 8 November 2002.[1365] During the

[1356] [P68-T48-ENG-ET-p28-L16]/[P68-T48-FRA-ET-p30-L23-p31-L4]
[1357] [P68-T48-ENG-ET-p32-L15]/[P68-T48-FRA-ET-p35-L19]
[1358] [P68-T48-ENG-ET-p32-L22]/[P68-T48-FRA-ET-p35-L8]
[1359] [P68-T49-ENG-ET-p49-L4]/[P68-T49-FRA-CT-p50-L24-p51-L4]; [P68-T49-ENG-ET-p21-L9]/[P68-T49-FRA-CT-p21-L27-p22-L3]; [P68-T48-ENG-ET-p20-L9]/[P68-T48-FRA-ET-p22-L7]; [P68-T49-ENG-ET-p12-L1]/[P68-T49-FRA-CT-p12-L8]; [P68-T49-ENG-ET-p12-L5]/[P68-T49-FRA-CT-p12-L12]; [P68-T49-ENG-ET-p11-L20]/[P68-T49-FRA-CT-p11-L28-p12-L7]; [P68-T49-ENG-ET-p11-L5]/[P68-T49-FRA-CT-p11-L10]; [P68-T49-ENG-ET-p13-L12]/[P68-T49-FRA-CT-p13-L22-p14-L8]; [P68-T48-ENG-ET-p22-L12]/[P68-T48-FRA-ET-p24-L19]
[1360] [P68-T48-ENG-ET-p36-L21]/[P68-T48-FRA-ET-p39-L5]
[1361] [P68-T48-ENG-ET-p29-L3]/[P68-T48-FRA-ET-p31-L9]
[1362] [P68-T48-ENG-ET-p32-L1]/[P68-T48-FRA-ET-p33-L25-p34-L23]
[1363] [P68-T48-ENG-ET-p37-L17]/[P68-T48-FRA-ET-p39-L26]
[1364] [P69-T192-ENG-ET-p11-L19-and-p12-L1]/[P69-T192-FRA-ET-p13-L6]
[1365] [P69-T192-ENG-ET-p22-L20]/[P69-T192-FRA-ET-p25-L7]

period that the MLC were in Begoua, there were no other troops in the neighbourhood.[1366] Even Miskine and his troops had left by the time the Banyamulenge arrived in PK 12.[1367]

396. P69 sufficiently identified the MLC troops who pillaged money from his sister and killed her. He identified them using language, control of area and their behaviour towards the civilian population in the CAR.[1368]

397. P69 testified that on 9 November 2002 two MLC troops went to his home and killed his sister[1369]. The two were armed.[1370] P69 sister had 800,000 francs which she had tied around her waist. The MLC demanded the money from her but she resisted. They threw her on the ground and took away the money without her consent.[1371] They then shot her.[1372] Her sister was a trader who sold [REDACTED] in Bangui[1373]. Before being killed, her sister had refused to give money to the MLC[1374]. Regarding the killing and pillaging of his sister, he stated that; "A. Thank you. I think I'm still answering these questions about my sister's death. She was killed like an animal, like a dog. I've told you, I was present." Those people from Zaire arrived in our neighbourhood and, given the situation, I asked my wife to leave, to go to PK22 and take refuge there with the children ."[1375]

398. P69 also testified that the MLC looted a magistrate's house from the floor to the ceiling.[1376] He stated as follows; "I mean, I mean, you can't claim here in this Court

[1366] [P69-T192-ENG-ET-p25-L14]/[P69-T192-FRA-ET-p27-L25-p28-L9]
[1367] [P69-T193-ENG-ET-p34-L6]/[P69-T193-FRA-ET-p37-L12]
[1368] [P69-T192-ENG-ET-p28-L1]/[P69-T192-FRA-ET-p30-L14]; [P69-T192-ENG-ET-p34-L1]/[P69-T192-FRA-ET-p36-L27-p37-L4]
[1369] [P69-T192-ENG-ET-p32-L6]/[P69-T192-FRA-ET-p34-L24]
[1370] [P69-T192-ENG-ET-p32-L17]/[P69-T192-FRA-ET-p35-L8]
[1371] [P69-T192-ENG-ET-p31-L3]/[P69-T192-FRA-ET-p33-L19]
[1372] [P69-T192-ENG-ET-p32-L6]/[P69-T192-FRA-ET-p34-L24]
[1373] [P69-T192-ENG-ET-p37-L13]/[P69-T192-FRA-ET-p40-L10]
[1374] [P69-T192-ENG-ET-p15-L7]/[P69-T192-FRA-ET-p17-L3]
[1375] [P69-T192-ENG-ET-p31-L7]/[P69-T192-FRA-ET-p33-L25]
[1376] [P69-T193-ENG-ET-p18-L1]/[P169-T193-FRA-ET-p19-L13-p20-L6]

that anybody has told me what to say. No, I saw what I saw. I know what I saw. There was a magistrate [REDACTED]. In fact, there were two. There were two magistrates and both their houses were looted, and if you like I can reveal the names of those magistrates here and now. They still reside in Bangui."[1377]

399. P69 also testified that the MLC pillaged a cassava mill, bicycle, motor cycle, four foam mattresses, furniture and 700,000 francs from P69.[1378] P69 believes it was the MLC who pillaged his property because the local residents had fled, MLC had spread all over the neighbourhood, their HQ was in Begoua, and they broke down people's doors.[1379]

400. Regarding his sister's death certificate which is dated January 2002, he testified that he is illiterate and did not know the certificate had a mistake. In any case, he explained, the mistake must have been made by issuing authority.[1380]

401. P69 is a credible witness. He testified that the MLC killed her sister and took her money in his presence because she refused to give them money. They took the money without her consent and killed her. Regarding discrepancies in her sister's death certificate, he gives a genuine and plausible explanation.

8. *Witness P22*

402. P22 was living in [REDACTED] during the conflict.[1381] She testified that on 26 October 2002, people who were running towards her house told her Bozize rebels had come. Shortly thereafter she heard Bozize rebels fire their guns in the air.[1382]

[1377] [P69-T193-ENG-ET-p18-L16]/[P69-T193-FRA-ET-p19-L23]
[1378] [P69-T193-ENG-ET-p14-L16-p15-L1]/[P169-T193-FRA-ET-p16-L1]
[1379] [P69-T193-ENG-ET-p15-L3]/[P169-T193-FRA-ET-p16-L17-p17-L9]
[1380] [P69-T192-ENG-ET-p41-L1-and-p42-L15]/[P69-T192-FRA-ET-p44-L2-p45-L3-and-p45-L19-p46-L3]
[1381] [P22-T40-ENG-ET-p11-L19]/[P22-T40-FRA-ET-p12-L24]
[1382] [P22-T40-ENG-ET-p14-L9-and-p15-L10]/[P22-T40-FRA-ET-p15-L15-and-p16-L6]

Bozize rebels stayed for 2 to 3 days and then they left.[1383] Later her uncles informed her that Bozize rebels had been pushed out of the neighbourhood and the MLC had arrived.[1384] They also informed her that MLC were raping people and committing crimes.[1385]

403. The MLC pillaged her belongings and those of her family. She explained that one morning between 4-5 in the morning, more than 20[1386] MLC soldiers entered their home, broke doors to the house, entered inside the house and pillaged ducks, owls, domestic animals, food, clothes, portable telephones, toiletries etc.[1387] she testified that; "when I came across them at the door, to begin with, they said, "Yaka," and then someone said to me in French, "Give me money." This evidence shows that the Banyamulenge demanded money from her after breaking into their house demonstrating lack of consent.

404. P22 testified that the Banyamulenge took her belongings such as shoes, clothing and everything they thought was good from her uncle's room. In the store room they took foodstuffs that were stored there.[1388] They also took animals such as ducks, chicken, goats, geese etc and left with them.[1389]
They also raped her.[1390] While three MLC troops raped P22 in her room, others were busy ransacking and pillaging her things in the room.[1391] All the six MLC soldiers who were in her room were armed with Kalashnikovs.[1392] Moreover, a Kalashnikov was placed on her chest while being raped.[1393]

[1383] [P22-T41-ENG-CT2-p4-L19]/[P22-T41-FRA-ET-p5-L7]
[1384] [P22-T40-ENG-ET-p18-L1]/[P22-T40-FRA-ET-p19-L12-p20-L6]
[1385] [P22-T40-ENG-ET-p18-L6]/[P22-T40-FRA-ET-p19-L15-p20-L6]
[1386] [P22-T41-ENG-CT2-p6-L18-p7-L2]/[P22-T41-FRA-ET-p7-L16]
[1387] [P22-T40-ENG-ET-p21-L1-and-p18-L24-and-p21-L1]/[P22-T40-FRA-ET-p22-L18-p23-L4-and-p20-L7-and-p21-L1]
[1388] [P22-T41-ENG-CT2-p21-L15]/[P22-T41-FRA-ET-p23-L7]
[1389] [P22-T41-ENG-CT2-p21-L1]/[P22-T41-FRA-ET-p22-L18]
[1390] [P22-T40-ENG-ET-p19-L13]/[P22-T40-FRA-ET-p20-L26-p21-L7]
[1391] [P22-T41-ENG-CT2-p15-L10-and-p17-L16]/[P22-T41-FRA-ET-p16-L28-p17-L7-and-p19-L11]
[1392] [P22-T41-ENG-CT2-p14-L1-and-p17-L22-p18-L1-and-p33-L15]/[P22-T41-FRA-ET-p15-L18-and p19-L19-and-p36-L23]
[1393] [P22-T41-ENG-CT2-p14-L1]/[P22-T41-FRA-ET-p15-L18]

405. She also testified that during the pillaging, they hit her paralysed uncle with the butts of the guns and threw him on the ground to search for money in his mattress.[1394] They carried away the lighter items on their shoulders.[1395] The MLC carried away the pillaged items from their home. When they came out of the house to flee, none of the pillaged items were outside.[1396] The items pillaged by the Banyamulenge from her and her family were never returned to them.[1397] This evidence demonstrates the coercive environment that prevailed during the pillaging.

406. P22 sufficiently identified the MLC using language, clothing, control of area and their behaviour towards the civilian population.[1398]

407. P22 is a credible witness. Her evidence shows that MLC entered their house by force, demanded money from her, ransacked her room and took away her belongings while she was being raped at the same time. They also pillaged other properties from her uncle without their consent. The pillaged items were taken away and never returned.

9. *Witness P79*

408. She lived in PK 12 during the conflict period.[1399] She testified that MLC arrived in PK 12 after Bozize rebels left.[1400] In fact she saw the MLC when they arrived in PK 12.[1401] The MLC soldiers that she saw were armed.[1402]

[1394] [P22-T41-ENG-CT2-p20-L14]/[P22-T41-FRA-ET-p22-L4]
[1395] [P22-T41-ENG-CT2-p19-L10]/[P22-T41-FRA-ET-p20-L28-p21-L3]
[1396] [P22-T41-ENG-CT2-p30-L18]/[P22-T41-FRA-ET-p33-L22-p34-L2]
[1397] [P22-T41-ENG-CT2-p19-L5]/[P22-T41-FRA-ET-p20-L23-p21-L11]
[1398] [P22-T40-ENG-ET-p23-L2]/[P22-T40-FRA-ET-p24-L23]; [P22-T41-ENG-CT2-p5-L10]/[P22-T41-FRA-ET-p5-L26-p6-L4]; [P22-T41-ENG-CT2-p4-L9-and-p5-L18]/[P22-T41-FRA-ET-p4-L24-p5-L5-and-p6-L7]; [P22-T42-ENG-ET-p29-L13]/[P22-T42-FRA-CT-p31-L8]; [P22-T41-ENG-CT2-p7-L9]/[P22-T41-FRA-ET-p8-L13]; [P22-T42-ENG-ET-p20-L16]/[P22-T42-FRA-CT-p21-L18]; [P22-T41-ENG-CT2-p15-L6-and-p32-L4]/[P22-T41-FRA-ET-p16-L24-p17-L11-and-p35-L10]; [P22-T41-ENG-CT2-p9-L19-and-p10-L1]/[P22-T41-FRA-ET-p11-L7]; [P22-T41-ENG-CT2-p7-L5]/[P22-T41-FRA-ET-p7-L28-p8-L12]
[1399] [P79-T76-ENG-CT-p48-L20]/[P79-T76-FRA-ET-p52-L13]

409. She explained that one night five MLC soldiers broke into her house, pulled her, and then raped her and her daughter.[1403] They also pillaged their properties.[1404] All the MLC that entered her house were carrying weapons.[1405] The MLC pillaged suitcases, fridge, TV, and other items from her house.[1406] They also pillaged foam mattresses, suitcases, shoes and clothes from her brother's houses.[1407] She did not consent to the pillaging. P79 explained that the MLC looted things right in front her and she would never have accepted that.[1408] P79 could not prevent the MLC from looting and raping her since she was faced with more powerful than her and in addition, the were armed with weapons.[1409] P79 believes that the pillaged items were transported away by a vehicle.[1410] The pillaged items were never returned to her nor was she compensated for them.[1411] She also witnessed the MLC carrying pillaged items on the main road.[1412]

410. P79 sufficiently identified the MLC using clothing, language, control of area and their behaviour towards the CAR civilian population.[1413]

411. P79 is a credible witness. Her evidence shows that elements of the crime of pillaging are satisfied. The MLC pillaged her property, they were armed and they

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[1400] [P79-T77-ENG-CT-p5-L10]/[P79-T77-FRA-ET-p5-L20]
[1401] [P79-T77-ENG-CT-p6-L1]/[P79-T77-FRA-ET-p6-L9]
[1402] [P79-T77-ENG-CT-p6-L13]/[P79-T77-FRA-ET-p6-L25]
[1403] [P79-T77-ENG-CT-p9-L1]/[P79-T77-FRA-ET-p9-L7]
[1404] [P79-T77-ENG-CT-p9-L14]/[P79-T77-FRA-ET-p9-L21]
[1405] [P79-T77-ENG-CT-p10-L1]/[P79-T77-FRA-ET-p10-L8]
[1406] [P79-T78-ENG-ET-p53-L9]/[P79-T78-FRA-ET-p54-13]; [P79-T79-ENG-CT2-p34-L20]/[P79-T79-FRA-CT-p37-L4]
[1407] [P79-T77-ENG-CT-p20-L20-and-p21-L1]/[P79-T77-FRA-ET-p21-L11-and-p21-L21-p22-L2]
[1408] [P79-T77-ENG-CT-p21-L10]/[P79-T77-FRA-ET-p22-L3]
[1409] [P79-T77-ENG-CT-p21-L10]/[P79-T77-FRA-ET-p22-L6]
[1410] [P79-T77-ENG-CT-p21-L17]/[P79-T77-FRA-ET-p22-L11]
[1411] [P79-T77-ENG-CT-p22-L1]/[P79-T77-FRA-ET-p22-L21]
[1412] [P79-T77-ENG-CT-p26-L13]/[P79-T77-FRA-ET-p27-L11]
[1413] [P79-T77-ENG-CT-p15-L13]/[P79-T77-FRA-ET-p15-L22-p16-L6]; [P79-T77-ENG-CT-p6-L17]/[P79-T77-FRA-ET-p7-L1]; [P79-T77-ENG-CT-p27-L20]/[P79-T77-FRA-ET-p28-L17]; [P79-T79-ENG-CT2-p39-L5]/[P79-T79-FRA-CT-p41-L19-p42-L5]; [P79-T77-ENG-CT-p7-L15]/[P79-T77-FRA-ET-p7-L24];[P79-T78-ENG-ET-p11-L12]/[P79-T78-FRA-ET-p12-L15]; [P79-T77-ENG-CT-p5-L4]/[P79-T77-FRA-ET-p5-L14]; [P79-T77-ENG-CT-p7-L7]/[P79-T77-FRA-ET-p7-L16]; [P79-T77-ENG-CT-p31-L3]/[P79-T77-FRA-ET-p31-L26-p32-L5]

did so without her consent. That property was never returned to her and therefore depriving her of its use.

10. *Witness P23*

412. [REDACTED].[1414] He testified that a day after Bozize rebels left PK 12 and withdrew towards Damara, the MLC arrived.[1415] The first day the MLC arrived, they stayed at the gendarmerie. The next day they set up a base at the school and took positions in the neighbourhood.[1416] The MLC arrived on 7 November 2002.[1417] The MLC were armed with AK 47s, mortars, knives, spears and machetes when they arrived in PK 12.[1418]

413. From 10 to 30 November 2002, the MLC came to P23 house and started taking items from his houses until they were empty. They pillaged his [REDACTED], generator and many other items. P23 could not stop the armed MLC troops from looting his property.[1419] The MLC also took money from the strong box.[1420] They used a push cart which they came with to his home to transport the heavy items.[1421] P23 saw the MLC take these items from the house.[1422] The MLC also pillaged items belonging to his family members.[1423] P23 could not have prevented the MLC from pillaging since they were armed. with weapons.[1424] P23 did not consent to his items being taken away.[1425] No one from P23 family consented to the MLC taking away

[1414] [P23-T50-ENG-CT-p55-L1]/[P23-T50-FRA-ET-p56-L27-p57-L8]
[1415] [P23-T51-ENG-CT2-p9-L4]/[P23-T51-FRA-ET-p9-L14]
[1416] [P23-T51-ENG-CT2-p16-L21-and-p17-L1]/[P23-T51-FRA-ET-p17-L1-and-p17-L6]
[1417] [P23-T51-ENG-CT2-p9-L8]/[P23-T51-FRA-ET-p9-L19]
[1418] [P23-T51-ENG-CT2-p12-L8]/[P23-T51-FRA-ET-p12-L17-p13-L6]
[1419] [P23-T52-ENG-CT2-p3-L12-p4-L8]/[P23-T52-FRA-CT-p3-L20-p4-L6]; [P23-T51-ENG-CT2-p49-L19-p50-L3]/[P23-T51-FRA-ET-p52-L24-p53-L7]
[1420] [P23-T52-ENG-CT2-p6-L17]/[P23-T52-FRA-CT-p6-L28-p7-L7]
[1421] [P23-T52-ENG-CT2-p4-L4]/[P23-T52-FRA-CT-p4-L12]
[1422] [P23-T52-ENG-CT2-p4-L16]/[P23-T52-FRA-CT-p4-L26-p5-L7]
[1423] [P23-T52-ENG-CT2-p5-L1]/[P23-T52-FRA-CT-p5-L8]
[1424] [P23-T52-ENG-CT2-p5-L11]/[P23-T52-FRA-CT-p5-L21-p6-L3]
[1425] [P23-T52-ENG-CT2-p5-L21]/[P23-T52-FRA-CT-p6-L4]

their belongings.[1426] No pillaged item was ever returned to P23 and his family members.[1427] No one was compensated for the pillaged items.[1428]

414. In addition the MLC pillaged many things from the PK 12 civilians [REDACTED]. They pillaged items such as utensils, cutlery, sewing machines, mattresses, cell phones etc.[1429]The MLC used beds as firewood.

415. P23 sufficiently identified the MLC as perpetrators of rape and pillaging against him and his family. He identified them using language, control of area and their behaviour towards the CAR civilian population.[1430]

416. He also testified that he could distinguish Bozize rebels because he previously knew Francois Bozize, the son to former CAR president Francis Bozize and who was among the rebels at the time.[1431] In addition, he knew MLC commanders like Mapao and Mustapha who commanded them all.[1432] [REDACTED].[1433] When Bemba visited PK 12 to address the Banyamulenge both Mapao and Mustapha were present. The MLC soldiers in PK 12 referred to Bemba as their president.[1434] This shows and identifies MLC soldiers in PK 12 as Bemba's soldiers over whom he exercised control. These are the same soldiers that P23 claim that they pillaged his property.

417. [REDACTED]. It's incontestable that MLC were in PK 12. He sufficiently identifies the MLC as the people who pillaged his property. They did so without his

[1426] [P23-T52-ENG-CT2-p6-L12]/[P23-T52-FRA-CT-p6-L22]
[1427] [P23-T52-ENG-CT2-p7-L16]/[P23-T52-FRA-CT-p8-L3]
[1428] [P23-T52-ENG-CT2-p9-L6]/[P23-T52-FRA-CT-p9-L20]
[1429] [P23-T52-ENG-CT2-p8-L1]/[P23-T52-FRA-CT-p8-L14-p9-L2]
[1430] [P23-T51-ENG-CT2-p16-L1]/[P23-T51-FRA-ET-p16-L5];[P23-T51-ENG-CT2-p16-L1]/[P23-T51-FRA-ET-p16-L7] ; [P23-T51-ENG-CT2-p16-L8]/[P23-T51-FRA-ET-p16-L13]; [P23-T52-ENG-CT2-p8-L18]/[P23-T52-FRA-CT-p9-L5]; [P23-T51-ENG-CT2-p13-L21]/[P23-T51-FRA-ET-p13-L26]; [P23-T51-ENG-CT2-p14-L1]/[P23-T51-FRA-ET-p14-L3];[P23-T51-ENG-CT2-p14-L18]/[P23-T51-FRA-ET-p14-L22];[P23-T52-ENG-CT2-p11-L15]/[P23-T52-FRA-CT-p12-L6]; [P23-T52-ENG-CT2-p27-L2]/[P23-T52-FRA-CT-p28-L13]
[1431] [P23-T51-ENG-CT2-p7-L2]/[P23-T51-FRA-ET-p7-L11]
[1432] [P23-T51-ENG-CT2-p10-L20]/[P23-T51-FRA-ET-p10-L26-p11-L4]
[1433] [P23-T52-ENG-CT2-p13-L3]/[P23-T52-FRA-CT-p13-L24-p14-L9]
[1434] [P23-T52-ENG-CT2-p43-L3]/[P23-T52-FRA-CT-p46-L14]

consent. The looted property was never returned and therefore denying him of its use. They also looted property that belonged to his family members without their consent.

11. *Witness P80*

418. Witness 80 is the wife of P23.[1435] She is also the mother to P81 and P82. During the conflict period she lived in PK 12 in the same compound with the abovementioned family members.[1436]

419. P80 testified that in the morning of the 17 October 2002, they were attacked by a group of MLC troops in their home and who had invaded their neighbourhood that day.[1437] She testified that witness 23, 81 and 82 were all raped on the same day and approximately the same time with her.[1438] MLC troops who came to their home that day were armed with rifles similar to those carried by the CAR military.[1439]
The MLC pillaged her property. P80 testified that she saw the MLC troops pillage their hens, goats, clothes, doors and mattresses[1440]. The looted items were stored at an MLC base at the PK 12 School.[1441] None of the pillaged items were ever returned to them.[1442] P80 believes it's the MLC who looted their other items while they were away because they used to loot peoples properties in the open. Moreover, a lot of pillaged items were stockpiled at the school which acted as the base for the MLC troops.[1443] Lack of consent can be inferred from the coercive circumstances that prevailed at that time. Armed MLC raped them and then pillaged their property. Evidence shows that they were not in a position to consent.

[1435] [P80-T60-ENG-CT-p58-L15]/[P80-T60-FRA-ET-p63-L15]
[1436] [P80-T60-ENG-CT-p58-L24]/[P80-T60-FRA-ET-p63-L23]
[1437] [P80-T61-ENG-CT-p6-L3]/[P80-T61-FRA-ET-p6-L2]
[1438] [P80-T61-ENG-CT-p9-L10-and-p11-L8]/[P80-T61-FRA-ET-p9-L10-and-p11-L13]
[1439] [P80-T61-ENG-CT-p12-L18-and-p13-L3]/[P80-T61-FRA-ET-p12-L25-and-p13-L8]
[1440] [P80-T63-ENG-ET-p20-L1]/[P80-T63-FRA-ET-p20-L20-p21-L7]
[1441] [P80-T61-ENG-CT-p23-L1]/[P80-T61-FRA-ET-p23-L3]
[1442] [P80-T61-ENG-CT-p25-L21]/[P80-T61-FRA-ET-p25-L25]
[1443] [P80-T63-ENG-ET-p24-L12]/[P80-T63-FRA-ET-p24-L16]

420. P80 also testified that the MLC took away beds, foam mattresses, kitchen utensils, and the furniture from P80's house.[1444] They also looted everything from houses of her other family members.[1445] She explained that on the day that these items were looted, the MLC troops had driven away the local residents and they were the only ones in control of everything in the neighbourhood.[1446] However, P23 testified that he was present and saw the MLC troops take away items that belonged to his family members including P-80.[1447]

421. P80 sufficiently identified the MLC based on clothing, language, control of area and their behaviour towards the civilian population.[1448]

422. At first she stated that they were attacked on 7 October 2002.[1449] Later, she stated that it was 17 November 2002.[1450] She explained the discrepancy by the fact that events happened in 2002 and she was testifying in 2011 and therefore she can't remember the exact date.[1451] This is a plausible explanation. After a period of 9 years, its possible that she could no longer recall the exact date they were attacked.

423. P80 is a credible witness. She witnessed the MLC pillage their hens, goats, clothes, doors and mattresses. She was also raped by the MLC who were armed with rifles. The MLC were in control of their neighbourhood at the time and therefore the

[1444] [P80-T61-ENG-CT-p22-L16]/[P80-T61-FRA-ET-p22-L22]
[1445] [P80-T61-ENG-CT-p22-L22]/[P80-T61-FRA-ET-p22-L27-p23-L1]
[1446] [P80-T61-ENG-CT-p22-L23]/[P80-T61-FRA-ET-p22-L28]
[1447] [P23-T52-ENG-CT2-p4-L16-p5-L10]/[P23-T52-FRA-CT-p4-L26-p5-L20]; [P23-T52-ENG-CT2-p5-L1]/[P23-T52-FRA-CT-p5-L8]
[1448] [P80-T61-ENG-CT-p16-L6-and-L21]/[P80-T61-FRA-ET-p16-L10-and-p16-L27-p17-L2]; [P80-T61-ENG-CT-p12-L10]/[P80-T61-FRA-ET-p12-L14]; [P80-T61-ENG-CT-p17-L5]/[P80-T61-FRA-ET-p17-L9]; [P80-T61-ENG-CT-p17-L17]/[P80-T61-FRA-ET-p17-L22]; [P80-T61-ENG-CT-p29-L7]/[P80-T61-FRA-ET-p29-L16]; [P80-T61-ENG-CT-p15-L1]/[P80-T61-FRA-ET-p15-L7]
[1449] [P80-T61-ENG-CT-p6-L3]/[P80-T61-FRA-ET-p6-L2]
[1450] [P80-T62-ENG-CT-p22-L7]/[P80-T62-FRA-ET-p24-L2]
[1451] [P80-T62-ENG-CT-p22-L7]/[P80-T62-FRA-ET-p24-L2]

only ones capable of pillaging at the time. The pillaged items were taken without their consent and none was ever returned therefore depriving them of their use.

12. *Witness P81*

424. P81 is the daughter to P-23.[1452] During the conflict period she lived in PK 12 in the same compound with witnesses 23, 80 and 82[1453]. At the time, [REDACTED] who could speak and understand Lingala.

425. P81 testified that when the MLC arrived, they started looting their property.[1454] The first group of the MLC entered their house in the morning demanded for money, and took away their belongings from their house.[1455] She explained that two groups of the MLC entered their home that day. The first group pillaged mattresses, suitcases and their other belongings.[1456] But the second group raped her.[1457] The MLC carried the pillaged items in their arms, backs and heads.[1458] The MLC were armed with AK 47s and rockets when they came to their house to pillage.[1459] P-81 and her husband did not consent to the pillaging. However, they could not prevent armed MLC soldiers from pillaging since that would have endangered their lives. At the time the MLC went to their house to pillage, other groups of the MLC troops simultaneously and at the same time went to the houses of other family members including witnesses 23, 80 and 82 to pillage as well.[1460] The MLC carried the looted items from those houses and took them towards the direction of PK 22.[1461] The MLC also pillaged machines and TV from her father's house.[1462] The MLC also raped,

[1452] [P81-T54-ENG-CT-p54-L10]/[P81-T54-FRA-ET-p60-L22]
[1453] [P81-T54-ENG-CT-p55-L18]/[P81-T54-FRA-ET-p61-L28-p62-L1]
[1454] [P81-T55-ENG-CT-p6-L3]/[P81-T55-FRA-CT-p6-L9]
[1455] [P81-T55-ENG-CT-p7-L7]/[P81-T55-FRA-CT-p7-L13]
[1456] [P81-T55-ENG-CT-p6-L3]/[P81-T55-FRA-CT-p6-L9-p7-L5]
[1457] [P81-T55-ENG-CT-p34-L2]/[P81-T55-FRA-CT-p35-L2]
[1458] [P81-T55-ENG-CT-p8-L13]/[P81-T55-FRA-CT-p8-L19]
[1459] [P81-T55-ENG-CT-p8-L21]/[P81-T55-FRA-CT-p8-L27-p9-L3]
[1460] [P81-T55-ENG-CT-p9-L5]/[P81-T55-FRA-CT-p9-L9]
[1461] [P81-T55-ENG-CT-p9-L22]/[P81-T55-FRA-CT-p9-L27]
[1462] [P81-T55-ENG-CT-p9-L18]/[P81-T55-FRA-CT-p9-L21]

pillaged and killed people at PK 22.[1463] Civilians who resisted were hit by the MLC soldiers.[1464]

426. P81 sufficiently identified the MLC using the language, control of area and behaviour towards the CAR population.[1465]

427. Bemba visited and addressed the MLC troops that were at PK 12[1466] meaning these were his soldiers. In addition, P81 knew names of the MLC soldiers who raped her [REDACTED] [1467] [REDACTED].[1468] She heard them address one another using those names.[1469] Moreover, P81 and her sisters were forced to cook for the MLC soldiers for a period of 2 weeks.[1470] All these factors considered together leaves no doubt that the soldiers who pillaged the house of P81 were the MLC troops who had exclusive control of the neighbourhood at the time.

428. The day that P81 was raped and pillaged was the same day her father, mother and two younger sisters were raped.[1471] After P81 was raped her husband went to report to P23 about what had happened. It's at that time that P23 told him that they had also been raped.[1472] In his testimony, P23 testified that they were raped on 8 November 2002, the time which the MLC exclusively occupied and controlled PK 12[1473].

[1463] [P81-T55-ENG-CT-p23-L5]/[P81-T55-FRA-CT-p32-L14]
[1464] [P81-T55-ENG-CT-p23-L10]/[P81-T55-FRA-CT-p23-L19]
[1465] [P81-T55-ENG-CT-p7-L12-and- p25-L16-and-p34-L25]/[P81-T55-FRA-CT-p8-L1-and-p27-L2-and-p35-L2]
[1466] [P81-T55-ENG-CT-p27-L2]/[P81-T55-FRA-CT-p28-L8-p28-L1]
[1467] [P81-T55-ENG-CT-p21-L5]/[P81-T55-FRA-CT-p21-L7]
[1468] [P81-T55-ENG-CT-p21-L5]/[P81-T55-FRA-CT-p21-L7]
[1469] [P81-T55-ENG-CT-p21-L11]/[P81-T55-FRA-CT-p21-L15]
[1470] [P81-T55-ENG-CT-p18-L3]/[P81-T55-FRA-CT-p17-L24-p18-L24]
[1471] [P81-T55-ENG-CT-p13-L21-p14-L19-and-p34-L13]/[P81-T55-FRA-CT-p13-L17-p14-L16-and-p35-L16]
[1472] [P81-T55-ENG-CT-p14-L6]/[P81-T55-FRA-CT-p14-L1]
[1473] [P23-T52-ENG-CT2-p38-L25-p39-L1]/[P23-T52-FRA-CT-p41-L18]

429. P81 is credible witness who should be believed. The MLC pillaged her property and that of her family members. She was able to sufficiently identify the MLC The properties were looted without their consent. None of the looted properties was ever returned therefore depriving them of their use.

13. *Witness P82*

430. P82 was 12 years old at the time when her property was pillaged.[1474] She is the granddaughter to P23.[1475] She was raped on the same date and time as P80, P81 and her other sister.[1476]

431. P82 testified that MLC troops arrived at their home on 7 October 2002 and attacked them.[1477] At the time of attack, P82, 23, and 80 were in the lounge of their house.[1478] The MLC troops knocked on the door and then broke it down.[1479] The MLC raped 80 and 82 on the same day and time.[1480] They also simultaneously pillaged their house.[1481] P82 explained that when P23 attempted to stop the MLC from pillaging, they pointed their weapons at him and proceeded to carry away looted items from their house.[1482] The MLC also took [REDACTED] outside and hit him with the butts of their rifles.[1483] The MLC pillaged P82 clothes and beds. They also destroyed TV and refrigerator in their house and took everything from the house.[1484] P82 was present and seated in the room when the MLC took away their properties.[1485] At the time of pillaging, the MLC were armed and P82 and her family

[1474] [P82-T58-ENG-CT-p26-L10]/[P82-T58-FRA-CT-p20-L27-p29-L9]
[1475] [P82-T58-ENG-CT-p9-L20-and-p25-L5]/[P82-T58-FRA-CT-p10-L16-and-p27-L15]
[1476] [P81-T55-ENG-CT-p13-L21-p14-L19-and-p34-L13]/[P81-T55-FRA-CT-p13-L17-p14-L16-and-p35-L16]
[1477] [P82-T58-ENG-CT-p14-L13]/[P82-T58-FRA-CT-p15-L28-p15-L4]
[1478] [P82-T58-ENG-CT-p19-L24-p20-L3]/[P82-T58-FRA-CT-p22-L2]
[1479] [P82-T58-ENG-CT-p20-L1]/[P82-T58-FRA-CT-p22-L4]
[1480] [P82-T58-ENG-CT-p20-L4]/[P82-T58-FRA-CT-p22-L7]
[1481] [P82-T58-ENG-CT-p20-L4]/[P82-T58-FRA-CT-p22-L7]
[1482] [P82-T58-ENG-CT-p20-L10]/[P82-T58-FRA-CT-p22-L13]
[1483] [P82-T58-ENG-CT-p20-L21]/[P82-T58-FRA-CT-p22-L26-p27-L1]
[1484] [P82-T58-ENG-CT-p23-L13]/[P82-T58-FRA-CT-p25-14]
[1485] [P82-T58-ENG-CT-p24-L1]/[P82-T58-FRA-CT-p26-L1]

members could do not prevent them from pillaging.[1486] The MLC loaded their pillaged items in the pushcarts and took them away.[1487]

432. P82 sufficiently identified the MLC who pillaged her property.[1488]

433. This witness has limitations to respond to certain questions because of her young age at the time of events.[1489] The events occurred when she was about 12 years old. Regarding events she was subjected to, she testified that she could only recall the most important aspects.[1490]

434. Though she testified to the court that they were attacked on 7 October 2002, she later clarified that she did not check the calendar to confirm the date but she was simply told about this date.[1491] In view of her young age at the time and trauma associated with what she went through, it's understandable for her not to recall the exact date that these events occurred. However, her inability to recall the date does not affect the substance of her evidence. She also stated that no one instructed her what to tell the court.[1492]

435. P82 is a credible witness who should be believed by the Chamber. The evidence shows that her property was pillaged. The same was pillaged without her consent by armed MLC troops within the PK 12 area at the time. None of the pillaged items was ever returned thus depriving her and her family members the use of the pillaged properties.

[1486] [P82-T58-ENG-CT-p24-L1]/[P82-T58-FRA-CT-p26-L1]
[1487] [P82-T58-ENG-CT-p24-L11]/[P82-T58-FRA-CT-p26-15]
[1488] [P82-T59-ENG-ET-p25-L18]/[P82-T59-FRA-ET-p26-L24]; [P82-T58-ENG-CT-p30-L1]/[P82-T58-FRA-CT-p33-L2]; [P82-T59-ENG-ET-p43-L2]/[P82-T59-FRA-ET-p45-L1]
[1489] [P82-T59-ENG-ET-p53-L20]/[P82-T59-FRA-ET-p57-L1]
[1490] [P82-T58-ENG-CT-p26-L18]/[P82-T58-FRA-CT-p29-L8]
[1491] [P82-T58-ENG-CT-p31-L10]/[P82-T58-FRA-CT-p34-L9]
[1492] [P82-T60-ENG-CT-p41-L1]/[P82-T60-FRA-ET-p43-L28-p44-L3]

14. *Witness P73*

436. P73 lived in PK 12 during the conflict period.[1493] He testified that the MLC arrived in PK 12 on the 22 November 2002. He states that their behaviour was bizarre. They were carrying Kalashnikovs.[1494]

437. P73 testified that about one week after arrival their arrival, six MLC went to his house and said they were hungry. His wife hurriedly prepared some food and gave them. After eating one of them demanded beer from his wife. P73 answered that there was no beer. One of them dragged his elderly wife into the house. When P73 tried to intervene, the other five Banyamulenge pointed their weapons at him threatening him with death if he followed his wife into the house. P73 followed his wife nonetheless and the Banyamulenge hit him with butts of their rifles. They took away from his wife money which was earnings from their sales of beverages. One of the Banyamulenge pointed his pistol at P73 neck and told him he is going to die. He then asked P73 wife how much the MLC had taken. She replied that they took 30,000 francs. He promised to bring the money back which he didn't[1495].

438. Further, P73 testified that the following day another Banyamulenge forced him to buy a radio. He paid him 4000 francs and later on another Banyamulenge came back armed with a sword and took away that radio. That MLC soldier explained that he was taking the radio to the Colonel.[1496] P73 also testified that the MLC pillaged food and firewood from them as well.[1497]

[1493] [P73-T70-ENG-CT-p9-L8]/[P73-T70-FRA-CT-p9-L25]
[1494] [P73-T70-ENG-CT-p17-L1-and-p26-L5]/[P73-T70-FRA-CT-p17-L18-p18-L15-and-p27-L17]; [P73-T72-ENG-ET-p5-L2]/[P73-T72-FRA-ET-p5-L5]
[1495] [P73-T70-ENG-CT-p33-L1-p35-L25-and-p40-L19]/[P73-T70-FRA-CT-p34-L23-p37-L24-and-p42-L27-p43-1]
[1496] [P73-T70-ENG-CT-p35-L20-p36-L23]/[P73-T70-FRA-CT-p37-L19-p38-L21]
[1497] [P73-T70-ENG-CT-p42-L6]/[P73-T70-FRA-CT-p44-L5]

439. He testified that the pillaged items were stockpiled at the MLC base at the school[1498]. He saw this with his own eyes.[1499] He also testified that they stored pillaged items at their sub-bases. These sub-bases were large houses that they occupied.[1500]Their headquarters was at the Begoua school and the in charge of that base was referred to as Colonel.[1501]

440. He testified that the young people who followed Bozize did not have any power. They were happy to be supporting him. They were happy and spoke to everyone they knew and did not perpetrate any act of violence against the civilian population.[1502] During the period that the Banyamulenge were in PK 12, there were no other armed forces within PK 12 area.

441. Though the witness testified that MLC arrived on the 22 November 2002 in PK 12, his inability to recall the exact dates is excusable. The witness was testifying about ten years later from the time the events happened. This is a long period of time for an individual to accurately recall dates. However, his inability to recall the exact date does not affect the substance of his evidence and the victimisation that he suffered under the MLC.

442. The above evidence shows that P73 is a credible witness. His evidence shows that the MLC pillaged his property without his consent. Moreover during the looting the MLC were armed with guns and they used force. The pillaged property was never returned to them this depriving them of its use.

[1498] [P73-T71-ENG-ET-p51-L6]/[P73-T71-FRA-ET-p53-L14]
[1499] [P73-T71-ENG-ET-p52-L8]/[P73-T71-FRA-ET-p54-L17]
[1500] [P73-T73-ENG-ET-p43-L7-14]/[P73-T73-FRA-ET-p45-L9]
[1501] [P73-T70-ENG-CT-p28-L12]/[P73-T70-FRA-CT-p30-L5]
[1502] [P73-T70-ENG-CT-p13-L19]/[P73-T70-FRA-CT-p14-L12]; [P73-T73-ENG-ET-p57-L5]/[P73-T73-FRA-ET-p59-L13]

III. Intent and knowledge

443. The MLC perpetrators committed the above *actus reus* of pillaging against the CAR civilians with intent and knowledge. In most cases the MLC troops entered the CAR civilian's houses with force and while armed with guns. Upon entry, they demanded and took away money and other valuable goods from the CAR civilians. The civilians who resisted were subjected to physical violence, rape and even killed.

444. In addition, the MLC committed the above acts of pillaging with the additional special intent to deprive the rightful owner of his or her property and to appropriate it for private or personal use. As set out above, the evidence shows that the MLC invaded houses of CAR civilians and expropriated their belongings by force or coercion. The looted items were transported to the MLC bases from where they were subsequently transported to the DRC. The looted property was never returned to their rightful owners. Having been sold or transported to the DRC, the rightful owners were no longer in a position to rightfully dispose of their goods.

IV. Nexus

445. The above acts of pillaging took place in the context of and were associated with an armed conflict not of an international character. The above evidence establishes that the MLC appropriated belongings of CAR civilians while moving through the CAR during the relevant conflict period from the 26 October 2002 to 15 March 2003.

V. Large Scale Pillaging

446. The MLC committed large scale pillaging in the CAR during the period relevant to the charges.[1503]

447. P38[1504], P63[1505], P69[1506], P119[1507], P169, P173[1508] and P178[1509] testified that pillaging by the MLC was both organised and on a large scale. After gaining control of a location, the MLC went house to house pillaging. They entered the houses by force and took away belongings of the CAR civilians without their consent. Civilians who resisted were subjected to physical violence, rape and even death[1510]. They testified that the MLC transported looted property on their heads, shoulders, by push carts and vehicles to their bases.[1511] From the MLC bases in the CAR the looted property was transported to the DRC thus depriving the CAR rightful owners of their properties without their consent.[1512]

448. P33[1513] testified that it was widely known that the MLC troops were not paid and therefore resorted to pillaging.[1514] [REDACTED].[1515] [REDACTED].[1516] [REDACTED].[1517] [REDACTED],[1518] [REDACTED],[1519] [REDACTED].[1520]

[1503] ICC-01/05-01/08-424 para.211;ICC-01/05-01/08-424 para.317
[1504] [P38-T34-ENG-ET-p42-L10-and-p43-L1]/[P38-T34-FRA-ET-p47-L23-p48-L2-and-p48-L15-p49-L20]
[1505] [P63-T110-ENG-ET-p9-L19]/[P63-T110-FRA-ET-p9-L13]
[1506] [P69-T193-ENG-ET-p34-L12-and-p35-L16-and-p36-L8-and-p37-L3]/[P69-T193-FRA-ET-p37-L24-and-p38-L12-p39-L5-and-p39-L21-p40-L14-and-p40-L18]
[1507] [P119-T82-ENG-CT-p47-L1-p48-L25-and-p49-L18-24]/[P119-T82-FRA-CT-p47-L1-p48-L28-and-p49-L21]
[1508] [P173-T144-ENG-ET-p24-L16-and-p25-L6-and-p25-L22-and-p26-L1-and-p30-L17]/[P173-T144-FRA-ET-p25-L5-and-p25-L22-and-p26-L11-and-p26-L15-and-p31-L15]
[1509] [P178-T150-ENG-ET-p62-L4-L11-and-p68-L25-p69-L16]/[P178-T150-FRA-ET-p63-L26-p64-L10-and-p71-L10-p72-L2]
[1510] [P69-T192-ENG-ET-p11-L19-p12-L4-and-p22-L20-and-p25-L14]/[P69-T192-FRA-ET-p13-L6-and-p25-L7-and-p31-L2];[P69-T193-ENG-ET-p34-L11]/[P69-T193-FRA-ET-p37-L24]
[1511] [P63-T110-ENG-CT2-p7-L12]/[P63-T110-FRA-ET-p7-L14]
[1512] [P178-T150-ENG-ET-p68-L25-p69-L1]/[P178-T150-FRA-ET-p70-L4-and-p71-L10-p72-L2];[P69-T193-ENG-ET-p36-L8-25-and-p37-L3]/[P69-T193-FRA-ET-p39-L21-p40-L17-and-p40-L18]
[1513] [P33-T157-ENG-ET-p67-L11]/[P33-T157-FRA-ET-p27-L22]
[1514] [P33-T159-ENG-ET-p36-L20-p37-L11]/[P33-T159-FRA-ET-p38-L8]
[1515] [P33-T159-ENG-ET-p15-L1]/[P33-T159-FRA-ET-p15-L26]; [P33-T162-ENG-ET-p39-L22-p40-L25]/[P33-T162-ENG-ET p40-L25-p41-L27]

449. [REDACTED] MLC troops pillaging items such as trucks, TVs, electrical or household appliances, radios;[1521] [REDACTED].[1522] [REDACTED] Mustapha had pillaged large lorries.[1523] Upon arrival in Zongo, the smaller items were kept by the MLC troops, the trucks were rented out to transport individuals for revenue, and the vehicles were transported to Coca-Cola warehouse in Gbadolite.[1524] The vehicles transported to Gbadolite at the end of the operations were: a white Nissan pick-up, either white or grey in colour Toyota pick-up, a blue Toyota corolla car, a white Suzuki jeep, another Toyota pick-up and a blue Galloper jeep.[1525] As addressed in chapter 7, these vehicles were eventually distributed by Bemba to the MLC managerial staff.[1526]

450. [REDACTED].[1527]

451. P213 testified that everybody knew that the MLC troops pillaged because they saw many pillaged items in Gbadolite, which the troops did not have prior to deploying to the CAR.[1528] The items pillaged from the CAR were transported through

[1516] [P33-T159-ENG-ET-p15-L11]/[P33-T159-FRA-ET-p16-L8];[P33-T162-ENG-ET-p39-L22-p-40-L25]/[P33-T162-FRA-ET-p40-L25-p41-L27]
[1517] [P33-T159-ENG-ET-p16-L2-and-p40-L11-19]/[P33-T159-ENG-ET-p16-L26-p17-L6-and-p41-L26-p42-L4];[P33-T162-ENG-ET-p50-L12-20]/[P33-T162-FRA-ET-p40-L25-p41-L27]
[1518] [P33-T159-ENG-ET-p38-L21-p39-L1-and-p16-L17-p17-L1]/[P33-T159-FRA-ET-p40-L5-and-p17-L15]
[1519] [P33-T162-ENG-ET-p43-L3-L19]/[P33-T162-FRA-ET-p44-L6]
[1520] [P33-T159-ENG-ET-p17-L2]/[P33-T159-FRA-ET-p18-L27-P19-L16]
[1521] [P33-T159-ENG-ET-p36-L20-p37-L11-and-p42-L1]/[P33-T159-ENG-ET-p38-L8-and-p43-L15]
[1522] [P33-T159-ENG-ET-p37-L23-p38-L8-and-p41-L10]/[P33-T159-FRA-ET-p39-L9-and-p42-L24-p43-L11]
[1523] [P33-T162-ENG-ET-p50-L21-L25]/[P33-T162-FRA-ET-p52-L22]
[1524] [P33-T159-ENG-ET-p42-L4-L13]/[P33-T159-FRA-ET-p43-L18]; [P33-T162-ENG-ET-p42-L7-L12]/[P33-T162-FRA-ET-p43-L9]
[1525] [P33-T159-ENG-ET-p43-L10]/[P33-T159-FRA-ET-p44-L23-p45-L6]; [P33-T162-ENG-ET-p42-L7]/[P33-T162-FRA-ET-p43-L9]
[1526] [P33-T159-ENG-ET-p42-L14L25]/[P33-T159-FRA-ET-p43-L27-p44-L11]
[1527] [REDACTED]
[1528] [P213-T186-ENG-ET-p7-L25-p8-L2-and-p10-L6]/[P213-T186-FRA-ET-p8-L14;p10-L19];[P213-T187-ENG-ET-p39-L21-p40-L1]/[P213-T187-FRA-ET-p40-L22-p41-L7]

the towns of Zongo, Gemena and then Gbadolite.[1529] P213 saw vehicles and motorbikes in Gbadolite, which people told him came from the CAR.[1530]

452. P213 testified that all MLC troops returned from the CAR operation with pillaged items.[1531] Mustapha pillaged a vehicle amongst other items.[1532] There were commanders who kept their pillaged items in Zongo and Gemena, which therefore did not reach Gbadolite.[1533] Bemba gave a pillaged white Land Cruiser to the MLC chief-of-staff .[1534] He provided a pillaged blue Pajero vehicle to the security service section.[1535] These pillaged items were used for the benefit of the MLC.[1536]

453. P178 testified that his knowledge of widespread pillaging by the MLC troops was based on hearing them discussing the crimes amongst themselves; and the few questions he asked them about it.[1537] This is how he learned that Mustapha received a large car that was pillaged.[1538] P178 also testified that an MLC called Koko-Roy, together with Mustapha's driver and an emissary called Soke Atandele, were also involved in pillaging.[1539]

454. The MLC troops conducted pillaging in an organised manner: first, they would take control of a neighbourhood and mop it up; then they would conduct house-to-house operations to pillage anything they found in people's homes.[1540] P178 explained that the MLC troops would take items by force and they would assault or

[1529] [P213-T187-ENG-ET-p40-L10]/[P213-T187-FRA-ET-p41-L10]
[1530] [P213-T187-ENG-ET-p40-L19-and-p41-L1]/[P213-T187-FRA-ET-p41-L17]
[1531] [P213-T187-ENG-ET-p42-L3]/[P213-T187-FRA-ET-p42-L23-p43-L2]
[1532] [P213-T187-ENG-ET-p44-L16-p45-L2]/[P213-T187-FRA-ET-p44-L6]
[1533] [P213-T187-ENG-ET-p45-L1-12]/[P213-T187-FRA-ET-p45-L16]
[1534] [P213-T187-ENG-ET-p43-L6-12]/[P213-T187-FRA-ET-p43-L23-p44-L1]
[1535] [P213-T187-ENG-ET-p43-L6-12]/[P213-T187-FRA-ET-p43-L23-p44-L1]
[1536] [P213-T187-ENG-ET-p42-L1]/[P213-T187-ENG-ET-p42-L21]
[1537] [P178-T150-ENG-ET-p62-L17-p63-L11]/[P178-T150-FRA-ET-p64-L18-p65-L20]
[1538] [P178-T150-ENG-ET-p64-L10-21]/[P178-T150-FRA-ET-p66-L17-p67-L1]
[1539] [P178-T150-ENG-ET-ET-p64-L22-66-L7]/[P178-T150-FRA-ET-p67-L2-p68-L11]
[1540] [P178-T150-ENG-ET-p67-L20-p68-L14]/[P178-T150-FRA-ET-p70-L4]

even murder people who resisted.[1541] In cases where there were women or girls present, MLC troops would rape them.[1542]

455. Regarding distribution of the pillaged property, P178 stated that vehicles were set aside for Mustapha and motorbikes were for Mustapha's closest friends, while TV sets and house appliances for foot soldiers.[1543] The MLC troops shared their pillaged items and either sold them at Lakouanga in Bangui, or transported them to the DRC.[1544] Pillaged property especially vehicles were processed through a garage at maximum café. The cars were sprayed and their colours changed at this garage.[1545] Pillaged items were sold at the Maximum Café.[1546] Mustapha gathered the vehicles he pillaged in the CAR inside and outside the compound [REDACTED] was renting at Zulu commune on the way to the airport.[1547]

456. Mustapha had a handler [REDACTED] called Maurice. Maurice brought in the vehicles, materials and pillaged items on his behalf.[1548] Mustapha retrieved the pillaged items at the end of the conflict when he crossed over into Zongo.[1549]

[1541] [P178-T150-ENG-ET-p67-L20-p68-L14]/[P178-T150-FRA-ET-p70-L4]
[1542] [P178-T150-ENG-ET-p67-L20-p68-L14/[P178-T150-FRA-ET-p70-L4]
[1543] [P178-T150-ENG-ET-p67-L20-p68-L14]/[P178-T150-FRA-ET-p70-L4]
[1544] [P178-T150-ENG-ET-p69-L1]/[P178-T150-FRA-ET-p71-L11]
[1545] [P178-T150-ENG-ET-p69-L17]/[P178-T150-FRA-ET-p72-L3]
[1546] [P178-T150-ENG-ET-p70-L1]/[P178-T150-FRA-ET-p72-L15]
[1547] [P178-T156-ENG-ET-p24-L21-p25-L9]/[P178-T156-FRA-ET-p31-L21-p32-L8]
[1548] [P178-T150-ENG-ET-p71-L17]/[P178-T150-FRA-ET-p74-L12]
[1549] [P178-T150-ENG-ET-p69-L8]/[P178-T150-FRA-ET-p71-L20]

CHAPTER 6. MURDER AS A CRIME AGAINST HUMANITY AND WAR CRIMES

457. The evidence proves beyond reasonable doubt that from on or about 26 October 2002 to 15 March 2003, Bemba is criminally responsible for the crimes against humanity committed by his forces in the killing of men, women and children civilians in the CAR, in violation of Articles 7(1)(a) and 28(a) of the Statute. Civilians in the CAR include all victims identified in the specific incidents of murder below.[1550]

I. Specific elements

458. The contextual elements of murder as a crime against humanity are addressed separately above. They are incorporated by reference herein.

459. The Prosecution has proven beyond any reasonable doubt that the individuals in the specific incidents discussed below were intentionally killed by MLC troops as part of and with knowledge of the widespread attack directed against the CAR civilians from on/or about 26 October 2002 to 15 March 2003.[1551]

460. There is no requirement for the Prosecution to find and/or identify the corpse of the murdered civilians. Also, it is not necessary for the Prosecutor to demonstrate, for each individual killing, the identity of the victim and the direct perpetrator. Only the attack and not the individual acts of the perpetrator must be widespread. A single act of murder may constitute a crime against humanity if it meets all the legal requirements. The perpetrator must be aware that a widespread attack directed against a civilian population is taking place and that

[1550] ICC-01/05-01/08-950-Red-Anx-A-SectionVIII-Charges-Count7
[1551] Elements of Crimes, article 7(1)(a) of the Statute and article 30 (1) of the Statute;ICC-01/05-01/08-424-paras.127-151

his or her action is part of the attack.[1552] The existence of intent and knowledge can be inferred from relevant facts and circumstances.[1553] In the case of murder as a crime against humanity, the intent can be inferred from the use of a firearm against unarmed persons.[1554]

461. With regard to the required nexus, in establishing that the murders were part of the widespread attack directed against the CAR civilian population, the Prosecution has relied on the evidence related to the time, place and circumstances of the incident and its relationship to the events in the surrounding areas and to the widespread attack; the commission of other crimes in the specific localities as well as throughout CAR territory; the manner in which the direct perpetrators acted towards the victims and/or others present in the crime scene; the characteristics, aims, nature and consequences of the act; the effect of the MLC troops' presence and crimes on the civilian population; the pattern of their actions during the attack; the similarity between the direct perpetrator's act and the other acts forming the attack; the means employed by them in killing the civilians or the presence of the other civilians in the crime scene.[1555]

462. The evidence supporting each specific incident of murder is corroborated by testimony regarding the killing civilians throughout CAR for simply trying to

[1552] ICC-01/05-01/08-424-paras.88-and-133-134-and-151
[1553] Rome Statute-General Introduction of the Elements of Crimes-item 3
[1554] ICC-01/05-01/08-424-para138
[1555] ICC-01/05-01/08-424-paras.86-and-139-and-141-and-149-150-and-276-277; ICTY, *Prosecutor v. Mrkšid*, Case No.IT-95-13/1-A,Judgement,5 May 2009,para.41; ICTY, *Prosecutor v. Kunarac et al.,* Case No.IT-96-23-&IT-96-23/1-T, Judgement,22 February 2001,para.418; ICTY, *Prosecutor v. Kunarac et al.,* Case No.IT-96-23&IT-96/1-A,Judgement,12 June 2002,paras.99-100; ICTR, *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement,15 May 2003,para.326; ICTY, *Prosecutor v. Tadić*, Case No.IT-94-1-T,Judgment,7 May 1997,para.629–633; ICTR, *The Prosecutor v. Kayishema and Ruzindana*, Case No.ICTR-95-1-T,21 May 1999, para.122

protect themselves, each other, or their property.[1556] In testifying about the MLC's modus operandi in the CAR, P178 stated:

> "…once they had taken over a neighbourhood they would mop up, as it were. For them, the mopping up was to go from house to house and from house to house the people would have fled, and if they were not there, thank goodness for them, then the soldiers would simply take things, not encountering any resistance. Now, if they got into a house and the owner was still there, they wouldn't ask them for anything, they'd just take it by force. If you happened to resist…they would make short work of it, kill you. If there were girls, if there were women in the house, they would be raped. So it is during that mopping up operation. This was a moment of pleasure for them."[1557]

463. Documentary evidence establishes that murders were committed by Bemba's men at different locations throughout the CAR, as part of the widespread attack against the CAR civilian population.[1558] The February 2003 FIDH report details the widespread attack by ALC forces against CAR civilians. The November 2004 AI report similarly provides accounts of the murders perpetrated against victims in response their attempts to resist other crimes.[1559]

[1556] [P73-T71-ENG-ET-p46-L24-and-p47-L1]/[P73-T71-FRA-ET-p49-L7]; [P112-T129-ENG-CT2-p49-L22]/[P112-T129-FRA-CT-p49-L25-p50-L14]; [P38-T36-ENG-CT-p27-L25]/[P38-T36-FRA-ET-p36-L23-p37-L27];[P38-T34-ENG-ET-p9-L18]/[P38-T34-FRA-ET-p11-L4]; [P82-T58-ENG-CT-p24-L25]/[P82-T58-FRA-CT-p27-L8]; [P69-T192-ENG-ET-p16-L6]/[P69-T192-FRA-ET-p18-L9]; [P38-T34-ENG-ENG-ET-p41-L7]/[P38-T34-FRA-ET-p46-L22-p47-L3]; [P169-T142-ENG-CT2-p14-L25]/[P169-T142-FRA-ET-p14-L24-p15-L4]
[1557] [P178-T150-ENG-ET-p67-L23-p68-L3]/[P178-T150-FRA-ET-p70-L7]
[1558] EVD-T-D04-00016/CAR-OTP-0004-0065-at-0082-and-0084; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423-0424-and-0428; EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0686-and-0689; EVD-T-CHM-00049/CAR-OTP-0013-0098; EVD-T-OTP-00576/CAR-OTP-0031-0099-track-01-8:39-to-8:57; [P42-T64-ENG-ET-p51-L4]/[P42-T64-FRA-ET-p56-L18-p57-L24]; [P42-T65-ENG-ET-p20-L15]/[P42-T65-FRA-ET-p19-L13]; [P229-T100-ENG-CT2-p6-L9]/[P229-T100-FRA-CT-p6-L9]; [P173-T147-ENG-ET-p21-L11]/[P173-T147-FRA-ET-p21-L16]; EVD-T-OTP-00581/CAR-OTP-0031-0122-track-01,5:35-to-6.28
[1559] EVD-T-OTP-00442/CAR-OTP-0011-0503-at-0509-0510

464. The October 2006 FIDH report observed that the "Banyamulenge['s]" crimes, including murders, were committed on a huge scale as they pushed Bozizé's rebels back towards the north of the country. It also described the pattern in which the crimes occurred: violent entry into the home, extortion of money, aimed or sporadic shooting to instil terror, then gang rapes. The ALC troops committed these crimes throughout the armed conflict in CAR.[1560]

II. Specific incidents of murder as crimes against humanity

1. *[REDACTED]'s murder in Boy-Rabé*

465. On or about the morning of 30 of October 2002, P87 saw people fleeing as the infamous "Banyamulenge" arrived in Boy-Rabé.[1561] She identified them as "Bemba's rebels from the other side of the river".[1562] They spoke to each-other in Lingala and to her in French.[1563] She was unequivocal about her ability to distinguish the MLC troops from the soldiers of her country, stating, "[a]ny person is able to recognize the soldiers of his country. If these people who came, if they are not soldiers from your country you will recognize them. You will know that."[1564]

466. Further, the crimes that were committed against her and her family occurred when the Bozizé rebels had already withdrawn from Boy-Rabé[1565] The ALC forces or "Banyamulenge" were the only ones present in the

[1560] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0428
[1561] [P87-T45-ENG-CT-p4-L1-and-p6-L1]/[P87-T45-FRA-ET-p4-L5-and-p6-L11]; [P87-T44-ENG-CT-p18-L19]/[P87-T44-FRA-CT-p19-L17]; [P87-T46-ENG-CT-p20-L15]/[P87-T46-FRA-ET-p20-L19]
[1562] [P87-T44-ENG-CT-p17-L16]/[P87-T44-FRA-CT-p18-L15]
[1563] [P87-T44-ENG-CT-p22-L15-p23-L4]/[P87-T44-FRA-ET-p23-L18]
[1564] [P87-T44-ENG-CT-p25-L18-and-p26-L3]/[P87-T44-FRA-CT-p26-L27-p27-L1-and-p27-L10]
[1565] [P87-T45-ENG-CT-p5-L17]/[P87-T45-FRA-ET-p5-L28-p6-L3]

neighbourhood[1566] and the population was completely defenceless against them.[1567]

467. Armed groups of "Banyamulenge" went to P87's house several times.[1568] She remembered them saying to her and her brothers, "give us money, give us money and we won't kill you."[1569] They pillaged her home and they raped her.[1570] The last time they visited her house they killed her brother. Hidden under the stairs at the door behind the adjacent house, she saw the "Banyamulenge" and [REDACTED] enter a bedroom where in which there was scooter.[1571] P87 believed that the "Banyamulenge" wanted to take the scooter.[1572] But, then she heard 'No, no' and three shots.[1573] She saw the killer exit the room, join the other "Banyamulenge" in the lounge and then leave.[1574] She heard her brother moan and say "…you've killed me."[1575] In the morning, she called her neighbour and they discovered [REDACTED] body[1576] covered in blood with the scooter beside him.[1577] Whilst his body was being washed, she saw that the "Banyamulenge" had shot him in the chest.[1578] She saw three marks of bullets on his chest and the large injuries on his back.[1579] After her brother's murder she suffered from nightmares.[1580]

[1566] [P87-T45-ENG-CT-p4-L9]/[P87-T45-FRA-ET-p5-L20]
[1567] [P87-T44-ENG-CT-p18-L2]/[P87-T44-FRA-CT-p18-L25-p19-L8]
[1568] [P87-T44-ENG-CT-p13-L12-and-p14-L1-and-p21-L24-and-p22-L5]/[P87-T44-FRA-CT-p13-L28-and-p15-L2-and-p23-L2]
[1569] [P87-T44-ENG-CT-p33-L24]/[P87-T44-FRA-CT-p35-L8]
[1570] [P87-T44-ENG-CT-p14-L5-and-p15-L1-and-p27-L19-and-p28-L1]/[P87-T44-FRA-CT-p14-L23-and-p15-L20-and-p28-L27-and-p30-L9]
[1571] [P87-T44ENG-CT-p29-L2]/[P87-T44-FRA-CT-p30-L10]
[1572] [P87-T45-ENG-CT-p10-L8]/[P87-T45-FRA-ET-p11-L1]; [P87-T44-ENG-CT-p29-L22]/[P87-T44-FRA-CT-p31-L5]
[1573] [P87-T44-ENG-CT-p29-L16]/[P87-T44-FRA-CT-p30-L26-p31-L2]
[1574] [P87-T44-ENG-CT-p29L16]/[P87-T44-FRA-CT-p30-L26-p31-L2]; [P87-T46-ENG-CT-p51-L12]/[P87-T46-FRA-ET-p51-L10]
[1575] [P87-T45-ENG-CT-p6-L7]/[P87-T45-FRA-ET-p6-L19]
[1576] [P87-T44-ENG-CT-p30-L1]/[P87-T44-FRA-CT-p31-L8-p32-L7]; [P87-T45-ENG-CT-p7-L1]/[P87-T45-FRA-ET-p7-L15]
[1577] [P87-T45-ENG-CT-p9-L19]/[P87-T45-FRA-ET-p10-L15]
[1578] [P87-T45-ENG-CT-p10-L1]/[P87-T45-FRA-ET-p10-L21]
[1579] [P87-T45-ENG-CT-p10-L1]/[P87-T45-FRA-ET-p10-L21]
[1580] [P87-T44-ENG-CT-p46-L8]/[P87-T44-FRA-ET-p48-L10]

468. A forensic autopsy report and a ballistics report corroborate P87's account. The [REDACTED] ballistics report describes the method, analysis and the conclusions of the crime scene investigation carried out in Bangui at the house of [REDACTED]. It analysed the traces of blood and the projectiles found at the crime scene to reconstruct the circumstances of his death.[1581] The report confirms the presence of bullet holes in the house[1582] and that two bullets came from the same gun,[1583] an assault rifle AK 47,[1584] the same type of weapon P87 testified that the attackers carried.[1585] The shots are compatible with the ballistic findings made in the victim's house.[1586]

469. The Forensic Report of the Exhumation and Autopsy of [REDACTED] also confirm P87's evidence.[1587] The expert determined that the cause of death was gunshot injuries to the thorax by at least three bullets with similar dimensions of the round defects.[1588] [REDACTED] death certificate is further supportive of P87's accounts on his death. It states that [REDACTED] died on 31 October 2002 at 16.00 hours in his house.[1589]

470. P87's accounts are further corroborated by other trial witnesses. P119 testified that on 28 October 2002, after the rebels withdrew and the bombing ceased, the "Banyamulenge" arrived in her neighbourhood.[1590] She testified that the "Banyamulenge" broke down the doors of the house, killed one of the

[1581] EVD-T-OTP-00588/CAR-OTP-0048-0492
[1582] EVD-T-OTP-00588/CAR-OTP-0048-0492-at-0540-0541-and-0543-0544-and-0550-0551
[1583] EVD-T-OTP-00588/CAR-OTP-0048-0492-at-0547-and-0552
[1584] EVD-T-OTP-00588/CAR-OTP-0048-0492-at-0548
[1585] [P87-T44-ENG-CT-p22-L9]/[P87-T44-FRA-CT-p23-L12]
[1586] EVD-T-OTP-00588/CAR-OTP-0048-0492-at-0552
[1587] EVD-T-OTP-00689/CAR-OTP-0051-0263_R02
[1588] EVD-T-OTP-00689/CAR-OTP-0051-0263_R02-at-0323
[1589] EVD-T-D04-00003/CAR-OTP-0036-0162_R01
[1590] [P119-T82-ENG-CT-p24-L8-and-p25-L10-and-p27-L3]/[P119-T82-FRA-CT-p24-L19-p-25-L5-and-p25-L18-and-p27-L9]; [P119-T83-ENG-CT2-p4-L21-p5-L1]/[P119-T83-FRA-CT2-p5-L3]

children from the [REDACTED] family ([REDACTED]) when he wanted to react and she saw his body covered in blood.[1591]

471. When describing the targeting of the civilians at Boy-Rabé by the MLC, P119 testified that the "Banyamulenge" leader told her that they (the troops) were told that "at Boy-Rabé, all the people are rebels. You must kill them, starting with the men, the women and the children"[1592] P119 also testified about the MLC's presence and control over *Boy-Rabé*: "[y]ou know, the "Banyamulenge", there were so many of them, they took over the whole neighbourhood. They committed atrocities."[1593] Apart, from the rapes and pillaging, she testified that the "Banyamulenge" killed many people,[1594] including in the *Boy-Rabé* neighbourhood.[1595]

472. Several other witnesses listed Boy-Rabé as one of the areas attacked by the MLC and where they were present during the conflict.[1596] Many witnesses testified on killing of civilians, the rapes of women and girls and looting of property by the MLC troops at Boy-Rabé.[1597] They described how the civilians fled because of the MLC's presence and the fighting there.[1598] Several media

[1591] [P119-T82-ENG-CT-p50-L4]/[P119-T82-FRA-CT-p50-L5]
[1592] [P119-T84-ENG-ET-p15-L21-and-p16-L1]/[P119-T84-FRA-ET-p14-L20-p15-L1]
[1593] [P119-T82-ENG-CT-p47-L2]/[P119-T82-FRA-CT-p47-L3]
[1594] [P119-T82-ENG-CT-p52-L8]/[P119-T82-FRA-CT-p52-L9]
[1595] [P119-T82-ENG-CT-p49-L4]/[P119-T82-FRA-CT-p49-L3]
[1596] [P6-T94-ENG-ET-p19-L7-and-p34-L17]/[P6-T94-FRA-ET-p18-L6-and-p32-L12]; [P119-T83-ENG-CT2-p4-L16]/[P119-T83-FRA-CT2-p4-L26-p5-L8]; [P63-T111-ENG-CT-p46-L9]/[P63-T111-FRA-ET-p47-L7]; [P31-T183-ENG-CT-p10-L19]/[P31-T183-FRA-ET-p11-L11]; [P29-T80-ENG-ET-p9-L18]/[P29-T80-FRA-ET-p9-L7-p11-L6]; [P68-T48-ENG-ET-p11-L22-and-p31-L6]/[P68-T48-FRA-ET-p13-L15-and-p33-L14]
[1597] [P6-T95-ENG-CT-p23-L8-and-p22-L8]/[P6-T95-FRA-ET-p21-L28-p22-L28-and-p21-L3]; [P47-T177-ENG-ET-p25-L22]/[P47-T177-FRA-ET-p22-L8-p26-L7]; [P75-T92-ENG-CT-p14-L2-and-p15-L6]/[P75-FRA-CT-p15-L1-and-p16-L4]; [P29-T80-ENG-ET-p9-L18]/[P29-T80-FRA-ET-p9-L7-p11-L6]; [P119-T83-ENG-CT2-p7-L24]/[P119-T83-FRA-CT2-p8-L13-p9-L16]; [P119-T82-ENG-CT-p57-L12]/[P119-T82-FRA-CT-p57-L5]; [P68-T48-ENG-ET-p24-L15]/[P68-T48-FRA-ET-p26-L20]; [P68-T48-ENG-ET-p33-L25-p34-L12]/[P68-T48-FRA-ET-p36-L10]
[1598] [P63-T111-ENG-CT-p45-L7-and-p46-L1]/[P63-T111-FRA-ET-p46-L14-and-p47-L17]; [P31-T183-ENG-CT-p20-L5]/[P31-T183-FRA-ET-p21-L8-p22-L3]; [P75-T92-ENG-CT-p14-L2-and-p15-L6]/[P75-T92-FRA-CT-p15-L1-and-p16-L4]; [P119-T85-ENG-ET-p28-L12]/[P119-T85-FRA-ET-p26-L17]; [P68-T50-ENG-CT-p8-L7]/[P68-T50-FRA-ET-p8-L13-p9-L2]

articles and other documentary evidence also corroborate these witnesses' accounts of the events at Boy-Rabé and its surroundings.[1599]

473. The evidence in this case proves beyond reasonable doubt each element of [REDACTED] murder by MLC troops, as a crime against humanity.

2. *[REDACTED]'s murder in [REDACTED]*

474. The "Banyamulenge" arrived in the [REDACTED] neighbourhood on 8 November 2002.[1600] On 9 November 2002, two ALC soldiers shot and killed 36 year old [REDACTED].[1601]

475. On the day of her murder, at around 08:00 hours, [REDACTED] and her brother P69 were at their home in [REDACTED]. [REDACTED] had some 800,000 francs tied around her waist. Seeing the money, ALC soldiers demanded it and [REDACTED] refused. One of the soldiers took the money by force anyway and put it in his uniform pocket. The soldiers then threw [REDACTED] to the ground and shot her in the head in front of P69. P69 described seeing his sister's brain was strewn across the ground. They then turned to P69, beat him, and shot him.[1602]

[1599] EVD-T-OTP-00400/CAR-OTP-0004-0345-at-0346-0347;EVD-T-OTP-00854/CAR-OTP-0013-0113;EVD-T-OTP-00846/CAR-OTP-0004-0874;EVD-T-OTP-00413/CAR-OTP-0005-0133-at-0133;EVD-T-OTP-00446/CAR-OTP-0013-0082-at-0082-and-0085-0086;EVD-T-OTP-00853/CAR-OTP-0013-0090;CAR-OTP-0013-0320-at-0321-and-0323-and-0326-0328;EVD-T-OTP-00568/CAR-OTP-0030-0002-at-0090-0095
[1600] [P69-T192-ENG-ET-p20-L9-and-p22-L20]/[P69-T192-FRA-ET-p22-L20-and-p25-L6]
[1601] [P69-T192-ENG-ET-p14-L25-and-p32-L6-and-p34-L17]/[P69-T192-FRA-ET-p16-L25-and-p34-L23-p35-L14-and-p37-L16]
[1602] [P69-T192-ENG-ET-p31-L1-and-p35-L1]/[P69-T192-FRA-ET-p36-L16-p37-L10-and-p37-L25-p39-L22];[P69-T194-ENG-ET-p25-L6]/[P69-T194-FRA-ET-p26-L7];[P69-T195-ENG-ET-p12-L2-and-p44-L16]/[P69-T195-FRA-ET-p12-L17-p-13-L1-and-p48-L17]

476. P69 could not preserve his sister's body and buried her on the same day[1603] next to the house. Her body remained there until the Red Cross disinterred it along with other bodies buried during the events in Begoua.[1604]

477. The evidence shows that MLC troops occupied the entire neighbourhood and were the only soldiers present at the time of the [REDACTED] murder.[1605] P69 heard the MLC troops speaking in Lingala; he stated that they said 'Yaka wa', gesticulating at the same time.[1606] They had no respect for the population and continued committing crimes.[1607]

478. P69's accounts of the events in the area are corroborated by several trial witnesses. P23 testified that the "Banyamulenge" arrived in PK12 in November 2002.[1608] They were armed,[1609] numerous[1610] and took control,[1611] remaining there until their withdrawal in March 2003.[1612] They committed many crimes of looting, rapes and murders of civilians.[1613] P23 testified that he saw "…bodies of the individuals who had been killed, and [REDACTED] those bodies when they killed one, two, three or four persons."[1614]

[1603] [P69-T192-ENG-ET-p37-L8]/[P69-T192-FRA-ET-p40-L4];[P69-T196-ENG-ET-p24-L9]/[P69-T196-FRA-ET-p25-L23]
[1604][P69-T196-ENG-ET-p16-L16]/[P69-T196-FRA-ET-p17-L24-p18-L9]
[1605] [P69-T195-ENG-ET-p36-L17]/[P69-T195-FRA-ET-p40-L3]; [P69-T192-ENG-ET-p25-L17/[P69-T192-FRA-ET-p28-L7]; [P69-T192-ENG-ET-p29-L9]/[P69-T192-FRA-ET-p31-L23]
[1606] [P69-T196-ENG-ET-p24-L15]/[P69-T196-FRA-ET-p26-L1-p27-L9]
[1607] [P69-T192-ENG-ET-p29-L9]/[P69-T192-FRA-ET-p31-L23]; [P69-T193-ENG-ET-p27-L7]/[P69-T193-FRA-ET-p29-L28-p29-L1]; [P69-T193-ENG-ET-p58-L23]/[P69-T193-FRA-ET-p63-L25]; [P69-T194-ENG-ET-p7-L2]/[P69-T194-FRA-ET-p7-L16];[P69-T194-ENG-ET-p7-L17]/[P69-T194-FRA-ET-p8-L6]
[1608] [P23-T51-ENG-CT2-p6-L2-and-p9-L9-and-p13-L8]/[P23-T51-FRA-ET-p6-L7-and-p9-L20-and-p13-L12]
[1609] [P23-T51-ENG-CT2-p12-L8]/[P23-T51-FRA-ET-p12-L17]
[1610] [P23-T51-ENG-CT2-p9-L19]/[P23-T51-FRA-ET-p10-L2]
[1611] [P23-T51-ENG-CT2-p10-L12]/[P23-T51-FRA-ET-p10-L19]; [P23-T53-ENG-CT-p47-L13/[P23-T53-FRA-CT-p48-L17]
[1612] [P23-T52-ENG-CT2-p24-L2]/[P23-T52-FRA-CT-p25-L4]
[1613] [P23-T51-ENG-CT2-p20-L1-and-p22-L2-and-p47-L14]/[P23-T51-FRA-ET-p20-L21-p21-L5-and-p23-L27-and-p50-L20p-51-L2]; [P23-T52-ENG-CT2-p13-L1]/[P23-T52-FRA-CT-p13-L18]
[1614] [P23-T54-ENG-CT-p16-L5]/[P23-T54-FRA-ET-p17-L7]

479. P82 testified that the "Banyamulenge" who raped her were armed.[1615] The "Banyamulenge" also beat her brother to death.[1616] They were throughout the neighbourhood and they were shooting.[1617] P81 also testified that the "Banyamulenge" that victimized her in her home were armed.[1618] P80 stated that during the period of October 2002 to March 2003, the civilian population was subjected to violence perpetrated by the "Banyamulenge".[1619] She too stated that she was raped by armed soldiers.[1620]

480. The account of P110 provided below, regarding the events she witnessed on the arrival of the "Banyamulenge" in [REDACTED] also corroborate P69's testimony.

481. P42, *inter alia*, testified about the "Banyamulenge" acting on orders to "clean up" the Ouango district when they deployed and the civilians having fled to avoid being killed.[1621] P42 attended the funeral of his uncle killed by the "Banyamulenge" at PK22.[1622]

3. *An unidentified civilian murdered in [REDACTED]*

482. P110 testified that in the afternoon of 30 October 2002, one day after their arrival in her locality, she saw armed "Banyamulenge"[1623] arrive outside her neighbour's compound.[1624] They marched towards it in two columns.[1625] She was

[1615] [P82-T58-ENG-CT-p18-L13-and-p22-L22]/[P82-T58-FRA-CT-p24-L25-p25-L2-and-p24-L25-p25-L6]
[1616] [P82-T58-ENG-CT-p24-L25]/[P82-T58-FRA-CT-p27-L8]
[1617] [P82-T60-ENG-CT-p18-L22]/[P82-T60-FRA-ET-p20-L26-p21-L2]
[1618] [P81-T55-ENG-CT-p8-L21]/[P81-T55-FRA-CT-p8-L27-p9-L1]
[1619] [P80-T61-ENG-CT-p5-L5]/[P80-T61-FRA-ET-p5-L5]
[1620] [P80-T61-ENG-CT-p12-L18]/[P80-T61-FRA-ET-p12-L25-p13-L15]
[1621] [P42-T64-ENG-ET-p38-L6]/[P42-T64-FRA-ET-p42-L6]; [P80-T63-ENG-ET-p61-L2]/[P80-T63-FRA-ET-p65-L14]
[1622] [P42-T67-ENG-ET-p41-L5]/[P42-T64-FRA-CT-p43-L13-p46-L1]
[1623] [P110-T127-ENG-ET-p5-L7]/[P110-T127-FRA-ET-p5-L13]
[1624] [P110-T125-ENG-CT-p11-L3-andp18-L2-and-p34-L14]/[P110-T125-FRA-CT-p11-L17-p12-L12-and-p18-L13-and-p35-L19]; [P110-T126-ENG-CT-p19-L22]/[P110-T126-FRA-ET-p20-L13]
[1625] [P110-T125-ENG-CT-p40-L11]/[P110-T125-FRA-CT-p41-L18]

told that they spoke Lingala by her Congolese employee who was with her.[1626] Some of troops were in uniform,[1627] others wore military shirts and civilian trousers.[1628] They occupied the entire area of PK12.[1629] They were shooting in all directions and people fled, as she did together with her children.[1630] P110 testified that there was a general panic and as the population fled the "Banyamulenge" shot in the air or towards the ground.[1631]

483. On the day that the "Banyamulenge" entered in [REDACTED], P110 saw the murder of an unidentified woman.[1632] Like other civilians, the unidentified woman was fleeing when she crossed paths with a group of approximately nine[1633] armed[1634] "Banyamulenge" standing in front of P110's neighbour's compound.[1635] They called out to the unidentified woman, asking her to come towards them, but as she turned around to run away,[1636] they shot her three times, killing her.[1637] P110 did not know the woman, whom she testified was wearing a Kaba at the time of her murder.[1638]

484. P110 observed the shooting from the outdoor toilets of her compound.[1639] From where she stood, she could see everything that was going on in front.[1640]

[1626] [P110-T125-ENG-CT-p13-L8]/[P110-T125-FRA-CT-p13-L19]
[1627] [P110-T127-ENG-ET-p14-L18]/[P110-T127-FRA-ET-p15-L6]
[1628] [P110-T127-ENG-ET-p14-L18]/[P110-T127-FRA-ET-p15-L6]
[1629] [P110-T125-ENG-CT-p16-L5]/[P110-T125-FRA-CT-p16-L16]
[1630] [P110-T125-ENG-CT-p11-L18-and-p24-L10]
[1631] [P110-T125-ENG-CT-p27-L24-and-p28-L1]
[1632] [P110-T127-ENG-ET-p34-L1]
[1633] [P110-T127-ENG-ET-p46-L22]/[P110-T127-FRA-ET-p49-L3]
[1634] [P110-T125-ENG-CT-p18-L2]/[P110-T125-FRA-CT-p18-L13]
[1635] [P110-T127-ENG-ET-p31-L6]/[P110-T127-FRA-ET-p32-L20-p33-L4]
[1636] [P110-T125-ENG-CT-p35-L17]/[P110-T125-FRA-CT-p36-L20-p37-L3]; [P110-T127-ENG-ET-p28-L21]/[P110-T127-FRA-ET-p30-L1-2]
[1637] [P110-T125-ENG-CT-p28-L6-and-p35-L2]/[P110-T125-FRA-CT-p28-L27-p29-L17-and-p36-L3]
[1638] [P110-T125-ENG-CT-p35-L17]/[P110-T125-FRA-CT-p36-L20-p37-L3]; [P110-T127-ENG-ET-p28-L21]/[P110-T127-FRA-ET-p30-L1-2]
[1639] [P110-T125-ENG-CT-p32-L8-and-p33-L1]/[P110-125-FRA-CT-p33-L16-p34-L3-and-p34-L8-p35-L2]
[1640] [P110-T128-ENG-CT2-p32-L2]/[P110-T128-FRA-CT-p33-L17]; [P110-T125-ENG-CT-p34-L3]/[P110-T125-FRA-CT-p35-L6]

She was looking in the direction of the perpetrators because she heard the yelling and then she saw the unidentified woman being hit by the bullets.[1641]

485. The accounts of P110 on the events in the area are corroborated by several witnesses. P112, [REDACTED], testified about the presence of the "Banyamulenge" in the area.[1642] He heard gunshots fired from Bemba's troops.[1643] P112 recounted the killing of an elderly man in [REDACTED], who lived on the other side of the road from the house of [REDACTED]. P112 heard the gunshots and saw the son of the elderly man running and crying. The "Banyamulenge" pointed the weapon at him and shot him.[1644]

4. *Murder of the two unidentified civilians in Mongoumba*

486. V1 testified extensively about crimes committed against her and the population of Mongoumba on 5 March 2003 by the MLC troops.[1645] She witnessed several cases of Bemba's men abusing civilians in Mongoumba, including the murder of two civilians. She identified the armed attackers as "Banyamulenge".[1646] They were in uniform[1647] and told her that Bemba told them not to spare anyone.[1648]

487. V1 testified that the ALC troops entered a Muslim's man compound in Mongoumba and demanded his sheep.[1649] He refused[1650] and so they shot him

[1641] [P110-T128-ENG-CT2-p31-L8]/[P110-T128-FRA-CT-p32-L26-p33-L2]
[1642] [P110-T128-ENG-CT2-p45-L12]/[P110-T128-FRA-CT-p47-L8]
[1643] [P110-T128-ENG-CT2-p45-L23-and-p46-L17]/[P110-T128-FRA-CT-p47-L19-and-p48-L12]
[1644] [P112-T129-ENG-CT2-p50-L1]/[P112-T129-FRA-CT-p50-L1]
[1645] [V1-T220-ENG-ET-p12-L1]/[V1-T220-FRA-ET-p13-L23]
[1646] [V1-T220-ENG-ET-p23-L21-and-p46-L4]/[V1-T220-FRA-ETp24-L5-and-p45-L18]
[1647] [V1-T220-ENG-ET-p18-L23]/[V1-T220-FRA-ET-p19-L19]; [V1-T221-p39-L20]/[V1-T221-FRA-ET-p42-L24]
[1648] [V1-T220-ENG-ET-p21-L20]/[V1-T220-FRA-ET-p22-L12]; [V1-T221-ENG-ET-p9-L12]/[V1-T221-FRA-ET-p10-L16]
[1649] [V1-T220-ENG-ET-p32-L8]/[V1-T220-FRA-ET-p32-L11]
[1650] [V1-T220-ENG-ET-p32-L13]/[V1-T220-FRA-ET-p32-L18]

several times with their weapons.[1651] They then proceeded to finish killing him by cutting off his penis and stuffing it in his mouth.[1652] V1 saw everything with her own eyes.[1653] She saw him bleeding and then saw him die.[1654] After murdering him, the troops pillaged his sheep.[1655] The man was later buried at the main cemetery.[1656]

488. V1 also testified that, having killed the Muslim man, the MLC troops then entered his neighbour's house.[1657] There was a lady holding a baby in the house.[1658] They demanded from her a new double foam mattress in the house.[1659] When she refused to give it over they killed her and took it.[1660] They took other items of furniture too before leaving.[1661]

489. V1's accounts of the murders at Mongoumba are corroborated by other trial witnesses. Several of them testified on the MLC presence and crimes committed by them in Mongoumba.[1662] P29 testified extensively about the attack of the MLC troops on Mongoumba and the crimes committed against her and other Mongoumba civilians. Specifically, her evidence about the murder of a young

[1651] [V1-T220-ENG-ET-p32-L21]/[V1-T220-FRA-ET-p32-L26]; [V1-T222-ENG-ET-p21-L14-and-p25-L6]/[V1-T222-FRA-ET-p23-L8-and-p27-L15-p28-L7]
[1652] [V1-T220-ENG-ET-p33-L13]/[V1-T220-FRA-ET-p33-L16]
[1653] [V1-T220-ENG-ET-p33-L12]/[V1-T220-FRA-ET-p33-L15]
[1654] [V1-T220-ENG-ET-p33-L15]/[V1-T220-FRA-ET-p33-L18]
[1655] [V1-T220-ENG-ET-p33-L17]/[V1-T220-FRA-ET-p33-L20]
[1656] [V1-T221-ENG-ET-p13-L21]/[V1-T221-FRA-ET-p15-L3]; [V1-T222-ENG-ET-p32-L11]/[V1-T222-FRA-ET-p35-L3]
[1657] [V1-T220-ENG-ET-p33-L18]/[V1-T220-FRA-ET-p33-L21]
[1658] [V1-T220-ENG-ET-p33-L21]/[V1-T220-FRA-ET-p33-L23]
[1659] [V1-T220-ENG-ET-p34-L1]/[V1-T220-FRA-ET-p33-L28]
[1660] [V1-T220-ENG-ET-p34-L2]/[V1-T220-FRA-ET-p34-L1]
[1661] [V1-T220-ENG-ET-p34-L5]/[V1-T220-FRA-ET-p34-L5]
[1662] [P29-T81-ENG-ET-p15-L9]/[P29-T81-FRA-ET-p15-L11]; [P173-T145-ENG-ET-p29L-10]/[P173-T145-FRA-ET-p31-L7]; [P47-T178-ENG-CT-p35-L14]/[P47-T178-FRA-ET-p35-L24-p36-L6]; [CHM1-T355-ET-p59-L1]/[CHM1-T355-FRA-ET-p52-L20-p53-L7]; [P29-T81-ENG-ET-p19-L1]/[P29-T81-FRA-ET-p18-L27-p19-L12]; [P178-T152-ENG-CT-p8-L1-and-p5-L23]/[P178-T152-FRA-ET-p8-L10-p9-L4-and-p6-L3]; [P169-T136-ENG-ET-p34-L1-and-p43-L5]/[P169-T136-FRA-ET-p34-L14-p35-L11-and-p43-L20]

lady who was shot dead at her parents' house in Mongoumba,[1663] is consistent with the pattern of such crimes that V1's testimony confirms.

490. P169 testified about the murder of an elderly man during the execution of the order for MLC troops to "clean up Mongoumba".[1664] He stated that ALC Commander Kamisi reached Mongoumba in the early morning of 5 March 2003 and the troops "committed a lot of atrocities, rapes, looting".[1665] He further detailed that "[t]hey started looting the police headquarters…They went into the homes of private individuals, looting the homes and raping the women."[1666] P169 testified that Colonel Mustapha received the order to sweep things up in Mongoumba directly from Bemba.[1667] This was a punitive operation.[1668] P42, *inter alia*, testified that when the MLC troops:

> "arrived in Mongoumba… they were armed and they were capable of doing anything they liked so they could rape, they could loot, they could do whatever they liked, and after committing those atrocities, they could easily cross over to enter the country. So everything that I've told you is the reality."[1669]

491. P47 stated that "[a]s they went about their rape, well, they killed a father, a person who was living there in his compound. He was quite an old man. He couldn't flee and they shot him in his compound."[1670]

492. P173 testified that the MLC crimes in Mongoumba were committed on orders from Bemba and Mustapha.[1671] P213 testified that MLC troops involved in

[1663] [P29-T81-ENG-ET-p17-L2]/[P29-T81-FRA-ET-p16-L28-p17-L11]; [P29-T80-ENG-ET-p34-L19-p35-L3]/[P29-T80-FRA-ET-p37-L13]; [P29-T81-ENG-ET-p16-L3]/[P29-T81-FRA-ET-p24-L24]
[1664] [P169-T138-ENG-ET-p48-L21]/[P169-T138-FRA-ET-p47-L18]
[1665] [P169-T136-ENG-ET-p39-L6]/[P169-T136-FRA-ET-p39-L14-p40-L3]
[1666] [P169-T137-ENG-ET-p49-L18]/[P169-T137-FRA-ET-p50-L20]
[1667] [P169-T136-ENG-ET-p41-L2]/[P169-T136-FRA-ET-p41-L12]
[1668] [P169-T137-ENG-ET-p49-L12]/[P169-T137-FRA-ET-p50-L14]
[1669] [P42-T67-ENG-ET-p50-L19]/[P42-T67-FRA-CT-p54-L2]
[1670] [P47-T178-ENG-CT-p35-L14]/[P47-T178-FRA-ET-p35-L24-p36-L6]

the Mongoumba operation [REDACTED] the crimes perpetrated there on the orders of their leader.[1672]

493. Several media articles, published contemporaneously with the events at Mongoumba, corroborate the accounts of the witnesses regarding MLC's presence in Mongoumba and the crimes of rape, looting and murders committed by them against the civilian population.[1673] As the witnesses' accounts detail, they too provide information on an "*opération de représailles*" carried out on 5 March 2003 in the early hours of the morning.[1674]

5. *Murder of unidentified child at the Yasimandji market*

494. P169 testified that on the afternoon of 15 March 2003 he saw two columns of ALC soldiers at the Yasimandji market, in the Sango neighbourhood of Bangui. He recognized ALC Commander Yves amongst them. At the market, there was a child selling bread. One of the soldiers wanted to take the bread by force, which the child resisted. The solider shot the child and he died on the spot. The murder happened in Commander Yves' presence. The MLC troops left to Ngu-etat and were transported on a riverboat to the other side of the river.[1675] Commander Yves took no measures against the MLC soldier who killed the child.[1676]

[1671] [P173-T144-ENG-ET-p33-L3]/[P173-T144-FRA-ET-p34-L8]; [P173-T145-ENG-ET-p29-L8]/[P173-T145-FRA-ET-p31-L6]
[1672] [P213-T191-ENG-ET-p36-L21]/[P213-T191-FRA-ET-p38-L17]
[1673] EVD-T-OTP-00820/CAR-OTP-0013-0114; EVD-T-OTP-00855/CAR-OTP-0013-0115; EVD-T-V20-00006/CAR-V20-0001-0177
[1674] EVD-T-OTP-00820/CAR-OTP-0013-0114; EVD-T-OTP-00855/CAR-OTP-0013-0115 ; EVD-T-V20-00006/CAR-V20-0001-0177
[1675] [P169-T137-ENG-ET-p26-L15-p27-L4]/[P169-T137-FRA-ET-p27-L11]
[1676] [P169-T137-ENG-ET-p27-L11]/[P169-T137-FRA-ET-p28-L7]

495. [REDACTED].[1677] When describing the situation during the withdrawal of the MLC troops, P169 testified that the situation was extremely tense.[1678] He stated that 15 March was the day that the President of the CAR entered the city of Bangui and hunted down the MLC soldiers who crossed the river with the pillaged items.[1679] P169 was located 10 to 12 meters away and could see the killing.[1680] He explained that commander Yves's order to the perpetrator was not to return the bread to the dead person. Instead, what Yves said was "[l]eave it there. Just drop it over there. Give the bread back. Go."[1681]

496. P169's account on the murder of the unidentified child at the Yasimandji market in Bangui is supported by the accounts of the other witnesses testifying about the killings perpetrated by ALC troops against civilians who protected their own property. It is also indirectly corroborated by the testimonies of trial witnesses and documentary evidence on the commission of the crimes by the MLC troops until and during their withdrawal from the CAR.[1682]

497. When testifying further on the MLC troops' 15 March 2003 retreat, P42 stated that "[t]hey were walking one behind another. Some of them went through the hills. In the centre of the town you could see those who were leaving, walking behind another…"[1683] Describing the situation on the day of the withdrawal, P73 recounted that MLC troops "brought a large vehicle loaded with machetes and knives that they were sharpening and promising to finish off

[1677] [P169-T137-ENG-ET-p3-L18-p4-L19]/[P169-T137-FRA-ET-p3-L25-p4-L27-and-p6-L1]; [P169-T137-ENG-ET-p5-L20]
[1678] [P169-T137-ENG-ET-p57-L15]/[P169-T137-FRA-ET-p58-L1]
[1679] [P169-T137-ENG-ET-p33-L21-p34-L13]/[P169-T137-FRA-ET-p34-L12-p35-L3]
[1680] [P169-T142-ENG-CT2-p16-L1]/[P169-T142-FRA-ET-p15-L20-p16-L19]
[1681] [P169-T142-ENG-CT2-p17-L1]/[P169-T142-FRA-ET-p16-L20-p17-L6]
[1682] EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0419; EVD-T-OTP-00161/CAR-OTP-0001-0190; [P38-T34-ENG-ET-p13-L2]/[P38-T34-FRA-ET-p14-L15]; [P42-T65-ENG-ET-p6-L4-p7-L11]/[P42-T65-FRA-ET-p6-L5-p7-L14]; [P42-T68-ENG-ET-p14-L14]/[P42-T68-FRA-ET-p15-L10]; [P73-T71-ENG-ET-p44-L24-P45-L18]/[P73-T71-FRA-ET-p47-L8-p48-L5]; [P73-T70-ENG-ET-p32-L3]/[P73-T70-FRA-CT-p33-L26-p34-L11]; [P178-T154-ENG-ET-p22-L23-p23-L3]/[P178-T154-FRA-p24-L23-p25-L1]
[1683] [P42-T64-ENG-ET-p14-L1]/[P42-T64-FRA-ET-p15-L21]

the population before withdrawing. The inhabitants were living in a situation of fear and terror. They were preparing to do what they intended to do."[1684]

III. Murder as a war crime

498. The evidence proves beyond reasonable doubt that from on or about 26 October 2002 to 15 March 2003, troops under Bemba's effective authority and control committed war crimes by the killing of men, women and children civilians in the CAR, in violations of articles 8(2)(c)(i) and 28(a) of the Statute.[1685] Civilians in the CAR include each of the victims identified in the specific incidents of murder as crimes against humanity above which also qualify as war crimes.

A. Specific Elements

499. The contextual elements of murder as a war crime are addressed separately above. Therefore, this chapter focuses solely on the specific elements of murder, including the direct perpetrator's requisite mental element.

500. The Prosecution has established that the murders described above took place in the context of and were associated with the armed conflict in the CAR. MLC troops killed each of the civilians with intent and knowledge and in the awareness of the factual circumstances which established their civilian status and the existence of the armed conflict.[1686]

[1684] [P73-T70-ENG-ET-p25-L4]/[P73-T70-FRA-CT-p26-L13]
[1685] ICC-01/05-01/08-950-Red-Anx-A-SectionVIII-Charges-Count6
[1686] Elements of Crimes article 8(2)(c)(i) of the Statute and article 30 (1) of the Statute; ICC-01/05-01/08-424-paras.265-279

501. The evidence unequivocally establishes that the murders were directly related to the hostilities,[1687] in that they were carried out in the course of ALC military operations in the CAR.

502. PTCI has found that "the armed conflict need not be considered the ultimate reason for the conduct and the conduct need not have taken place in the midst of battle. Nonetheless, the armed conflict must play a substantial role in the perpetrator's decision, in his or her ability to commit the crime or in the manner in which the conduct was ultimately committed".[1688] Similarly, PTCII has referred to several factors in considering the requirement of nexus between the crimes committed and the armed conflict. It regarded, *inter alia*, the timing and circumstances in which the killings occurred *vis-à-vis* the battle throughout CAR, the means by which they were carried out, the evidence on the overall killings in the location of the crime as well as throughout CAR, the status of the perpetrator and of the victim.[1689] In line with PTC II's findings and the jurisprudence of the Court, the Prosecution has relied on evidence related to these factors.

503. The evidence discussed in above sections of this brief as well as the evidence discussed under the section of the specific incidents of murder as crimes against humanity, is incorporated by reference in this section. That evidence is further supported by several other items of evidence regarding the context in which the crimes by MLC troops were committed throughout the CAR from on/or about 26 October 2002 until 15 March 2003 specifying, *inter alia*, that crimes, including killings of the civilians, occurred in areas occupied and

[1687] ICC-01/04-01/06-803-tEN-para.287; ICC-01/04-01/07-717-para.380
[1688] ICC-01/04-01/06-796-Conf-tEN-paras.286-288
[1689] ICC-01/05-01/08-424-paras.276-277

under the control of the MLC troops who terrorized the civilians through their crimes.[1690]

504. The entirety of this evidence proves beyond reasonable doubt that each of the civilian victims in the specific incidents set out above were murdered by ALC troops. The evidence establishes a clear nexus between these murders and the non-international armed conflict which existed in CAR from on/or about 26 October 2002 until 15 March 2003. The evidence proves that the perpetrators knew and intended to kill each of the civilians through their actions and did so in the awareness of the victims' status as civilians.

B. Specific incidents of murder as war crimes

505. All of the specific incidents of murders as crimes against humanity qualify also as war crimes.

506. As discussed in each of the specific incidents cited, the evidence establishes beyond reasonable doubt that MLC troops killed the victim with intent and knowledge. The evidence also establishes that the murders occurred in the context of the non-international armed conflict existing in the CAR from on/or about 26 October 2002 until 15 March 2003. They were perpetrated by the MLC troops as they advancing into the CAR territory or as they were withdrawing. The victims were killed within the time that the conflict existed.

[1690] EVD-T-CHM-00042/CAR-OTP-0057-0243-at-0245; EVD-T-OTP-00401/CAR-OTP-0004-0409-at-0423-0424-and-0428; [P173-T144-ENG-ET-p35-L15]/[P173-T144-FRA-ET-p37-L1]; EVD-T-OTP-00410/CAR-OTP-0004-0977-at-0981-and-0900; EVD-T-OTP-00409/CAR-OTP-0004-0881; EVD-T-OTP-00568/CAR-OTP-0030-0002-at-0090-0095; [P108-T133-ENG-ET-p22-L23-p23-L3]; EVD-T-OTP-00427/CAR-OTP-0008-0413;EVD-T-OTP-00413/CAR-OTP-0005-0133; EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0669; [P42-T64-ENG-ET-p10-L23-p11-L6]; [P42-T64-FRA-ET-p12-L6-and-p13-L13]; EVD-T-OTP-00399/CAR-OTP-0004-0343-at-0344; EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0044-0046-and-0048; EVD-T-OTP-00580/CAR-OTP-0031-0120-Track-01-at-01:19-and-Track 02-at-02:04; EVD-T-CHM-00043/CAR-OTP-0057-0353-at-0356; EVD-T-OTP-00582/CAR-OTP-0031-0124-Track-01-at-12:25-13:05; [P42-T64-ENG-ET- p8-L23-p9-L12]/[P42-T64-FRA-ET-p9-L16]

507. The murders took place when the MLC troops either seized the areas in which the victims lived or were in the process of withdrawing these areas. The MLC troops deployed and established control in the areas that the victims were living. They targeted the civilians in these areas and their surroundings through pillaging, rape and killings just like they did throughout the CAR territory. The MLC troops' presence and the crimes they committed terrorized the civilians who fled as a result.

508. The MLC troops attacked most of the civilian victims in their own homes. They acted in a group or in the presence of other MLC troops, and in some cases in the presence of officers and commanders. They were armed and committing crimes against unarmed and defenceless civilians.

CHAPTER 7. ARTICLE 28 RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS

509. The Prosecution has proven each of the five constituent elements[1691] under Article 28(a) of the Statute necessary to establish Bemba's individual criminal responsibility beyond reasonable doubt:

a. Bemba was effectively acting as a military commander;

b. The forces that committed the charged crimes were under Bemba's effective authority and control;

c. Bemba's failure to properly exercise control over his forces resulted in the commission of the charged crimes;

d. Bemba either knew or, owing to circumstances at the time, should have known that his forces were committing or about to commit such crimes; and

[1691] Confirmation Decision, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 407.

e. Bemba failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes or to submit the matter to the competent authorities for investigation and prosecution.

I. Bemba effectively acted as the military commander of the ALC forces

510. At all times relevant to the charges, Bemba was the *de jure* and *de facto* Commander-in-Chief of the ALC. Bemba held the rank of division general, wore a military uniform and issued military orders accordingly. There is no doubt that Bemba was effectively acting as a military commander during the armed conflict in the CAR from 25 October 2002 to 15 March 2003.

511. The section below on Bemba's effective authority and control (paras. 525-613) discusses in detail the evidence of Bemba's effective control and his military command over the ALC troops. That evidence is intrinsically linked with Bemba effectively acting as the military commander of the ALC troops. The evidence discussed in that section is incorporated by reference herein. This brief uses the terms ALC and MLC interchangeably to refer to Bemba's forces. MLC was the acronym for Bemba's movement (*Mouvement de Libération du Congo*) and ALC the acronym for his army (*Armée de Libération du Congo*). Generally when MLC is used in this brief it refers either to the movement as a whole or to the political wing of the movement; ALC refers specifically to Bemba's army. However, since many witnesses used both acronyms interchangeably to describe Bemba's army, both are used in this brief.

512. The MLC Statute clearly specifies Bemba's functions as President[1692] of the MLC and the functions of the Political-Military Council assisting him. Article 12 of the

[1692] [P15-T207-ENG-CT-p21-L13-22]/[P15-T207-FRA-ET-p22-L7-15]

MLC Statute provides that the MLC President (Bemba), heads its political wing and is the Commander-in-Chief of its military wing, the ALC.[1693]

513. The ALC comprised approximately 20,000 soldiers[1694] and was structured like a conventional army. As stated in Article 16 of the MLC Statute and corroborated by, *inter alia*, the evidence of P45, P32, P33 and P36, the ALC had a General Staff (*état-major*) , which included (i) a commander of the army - the Chief of Staff; (ii) a G1 in charge of administration; (iii) a G2 in charge of intelligence; (iv) a G3 in charge of operations; (v) a G4 in charge of logistics; and (vi) a G5 in charge of political and civilian affairs.[1695] P15, [REDACTED], testified that "[t]he military wing was organised in the same way as any conventional army, so the troops were organised according to the normal hierarchy of a conventional army even though the MLC was a liberation movement."[1696]

514. The ALC was thus divided into brigades, which were divided into battalions, and further sub-divided into companies, platoons and sections. P36, [REDACTED], testified that the ALC had "[a]pproximately seven brigades. Each brigade had three battalions, and so we could deduce that we had approximately 21, 21 *(sic)* battalions, and other than the battalions we had some units that reported to headquarters, similar units, and they ensured rear defence."[1697] The ALC troops deployed in CAR during the 2002-2003 maintained this structure.[1698]

[1693] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0364
[1694] [P36-T213-ENG-ET-p25-L3-25]/[P36-T213-FRA-CT-p25-L22-p26-L16]
[1695] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0365; [P45-T201-ENG-ET-p32-L15-p33-L5]/[P45-T201-FRA-ET-p35-L27-p36-L16]; [P32-T165-ENG-ET-p29-L1-L13]/[P32-T165-FRA-ET-p29-L3-L13]; [P36-T213-ENG-ET-p17-L1-L8]/[P36-T213-FRA-CT-p17-L22-p18-L3]; [P36-T217-ENG-ET-p23-L7-14]/[P36-T217-FRA-ET-p25-L22-p26-L2]; [P33-T158-ENG-ET-p26-L14-p27-L2]/[P33-T158-FRA-ET-p25-L15-p26-L2]
[1696] [P15-T207-ENG-CT-p37-L21L25]/[P15-T207-FRA-ET-p39-L13L17]; see also [P15-T207-ENG-CT-p34-L5-L10]/[P15-T207-FRA-ET-p35-L18-26]
[1697] [P36-T213-ENG-ET-p26-L3L11]/[P36-T213-FRA-CT-p26-L20-p27-L1]; [P33-T161-ENG-ET-p12-L1-22]/[P33-T161-FRA-ET-p12-L23-p13-L21]
[1698] [P33-T158-ENG-ET-p47-L16-p48-L12]/[P33-T158-FRA-ET-p45-L22-p46-L13]

515. Article 12 of the MLC Statute specifies that, as the Commander-in-Chief of the ALC, Bemba, *inter alia*: (i) defined the general policy and determined military objectives; (ii) approved and signed defence agreements with external partners; and (iii) convened and presided over the ALC General Staff (*état-major*) meetings. As the MLC President, Bemba was responsible for the movement's management. He appointed the nine-member Political-Military Council, which acted as a "rubber-stamp"[1699] for Bemba's decisions, and Article 12 further vested him with the authority to appoint and dismiss members of the MLC, after considering the Council's opinion.[1700]

516. Bemba's powers as MLC President and ALC Commander-in-Chief allowed him to appoint and dismiss each member of the ALC's General Staff with the concurrence of the Political-Military Council.[1701] The Chief of Staff coordinated the activities of the General Staff and troops. He prepared and executed Bemba's decisions, and reported directly to him on the implementation of his orders.[1702]

517. Bemba issued decrees in his capacity as the President of the MLC and the Commander-in-Chief of the ALC which impacted on the functions of both wings of his movement. MLC Decree No. 016/Pres./MLC/07/02, appointing General Amuli to *General de division*, is signed by Bemba as ALC Commander-in-Chief. According to Article 2 of the decree, the appointment took effect immediately on Bemba's signature.[1703] MLC Decree No.0021/Pres./MLC/09/99, signed by Bemba as MLC President, informs [REDACTED] of his election as the head of the *Bureau de Renseignement Militaire*.[1704] MLC Decree No.035/Pres./MLC/11/02, signed by Bemba as the President of the MLC, refers to the establishment, within the territories

[1699] [P15-T207-ENG-CT-p36-L7]/[P15-T207-FRA-ET-p37-L27]
[1700] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0364-0365
[1701] [P45-T201-ENG-CT-p33-L9-L15]/[P45-T201-FRA-ET-p36-L20-L26]
[1702] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0365
[1703] EVD-T-OTP-00693/CAR-D04-0002-1399
[1704] EVD-T-OTP-00357/CAR-OTP-0009-0134

administered by the MLC, of a superior War Counsel and a Garrison War Counsel.[1705] MLC Decree No.002/Pre./MLC/2002, signed by Bemba as MLC President and the ALC Commander-in-Chief, refers to the establishment of a court-martial.[1706]

518. ALC troops knew that Bemba was their ultimate commander. P33, the Director of the MLC Intelligence Service, testified that Bemba "…supervised very closely what was happening at the front lines and very often he himself would go to the front, to the very, very front line…. The very presence of the Commander-in-Chief on the front line was a tremendous source of inspiration for the troops, and this was indeed highly beneficial for the men. So, indeed, he would often go on such journeys…to the very front line."[1707] Video footage shows Bemba wearing military attire, carrying a baton of command (swagger stick) and addressing the troops.[1708] P15 identified Bemba in a photograph holding a baton of command in his hand—a symbol of authority and power for the soldiers, as he greeted a crowd.[1709] In another photograph, Bemba posed for the camera amidst ALC officers at a reception following the ceremony conferring their new ranks, pursuant to Bemba's decree.[1710] Yet another photograph depicts Bemba in military attire with Colonel Mustapha at the end of the same ceremony.[1711] On 13 July 2002, Bemba also attained the military rank of division general, which was later ceremoniously pinned on by the Secretary General of the MLC's political wing, Olivier Kamitatu, and the ALC Chief of Staff, General Dieudonné Amuli in March 2003.[1712]

[1705] EVD-T-OTP-00452/CAR-OTP-0017-0355
[1706] EVD-T-OTP-00697/CAR-DEF-0002-0580
[1707] [P33-T158-ENG-ET-p59-L9-L20]/[P33-T158-FRA-ET-p56-L25-p57-L5]
[1708] EVD-T-OTP-00835/CAR-OTP-0069-0369-at-minute mark 11:30
[1709] EVD-T-OTP-00718/CAR-OTP-0046-0064; [P15-T208-ENG-ET-p10-L2-L11]/[P15-T208-FRA-ET-p10-L14-L24]
[1710] EVD-T-OTP-00729/CAR-OTP-0046-0170; [P15-T208-ENG-ET-p33-L6-L14]/[P15-T208-FRA-ET-p35-L9-L20]
[1711] EVD-T-OTP-00728/CAR-OTP-0046-0116; [P15-T208-ENG-ET-p32-L8-L16]/[P15-T208-FRA-ET-p34-L11-22]
[1712] EVD-T-OTP-00724/CAR-OTP-0046-0084; EVD-T-OTP-00368/CAR-OTP-0032-0167-at-0168

519. ALC troops in PK12 referred to Bemba as their Chairman. P38 testified that when Bemba addressed the ALC troops they were lined up in formation to listen to what he was saying, as they would be during any important military event.[1713] P38 also testified that when Bemba addressed them he held a command baton and was roundly applauded by his troops.[1714] P213, one of Bemba's bodyguards, testified that Bemba went to Zongo to talk to the ALC officers to boost the morale of the troops there and to issue them orders before crossing over to Bangui.[1715] P213 testified further about Bemba's visits to his troops in CAR.[1716]

520. Trial witnesses who were either personally victimized or witnessed the victimization of the CAR civilians by the ALC troops testified about the statements they made. V1 testified that the ALC forces told her that, "the president of their country had asked them to come and shoot at everyone and not to spare anyone …"[1717] She stated that "after my arrest they shot and they said the name of their president. They didn't say the name of Patassé, or Bozizé, no. They just gave the name of their president, which I remember to this day. They stated the name of Mr Bemba."[1718] P119 testified that the ALC leader in her neighbourhood told her that "Papa Bemba had asked us to come and to apply Article 15".[1719] Throughout their testimonies, the CAR civilian victims referred to the ALC troops as "Bemba's men".[1720]

[1713] [P38-T34-ENG-ET-p29-L17-L23]/[P38-T34-FRA-ET-p33-L25-p34-L6]
[1714] [P38-T36-ENG-ET-p23-L25-p24-L13]/[P38-T36-FRA-ET-p32-L17-p33-L4]; [P38-T34-ENG-ET-p29-L14-16]/[P38-T34-FRA-ET-p33-L20-24]
[1715] [P213-T186-ENG-ET-p38-L15-L18-and-p42-L1-p43-L6]/[P213-T186-FRA-ET-p40-L24-L27-and-p44-L12-p45-L16]
[1716] [P213-T186-ENG-ET-p62-L4-p64-L19]/[P213-T186-FRA-ET-p64-L24-p67-L15]
[1717] [V1-T220-ENG-ET-p21-L19-25]/[V1-T220-FRA-ET-p22-L11-L17]
[1718] [V1-T221-ENG-ET-p9-L12-L23]/[V1-T221-FRA-ET-p10-L15-L27]
[1719] [P119-T82-ENG-CT-p34-L1-L3]/[P119-T82-FRA-CT-p34-L4-L6]
[1720] [P23-T51-ENG-CT2-p35-L2-L6]/[P23-T51-FRA-ET-p37-L8-13]; [P81-T55-ENG-CT-p5-L13-23]/[P81-T55-FRA-CT-p5-L21-p6-L4]; [P80-T61-ENG-CT-p17-L10-20]/[P80-T61-FRA-ET-p17-L14-L24]; [P87-T44-ENG-CT-p17-L15-Ll20]/[P87-T44-FRA-CT-p18-L14-L18]; [P69-T192-ENG-ET-p19-L17-L21-and-p20-L3-L6-and-p53-L4-L5]/[P69-T192-FRA-ET-p21-L28-p22-L5-and-p22-L13-L16-and-p57-L9-L11]; [P22-T40-ENG-ET-p21-L16-L25]/[P22-T40-FRA-ET-p23-L9-L19]; [P79-T77-ENG-CT-p5-L10-20-and-p6-L1-L7]/[P79-T77-FRA-ET-p5-L20-p6-L2-and-p6-L9-L17]; [P68-T48-ENG-ET-p14-L4-L17]/[P68-T48-FRA-ET-p15-L22-p16-L7]

521. Bemba publicly touted his position and authority in the MLC. In his book, Bemba wrote about how he was directly contacted by President Patassé requesting the ALC's intervention in May 2001.[1721] He wrote about the orders he gave to Commander Jean-Louis Bokolombe regarding the operation in the CAR, and provided details of the specific orders he issued to the ALC soldiers of 28th Battalion. He further stated that "[a]t President Patassé's request, I gave my men the order to remain in position in Bangui for the time being to enable the FACA to regain full control of the capital."[1722]

522. Bemba appointed Colonel Mustapha to lead the 2002-2003 CAR operation.[1723] P36 testified that

> "[t]he Commander-in-Chief . . . had preferred straightaway to take the unit which was ready, which wasn't far in terms of a proximity to Bangui, and that is how Mustapha was chosen, I think, and quickly he had to get the two battalions to cross, the two battalions that were there, in order to afterwards reinforce them with the other ones I referred to earlier which came from or which left from Basankusu and the choice of these units was as I have always said, the movement, all of that that was up to the Commander-in-Chief."[1724]

P15 testified that the relationship between Bemba and Colonel Mustapha "was a hierarchical relationship between the president of the movement and one of his

[1721] EVD-T-CHM-00028/CAR-OTP-0069-0372-at-0421-0423, EVD-T-CHM-00029/CAR-OTP-0070-0138 English Translation
[1722] EVD-T-CHM-00029/CAR-OTP-0070-0138
[1723] [P36-T215-ENG-ET-p45-L13-25]/[P36-T215-FRA-ET-p43-L7-23]; [P33-T158-ENG-ET-p27-L4-21]/[P33-T158-FRA-ET-p26-L3-21]; [P33-T159-ENG-ET-p33-L6-12]/[P33-T159-FRA-ET-p34-L23-p35-L2]; [P178-T150-ENG-ET-p25-L3-4]/[P178-T150-FRA-ET-p25-L21-23]; [P213-T188-ENG-ET-p28-L10-p29-L-3]/[P213-T188-FRA-ET-p28-L25-p29-L21]
[1724] [P36-T215-ENG-ET-p45-L13-25]/[P36-T215-FRA-ET-p43-L7-23]; [P33-T159-ENG-ET-p33-L6-12]/[P33-T159-FRA-ET-p34-L23-p35-L2]

senior officers."[1725] He further stated that Colonel Mustapha was always under the orders of Bemba and reported directly to him.[1726]

523. As Commander-in-Chief, Bemba exercised both *de jure* and *de facto* control over all military matters and operations.[1727] Bemba gave direct orders to his subordinate commanders, which were dutifully executed by the ALC troops.

524. In his capacity, as described above, and through the MLC chain-of-command, Bemba had both a *de jure* and *de facto* superior-subordinate relationship with the ALC forces that perpetrated the crimes charged. The evidence proves beyond reasonable doubt that Bemba effectively acted as their military commander at all times relevant to the charges.

II. Bemba's effective authority and control

525. Bemba had effective authority and control over ALC forces in CAR because he had the material ability to prevent and punish crimes[1728] committed by them. Bemba's letters to others, reports of inquiries or investigations, courts-martial records, communication records, and testimony all establish this. Further, there can be no doubt that Bemba had the material ability to prevent and punish crimes and therefore had effective authority and control over his forces that committed crimes in CAR.

[1725] [P15-T208-ENG-ET-p32-L17-22]/[P15-T208-FRA-ET-p34-L23-28]
[1726] [P15-T210-ENG-CT-p25-L20-p26-L7]/[P15-T210-FRA-ET-p28-L1-12]; [P15-T208-ENG-ET-p49-L12-25]/[P15-T208-FRA-ET-p51-L28-p52-L17]
[1727] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0364-0365; [P45-T201-ENG-ET-p33-L9-15]/[P45-T201-FRA-ET-p36-L20-26]; [P36-T213-ENG-ET-p28-L5-11]/[P36-T213-FRA-CT-p28-L21-28]; [P15-T207-ENG-CT-p38-L7-16]/[P15-T207-ENG-CT-p39-L25-p40-L6]; [P33-T158-ENG-ET-p38-L2-p39-L20]/[P33-T158-FRA-ET-p36-L21-p38-L7]; [P33-T159-ENG-ET-p22-L9-p23-L24]/[P33-T159-FRA-ET-p23-L9-p24-L28]
[1728] Confirmation Decision, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 415 citing *inter alia*, ICTY, *Prosecutor v. Delalic et al.*, Case No. IT-96-21-A, "Appeals Chamber Judgment", 20 February 2001, para. 256.

A. Bemba's material ability to prevent and punish crimes

526. "[The MLC] was very much an organisation with a very distinct line of authority. There was a leader. The leader had the authority. The actual organisation of the movement was very much in keeping with the will of the president, Mr Bemba. It was a machine that was both military and political in nature; a machine aligned with the president, Mr Bemba. There was no one else who was more visible that Mr Bemba."[1729]

527. The evidence in this case establishes beyond reasonable doubt that Bemba at all times relevant to the charges possessed and exercised effective authority and control over the ALC units deployed to the CAR in the 2002-2003 operation.

528. Regardless of whether Bemba exercised operational command during the conflict, which the evidence demonstrates he did, Bemba retained the ultimate authority to discipline his subordinates and had at his disposal the material ability to prevent, punish or refer alleged crimes to the competent authorities. Such material abilities are particularly manifested in view of Bemba's position at the top of the military chain of command within the MLC hierarchy, and given his powers to arrest, order investigations and to refer cases of misconduct to the court-martial system that he controlled.

[1729] [P15-T210-ENG-CT-p13-L20-25]/[P15-T210-FRA-ET-p15-L1]

B. Bemba's position in the MLC

529. The MLC was Bemba's movement and the ALC, his army.[1730] P15 testified that Bemba "had authority and his authority was not challenged and his character was one of a man who imposes his authority. He was authoritative."[1731]

530. As stated above, Bemba led the MLC politically and militarily.[1732] He had full authority to define the general policies and objectives of the MLC[1733], as its president and the chair of the Political-Military Council, the movement's highest organ.[1734] In reality the Political-Military Council was but a "symbolic"[1735], "rubber-stamp"[1736] or a "bogus"[1737] organ with no real decision-making power.[1738] Decision-making within the MLC lay solely in Bemba's hands.[1739]

531. In addition to ALC appointments,[1740] Bemba also appointed all members of the General-Secretariat of the MLC.[1741] Bemba, as the Commander-in-Chief, issued all military orders,[1742] which P15 confirmed: "it is the president who took the decisions exclusively in military matters".[1743] He further elaborated "as for military decisions, they were taken by the president […] but, as is the case in all movements, these

[1730] [P15-T207-ENG-CT-p19-L15-16-and-p20-L1]/[P15-T207-FRA-ET-p20-L10-and-L21]; [P178-T150-ENG-ET-p30-L21]/[P178-T150-FRA-ET-p31-L28]
[1731] [P15-T210-ENG-CT-p3-L10-12]/[P15-T210-FRA-ET-p3-L18]
[1732] [P33-T158-ENG-ET-p15-L2-10]/[P33-T158-FRA-ET-p14-L14]; [P15-T207-ENG-CT-p21-L9-11]/[P15-T207-FRA-ET-p22-L2]
[1733] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0364; [P33-T159-ENG-ET-p55-L21-25]/[P33-T159-FRA-ET-p67-L5]
[1734] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0365
[1735] [P36-T213-ENG-ET-p18-L17]/[P36-T213-FRA-CT-p19-L18]
[1736] [P15-T207-ENG-CT-p36-L7-p40-L25]/[P15-T207-FRA-ET-p37-L27-p42-L16]
[1737] [P15-T207-ENG-CT-p41-L9]/[P15-T207-FRA-ET-p42-L24]
[1738] [P36-T213-ENG-ET-p18-L17]/[P36-T213-FRA-CT-p19-L18]
[1739] [P36-T213-ENG-ET-p17-L11-17-and-p18-L8-24-and-p21-L1-15]/[P36-T213-FRA-CT-p18-L7-and-p19-L7-and-p21-L24-p22-L12]; [P15-T207-ENG-CT-p26-L16-17-and-p36-L2-9-and-p41-L9-10]/[P15-T207-FRA-ET-p27-L17-and-p37-L21-p38-L2-and-p42-L24]
[1740] [P33-T158-ENG-ET-p52-L13-15]/[P33-T158-FRA-ET-p50-L6]; EVD-T-OTP-00357/CAR-OTP-0009-0134;[P36-T213-ENG-ET-p17-L11-and-p27-L17-20]/[P36-T213-FRA-CT-p18-L7-and-p28-L6]; [P15-T208-ENG-ET-p18-L3-6-and-L23-24]/[P15-T208-FRA-ET-p18-L24-and-p19-L16]; EVD-T-OTP-00368/CAR-OTP-0032-0167-at-0169-172
[1741] [P15-T207-ENG-CT-p28-L16-17]/[P15-T207-FRA-ET-p29-L22]
[1742] [P33-T158-ENG-ET-p28-L4-6-and-L12-13]/[P33-T158-FRA-ET-p27-L2-and-L10]
[1743] [P15-T207-ENG-CT-p31-L5]/[P15-T207-FRA-ET-p32-L12]

decisions were implemented by the command structure or the Chief of Staff."[1744] The witness added that "whether it be the political or the military wings of the movement, [REDACTED] were all expected to report to the president of the movement […] The president of the MLC was very mindful that [REDACTED] should report to him […] as frequently as possible, so when [REDACTED] were in Gbadolite [REDACTED] all had communication devices, and the president had his eye and ear on everything."[1745] Addressing Bemba's control over the MLC's decision-making, P36 testified that "[Bemba] was the one who made all the decisions. The decision, even for example to provide fuel for someone's jeep, he made the decision. In other words, he made all the decisions, even the most minor decisions."[1746]

532. Bemba controlled MLC funds and the procurement and distribution of weapons,[1747] food supplies, fuel and other essential military needs.[1748] P36 testified that not a single bullet could be taken out of the warehouse to any location without Bemba's authorization.[1749] [REDACTED] testified that "any expenditure by the MLC required the authorization of the president of the MLC, no matter what the amount, and if by some chance the expenditure was done without approval it would have to be marked in a logbook, or a notebook, that would be shown to the president of the MLC on a day-to-day basis. That way the finances and the approval and the organisation, it all depended on the president of the MLC. It was all subject to the president of the MLC."[1750]

[1744] [P15-T207-ENG-CT-p32-L4-6]/[P15-T207-FRA-ET-p33-L11]
[1745] [P15-T207-ENG-CT-p32-L19-25]/[P15-T207-FRA-ET-p33-L25-p34-L6]
[1746] [P36-T207-ENG-ET-p23-L6-9]/[P36-T207-FRA-CT-p23-L24-28]
[1747] [P36-T213-ENG-ET-p30-L11-25-p32-L17-25-p73-L5-11]/[P36-T213-FRA-CT-p31-L4-15-p33-L9-14-p74-L6-15]
[1748] [P36-T213-ENG-ET-p72-L8-25]/[P36-T213-FRA-CT-p73-L9-28]
[1749] [P36-T213-ENG-ET-p69-L8-11]/[P36-T213-FRA-CT-p70-L11-14]
[1750] [P15-T207-ENG-CT-p32-L15-21]/[P15-T207-FRA-ET-p33-L20]

533. Bemba was the one who could authorize the use of the aeroplanes available to the MLC, used to transport troops and supplies.[1751]

534. Bemba established direct contact with his troops on the ground. As the Commander-in-Chief, he could give direct orders to anyone without having to go through the Chief of Staff.[1752] He would bypass the structural chain of command and issue orders directly to the commanders deployed to the field.[1753] P33 described Bemba as "a stickler for rules. He would go into even the tiniest detail concerning strategic operational tactical matters."[1754] He stated that:

> "[t]he president of the movement was a man who liked to see decisions be carried out immediately or as quickly as possible; consequently he didn't always bother going through the structure or the hierarchy. The important thing was for the objectives to be attained; consequently, it was possible and indeed it did happen that an order would be given but the chain of command would not be respected. [REDACTED], and each time reports would come back to the Chief of General Staff and he would be told of the decision after the fact. He would be told of the various decisions taken after the fact, so it all depended on the circumstances and the requirements and the assessment done by the president of the MLC."[1755]

535. The ALC General Staff ensured that Bemba's decisions were implemented, even if Bemba took these decisions unilaterally without prior consultation with the

[1751] [P36-T213-ENG-ET-p34-L15-p37-L8-and-p69-L14-24]/[P36-T213-FRA-CT-p34-L27-p37-L19-and-p70-L17-p71-L1];[P15-T207-ENG-CT-p61-L6-12]/[P15-T207-FRA-ET-p63-L10]
[1752] [P15-T210-ENG-CT-p22-L1-8]/[P15-T210-FRA-ET-p24-L9]
[1753] [P33-T159-ENG-ET-p50-L8-18]/[P33-T159-FRA-ET-p52-L2]; [P36-T213-ENG-ET-p42-L12-23]/[P36-T213-FRA-CT-p42-L17]; [P36-T214-ENG-ET-p6-L13-25]/[P36-T214-FRA-CT-p6-L20-p7-L6]; [P36-T217-ENG-ET-p56-L25-p57-L7]/[P36-T217-FRA-ET-p61-L6]; [P15-T207-ENG-CT-p38-L13-16]/[P15-T207-FRA-ET-p40-L3]
[1754] [P33-T158-ENG-ET-p38-L9-11]/[P33-T158-FRA-ET-p36-L28-p37-L3]
[1755] [P15-T207-ENG-CT-p42-L7-16]/[P15-T207-FRA-ET-p43-L25-p44-L5]

General Staff.[1756] The General Staff reported back to Bemba on the implementation of his decisions.[1757] P36 testified that Bemba made all decisions concerning military matters such as to "go to war", to "open fire", or "even if it was a matter of shifting one platoon from one place to another".[1758] P36 described the role of the General Staff as confined to simply implementing Bemba's decisions and orders and reporting back to Bemba.[1759] This is consistent with Article 16 of the MLC Statute, which provides that "*Le Commandant de l'Armée, subordonné du Commandant en Chef à savoir le Président du MLC, coordonne les activités de l'Etat-major et des troupes. Il exécute les décisions du Commandant en Chef de l'ALC. A ce titre, il prépare les décisions du Commandant en Chef, il coordonne les activités de l'Etat-major, et il rend compte au Commandant en Chef de l'exécution des ordres transmis.*"[1760]

536. Bemba's control over the organisation is so remarkably profound that even his arrest in this case could not extinguish it, and no other person was named to fill his position.[1761] The MLC Statute does not provide for any mechanism to elect or replace its President. Article 30 which names Bemba as the MLC President, providing no possibility for his removal or for the election of a different president.[1762]

537. P213, [REDACTED], including during the MLC intervention in the CAR, stated that "there was just one leader that we had … this person was President Bemba. There was no one else apart from him."[1763]

[1756] [P33-T158-ENG-ET-p31-L16-p32-L1]/[P33-T158-FRA-ET-p30-L11]
[1757] [P33-T158-ENG-ET-p31-L16-p32-L1]/[P33-T158-FRA-ET-p30-L11]
[1758] [P36-T213-ENG-ET-p28-L5-11]/[P36-T213-FRA-CT-p28-L21]; [P36-T215-ENG-ET-p65-L16-23]/[P36-T215-FRA-ET-p65-L4]
[1759] [P36-T213-ENG-ET-p28-L12-16]/[P36-T213-FRA-CT-p29-L1]
[1760] EVD-T-OTP-00808/CAR-OTP-0069-0363-at-0365
[1761] [P44-T205-ENG-ET-p18-L10-p20-L3]/[P44-T205-FRA-ET-p20-L15-p22-L12]; [P15-T207-ENG-CT-p34-L13-15]/[P15-T207-FRA-ET-p36-L1]
[1762] EVD-T-OTP-00808/CAR-OTP-0069-0363.
[1763] [P213-T186-ENG-ET-p50-L7-9]/[P213-T186-FRA-ET-p52-L12]

538. The ALC troops feared Bemba, demonstrating his authority. Commanders "may sometimes be afraid" to talk directly to him to avoid "being scolded" or "treated in any offhanded manner".[1764] P178 observed that "every time there was a phone call from Jean-Pierre Bemba, well, Mustapha would be in a state of panic."[1765]

539. Bemba's leadership of and authority over the ALC troops is undeniable. P178, [REDACTED], testified that:

> "[Bemba] . . . is someone who has what one calls authority and when I say 'authority', it means respect, people respect him […] He could have stopped these acts when, as with the commander, wherever he called him on the Thuraya – although he was very far away from Gbado- well, you should have seen how the commander ran or how the troops who were there - - there was a soldier who was guarding the Thurayas, for example, you […] should see how he took the Thuraya to run and take it to the commander because it was the supreme commander who was calling, so he had the power to stop these crimes. I don't understand why he didn't do that. It continued until the very end."[1766]

C. Bemba's authority to discipline the ALC troops

540. Bemba had the power to discipline the ALC troops. His authority extended to sanctioning the imposition of the death penalty.[1767] He dictated the code of discipline by which soldiers and commanders should abide.[1768] It was his prerogative to

[1764] [P36-T213-ENG-ET-p42-L4-7]/[P36-T213-FRA-CT-p42-L9]
[1765] [P178-T151-ENG-CT-p56-L11-13]/[P178-T151-FRA-ET-p58-L25]
[1766] [P178-T151-ENG-CT-p43-L23-p44-L10]/[P178-T151-FRA-ET-p46-L3]
[1767] EVD-T-OTP-00700/CAR-DEF-0001-0161; [P15-T210-ENG-CT-p42-L9-p43-L15-and-p44-L2-6]/[P15-T210-FRA-ET-p45-L11-p46-L18-and-p47-L3]; EVD-T-OTP-00691/CAR-D04-0002-1513
[1768] [P15-T207-ENG-CT-p37-L23-25]/[P15-T207-FRA-ET-p39-L15]

pronounce on what was and was not permitted, and he established a formal Code of Conduct for the ALC troops.[1769] However, his authority was even broader than that provided in this Code. For example, Bemba ordered that the Code of Conduct would not apply regarding acts of pillage committed on the first day of attack against any town. This "first day booty rule"[1770] obliged commanders not to take disciplinary actions or take the pillaged items from the foot soldiers.[1771] Commanders on-site conveyed Bemba's orders stating that:

> "[t]he chief commander of the ALC, Jean-Pierre Bemba, gave orders and he said 'if you take a town, you may enter and take property like goats, or pigs, or any soldier who could make away with such booty could keep it. He would not be punished or arrested for such acts.'"[1772]

541. According to P119, the ALC soldiers said, "Papa Bemba asked us to come apply Article 15",[1773] meant that Bemba gave the ALC soldiers the license to "to do what's necessary to live, even if [they] have to kill, rape and steal to live, that's what Article 15 means".[1774]

542. Each ALC unit had a disciplinary council, established to discipline the troops and ensure their compliance with military rules and regulations.[1775]

543. Bemba had the power to train members of the ALC, including the high-level ones.[1776] Fresh recruits who joined the ALC and became soldiers underwent four to five months of training before their assignment to a battalion.[1777]

[1769] [P213-T187-ENG-ET-p58-L18-21]/[P213-T187-FRA-ET-p59-L22]; [P33-T159-ENG-ET-p62-L1-4]/[P33-T159-FRA-ET-p63-L13]
[1770] [P213-T187-ENG-ET-p57-L22]/[P213-T187-FRA-ET-p58-L25]
[1771] [P213-T187-ENG-ET-p55-L1-5-and-L22-24-and-p56-L11-14-and-p58-L6-11]/[P213-T187-FRA-ET-p56-L1-and-L21-and-p57-L9-and-p59-L9]
[1772] [P213-T187-ENG-ET-p55-L1-5-and-p58-L6-11]/[P213-T187-FRA-ET-p56-L1-and-p59-L9]
[1773] [P173-T144-ENG-ET-p64-L3-23]/[P173-T144-FRA-ET-p67-L21-p68-L13]
[1774] [P173-T144-ENG-ET-p64-L3-23]/[P173-T144-FRA-ET-p67-L21-p68-L13]
[1775] [P33-T159-ENG-ET-p5-L18-22]/[P33-T159-FRA-ET-p5-L28-p6-L5]

D. Bemba's power to arrest

544. Bemba, as the Commander-in-Chief, had supervisory and disciplinary powers including the power to arrest.[1778] Bemba was well aware of this power and threatened to use it against ALC commanders.[1779]

545. Bemba had the ability to order the arrest of any member of the MLC including, of the ALC, regardless of rank or position. [REDACTED].[1780] [REDACTED].[1781]

546. Bemba's powers to arrest are further established by his own acknowledgments. Bemba sent a letter to the Special Representative to the United Nation Secretary-General in Central African Republic, General Limine Cissé, on 4 January 2003 informing him that he had "ordered the arrest, as a preventative measure, of eight soldiers whose conduct in Bangui has been shown to contravene the orders issued both to officers and men before they left for the Central African Republic."[1782]

547. Bemba's acknowledgment in this letter of his own powers to issue orders to the ALC troops and his powers to arrest those who do not follow his orders proves beyond reasonable doubt that Bemba actively exercised effective control over the perpetrators of offences and crimes within the ranks of the MLC.

[1776] [P33-T158-ENG-ET-p11-L20-23]/[P33-T158-FRA-ET-p11-L15]; [P33-T159-ENG-ET-p61-L8-24-and-p63-L11-16]/[P33-T159-FRA-ET-p62-L21-p63-L10-and-p65-L6]; [P15-T207-ENG-CT-p10-L24-p11-L11-and-p17-L18-20-and-p48-L5-18]/[P15-T207-FRA-ET-p11-L7-and-p18-L6-and-p49-L23-p50-L10]

[1777] [P36-T213-ENG-ET-p50-L13-18]/[P36-T213-FRA-CT-p50-L25-p51-L3]
[1778] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364.
[1779] [P33-T158-ENG-ET-p36-L6-10-and-p39-L2-9]/[P33-T158-FRA-ET-p35-L1-and-p37-L20]
[1780] [P33-T163-ENG-ET-p10-L4-13]/[P33-T163-FRA-ET-p10-L22-p11-L4]
[1781] [P33-T162-ENG-ET-p10-L4-p11-L3]/[P33-T162-FRA-ET-p10-L15-p11-L16]
[1782] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364 (emphasis added)

E. Bemba's powers to order investigations and refer cases to court-martial

548. Within the MLC, Bemba established a judicial system, in which he would appoint officials supportive of and favourable to the MLC and would take positions favourable to Bemba.[1783]

549. Bemba had the benefit of the existing judicial system that was already set up in the territory under his control, such as in the Equateur province and the Province Orientale.[1784] Within this judicial system, there existed different types of courts, including the High Courts or Tribunal de Grand Instance in districts and the Peace Courts or Tribunaux du Paix in the rest of the territory.[1785] Within the ALC, Bemba had the material ability to refer criminal matters to courts-martial.[1786]

550. The appointment of magistrates and court officials was based on their loyalty to the MLC, to ensure that they took positions supporting the MLC and took its side, when necessary.[1787] They were appointed by Bemba and bound by his orders.[1788]

551. Bemba had the power to order investigations. During the CAR operation, Bemba used this power, albeit disingenuously, ordering two such investigations. Bemba launched an investigative commission to ostensibly investigate crimes related to pillage committed by the ALC troops in the CAR.[1789] The outcome of the investigation was sent to Bemba, who had the requisite authority to take disciplinary

[1783] [P33-T158-ENG-ET-p65-L2-8]/[P33-T158-FRA-ET-p61-L27-p62-L5]
[1784] [P33-T159-ENG-ET-p3-L14-p4-L1]/[P33-T159-FRA-ET-p3-L23-p4-L8]
[1785] [P33-T159-ENG-ET-p3-L14-p4-L1]/[P33-T159-FRA-ET-p3-L23-p4-L8]
[1786] EVD-T-OTP-00697/CAR-DEF-0002-0580; EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156; [P33-T159-ENG-ET-p5-L11-17]/[P33-T159-FRA-ET-p5-L21]
[1787] [P33-T158-ENG-ET-p65-L2-8]/[P33-T158-FRA-ET-L27-p61-L5]
[1788] [P33-T159-ENG-ET-p4-L2-9-and-p7-L24-p8-L6]/[P33-T159-FRA-ET-p4-L9-and-p8-L12];[P33-T162-ENG-ET-p7-L11-p8-L1]/[P33-T162-FRA-ET-p7-L20-p8-L7]
[1789] [P36-T214-ENG-ET-p48-L20-25]/[P36-T214-FRA-CT-p48-L28-p49-L5]; [P36-T215-ENG-ET-p6-L12-15]/[P36-T215-FRA-ET-p6-L19]; [P36-T218-ENG-CT-p35-L14-23]/[P36-T218-FRA-ET-p37-L4]

measures. In this case, he ordered the arrest of the soldiers who committed the crimes and referred them to trial by court-marital in Gbadolite.[1790]

552. Bemba sent a letter to the FIDH President Mr. Kaba on 20 February 2003 to inform him that he had found out on the radio about ALC violations of human rights and launched a commission of inquiry.[1791] Bemba told Mr. Kaba that eight soldiers accused of pillaging had been arrested and charged by the military court.[1792]

553. Another Commission of Inquiry, which went to Zongo between 26 and 28 December 2002, submitted a report to Bemba about the investigations that it carried out. Under the title "circumstances leading to the opening of the inquiry", the report states: "His Excellency the MLC National President ordered the opening of an inquiry and at the same referred the matter to the court-martial to shed light on this affair, establish responsibility and punish the perpetrators."[1793]

554. In February 2003, Bemba dispatched an MLC delegation to Sibut to film questions put to Sibut residents based on assertions made by RFI about crimes committed by the ALC troops.[1794] He even provided a helicopter to transport the investigators to Bangui.[1795]

[1790] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156
[1791] EVD-T-OTP-00391//CAR-DEF-0001-0152
[1792] EVD-T-OTP-00391/CAR-DEF-0001-0152
[1793] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-156
[1794] EVD-T-D04-00008/CAR-DEF-0001-0832; [P15-T208-ENG-ET-p31-L6-14-and-p50-L6-p51-L22]/[P15-T208-FRA-ET-p33-L10-and-p52-L23-p54-L12]
[1795] EVD-T-OTP-00585/CAR-OTP-0045-0002-at-0197-0198; [P33-T162-ENG-ET-p51-L7-16-and-p64-L8-10]/[P33-T162-FRA-ET-p53-L8-and-p66-L26];EVD-T-OTP-00392/CAR-DEF-0001-0155; [P15-T209-ENG-CT-p2-L17-p6-L1]/[P15-T209-FRA-CT-p2-L25-p3-L8]; EVD-T-OTP-00730/CAR-OTP-0046-0224.

F. Bemba's power to issue orders that were obeyed

555. At all times relevant to the charges, Bemba's orders to the ALC troops during the CAR 2002/2003 operation were obeyed.[1796] As described by witness P213: "All the orders were carried out".[1797] Bemba ensured obedience to his orders. His intelligence service (BRM) submitted reports to him to keep him apprised of the implementation of his orders.[1798]

556. P15 testified that Bemba's decisions were not subject to discussion, as this reflected a perceived lack of discipline.[1799]

557. When Bemba decided to withdraw the ALC troops from the CAR, the troops followed his order and returned to the DRC. [1800] Bemba gave the order for his troops' withdrawal ostensibly to conform to the DRC's new constitution.[1801]

G. Bemba's operational command and control over the perpetrators

558. Bemba exercised operational command and control over the ALC troops in the CAR. At the outset, Bemba unilaterally took the decision to send the ALC troops to the CAR.[1802] He did not consult with the Chief of Staff about the operation, but rather simply informed him of this decision.[1803] Bemba decided which units would be deployed[1804] and his orders were obeyed.[1805] This is consistent with Bemba's

[1796] [P213-T188-ENG-ET-p54-L23-24]/[P213-T188-FRA-ET-p55-L23]
[1797] [P213-T188-ENG-ET-p13-L18-20]/[P213-T188-FRA-ET-p14-L17]
[1798] [P213-T188-ENG-ET-p13-L1-2]/[P213-T188-FRA-ET-p13-L23]
[1799] [P15-T208-ENG-ET-p36-L24-p37-L2]/[P15-T208-FRA-ET-p39-L4]
[1800] [P213-T188-ENG-ET-p25-L8-10]/[P213-T188-FRA-ET-p25-L16]
[1801] EVD-T-OTP-00824/CAR-OTP-0010-0471
[1802] [P33-T158-ENG-ET-p32-L23-p33-L10]/[P33-T158-FRA-ET-p31-L20-p32-L4]; [P36-T213-ENG-ET-p60-L25-p61-L4-and-p62-L3-6]/[P36-T213-FRA-CT-p61-L15-and-p62-L21]
[1803] [P36-T213-ENG-ET-p62-L3-12]/[P36-T213-FRA-CT-p62-L21-p63-L3]; [P213-T186-ENG-ET-p30-L13-p32-L9-and-p36-L15-22]/[P213-T186-FRA-ET-p32-L17-p34-L8-and-p39-L3]; [P213-T190-ENG-ET-p25-L15-18-and-p26-L14-15]/[P213-T190-FRA-ET-p26-L12-and-p27-L7]
[1804] [P36-T215-ENG-ET-p45-L19-25]/[P36-T215-FRA-ET-p43-L15]
[1805] [P213-T186-ENG-ET-p32-L13-14]/[P213-T186-FRA-ET-p34-L11]

established authority over the ALC in general and the process in place, whereby the Chief of Staff and the members of the General Staff reported to Bemba for his information and instructions and thereafter coordinated the implementation of Bemba's orders, reporting back to him on the progress of such implementation.[1806]

559. Bemba maintained operational command throughout the operation. His orders covered all aspects of the ALC's engagement in the CAR, including instructing troops to progress, to maintain their positions or, to carry out assigned tasks,[1807] as well as ordering that actions to be taken in relation to detainees (prisoners of war).[1808] Bemba's operational control was so extensive that he had better information and a better understanding of the events on the ground in the CAR than the highest echelons of the CAR military authorities.[1809] Bemba's forces were doing the actual fighting on the ground and were able to reliably relay the information necessary for Bemba to make decisions.[1810] Maps in Bemba's office in Gbadolite that were updated with real-time intelligence attest to this.[1811]

560. Bemba's orders to the ALC troops included his orders to attack, such as the one Colonel Mustapha received at PK12 regarding Damara.[1812] Upon receipt of Bemba's call, Mustapha gathered the ALC officers on the ground and informed them that, "[t]he chairman just called. We have to attack."[1813] In implementing Bemba's orders, they planned for the attack, which included conducting initial scout missions

[1806] [P36-T217-ENG-ET-p39-L17-p41-L8]/[P36-T217-FRA-ET-p42-L3-p43-L23]
[1807] [P213-T188-ENG-ET-p12-L13-14]/[P213-T188-FRA-ET-p13-L10]; [P36-T218-ENG-CT-p52-L1-15]/[P36-T218-FRA-ET-p54-L2]; CAR-D04-0002-1654;CAR-D04-0002-1665; [P36-T214-ENG-ET-p34-L7-p35-L6]/[P36-T214-FRA-CT-p35-L1-p36-L3]; [P178-T151-ENG-CT-p53-L4-p54-L21]/[P178-T151-FRA-ET-p60-L9-p62-L11]
[1808] [P213-T188-ENG-ET-p8-L3-22]/[P213-T188-FRA-ET-p8-L17-p9-L14]; [P33-T159-ENG-ET-p7-L5-9]/[P33-T159-FRA-ET-p7-L16]
[1809] [CHM1-T356-ENG-ET-p20-L21]/[CHM1-T356-FRA-ET-p18-L19]
[1810] [CHM1-T356-ENG-ET-p20-L21]/[CHM1-T356-FRA-ET-p18-L19]
[1811] [CHM1-T356-ENG-ET-p20-L21]/[CHM1-T356-FRA-ET-p18-L19]
[1812] [P178-T151-ENG-CT-p53-L4-p54-L21]/[P178-T151-FRA-ET-p60-L9-p62-L11]; [P178-T152-ENG-ET-p17-L11-p18-L17]/[P178-T152-FRA-ET-p18-L22-p19-L22]
[1813] [P178-T151-ENG-CT-p53-L7-8]/[P178-T151-FRA-ET-p60-L12]; [P178-T152-ENG-ET-p17-L11-p18-L17]/[P178-T152-FRA-ET-p18-L22-p19-L22]

followed by shelling Damara from a distance before the infantrymen were to reach the town.[1814]

561. Ultimately, Bemba ordered his troops to withdraw to the DRC.[1815] The withdrawal of the ALC troops from the CAR was a strategic and operational decision.[1816] Bemba decided its timing, the gradual manner in which it would be done and the military attack that should be conducted prior to full withdrawal, to drive Bozizé's rebels from Bangui.[1817] Despite Patassé's different views, Bemba insisted on the withdrawal and took the position that Patassé should consider "the total withdrawal of the ALC troops […] a serious matter".[1818]

562. Bemba acquired and distributed the profits of war.[1819] [REDACTED].[1820]

563. During the operation, Bemba ordered the troops to advance to Bozoum, Bossembélé and Damara. The troops executed the order, moving to these locations and reporting back on their progress, as the MLC communication logbooks record.[1821]

[1814] [P178-T151-ENG-CT-p53-L4-p54-L21]/[P178-T151-FRA-ET-p60-L9-p62-L11]; [P178-T152-ENG-ET-p17-L11-p18-L17]/[P178-T152-FRA-ET-p18-L22-p19-L22]
[1815] EVD-T-OTP-00824/CAR-OTP-0010-0471; [P213-T188-ENG-ET-p25-L8-10]/[P213-T188-FRA-ET-p25-L16]; [P36-T215-ENG-ET-p32-L15-16]/[P36-T215-FRA-ET-p30-L6]; [P15-T208-ENG-ET-p28-L15-18]/[P15-T208-FRA-ET-p30-L11]; [P169-T137-ENG-ET-p25-L20-22]/[P169-T137-FRA-ET-p26-L17]
[1816] [P15-T209-ENG-CT-p34-L7-9]/[P15-T209-FRA-CT-p35-L21]
[1817] [P15-T208-ENG-ET-p28-L15-18]/[P15-T208-FRA-ET-p30-L11]; [P15-T209-ENG-CT-p20-L13-p22-L13-and-p23-L12-13-and-p24-L1-4-and-p24-L19-p-25-L16]/[P15-T209-FRA-CT-p21-L19-p23-L19-and-p24-L18-and-p25-L8]; [P15-T211-ENG-ET-p38-L12]/[P15-T211-FRA-ET-p41-L3]; CAR-OTP-0008-0381;EVD-T-OTP-00824/CAR-OTP-0010-0471
[1818] [P15-T209-ENG-CT-p27-L24-p28-L3]/[P15-T209-FRA-CT-p29-L5]
[1819] [P169-T137-ENG-ET-p34-L12-13-and-p51-L9-25]/[P169-T137-FRA-ET-p35-L2-and-p52-L7]; [P169-T138-ENG-ET-p30-L17-p31-L6-and-p41-L2-14]/[P169-T138-FRA-CT-p29-L17-p30-L5-and-p40-L8]; [REDACTED]; [P173-T144-ENG-ET-p39-L8-16]/[P173-T144-FRA-ET-p40-L25-p41-L10]; [P178-T150-ENG-ET-p68-L11-12-and-p73-L15-p74-L19]/[P178-T150-FRA-ET-p70-L22-and-p76-L10-p77-L14]
[1820] [P36-T214-ENG-ET-p56-L22-p51-L9]/[P36-T214-FRA-CT-p55-L14]; [P36-T215-ENG-ET-p5-L8-21]/[P36-T215-FRA-ET-p5-L15-p6-L3]
[1821] [P36-T218-ENG-CT-p52-L1-15]/[P36-T218-FRA-ET-p54-L2]; CAR-D04-0002-1641-at-1654; CAR-D04-0002-1641-at-1665; [P36-T214-ENG-ET-p34-L7-p35-L6]/[P36-T214-FRA-CT-p35-L1-p36-L3]

564. Bemba never relinquished control of the CAR operation to the CAR authorities.[1822] When the MLC lost some of its manpower in the battlefield, Bemba ensured reinforcements were sent.[1823]

565. P213 testified that: "the command was in the hands of Jean-Pierre Bemba".[1824] The same witness further elaborated:

> "All of the orders relating to the operation came from President Jean-Pierre Bemba. If troops were to move forward, or stay in the same position, it was Jean-Pierre Bemba who gave that kind of order. Mustapha could not do anything without referring first to Jean-Pierre Bemba. Mustapha received orders from the president, Jean-Pierre Bemba, and he's the one who commanded the operation in the Central African Republic. It wasn't Mustapha. Mustapha was in the field with the soldiers. There had to be an officer in the field and that's why Mustapha was there but the actual orders regarding the operation came from Gbadolite."[1825] Further, the witness stressed that: "it was the president Jean-Pierre Bemba himself, alone, who commanded the operation in the CAR. No one else",[1826] and that Bemba "would give his orders using the Thuraya, or using the radio and he himself went to the field to boost morale". [1827]

[1822] [P213-T188-ENG-ET-p5-L16-18]/[P213-T188-FRA-ET-p5-L26-p6-L1]
[1823] [P169-T137-ENG-ET-p6-L7-19]/[P169-T137-FRA-ET-p6-L12]
[1824] [P213-T188-ENG-ET-p28-L13-14]/[P213-T188-FRA-ET-p29-L2]
[1825] [P213-T188-ENG-ET-p28-L21-p29-L3]/[P213-T188-FRA-ET-p29-L13]; see also [P36-T215-ENG-ET-p28-L12-25]/[P36-T215-FRA-ET-p26-L14]
[1826] [P213-T188-ENG-ET-p29-L23-25]/[P213-T188-FRA-ET-p30-L16]
[1827] [P213-T188-ENG-ET-p29-L21-22]/[P213-T188-FRA-ET-p30-L14]

566. Furthermore, witnesses [REDACTED] testified that he received his instructions from Bemba, which he passed on to the ALC troops.[1828] P169 testified that, "Mustapha didn't have any other commanding officer. Only Jean-Pierre Bemba acted in that capacity."[1829] P178 testified that Bemba was "the real leader [who] commanded the operations from a distance because he was the one who had the power to put an end to this mutiny".[1830]

567. P36 confirmed that during the CAR operation, neither Mustapha nor the DRC authorities could make a decision about the movements of the ALC troops or the choice of units to go to the field. They could only make suggestions or give advice, but the decision lay solely in Bemba's hands.[1831]

568. Bemba's decisions were not subject to the approval of any organ within the MLC.[1832] The ALC Chief of Staff was informed of Bemba's decisions to coordinate their implementation.[1833] Bemba would gather the members of the General Staff, including the ALC Chief of Staff, the G1, G2, G3, G4, G5 and the Secretary-General of the MLC, to give his orders and assign specific tasks to each of them.[1834]

[1828] [P169-T136-ENG-ET-p37-L20-25]/[P169-T136-FRA-ET-p38-L6]; [P178-T151-ENG-CT-p53-L7-p54-L21-and-p64-L9-18]/[P178-T151-FRA-ET-p60-L12-p62-L10-and-p73-L1]
[1829] [P169-T136-ENG-ET-p21-L17-18]/[P169-T136-FRA-ET-p22-L28-p23-L1]
[1830] [P178-T154-ENG-ET-p57-L3-5]/[P178-T154-FRA-ET-p62-L7]
[1831] [P36-T215-ENG-ET-p28-L19-p29-L14]/[P36-T215-FRA-ET-p26-L21-p27-L14]
[1832] [P213-T186-ENG-ET-p32-L13-14]/[P213-T186-FRA-ET-p34-L11]; [P36-T217-ENG-ET-p39-L17-p41-L8]/[P36-T217-FRA-ET-p42-L3-p43-L23]; [P33-T159-ENG-ET-p36-L18-19]/[P33-T159-FRA-ET-p38-L6]
[1833] [P36-T213-ENG-ET-p62-L3-12]/[P36-T213-FRA-CT-p62-L21-p63-L3]
[1834] [P213-T186-ENG-ET-p30-L13-p32-L9-and-p36-L15-22]/[P213-T186-FRA-ET-p32-L17-p34-L8-and-p39-L3]; [P213-T190-ENG-ET-p25-L15-18-and-p26-L14-15]/[P213-T190-FRA-ET-p26-L12-and-p27-L7]

H. Bemba's use of communication devices to control his troops

569. Bemba achieved operational control by using communication devices. Bemba relied on two primary communication devices to give operational orders to the ALC units in CAR: (a) a Thuraya satellite phone[1835]; and (b) a high frequency long-range radio[1836] or "phonie".[1837] The communication logbooks contain information proving the ability of the ALC units in CAR to communicate with Amuli and Bemba in Gbadolite.[1838] The available Thuraya records show Bemba's communication with Colonel Mustapha and several Central African telephone numbers from 4 February 2003 until the end of the conflict on 15 March 2003.[1839] P178's diary independently confirmed the Thuraya number of Mustapha.[1840] A series of emails proves unequivocally that the Thuraya records reflect Bemba's communications.[1841] This is corroborated by the evidence of the numbers dialled, many of which match numbers found in Bemba's SIM cards, seized when he was arrested in 2008. Those phone numbers include the phone numbers of Patassé in Togo,[1842] Bongo in Gabon,[1843] Bashir in Libya,[1844] Sassou[1845] in the Republic of Congo, and Bemba's wife[1846] in Belgium.

[1835] [P213-T191-ENG-ET-p51-L25-p52-L2]/[P213-T191-FRA-ET-p53-L27-p54-L1]
[1836] [P33-T161-ENG-ET-p39-L19-p40-L15]/[P33-T161-FRA-ET-p42-L13-p43-L8]
[1837] [P15-T207-ENG-CT-p46-L2-p47-L20]/[P15-T207-FRA-ET-p47-L20-p48-L6]
[1838] EVD-T-OTP-00702/CAR-D04-0002-1514; EVD-T-OTP-00703/CAR-D04-0002-1641
[1839] EVD-T-OTP-00591/CAR-OTP-0055-0893
[1840] *See e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0897 (Item numbers 198, 199, 200, 220, 221, 224) and EVD-T-OTP-00733/CAR-OTP-0046-0387-at-0396 (showing the phone number of Mustapha's Thuraya which P178 had annotated contemporaneously with the events. [P178-T150-ENG-ET-p43-45]/[P178-T150-FRA-ET-p44-46]
[1841] EVD-T-CHM-00018/CAR-OTP-0048-0383
[1842] *See e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0930-0933-0934 (Item numbers 865, 1011, 1076) and EVD-T-OTP-00833/CAR-OTP-0047-1660-at-1674
[1843] *See e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0894-0923 (Item numbers 78, 545) and EVD-T-OTP-00833/CAR-OTP-0047-1660-at-1672
[1844] *See e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0902-0928 (Item numbers 460, 766) and EVD-T-OTP-00833/CAR-OTP-0047-1660 at 1672
[1845] *See e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0894 (Item number 77) and EVD-T-OTP-00833/CAR-OTP-0047-1660-at-1674
[1846] *See e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893 at 0893, 0894, 0895, 0896 (Item numbers 24, 68, 75, 136, 153) and EVD-T-OTP-00833/CAR-OTP-0047-1660-at-1673 under "[REDACTED]". The number was called a total of [REDACTED] in the Thuraya record.

570. From 4 February to 15 March 2003, Bemba called Mustapha 126 times, averaging about three times per day.[1847] The ALC battalion commanders in CAR also had Thuraya phones, through which Bemba issued them military orders.[1848] From 4 February to 15 March, Bemba made 252 calls to Mustapha's number and other Thuraya numbers.[1849] During this period, Bemba also placed 139 calls to CAR +236 numbers from his Thuraya.[1850] Before and during known attacks, such as the 14 February 2003 attack at Sibut, the frequency of Bemba's calls to Mustapha and other ALC commanders in the CAR increased significantly. This pattern of calls is consistent with Bemba's exercise of operational control over the ALC forces. For example, on 12 -14 February, Bemba called Thuraya numbers 86 times.[1851] Similarly, on 4-5 March, the day before and the day of the ALC attack on Mongoumba, Bemba called Mustapha and other Thuraya numbers 20 times.[1852]

571. The Thuraya records establish that Bemba frequently contacted his commanders and others in the CAR. Bemba's calls to Mustapha were to give orders and obtain information. At least eight witnesses with personal knowledge of these calls establish this.[1853] On the CAR side of the communications, the Thuraya records corroborate the testimony of three witnesses (P169, P173, and P178) all of whom had direct personal knowledge of the nature of Mustapha's communications with Bemba via the Thuraya.[1854] On the Gbadolite side of the communications, the Thuraya

[1847] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0895-0924. (During this period, Bemba also called several other Thuraya numbers, identical to Mustapha's number but for the last two or three digits, *see e.g.* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0898 (Item numbers 237, 244, 246, 250)
[1848] [P169-T137-ENG-ET-p41-L15-25]/[P169-T137-FRA-ET-p42-L24-p43-L9]
[1849] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0893-0924
[1850] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0893-0924
[1851] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0897-0901
[1852] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0914-0916
[1853] [P178-T151-ENG-CT-p64-L9-13]/[P178-T151-FRA-ET-p73-L1]; [P45-T201-ENG-ET-p33-L16-p34-L7]/[P45-T201-FRA-ET-p36-L27-p37-L22]; [P213-T188-ENG-ET-p5-L3-p6-L4]/[P213-T188-FRA-ET-p5-L12-p6-L13];[P169-T141-ENG-CT-p5-L9-p6-L5]/[P169-T141-FRA-CT-p5-L13-p6-L11]; [P15-T209-ENG-CT-p22-L7-9]/[P15-T209-FRA-CT-p23-L12]; [P173-T146-ENG-ET-p44-L9-10]/[P173-T146-FRA-ET-p19-L25]; [P33-T159-ENG-ET-p49-L17-p50-L18]/[P33-T159-FRA-ET-p51-L12-p52-L12]; [P36-T215-ENG-ET-p28-L21-p29-L3]/[P36-T215-FRA-ET-p26-L24-p27-L3]; [P36-T213-ENG-ET-p71-L15-24]/[P36-T213-FRA-CT-p72-L18]
[1854] P173, P178, P169

records also corroborate the testimony of five witnesses (P15, P33, P36, P45, and P213) all of whom had direct personal knowledge of Bemba's orders to Mustapha via the Thuraya.[1855] The three witnesses on Mustapha's end of Bemba's orders to Mustapha are entirely independent from the five witnesses on Bemba's end of these calls and all eight similarly stated that Bemba gave orders to Mustapha. All eight witnesses establish that Bemba gave Mustapha operational orders to attack, withdraw, and to move ALC troops within the CAR. Indeed, Mustapha had to get Bemba's permission to move even a single kilometre.[1856] The interlocking testimonies of all eight witnesses establish that Bemba relayed orders via Thuraya to Mustapha throughout the CAR conflict. Their testimonies are consistent with the immutable Thuraya records showing the phone contact between Bemba and Mustapha.

572. P15 testified that Bemba kept [REDACTED] informed kilometre by kilometre during the withdrawal of ALC troops from the CAR.[1857] To inform the [REDACTED], Bemba had to supervise the withdrawal of troops himself and to be informed of their steps to withdraw from CAR to DRC. The Thuraya records are consistent with P15's testimony and establish that from 10 - 17 March 2003, during the week of the ALC's withdrawal from CAR, Bemba contacted Mustapha 60 times.[1858] Exactly in line with what P15 stated, Bemba also contacted [REDACTED] 20 times and contacted CAR numbers (+236) 19 times from 10-17 March 2003.[1859]

573. Bemba received situation reports from the ALC troops in CAR reporting on the progress of the operation and requesting Bemba's interventions and instructions.[1860]

[1855] P36, P213, P33, P45, P15
[1856] [P36-T213-ENG-ET-p71-L15-24]/[P36-T213-FRA-CT-p72-L18]
[1857] [P15-T209-ENG-CT-p22-L7-9]/[P15-T209-FRA-CT-p23-L12]
[1858] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0920-0926
[1859] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0920-0926
[1860] [P36-T218-ENG-CT-p52-L1-15]/[P36-T218-FRA-ET-p54-L2]; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1654; CAR-D04-0002-1641-at-1665; [P36-T214-ENG-ET-p34-L7-p35-L6-and-p18-L22-p21-L20-and-p23-L8-p24-L14]/[P36-T214-FRA-CT-p35-L1-p36-L3-and-p19-L4-p21-L21-and-p23-L9-p24-L25]; EVD-T-OTP-00702/CAR-D04-0002-1514-at-1628; EVD-T-OTP-00702/CAR-D04-0002-1514-at-1631; [P173-T145-ENG-ET-p18-L10-23-and-p8-L15-p9-L13]/[P173-T145-FRA-ET-p19-L15-and-p8-L12-p9-L10]; [P213-T188-ENG-

This is documented in particular by the MLC communication logbooks disclosed by the Defence.[1861] It bears noting that the logbooks do not cover all the messages sent to or received from Gbadolite. Nor do the logbooks cover the entire duration of the CAR operation. The Defence, who submitted the logbooks, claimed that those parts were the only parts available, and that the remainder of the logbooks were burned when a fire burned the location where they were kept.[1862] The logbooks are missing communications for 85 days of the conflict for the period 1 November 2002 to 21 December 2002 and 8 February 2003 to 15 March 2003. However, messages were sent during this period as noted by the numbering of the messages in the existing logbooks.[1863] The communication logbooks show that messages were transmitted between the ALC troops in the field and the headquarters in Gbadolite during the CAR operation and that communication was not an obstacle to Bemba's assertion of authority and control.

574. By way of illustration, the logbook registers a message dated 25 October 2002 sent from Mustapha, the commander of the Echo Brigade, to Bemba, with a copy for information to the Chief of Staff. In this message, Mustapha made reference to a previous conversation with Bemba, and explained the situation on the ground and the best way to advance the troops in the direction of the CAR and requested Bemba's instructions and authorization for supply of fuel necessary for the movement of the troops.[1864]

ET-p16-L13-17-and-p5-L19-22]/[P213-T188-FRA-ET-p17-L4-and-p6-L2]; [P33-T159-ENG-ET-p52-L7-10]/[P33-T159-FRA-ET-p53-L22]; [P178-T152-ENG-ET-p16-L16-p17-L3]/[P178-T152-FRA-ET-p17-L23-p18-L8]; [P33-T158-ENG-ET-p47-L4-p52-L15-and-p55-L4-p56-L2-and-p58-L1-10]/[P33-T158-FRA-ET-p45-L10-p50-L8-and-p52-L20-p53-L19-and-p55-L21-P56-L3]

[1861] EVD-T-OTP-00702/CAR-D04-0002-1514; EVD-T-OTP-00703/CAR-D04-0002-1641

[1862] [P65-T170-ENG-ET-p13-L2-p14-L21]/[P65-T170-FRA-CT-p13-L11-p15-L4]

[1863] EVD-T-OTP-00703/CAR-D04-0002-1641

[1864] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1628; [P36-T214-ENG-ET-p18-L22-p21-L20]/[P36-T214-FRA-CT-p19-L4-p21-L21]

575. A 26 October 2002 logbook message informs the Chief of Staff and Bemba of the crossing of 151 soldiers to Bangui under the command of Captain Rene Abongo and reports on their status and morale.[1865]

576. On 30 October 2002, Mustapha sent a message informing the Chief of Staff and Bemba of his arrival in Bangui, providing a full report of the situation on the ground including a coordination meeting before the operation, the commencement of a military operation at 13:00 hours, the outcome of this operation, the number of casualties from both sides, the weapons, ammunitions and other items captured during the operation, and the difficulties facing the troops in the field, including that the ALC was abandoned by the nationals [of CAR]. At the end of the message, Mustapha undertakes to send other situation reports.[1866]

577. On 24 December 2002, the logbook shows another situation report sent from the coordinator of operations in Bangui informing the Chief of Staff and Bemba of the situation on 22 and 23 December 2002. The report details the situation in general, the morale of the troops, the situation of the enemy, and the position and whereabouts of Commander Rene and Colonel Mustapha. It states that the rear-guard company was in Damara and that there was nothing to report about logistics. It reports that colonel Mustapha and the Bangui co-ordinator went to Bossembélé with a view to co-ordinating future action on Bozoum. At the end of the message, it is indicated that other reports will follow.[1867]

[1865] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1631; [P36-T214-ENG-ET-p23-L8-p24-L14]/[P36-T214-FRA-CT-p23-L9-p24-L25]
[1866] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1637; [P36-T214-ENG-ET-p28-L5-p29-L5-and-p32-L6-25]/[P36-T214-FRA-CT-p28-L15-p29-L15-and-p32-L23-p33-L17]
[1867] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1654; [P36-T214-ENG-ET-p34-L7-p35-L6]/[P36-T214-FRA-CT-p35-L1-p36-L3]

578. Mustapha sent another message on 25 December 2002 to the Chief of Staff, copying Bemba for his information, requesting that another radio be sent to the troops to facilitate coordination between the various units.[1868]

579. Again, on 20 January 2003, Mustapha sent a message to the Chief of Staff, copying Bemba for his information and following up on an 11 January 2003 message requesting equipment. He additionally requested a microphone for transmission and the supply of ammunition of various calibres be sent at the earliest opportunity.[1869] When a request for supply like this was received in the MLC headquarters, Bemba was informed and took the decision on the matter. The Chief of Staff then would coordinate its implementation in accordance with Bemba's instructions.[1870]

580. P36 testified that the logbook entries demonstrate Bemba's authority; specifically, that:

> "[t]he various documents or messages contained in the log-books […] show this only too clearly. Authorisation for anything or everything had to come from the supreme commander, from the Commander-in-Chief, Mr Jean-Pierre Bemba, and this has been proven in the documents themselves. […] when the commander, […] [REDACTED] authorisation from Mr Jean-Pierre Bemba. Now, generally speaking, one could not even send a single magazine or take a single magazine[1871] out of the depot without receiving the authorisation from the commander-in-chief. Everything was at his disposal. We were just envoys and we were there to monitor the situation and report back to

[1868] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1658; [P36-T214-ENG-ET-p35-L19-p36-L18]/[P36-T214-FRA-CT-p36-L17-p37-L16]
[1869] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1726; [P36-T214-ENG-ET-p36-L20-p40-L21]/[P36-T214-FRA-CT-p37-L18-p41-L8]
[1870] [P36-T214-ENG-ET-p39-L9-p40-L21]/[P36-T214-FRA-CT-p39-L27-p41-L8]; [P36-T217-ENG-ET-p38-L3-9]/[P36-T217-FRA-ET-p40-L12]
[1871] [P36-T216-FRA-ET-p23-L7]/[P36-T216-ENG-ET-p23-L6]

> him. Of course, he would talk directly to all the commanders, even from his own residence, form his living room, and that is also proven. [REDACTED]. So he was in control of all the units. He would speak to all the commanders and that is the truth. "[1872]

581. Even when a field commander addressed messages to the Chief of Staff, as shown in some of the logbook entries, the commander would know that the report would go to the Commander-in-Chief and Bemba's authorization for any requests would be required.[1873]

582. Indeed, the wording used in the messages described above confirms that Bemba was in charge. Many of the messages from ALC entities in the CAR to Bemba and the Chief of Staff ended with words such as "nothing further awaiting your orders"[1874], "we have faith in the hierarchy"[1875] and "at your command".[1876] Mustapha's salutation, "at your command" had only meaning – that he and the ALC forces he commanded in the CAR were at Bemba's command.

583. The fact that Bemba was not physically present with the ALC troops in the CAR did not undermine his authority and control over them. The distance separating him from his troops was far shorter than other locations where the ALC forces conducted military operations under Bemba's command within the DRC. Bangui is approximately 280km away from Gbadolite,[1877] whereas Isiro, where the ALC engaged in military operations under Bemba's command and control through radio communication,[1878] is approximately 800km away from Gbadolite.[1879]

[1872] [P36-T216-ENG-ET-p22-L25-p23-L16]/[P36-T216-FRA-ET-p23-L1]
[1873] [P36-T217-ENG-ET-p57-L10-16]/[P36-T217-FRA-ET-p61-L20]; [P36-T218-ENG-CT-p36-L16-24]/[P36-T218-FRA-ET-p38-L6]
[1874] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1665-1747
[1875] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1726
[1876] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1680-1687-1693-1700-1720-1765-1767
[1877] EVD-T-D04-00055/CAR-ICC-0001-0080
[1878] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1523

584. An array of communication instruments at his home gave Bemba the possibility to contact the commanders in real-time and to give them orders.[1880] Talking over the phone through the Thuraya was one means of communication Bemba used with troops in the CAR.[1881] Radio transmission was another .[1882] Bemba had radio devices, sometimes referred to as the "phonie", both at home and in his office.[1883] These devices were located in his lounge, by an armchair where he usually sat.[1884]

585. Bemba and Mustapha communicated daily throughout the CAR operation.[1885] Mustapha provided detailed reports of the situation of the troops at the front, the developments at the battlefront, the advancement of the troops, and the names of the wounded and the dead.[1886] Mustapha relayed to Bemba complaints of the population in the CAR that some of the Chadians targeted were actually civilians, and received from Bemba instructions to treat them as rebels.[1887]

586. Not only did Bemba receive situation reports from Mustapha,[1888] but he ensured that he received reports from several other sources, including reporters deployed

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[1879] EVD-T-D04-00055/CAR-ICC-0001-0080
[1880] [P33-T158-ENG-ET-p29-L21-23-and-p30-L20-21]/[P33-T158-FRA-ET-p28-L17-and-p29-L15]; [P36-T213-ENG-ET-p28-L19-25]/[P36-T213-FRA-CT-p29-L8]; [P15-T207-ENG-CT-p46-L19-p47-L7]/[P15-T207-FRA-ET-p48-L12]
[1881] [P213-T188-ENG-ET-p5-L19-22]/[P213-T188-FRA-ET-p6-L2];[P33-T159-ENG-ET-p52-L7-10]/[P33-T159-FRA-ET-p53-L22];[P169-T137-ENG-ET-p41-L19-p44-L12]/[P169-T137-FRA-ET-p43-L2-p45-L18]
[1882] [P36-T218-ENG-CT-p8-L5-20]/[P36-T218-FRA-ET-p8-L9]; [P33-T161-ENG-ET-p29-L21-p30-L2-and-p31-L15-23]/[P33-T161-FRA-ET-p31-L27-p32-L7-and-p34-L4]; [P36-T213-ENG-ET-p38-L25-p39-L12]/[P36-T213-FRA-CT-p39-L6];[P36-T217-ENG-ET-p54-L4-19]/[P36-T217-FRA-ET-p58-L9]; [P178-T151-ENG-CT-p25-L15-22]/[P178-T151-FRA-ET-p31-L17]
[1883] [P213-T188-ENG-ET-p14-L8-10-and-L23-and-p15-L24-p16-L5]/[P213-T188-FRA-ET-p15-L11-and-L19-and-p16-L17]; [P33-T158-ENG-ET-p39-L14-p40-L19]/[P33-T158-FRA-ET-p38-L2-p39-L4]; [P36-T214-ENG-ET-p41-L24-p42-L13]/[P36-T214-FRA-CT-p42-L11]
[1884] [P15-T211-ENG-ET-p30-L5-7]/[P15-T211-FRA-ET-p32-L16]
[1885] [P173-T145-ENG-ET-p6-L15-20-and-p15-L18-21]/[P173-T145-FRA-ET-p6-L14-and-p16-L10]; [P178-T151-ENG-CT-p52-L3-5-and-p55-L17-22-and-p59-L9-24]/[P178-T151-FRA-ET-p59-L2-and-p63-L10-and-p67-L21-p68-L11]
[1886] [P173-T145-ENG-ET-p18-L10-23]/[P173-T145-FRA-ET-p19-L15]
[1887] [P173-T145-ENG-ET-p19-L12-22]/[P173-T145-FRA-ET-p20-L14]
[1888] [P213-T188-ENG-ET-p5-L19-22]/[P213-T188-FRA-ET-p6-L2]; [P33-T159-ENG-ET-p52-L7-10]/[P33-T159-FRA-ET-p53-L22]; [P15-T208-ENG-ET-p49-L15-19]/[P15-T208-FRA-ET-p52-L5]; [P173-T145-ENG-ET-p6-L15-20]/[P173-T145-FRA-ET-p6-L14]

with the troops on the field.[1889] In the operations centre - which was only 10 metres away from Bemba's residence - radio-operators were assigned to receive and gather all information from the ALC troops in the CAR and compile reports to be submitted to Bemba.[1890]

587. It was routine that every morning, the operators at the MLC headquarters would communicate with all the various units to obtain the morning situation report (also known as morning sitrep) and compile a list in the logbook, which was then taken to Bemba to review and determine whether any instructions needed to be issued.[1891] The communication logbooks are replete with morning sitreps and other messages.[1892]

588. The operations/transmission centre was also used by Bemba to locate and establish contact with ALC commanders, with whom Bemba wanted to communicate.[1893] Frequencies for radio communications and codes would be changed constantly to ensure secure communications.[1894] Operators at the centre would single out the commander, put him on hold, and shut down all other radio transmissions on that frequency until Bemba was available to make the call with that commander.[1895] The radio communication system was available to all military units

[1889] [P213-T188-ENG-ET-p16-L13-17-and-p5-L19-22]/[P213-T188-FRA-ET-p17-L4-and-p6-L2]; [P33-T159-ENG-ET-p52-L7-10]/[P33-T159-FRA-ET-p53-L22]; [P178-T152-ENG-ET-p16-L16-p17-L3]/[P178-T152-FRA-ET-p17-L23-p18-L8]
[1890] [P213-T188-ENG-ET-p15-L24-p16-L17]/[P213-T188-FRA-ET-p16-L17-p17-L8]
[1891] [P36-T218-ENG-CT-p8-L5-20-and-p58-L12-20]/[P36-T218-FRA-ET-p8-L9-and-p61-L9]
[1892] *See* Morning SITREPS EVD-T-OTP-00702/CAR-D04-0002-1514 and EVD-T-OTP-00703/CAR-D04-0002-1641
[1893] [P33-T161-ENG-ET-p33-L25-p34-L20]/[P33-T161-FRA-ET-p36-L15-p37-L8]
[1894] [P36-T217-ENG-ET-p53-L4-7]/[P36-T217-FRA-ET-p57-L6]
[1895] [P33-T159-ENG-ET-p50-L1-7]/[P33-T159-FRA-ET-p51-L23-p52-L1]; [P33-T161-ENG-ET-p33-L25-p34-L20-and-p36-L12-p37-L9]/[P33-T161-FRA-ET-p36-L15-p37-L8-and-p38-L28-p39-L26]; [P33-T164-ENG-ET-p45-L22-p46-L4]/[P33-T164-FRA-ET-p46-L26-p47-L5]; [P36-T213-ENG-ET-p39-L13-21]/[P36-T213-FRA-CT-p39-L20-p40-L1]

deployed in the CAR,[1896] allowing for Bemba's effective communication with both the commanders and the units.[1897]

589. Bemba set up an intelligence-gathering system within the military, the *Bureau de Renseignement Militaire* (BRM). Intelligence officers were assigned to each of ALC unit and reported from the field on the combat situation, including on strategy, tactical and operational matters, and the conduct of the troops.[1898] These reports were provided to Bemba daily.[1899] Bemba also created the *Bureau de Securité Intérieure*, (BSI), a civilian intelligence service with informants both in DRC and CAR. This service provided Bemba with reports on the conduct of the troops.[1900]

590. This information-gathering and communication network enabled Bemba to lead the operation on the ground effectively. As P36 explains, Bemba did not have to travel to the CAR to give instructions to Mustapha, since he was able to do so by using the communications systems at his disposal.[1901]

591. Bemba's control and authority was not only exercised from across the river, but strengthened and made visible to the ALC troops by on-site visits to the key deployments in the CAR,[1902] including Bangui, PK12, PK22, Bossembélé and

[1896] [P213-T188-ENG-ET-p23-L2-4]/[P213-T188-FRA-ET-p23-L6]; [P36-T214-ENG-ET-p6-L5-7]/[P36-T214-FRA-CT-p6-L11]; [P178-T150-ENG-ET-p45-L18-p46-L12]/[P178-T150-FRA-ET-p47-L10-p48-L5]
[1897] [P33-T158-ENG-ET-p39-L14-20]/[P33-T158-FRA-ET-p38-L2]; [P173-T145-ENG-ET-p5-L13-19-and-p8-L1]/[P173-T145-FRA-ET-p5-L15-and-p7-L25]
[1898] [P33-T158-ENG-ET-p47-L4-p52-L15-and-p55-L4-p56-L2-and-p58-L1-10]/[P33-T158-FRA-ET-p45-L10-p50-L8-and-p52-L20-p53-L19-and-p55-L21-P56-L3]; [P33-T159-ENG-ET-p15-L12-15]/[P33-T159-FRA-ET-p16-L9]; [P36-T213-ENG-ET-p29-L11-21]/[P36-T213-FRA-CT-p29-L28-p30-L11]; [P36-T214-ENG-ET-p49-L18-p50-L14]/[P36-T214-FRA-CT-p49-L24-p50-L13]; [P173-T145-ENG-ET-p10-L8-13]/[P173-T145-FRA-ET-p10-L6]
[1899] [REDACTED]
[1900] [P173-T145-ENG-ET-p8-L15-p9-L13]/[P173-T145-FRA-ET-p8-L12-p9-L10]
[1901] [P36-T215-ENG-ET-p25-L21-23]/[P36-T215-FRA-ET-p23-L28-p24-L2]; [P173-T145-ENG-ET-p15-L13-21]/[P173-T145-FRA-ET-p16-L4]
[1902] [P213-T188-ENG-ET-p5-L12-14]/[P213-T188-FRA-ET-p5-L22]; [P36-T215-ENG-ET-p19-L1-p21-L25]/[P36-T215-FRA-ET-p17-L7-p20-L5]; [P36-T218-ENG-CT-p32-L18-22]/[P36-T218-FRA-ET-p34-L9]; [P169-T138-ENG-ET-p22-L23-p23-L3]/[P169-T138-FRA-CT-p22-L2]; [P178-T150-ENG-ET-p70-L6-8]/[P178-T150-FRA-ET-p72-L22]

Mongoumba.[1903] P213 testified that, "[f]rom time to time [Bemba] was on-site in the Central African Republic. In order to control the situation, he was on-site".[1904]

592. Mustapha also communicated with Bemba in person during the CAR operation. He came to Gbadolite with the FACA Chief of Staff to discuss with Bemba the CAR operation[1905] and again went again to Gbadolite to meet with Bemba for Rene's burial, an MLC commander killed during the operation.

593. Bemba also maintained contact between the MLC headquarters and the ALC troops in the CAR was through using liaison officers. These officers acted as Bemba's agents and were sent "to assess the situation on the ground and to report to him".[1906]

594. The MLC helicopter and Antonov planes were used to set up an air bridge linking the troops on the ground with Bemba at the Gbadolite headquarters.[1907] The substantial increase of flights between Gbadolite and Bangui during the 2002/2003 demonstrated by flight data (described in the next section) supports this.

[1903] [P213-T186-ENG-ET-p58-L14-and-p61-L2-p67-L20]/[P213-T186-FRA-ET-p60-L23-p61-L5-and-p62-L17-p70-L20]; [P36-T218-ENG-CT-p24-L6-24]/[P36-T218-FRA-ET-p24-L23-p25-L18]
[1904] [P213-T188-ENG-ET-p5-L10-13]/[P213-T188-FRA-ET-p5-L20]
[1905] [P15-T211-ENG-ET-p34-L4-8]/[P15-T211-FRA-ET-p36-L20]; [P36-T215-ENG-ET-p25-L13-15-and-p31-L5-16]/[P36-T215-FRA-ET-p23-L20-and-p29-L1]
[1906] [P178-T151-ENG-CT-p60-L3-6]/[P178-T151-FRA-ET-p68-L16]; [P178-T150-ENG-ET-p65-L2-10]/[P178-T150-FRA-ET-p67-L8]; [P173-T144-ENG-ET-p19-L23-p20-L3]/[P173-T144-FRA-ET-p20-L2]; [P178-T152-ENG-ET-p22-L3-18]/[P178-T152-FRA-ET-p23-L4]
[1907] [P173-T144-ENG-ET-p20-L19-23-and-p21-L11-13]/[P173-T144-FRA-ET-p20-L26-p21-L3-and-p21-L15]; [P36-T213-ENG-ET-p34-L15-p37-L8-and-p69-L14-24]/[P36-T213-FRA-CT-p34-L27-p37-L19-and-p70-L17-p71-L1]; [P15-T207-ENG-CT-p61-L6-12]/[P15-T207-FRA-ET-p63-L10]; [P178-T150-ENG-ET-p65-L2-10]/[P178-T150-FRA-ET-p67-L8]

I. Bemba's authority over the distribution of weapons, ammunition, and supplies

595. Bemba supplied the troops with weapons and ammunition before their departure.[1908] He ensured that they were well equipped and able to obtain weapon supplies during the operation.[1909] Bemba secured weapon supplies from Tripoli, which were transported by plane to Gbadolite and then to Bangui for the ALC troops on the ground.[1910] The communication logbooks clearly show Mustapha's requests to Amuli and Bemba for these supplies.[1911] Bemba was the only source of weapons, ammunition and supplies since the CAR authorities did not have ammunition and weapons for their own troops.[1912]

596. Flight records from the airport in Bangui confirm that Bemba supplied the ALC troops with weapons and ammunition by airplane from Gbadolite.[1913] From 4 November 2002 to 13 March 2003, there were at least 74 MLC flights into the Bangui Airport or on average, one MLC flight every other day.[1914] The 74 MLC flights during the conflict represent a significant increase compared to MLC flights during 2002. There were 38 MLC flights to Bangui from 2 January 2002 to 17 August 2002.[1915] From 18 August until 2 November 2002 however, there were no MLC flights in or out of Bangui.[1916] Additionally, the MLC helicopter did not appear in any flight record until the conflict period, when the records reflect it landed in Bangui at least 18 times.[1917]

[1908] [P213-T186-ENG-ET-p36-L10-p37-L22-and-p47-L12-p48-L3]/[P213-T186-FRA-ET-p38-L23-p40-L6-and-p49-L26-p50-L15];[P36-T213-ENG-ET-p65-L12-13]/[P36-T213-FRA-CT-p66-L9]
[1909] [P213-T187-ENG-ET-p4-L14-23]/[P213-T187-FRA-ET-p4-L19-p5-L4]; [P36-T213-ENG-ET-p65-L20-25]/[P36-T213-FRA-CT-p66-L18]
[1910] [P213-T190-ENG-ET-p21-L13-20-and-p22-L11-13]/[P213-T190-FRA-ET-p22-L3-and-p22-L25];[P33-T159-ENG-ET-p23-L12-24]/[P33-T159-FRA-ET-p24-L12]; [P36-T213-ENG-ET-p66-L13-18]/[P36-T213-FRA-CT-p67-L10]
[1911] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1726
[1912] EVD-T-OTP-00703/CAR-D04-0002-1641-at 1726; [CHM1-T353-ENG-ET-p60-L6-8]/[CHM1-T353-FRA-ET-p54-L5]; [P36-T213-ENG-ET-p69-L25-p70-L10]/[P36-T213-FRA-CT-p71-L2]
[1913] EVD-T-OTP-00585/CAR-OTP-0045-0002
[1914] EVD-T-OTP-00585/CAR-OTP-0045-0002-at-0078-0222
[1915] EVD-T-OTP-00586/CAR-OTP-0045-0228-at-0228-0237
[1916] EVD-T-OTP-00586/CAR-OTP-0045-0228-at-0228-0237
[1917] EVD-T-OTP-00585/CAR-OTP-0045-0002-at-0096-0222

597. The timing of messages requesting ammunition and flights also confirm Bemba's supply of ammunition and weapons. On 20 January 2003, Mustapha requested 35 cases of ammunition and mortars and rocket propelled grenades.[1918] On 21, 23, 25, and 27 January 2003, several MLC aircraft landed at Bangui airport.[1919] These flights are consistent with other evidence establishing Bemba's supply of ammunition and weapons, which is confirmed by the testimony, the frequency of flights, and the communication logbook messages.

J. Bemba did not relinquish his effective control over the MLC in the 2002-2003 CAR operation

598. The evidence in this case establishes beyond reasonable doubt, that Bemba did not relinquish control over the ALC troops in the CAR to the CAR authorities. Had Bemba simply lent his troops to President Patassé and relinquished command and authority over them, Bemba would not have been informed of the details of the operation,[1920] particularly minutiae, such as a negligible car accident,[1921] or the way the New Year's festivities had gone.[1922] Bemba would not have received messages from his troops in the field requesting instructions and clearly stating "awaiting orders".[1923]

[1918] EVD-T-OTP-00703/CAR-D04-0002-1641-at-1726
[1919] EVD-T-OTP-00585/CAR-OTP-0045-0002-at-0161-0166
[1920] [P173-T145-ENG-ET-p6-L15-20]/[P173-T145-FRA-ET-p6-L14]
[1921] [P36-T218-ENG-CT-p53-L5-8]/[P36-T218-FRA-ET-p55-L16]; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1665
[1922] [P36-T218-ENG-CT-p58-L2]/[P36-T218-FRA-ET-p61-L2]; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1689
[1923] [P36-T218-ENG-CT-p53-L10]/[P36-T218-FRA-ET-p55-L23]; EVD-T-OTP-00703/CAR-D04-0002-1641-at-1665.

599. P15 testified that:

> "President Patassé was not in any way similar to a general commanding any operations. He actually knew nothing about military matters. […] And then the fact that Mustapha reported on [his discussions with President Patassé] to his own hierarchy also reveals the fact that Mustapha was always under the orders of President Jean-Pierre Bemba, to the extent that he reported to him exhaustively on the content of [the conversation he had with President Patassé]. If he had at all been under President Patassé's orders for operational reasons he clearly, that is Mustapha, would have spared himself the trouble of making such a statement, and that to me clearly points to the fact that Colonel Mustapha received orders from his hierarchy, from the MLC."[1924]

600. During the CAR operation, the Chief of Staff of the FACA, had to travel to Gbadolite to seek Bemba's authorization to advance the ALC toward the north and to receive additional troops.[1925] Thus, CAR authorities, far from having control of the ALC, had to convince Bemba to send additional troops, weapons, and ammunition.[1926] P36, testifies that:

> "the [FACA] troops were available simply to guide the MLC or to guide the soldiers because they know the terrain, but when it came to orders to move forward, to push forward in the operations, all such orders came from the Commander-in-Chief, the supreme

[1924] [P15-T210-ENG-CT-p25-L20-p26-L7]/[P15-T210-FRA-ET-p28-L1]
[1925] [P36-T213-ENG-ET-p70-L2-p71-L24]/[P36-T213-FRA-CT-p71-L4-p72-L27]
[1926] [CHM1-T356-ENG-ET-p16-L17]/[CHM1-T356-FRA-ET-p15-L16]

commander."[1927]

The same witness emphasized that: "it took a clear order from the Commander-in-Chief for any troops to move, even for a single kilometre."[1928]

601. P213 testified that, "[t]he Central African officers had no power over our soldiers",[1929] and confirmed that "[t]he person who controlled the troops was the president himself, Jean-Pierre Bemba."[1930] CHM1 confirmed that the CAR authorities had no power over the ALC forces in CAR since they had no power to arrest or punish ALC forces.[1931]

602. It is only logical that Bemba had control since "Central African Republic soldiers who had remained loyal to President Patassé were not even able to hold control of one single road."[1932]When [REDACTED] the behaviour of the ALC troops in the CAR, witness P15 explains: "as I have already stated […] President Patassé no longer had a regular army and it is for that reason that ALC troops had been invited to support him. [REDACTED].[1933] It was common knowledge that the CAR "was more or less without an army and the requisite discipline and leadership".[1934] It was not possible for the remaining armed forces of the CAR, which themselves were lacking the requisite discipline and leadership, to have had the material ability to discipline the ALC troops or to exercise effective control over them at the time. Indeed, the obstacles of differences in military doctrine, language, and radio

[1927] [P36-T213-ENG-ET-p71-L15-18]/[P36-T213-FRA-CT-p72-L18]; [P36-T214-ENG-ET-p45-L23-p46-L6]/[P36-T214-FRA-CT-p46-L5]
[1928] [P36-T213-ENG-ET-p71-L15-24]/[P36-T213-FRA-CT-p72-L18]
[1929] [P213-T188-ENG-ET-p5-L16]/[P213-T188-FRA-ET-p5-L26]
[1930] [P213-T188-ENG-ET-p28-L9]/[P213-T188-FRA-ET-p28-L23]
[1931] [CHM1-T355-ENG-ET-p65-L18-p66-L12]/[CHM1-T355-FRA-ET-p58-L1]
[1932] [P36-T214-ENG-ET-p45-L23-p46-L6]/[P36-T214-FRA-CT-p46-L5]
[1933] [P15-T209-ENG-CT-p15-L18-20]/[P15-T209-FRA-ET-p16-L19]; [P15-T210-ENG-CT-p24-L15-p25-L7]/[P15-T210-FRA-ET-p26-L20-p27-L13]
[1934] [P15-T209-ENG-CT-p17-L2-3]/[P15-T209-FRA-ET-p18-L2]

frequencies would have been insurmountable to the Central African authorities given their general lack of organization.[1935]

603. In fact, the CAR forces had no authority over the ALC troops.[1936] To the contrary - the CAR forces feared the ALC troops.[1937] P178 testified that the CAR forces

> "had no authority over the Banyamulengue whatsoever. […] It is in fact the contrary that happened, because every now and then – maybe once or twice- I saw a Central African soldier and a Banyamulengue involved in some kind of a quarrel. And it happened that the Banyamulengue soldier would call a Central African soldier a woman, and refer to them 'Look, woman, you are so-called soldier relaxing in the city and in your country; whereas, we are here fighting on your behalf.'"[1938]

Indeed, during the operation, the Chief of Staff of the FACA had to request authorization from Bemba for further reinforcement of the ALC troops deployed in the CAR.[1939]

604. President Patassé did not have the authority to sanction the ALC troops in CAR. Instead, Patassé had to refer their misconduct to Bemba to discipline his troops.[1940] Patassé specifically complained to Bemba about the crimes of ALC troops in the CAR.[1941]

[1935] [P31-T182-ENG-ET-p32-L1-3]/[P31-T182-FRA-ET-p32-L9]; [P219-T200-ENG-CT-p54-L1]/[P219-T200-FRA-ET-p60-L6]
[1936] [P178-T154-ENG-ET-p39-L20-p40-L5]/[P178-T154-FRA-ET-p43-L13]
[1937] [P178-T154-ENG-ET-p40-L4-5]/[P178-T154-FRA-ET-p43-L24]
[1938] [P178-T154-ENG-ET-p39-L20-p40-L3]/[P178-T154-FRA-ET-p43-L13]
[1939] [P36-T215-ENG-ET-p18-L15-25]/[P36-T215-FRA-ET-p16-L24-p17-L6]
[1940] [P36-T215-ENG-ET-p18-L5-15]/[P36-T215-FRA-ET-p16-L13]
[1941] [P213-T190-ENG-ET-p58-L2-8]/[P213-T190-FRA-ET-p60-L11]

605. P173 testified that

> "President Patassé had no power over the [A]LC troops. Those troops were answerable directly to Jean-Pierre Bemba and to their leaders on the ground in the Central African Republic. But they received information and intelligence from the Central African army and the Central African intelligence services. But as for sanctions and punishment, Patassé did not have any power over them."[1942]

From the perspective of CAR officers, Colonel Mustapha was the person in charge and his superior was Bemba.[1943]

606. The evidence in this case shows that, not only did CAR officials witness crimes,[1944] but that they were victims of the MLC crimes. However, the CAR authorities did not impose sanctions or undertake any disciplinary measures, underscoring their complete lack of any disciplinary authority over the ALC troops. A series of CAR government documents produced contemporaneous with the armed conflict show that CAR authorities had little to no power to influence the behavior of the ALC troops, let alone have effective control over them.[1945]

607. When Patassé was informed that CAR forces in Mongoumba had intercepted and seized a riverboat loaded with items looted by the ALC troops, he reprimanded the CAR forces over the radio, calling them "good-for-nothings" and ordering them

[1942] [P173-T144-ENG-ET-p75-L8-15]/[P173-T144-FRA-ET-p78-L25-p79-L3]
[1943] [P31-T183-ENG-ET-p31-L15-25]/[P31-T183-FRA-ET-p34-L7-19]
[1944] [P169-T136-ENG-ET-p31-L15-p32-L13]/[P169-T136-FRA-ET-p32-L13-p33-L8]
[1945] EVD-T-OTP-00800/CAR-OTP-0042-0235; EVD-T-OTP-00803/CAR-OTP-0042-0243; EVD-T-OTP-00801/CAR-OTP-0042-0236; EVD-T-OTP-00802/CAR-OTP-0042-0242; EVD-T-OTP-00804/CAR-OTP-0042-0246; EVD-T-D04-00019/CAR-OTP-0042-0237; EVD-T-OTP-00805/CAR-OTP-0042-0253; EVD-T-CHM-00016/CAR-OTP-0042-0254; EVD-T-OTP-00806/CAR-OTP-0042-0255

to return the items to the ALC troops.[1946] Patassé not only lacked control over the ALC troops, but, was at their mercy to protect his presidency. As such, he was powerless to take any measures to prevent or punish their crimes; he could not even allow his own forces to return the looted items to their proper owners in the CAR.

608. When Bemba ordered his troops to withdraw to the DRC, it was clear that this was not in Patassé's best interests. Bemba had been asked to keep his forces in CAR to defend the Patassé regime,[1947] but he refused stating that "we cannot police the whole of Africa."[1948] And indeed, Patassé lost his presidency as a consequence. In his withdrawl of his troops Bemba made an interest-based decision in light of the imminent signature of the Sun City 2 agreement.[1949] Considering these factors and in response to the increased pressure from the international community, Bemba decided that his troops' withdrawal was in his best interest. Accordingly, he ordered their withdrawal regardless of the consequences to President Patassé.[1950] As an immediate result, "President Bozizé took over the capital and it was like plucking a piece of ripe fruit off a tree. There was no one opposing him."[1951]

609. P178's evidence is corroborative. He stated that:

> "people were sick and tired of President Patassé. […] And the army was discouraged; there'd been several mutinies, several mutinies. […] Because he had no one behind him, he called on Jean-Pierre Bemba, who came over to assist him. […] if Mr

[1946] [P178-T152-ENG-ET-p33-L6-19]/[P178-T152-FRA-ET-p34-L4]; [P178-T151-ENG-CT-p41-L21-p42-L25]/[P178-T151-FRA-ET-p48-L11-p49-L16]
[1947] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0688
[1948] EVD-T-OTP-00407/CAR-OTP-0004-0667-at-0690
[1949] EVD-T-OTP-00824/CAR-OTP-0010-0471
[1950] [P213-T188-ENG-ET-p25-L8-10]/[P213-T188-FRA-ET-p25-L16]; [P36-T215-ENG-ET-p32-L15-16]/[P36-T215-FRA-ET-p30-L6];[P15-T208-ENG-ET-p28-L15-18]/[P15-T208-FRA-ET-p30-L11]; [P15-T209-ENG-CT-p20-L13-p22-L13-and-p23-L12-13-and-p24-L1-4-and-p24-L19-p25-L16]/[P15-T209-FRA-CT-p21-L19-p23-L19-and-p24-L18-and-p25-L8-and-p25-L27-p26-L22]
[1951] [P15-T209-ENG-CT-p22-L10-11]/[P15-T209-FRA-CT-p23-L15]

> Bemba decided to withdraw, that would cause him a serious, serious failure. So he had no power; he had no power over his soldiers. In fact, he would first refer to his son [Bemba] and his son would direct operations from a distance. […] The chief, Jean-Pierre Bemba, was the one directing these operations from a distance. He was a soldier; a very well trained soldier, Mr Jean-Pierre Bemba."[1952]

K. Power to appoint, promote, replace, remove, or discipline

610. Bemba had the authority to appoint, promote, replace, remove,[1953] or discipline officers and soldiers within the ALC. He had the authority to appoint all military officials in the MLC,[1954] including the Chief of Staff,[1955] and members of the General Staff.[1956] P15 testified that no one other than Bemba can take a decision to appoint a military official in the MLC.[1957]

611. In response to the ALC troops' misconduct, the Chief of Staff proposed that Bemba should replace the battalion commanders and certain company commanders. However, Bemba did not take that measure.[1958]

612. Pursuant to Articles 12, 13 and 16 of the MLC Statue, Bemba also had the power to promote members of the ALC troops.[1959]A few months prior to the CAR operation,

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[1952] [P178-T152-ENG-ET-p43-L25-p44-L6]/[P178-T152-FRA-ET-p46-L3]
[1953] [P45-T201-ENG-CT-p46-L15]/[P45-T201-FRA-CT-p51-L26]
[1954] [P33-T158-ENG-ET-p52-L13-15]/[P33-T158-FRA-ET-p50-L6];EVD-T-OTP-00357/CAR-OTP-0009-0134; [P36-T213-ENG-ET-p17-L11-17-and-p27-L17-20]/[P36-T213-FRA-CT-p18-L7-and-p28-L6]; [P15-T208-ENG-ET-p18-L3-6-and-L23-24-and-p36-L15-17]/[P15-T208-FRA-ET-p18-L24-and-p19-L16-and-p38-L23]; EVD-T-OTP-00368/CAR-OTP-0032-0167-at-0169
[1955] [P36-T213-ENG-ET-p15-L11-14]/[P36-T213-FRA-CT-p16-L6]
[1956] [P36-T213-ENG-ET-p27-L17-20]/[P36-T213-FRA-CT-p28-L6]
[1957] [P15-T208-ENG-ET-p36-L18-21]/[P15-T208-FRA-ET-p38-L26-p39-L1]
[1958] [P36-T216-ENG-ET-p9-L6-23]/[P36-T216-FRA-ET-p9-L11]

Bemba issued decrees promoting dozens of MLC officers, including, the Chief of Staff Amuli to the rank of Division General, and Mustapha to the rank of Colonel.[1960] In March 2003, Bemba publicly awarded the new ranks to these officers in a military parade.[1961]

613. It is clear from the above section that Bemba had effective authority and control over the perpetrators. Bemba was a singularly controlling individual who told his forces what to do, how to do it, and when to do it. Bemba was the ultimate authority.

III. Article 28(a)(i) Bemba's knowledge of the crimes of the ALC

614. The Prosecution has proven beyond reasonable doubt that Bemba "knew, or, owing to circumstances at the time, should have known that his forces were committing, or were about to commit" the charged crimes of rape, pillage, and murder. He knew, or should have known, that his forces were going to engage in, were engaging in, or had engaged in, behaviour constituting the charged crimes.

615. Bemba knew of the crimes because his own people told him. Bemba knew of the crimes because the UN and FIDH told him. And, Bemba knew of the crimes because the media told him. The evidence of the many witnesses who testified and the documents adduced before the Chamber readily establish Bemba's knowledge of the crimes that his soldiers had committed, were committing, or intended to commit.

[1959] [P15-T208-ENG-ET-p18-L3-6-and-L23-24-and-p25-L3-p27-L6]/[P15-T208-FRA-ET-p18-L24-and-p19-L16-and-p26-L17-p28-L28];EVD-T-OTP-00368/CAR-OTP-0032-0167-at-0169-172; EVD-T-OTP-00725/CAR-OTP-0046-0090;EVD-T-OTP-00726/CAR-OTP-0046-0106.
[1960] [P15-T208-ENG-ET-p18-L3-6-and-L23-24-and-p25-L3-p27-L6]/[P15-T208-FRA-ET-p18-L24-and-p19-L16-and-p26-L17-p28-L28]; EVD-T-OTP-00368/CAR-OTP-0032-0167-at-0169-172; EVD-T-OTP-00725/CAR-OTP-0046-0090; EVD-T-OTP-00726/CAR-OTP-0046-0106.
[1961] [P15-T208-ENG-ET-p8-L25-p9-L3]/[P15-T208-FRA-ET-p9-L12]; [P178-T151-ENG-CT-p39-L5-7]/[P178-T151-FRA-ET-p45-L25]

616. Even before the start of the conflict in the CAR, Bemba had equipped himself with tools enabling him to know of his troops' activities. When Bemba sent his troops into the CAR, he was in a position to know that there was a high risk of crimes being committed. In the early stages of the intervention, reports of crimes were brought directly to Bemba's attention. This information came from a variety of sources, but its content was consistent in reporting acts of mass violence committed by his troops. These reports persisted throughout the MLC's intervention in the CAR. Furthermore, Bemba went to the CAR on several occasions, visiting President Patassé and other officials there, as well as ALC soldiers deployed in the area. He was regularly questioned by the press about alleged crimes committed by his troops, but chose to deny them, despite the consistent nature of the information which was reaching him. Finally, by pretending to conduct investigations and to implement cosmetic measures whose sole purpose was to exonerate himself, Bemba showed that he was aware of his troops' criminal activities.

A. Chronology of Bemba's knowledge

617. Bemba was fully aware of the crimes of rape, murder, and pillage committed by his troops from the very beginning of the intervention in the CAR in October 2002 until March 2003. The evidence of this is unassailable.

a). On 11 September 1999, Bemba established his reporting system that would later be used to report ALC crimes provided the ALC with a military intelligence agency (BRM), headed by the G2 in charge of intelligence in staff headquarters.[1962] The G2 reported directly to Bemba, bypassing the Chief of Staff.[1963] Each operational unit had an intelligence officer, an S2, who

[1962] EVD-T-OTP-00358/CAR-OTP-0009-0135
[1963] [P33-T158-ENG-ET-p34-L17-p35-L14]/[P33-T158-FRA-ET-p33-L13-p34-L10]

addressed his reports directly to the G2. This was also the case during the operation in the CAR.[1964]

b). [REDACTED] throughout the conflict in the CAR.[1965]

c). Between 26 and 29 October 2002 during the first days of the ALC's presense in CAR Bemba was informed that his troops were committing acts of violence in the CAR. The reports he received were sufficiently serious for him to dispatch a commission of inquiry made up of five officers headed by Colonel Mondonga.[1966]

d). On 30 October 2002 at about 11.00 hours, eight soldiers were arrested and accused of pillaging in the CAR.[1967]

e). On 1 November 2002, during an interview he gave to the BBC's *Network Africa* programme, Bemba denied the crimes, claiming that his troops were over 20km from Bangui.[1968]

f). On 2 November 2002, during a visit to Bangui, Bemba met officials, including President Patassé and General Lamine Cissé. The latter referred to the bad memories the MLC had left behind during the first operation in the CAR.[1969] In response to General Cissé's concerns, Bemba provided an undertaking that this would not happen again, promising a coordinated, non-violent withdrawal of his troops.[1970]

[1964] [REDACTED]
[1965] [P33-T158-ENG-ET-p56-L6-p56-L24]/[P33-T158-FRA-ET-p53-L24-p54-L17]
[1966] EVD-T-OTP-00391/CAR-DEF-0001-0152
[1967] EVD-T-OTP-00393/CAR-DEF-0002-0001
[1968] EVD-T-OTP-00821/CAR-OTP-0030-0274
[1969] EVD-T-OTP-00444/CAR-OTP-0013-0053
[1970] EVD-T-OTP-00444/CAR-OTP-0013-0053

g). On 27 November 2002, Colonel Mondonga sent the *File containing pillaging charges against Willy Bomengo et al*.[1971] to the ALC's Chief of Staff, copying the ALC's Commander-in-Chief. This report contained allegations — notably of rape — against men from Bemba's units in the CAR.[1972]

h). On 5 December 2002, the Gbadolite court-martial held the trial of *Willy Bomengo et al*.[1973]

i). From 26 to 28 December 2002, a delegation of MLC officials heard the accounts of a certain number of people in Zongo, thought to be the point of entry into the DRC of property pillaged in the CAR. The mission took place on Bemba's orders and specifically in response to persistent allegations in the media of pillaging and rape.[1974]

j). On 4 January 2003, in a letter to General Cissé, Bemba described the adverse reaction to the MLC's intervention as a campaign of misinformation, but also announced that eight soldiers had been arrested as a preventative measure.[1975]

k). Between 10 and 17 January 2003, [REDACTED] Bemba about the Central African population's complaints, of which P45 had just become aware during a [REDACTED] visit to Bangui.[1976]

l). On 17 January 2003, the National Secretary for Justice sent Bemba and the Secretary-General of the MLC the *Investigation report on the alleged acts of*

[1971] EVD-T-OTP-00393/CAR-DEF-0002-0001
[1972] EVD-T-OTP-00393/CAR-DEF-0002-0001
[1973] EVD-T-OTP-00393/CAR-DEF-0002-0001
[1974] EVD-T-OTP-00392/CAR-DEF-0001-0155
[1975] EVD-T-OTP-00453/CAR-OTP-0017-0363
[1976] [P45-T201-ENG-ET-p64-L22]/[P45-T201-FRA-ET-p71-L11]

pillaging of property by ALC soldiers in the Central African Republic.[1977] This was the report of the mission to Zongo.

m). On 13 February 2003, the FIDH published a report on the crimes in the Central African Republic, devoting a whole chapter to the acts of violence committed by Bemba's forces.[1978]

n). In a 14 February 2003 AFP interview, published the following day, Bemba rejected the FIDH's accusations,[1979] regarding them as as a polically motivated attack orchestrated by France.

o). On 20 February 2003, Bemba sent a mission to Sibut headed by Thomas Luhaka, the then National Secretary for Defence.

p). In a letter written to the President of FIDH on 20 February 2003, Bemba responded to accusations contained in the report, which the NGO had recently published and which Bemba had read. In his letter, Bemba said he had sent a commission of inquiry to Bangui on 30 October, having learned about the alleged crimes via the broadcast media.[1980]

q). On 26 February 2003, Sidiki Kaba, the President of FIDH faxed a reply to Bemba, informing him, *inter alia*, of their readiness to help prevent the recurrence of such acts.[1981]

[1977] EVD-T-OTP-00392/CAR-DEF-0001-0155
[1978] EVD-T-OTP-00395/CAR-OTP-0001-0034
[1979] EVD-T-OTP-00832/CAR-OTP-0013-0106-at-0109
[1980] EVD-T-OTP-00391/CAR-DEF-0001-0152
[1981] EVD-T-OTP-00690/CAR-DEF-0001-0154

B. Actual knowledge: Bemba knew of his forces' crimes in the CAR

618. The Prosecution has established beyond reasonable doubt that Bemba had knowledge of the crimes which had been, or were about to be, committed by his forces in the CAR. Bemba knew of the crimes since he had "awareness that a circumstance exists" or that "a consequence will occur in the ordinary course of events".[1982] Bemba's knowledge is not constructive knowledge,[1983] but actual, and meets the criteria used by the Pre-Trial Chamber and the *ad hoc* tribunals.[1984] The following criteria prove Bemba's knowledge of the charged crimes: Bemba's location at the time of the crimes; Bemba's subordinates informed him of his troops' crimes; The UN and FIDH informed Bemba about his troops' crimes; Bemba had reporting and monitoring systems to stay informed of crimes; Bemba knew about his troops' crimes from the media; Bemba knew about his troops' crimes through his communication devices; Bemba knew about his troops' crimes by virtue of his position in the MLC; and Bemba knew about his troops' crimes since they were numerous and widespread.

[1982] Article 30, Rome Statute.
[1983] ICTY, *Prosecutor v. Delic*, Case No. IT-04-83-T, "Judgement", 15 September 2008, para. 64; ICTY, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, "Judgement", 1 September 2004, para. 278 (stating that "[k]nowledge may be presumed if a superior had the means to obtain the relevant information of a crime and deliberately refrained from doing so")
[1984] Confirmation Decision, ICC-01/05-01-08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 431; ICTY, *Prosecutor v. Delalić et al.,* Case No. IT-96-21-T, "Judgment", 16 November 1998, para. 386; ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-T, "Judgment", 3 March 2000, para. 307; ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgment", 31 January 2005, para. 368; ICTY, *Prosecutor v. Orić*, Case No. IT-03-68-T, "Judgment", 30 June 2006, para. 319; ICTR, *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Judgment and Sentence", 18 December 2008, para. 2014; SCSL, *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, "Judgment", 2 March 2009, para. 309; ICTY, *Prosecutor v. Halilovic*, Case No. IT-01-48-T, "Judgment", 16 November 2005, para. 66; ICTY, *Prosecutor v. Had'ihasanović and Kubura*, Case No. IT-01-47-T, "Judgment", 15 March 2006, para. 83; ICTY, *Prosecutor v. Orić*, Case No. IT-03-68-T, "Judgment", 30 June 2006, para. 319;ICTR, *Prosecutor v Ntagerura et al.*, Case No. ICTR-99-46-T, "Judgment and Sentence", 1 September 2009, para. 648ICTR, *Prosecutor v. Nahimana et al*., Case No. ICTR-99-52-A, "Appeals Chamber Judgment", 28 November 2007, para. 840.

1. *Bemba's location at the time of the crimes*[1985]

619. Bemba was based at ALC headquarters in Gbadolite between October 2002 and March 2003. During this period, he had a variety of means at his disposal to stay constantly updated about the situation on the ground concerning his troops in the CAR.

620. Bemba had two Antonov aeroplanes, one helicopter, and a King Air small jet which he would hire as the need arose.[1986] This fleet of aircraft enabled Bemba to travel to the CAR many times.[1987] A few days after the start of the MLC's intervention in the CAR, Bemba flew from Gbadolite to Bangui with [REDACTED].[1988] During the journey, Bemba met President Patassé at his residence, before going on to PK12, where he addressed his troops[1989] in Colonel Mustapha's presence.[1990]

621. The distance between Gbadolite and Bangui is approximately 280km, whereas the entire territory under MLC control in 2002 and 2003 was larger than France.[1991] The MLC communication logbooks make clear that the MLC never experienced any significant problems communicating over long distances.[1992]

622. To overcome the distance between Gbadolite and the CAR, Bemba had communication means at his disposal. This enabled him to contact Mustapha and the officers engaged in operations at any time. [REDACTED] he was personally in contact with ALC officers in the CAR, particularly Mustapha.[1993] The MLC communication logbooks confirm regular communications between Echo Brigade,

[1985] ICTY, *Prosecutor v. Halilovic*, TJCase No. IT-01-48-T, "Judgement", 16 November 2005, para. 66
[1986] [P45-T202-ENG-ET-p30-L12]/[P45-T202-FRA-ET-p35-L1]; [P36-T213-ENG-ET-p34-L15-and-p35-L10]/[P36-T213-FRA-CT-p34-L27-and-p35-L19]
[1987] [P36-T215-ENG-ET-p25-L2]/[P36-T215-FRA-ET-p23-L8]
[1988] [REDACTED]
[1989] [P36-T215-ENG-ET-p19-L3-and-p20-L2-21]/[P36-T215-FRA-ET-p17-L9-and-p18-L8-p19-L1]
[1990] [P36-T218-ENG-CT-p42-L25]/[P36-T218-FRA-ET-p44-L5]
[1991] [P33-T160-ENG-ET-p37-L12]/[P33-T160-FRA-ET-p40-L7]
[1992] EVD-T-OTP-00702/CAR-D04-0002-1514; EVD-T-OTP-00703/CAR-D04-0002-1641
[1993] [REDACTED]

which was engaged in the CAR, and Gbadolite.[1994] The fact that Mustapha and his battalion commanders had Thuraya satellite phones also ensured constant communication with Bemba.[1995] P15's account of how Bemba monitored the troop withdrawal from the CAR in March 2003 kilometre by kilometre clearly indicates that there was no need for Bemba's physical presence in the field.[1996] From his lounge, he was able to organise and remain fully informed of the troop withdrawal with his available communications devices.[1997]

2. *Bemba's subordinates informed him of his troops' crimes*

623. [REDACTED].[1998] [REDACTED].[1999] [REDACTED].

624. P45 reported that Bemba, was well informed of the conflict in the CAR. Bemba told P45:

> "that things were going very well, that progress was being made, Bozizé's troops had been warded off and stability was returning, so he was very happy with the performance of the MLC and that was a demonstration of the fact that the MLC had a good army, a very powerful army."[2000]

625. [REDACTED] broader discussions between Bemba and political representatives of the MLC, during which senior officials expressed their concern particularly about the negative effect the intervention was having on the MLC's image. Some, especially negotiators who had to represent the MLC at a variety of

[1994] *See supra* paras. 569-594
[1995] *Ibid.*
[1996] [P15-T209-ENG-CT-p25-L10]/[P15-T209-FRA-CT-p26-L16]
[1997] [P15-T209-ENG-CT-p34-L18]/[P15-T209-FRA-CT-p36-L6]
[1998] [P36-T216-ENG-ET-p20-L3]/[P36-T216-FRA-ET-p20-L1]
[1999] [P36-T216-ENG-ET-p9-L4]/[P36-T216-FRA-ET-p9-L10]
[2000] [P45-T201-ENG-ET-p56-L19]/[P45-T201-FRA-ET-p63-L2]

forums, wanted the troops' withdrawal, because the situation was becoming increasingly untenable.[2001] These senior officials felt that Bemba's line of defence was unsupportable in the eyes of the international community, because he had "continued to deny the facts."[2002] This issue of the crimes was apparent to the MLC leadership, since wherever the MLC representatives went and that the crimes caused great concern.[2003]

626. On his return from a [REDACTED] visit to Bangui, P45 told Bemba that the CAR population was unhappy about the MLC's intervention, and was complaining about the conduct of the troops accused of committing numerous acts of violence, such as rape, murder, and pillaging.[2004] P45 placed this conversation some time during the [REDACTED] 2003, immediately after his return from Bangui.[2005] Bemba refused to give credence to P45's information on the ALC's crimes, preferring to argue that it was propaganda orchestrated by France via media organisations, such as RFI.[2006] However, at the time of this exchange with P45, Bemba was already aware of this information.[2007] He undoubtedly would have taken notice of the fact that P45, as an independent source, and one in principle favourably disposed to the MLC, had just confirmed these allegations.

627. [REDACTED][2008] [REDACTED]. An instance of this was the attack on Mongoumba.[2009] Bemba was able [REDACTED] on fielding questions from the media because he knew what his troops had done.

[2001] [P45-T201-ENG-ET-p67-L13]/[P45-T201-FRA-ET-p74-L3]
[2002] [P45-T202-ENG-ET-p14-L3-p14-L18]/P45-T202-FRA-ET-p15-L21-p16-L13]
[2003] [P45-T204-ENG-ET-p8-L12-22]/[P45-T204-FRA-ET-p9-L17]
[2004] [P45-T201-ENG-ET-p64-L22]/[P45-T201-FRA-ET-p71-L11]
[2005] [P45-T201-ENG-ET-p65-L14]/[P45-T201-FRA-ET-p72-L2]
[2006] [REDACTED]
[2007] [REDACTED]
[2008] [P15-T209-ENG-CT-p8-L23]/[P15-T209-FRA-CT-p9-L11]
[2009] [P15-T209-ENG-CT-p15-L8]/[P15-T209-FRA-CT-p16-L8]

628. When the court-martial tried the soldiers accused of acts of violence in the CAR, Bemba was not present. However, the members of the court informed Bemba of the proceedings at the end of each hearing.[2010] By virtue of the official transcript prepared by the President of the court-martial or the representative of the Public Prosecution Office,[2011] Bemba knew that the accused denied the charges against them, and that they had instead incriminated Colonel Mustapha.[2012]

629. Through the channels in place, Bemba had regular, reliable information on the conduct of his troops in the CAR. The civilian intelligence service reported to him regularly based on information gathered from informants of the MLC's intelligence services.[2013] These informants, some of whom lived in the CAR, were ordinary citizens going about their daily lives[2014] who would occasionally work with the MLC's intelligence services.[2015] The information they supplied was first processed before being included as intelligence in the Internal Security Office's (*Bureau de sécurité intérieure* (BSI) reports to Bemba.[2016] These intelligence reports arrived at the Intelligence Directorate at different times as the operation in the CAR progressed. They dealt with such topics as the crimes of the ALC troops.[2017] The reports on the situation in Bangui [REDACTED], brought to Bemba's attention.[2018]

630. On the other side of the border, the post in Zongo also gathered information on the CAR. The head of the post in Zongo, Papy Boukula, was an officer who had undergone intelligence training in Uganda. He had the necessary skills to analyse and process the information coming in from the various sources.[2019] [REDACTED]

[2010] [P45-T202-ENG-ET-p13-L13]/[P45-T202-FRA-ET-p15-L2]
[2011] [P45-T202-ENG-ET-p14-L24]/[P45-T202-FRA-ET-p16-L21]
[2012] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0003
[2013] [REDACTED]
[2014] [REDACTED]
[2015] [REDACTED]
[2016] [REDACTED]
[2017] [REDACTED]
[2018] [REDACTED]
[2019] [REDACTED]

fed back to Bemba information from the Central African population, who said they had been victims of pillage and had lost members of their families.[2020] He also relayed to Bemba information supplied by the post in Zongo relating to the involvement of high-ranking MLC officers, such as Mustapha, in pillaging incidents wherein the looted items were being sent back to Zongo in lorries.[2021]

3. *The UN and FIDH informed Bemba about his troops' crimes*

631. General Lamine Cissé, Special Representative of the Secretary-General of the United Nations to the CAR, held a Press conference on Friday, 8 November 2002, which was the subject of an article published in the newspaper *Le Citoyen* on 14 November 2002.[2022] At that conference, General Cissé said he had met Bemba for the third time on Saturday, 2 November 2002, in Bangui. During their meeting, General Cissé told Bemba that the ALC soldiers "came here once, and when they went back, they left behind bad memories in Bangui. Because there was pillaging Everyone blamed Jean-Pierre Bemba's men. So we must make sure that there's no pillaging this time: that tarnishes the image of their leader. And the withdrawal needs to be orderly."[2023] In response, Bemba pledged that the withdrawal would be undertaken in an orderly manner, with the assistance of the international organisations and the Presidential Security Unit, so that there will be no pillaging or acts of violence. General Cissé added that, "the Central African population has been complaining of acts of violence on the part of Bemba's men", but he concluded this chapter by saying that:

> "Jean-Pierre Bemba, whom you've heard on Radio France Internationale, has said that those people who commit acts of violence will be punished, and that disciplinary action has already been taken

[2020] [REDACTED]
[2021] [REDACTED]
[2022] EVD-T-OTP-00444/CAR-OTP-0013-0053
[2023] *Ibid*.

against a colonel and others. They have been relieved of their duties, and have returned to Gbadolite."[2024]

632. On 4 January 2003, in a letter to General Cissé,[2025] Bemba stated that the MLC intervention had given rise to several instances of negative reaction, but, based on information in his possession at that time, he had reason to believe that public opinion had been subjected to manipulation and misinformation.[2026] However, he added that the MLC could not sanction conduct which constituted a breach of the military code, particularly when such behaviour "may have led to serious human rights violations". Bemba said he had ordered the arrest, as a preventative measure, of eight soldiers whose conduct had been found to violate the instructions given to both officers and men before they left for the CAR. In conclusion, Bemba requested the assistance of the United Nations in the investigations to be held "in order to shed light on what really happened on the ground".[2027]

633. Whilst acknowledging that there had been several instances of negative reactions to the MLC intervention, Bemba decided to ignore them, labelling them as misinformation. Referring to "serious human rights violations" following the conduct which breached the instructions that had been issued, he said he wished to know what had <u>really</u> happened through an inquiry to be carried out with the support of the United Nations.[2028] In so doing, he acknowledged both the seriousness of the allegations against the MLC, and the fact that he had refused to address them. In requesting the help of the United Nations to conduct an inquiry, three months after the start of the intervention in the CAR, Bemba implicitly admitted that, up to 4 January 2003, he had not yet carried out any serious investigation.

[2024] EVD-T-OTP-00444/CAR-OTP-0013-0053-at-0054
[2025] EVD-T-OTP-00453/CAR-OTP-0017-0363
[2026] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364
[2027] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364
[2028] EVD-T-OTP-00453/CAR-OTP-0017-0363

634. In a letter written on 20 February 2003 to FIDH President Sidiki Kaba,[2029] Bemba refers to "accusations made against me by your organisation following human rights violations in the Central African Republic".[2030] He goes on to point out that "as soon as I learned via the broadcast media of the alleged involvement of certain soldiers of the *Armée de Libération du Congo* (ALC) in human rights violations, I immediately launched a commission of inquiry whose task was to verify the truthfulness of the facts, identify those ALC men involved in the aforementioned violations, and hand them over to the military courts." For a second time, Bemba acknowledged that he had learned of the serious accusations against him in the FIDH report on war crimes in Central Africa, and, regretting that the FIDH had not contacted the MLC, said he felt duty-bound to enlighten Sidiki Kaba as to some of the actions taken by the MLC and himself from 30 October 2002 in response to the acts of violence denounced in the media.[2031]

635. Several facts emerge from this letter signed by Bemba:

1. He acknowledged that he learned "via the broadcast media" of the alleged involvement of his soldiers in human rights violations;
2. He stated that, as soon as he became aware [of this], he dispatched a commission of inquiry;
3. He pointed out that this fact-finding mission went to Bangui on 30 October 2002, thus confirming that he was aware of the violations prior to this date;
4. The investigation report which reached the Staff on 28 November 2002, resulted in the conviction of seven soldiers, thus confirming press allegations;
5. In the days leading up to 20 February 2003, Bemba had a telephone conversation with Sidiki Kaba, and became aware of the detailed information on the crimes of his forces in the FIDH report; and

[2029] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2030] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2031] EVD-T-OTP-00391/CAR-DEF-0001-0152-at-0153

6. Finally, he says that the action taken by the MLC and himself from 30 October 2002 was in response to the acts of violence denounced in the media.

636. Bemba unequivocally confirmed that he was aware of the accusations against the MLC before 30 October 2002, accusations which were confirmed on 28 November 2002 by the investigation carried out by his own officers. However, as shown in the chapter relating to the measures taken to punish the perpetrators of acts of violence, Bemba did not carry out a thorough investigation into, or take disciplinary action against, any other soldier after this date. Despite having read the conclusions of the investigation report as early as 28 November 2002, in his 4 January 2003 letter to General Cissé, Bemba claimed that, based on information in his possession at that time, he had "[r]eason to believe that public opinion had been subjected to manipulation and misinformation".[2032]

637. Bemba also confirmed that between 13 February 2003 — the date the FIDH report was published — and 20 February 2003, he was aware of the information on the crimes committed by his troops, and of the possible implications regarding his own criminal responsibility.

638. FIDH's report on war crimes in the CAR included details on Bemba's troops' crimes. It consists of 13 detailed statements narrating the crimes committed by Bemba's troops.[2033] Part of it concerns an analysis of Bemba's individual criminal responsibility under article 28 of the Rome Statute.[2034] Despite the fact that the FIDH report contained a detailed account of crimes in which his troops were implicated, Bemba took no disciplinary action.

[2032] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364
[2033] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0048-to-0053
[2034] EVD-T-OTP-00395/CAR-OTP-0001-0034-at-0054-to-0057

639. In a 26 February 2003 letter, the FIDH President Kaba replied to Bemba.[2035] He expressed his "grave reservations as to the legitimacy" of the legal proceedings allegedly initiated by the MLC, and questioned their impartiality and independence.[2036] Kaba raised the FIDH's concern not only about determining the truth, "but more importantly [about] contributing to the victims' effective enjoyment of their right to justice and reparations, and, in addition, contributing to preventing the recurrence of such acts".[2037] On 26 February 2003, the FIDH reminded Bemba of his responsibility for crime prevention, but despite this, no action ensued.

4. *Bemba had reporting and monitoring systems to stay informed of crimes*[2038]

640. Bemba had imposed an extremely hierarchical structure on the MLC. All persons and entities — whether in the political or the military wing — had to report to him, as the movement's President.[2039] And Bemba was keen for the army to be modelled on the standard of a conventional army.[2040] As Commander-in-Chief, he was the one who appointed the members of the Staff, sector commanders, and brigade commanders. He was in direct contact with them; he gave them instructions, and he received reports from them.[2041]

641. The ALC's intelligence service — the BRM —was responsible for collecting intelligence primarily relating to knowledge of the enemy, strategy, tactics, and operations.[2042] Together with the BSI, which gathered and collated information of a political, economic, and socio-cultural nature; [2043] and the Border Security Office

[2035] EVD-T-OTP-00690/CAR-DEF-0001-0154
[2036] EVD-T-OTP-00690/CAR-DEF-0001-0154-at-0154
[2037] EVD-T-OTP-00690/CAR-DEF-0001-0154-at-0154
[2038] ICTY, *Prosecutor v. Hadžihasanović et al*, Case No. IT-01-47-T, "Judgement", 15 March 2006, para. 94.
[2039] [P15-T207-ENG-CT-p32-L15]/[P15-T207-FRA-ET-p33-L21]
[2040] [P15-T207-ENG-CT-p37-L20]/[P15-T207-FRA-ET-p39-L12]
[2041] [P45-T201-ENG-ET-p33-L9]/[P45-T201-FRA-ET-p36-L20]
[2042] [REDACTED]
[2043] [REDACTED]

(*Bureau de sécurité des frontières* (BSF)), responsible for border security in territories under MLC control,[2044] these services reported directly to Bemba.[2045]

642. At the head of the BRM was the G2, a member of the ALC General Staff responsible for intelligence who was required to send daily reports directly to Bemba. [REDACTED].[2046]

643. Military intelligence was present in all fields of operation. Each ALC unit — brigade, battalion, company, platoon, and section — had an officer responsible for intelligence.[2047] At battalion level, intelligence was the role of the S2.[2048] Intelligence agents received special training.[2049] An S2 routinely sent reports to, on the one hand, the operations commander of the unit to which he was assigned, and on the other, directly to the G2.[2050] [REDACTED], intelligence officers were also obliged to report any incidents which might involve soldiers and the civilian population,[2051] and reports from S2s in the CAR which dealt with acts of violence committed by ALC troops.[2052] In order to avoid reprisals from the targeted commanders, the reports were confidential.[2053]

644. Like the BRM, the BSI and the BSF reported information directly to the President of the MLC.[2054] These services operated in a sophisticated manner, with officers spread out all over the territory under MLC control, and informants, some of

[2044] [P15-T210-ENG-CT-p29-22]/[P15-T210-FRA-ET-p32-L7]
[2045] [P45-T201-ENG-ET-p19-L6]/[P45-T201-FRA-ET-p44-L15]
[2046] [P33-T158-ENG-ET-p34-L17-p35-L14]/[P33-T158-FRA-ET-p33-L13-p34-L10]
[2047] [REDACTED]
[2048] [P36-T213-ENG-ET-p29-L11]/[P36-T213-FRA-CT-p30-L2]
[2049] [P36-T213-ENG-ET-p50-L20]/[P36-T213-FRA-CT-p51-L5]
[2050] [REDACTED]
[2051] [P36-T213-ENG-ET-p49-L10]/[P36-T213-FRA-CT-p49-L21]
[2052] [P36-T214-ENG-ET-p49-L21-p50-L21]/[P36-T214-FRA-ET-p49-L27-p50-L20]
[2053] [REDACTED]
[2054] [P36-T214-ENG-ET-p49-L7-and-p51-L15]/[P36-T214-FRA-CT-p45-L10-and-p51-L14]

whom had access to territories of neighbouring countries, including the CAR.[2055] The intelligence services provided Bemba with intelligence from the CAR.[2056]

645. In addition to the intelligence services, Bemba had the authority to set up commissions responsible for gathering information, investigating and/or prosecuting ALC troops accused of crimes. The few measures Bemba claims to have taken, such as the October 2002 Bangui commission of inquiry, the December 2002 Zongo mission, and the February 2003 Sibut mission, demonstrate his authority and prove his material ability to conduct investigations both in the CAR and the DRC [2057] regarding his forces' conduct.

646. To build a case regarding the acts of violence committed by Laurent Kabila's troops in Équateur, Bemba set up a mission to gather all the evidence, testimonies, photographs and other evidence from the civilian population.[2058]

647. On 17 January 2003, Paul Musafiri, the MLC National Secretary for Justice sent Olivier Kamitatu and Bemba[2059] the report of his inquiry concerning pillaging at Zongo,[2060] signed on 3 January 2003 by the President of the High Court and the Public Prosecutor in Gbadolite.[2061] The report states that a commission of inquiry went to Zongo from 26 to 28 December 2002 in accordance with the order of the President of the MLC with the aim of verifying the acts of Bemba's forces pillaging in CAR. The report states that ALC soldiers were accused by RFI broadcasts of pillaging and rape.[2062]

[2055] [REDACTED]
[2056] [REDACTED]
[2057] [P15-T208-ENG-ET-p31-L8]/[P15-T208-FRA-ET-p33-L13]
[2058] [P15-T210-ENG-CT-p44-L20-p45-L7]/[P15-T210-FRA-ET-p47-L24-p48-L9]
[2059] EVD-T-OTP-00392/CAR-DEF-0001-0155 ("C.I.: - PRESIDENT DU MLC")
[2060] EVD-T-OTP-00392/CAR-DEF-0001-0155
[2061] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158
[2062] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156

648. As the report states, Bemba knew of the crimes of his forces from foreign radio stations in December 2002. The report also establishes that virtually all the MLC officials questioned in Zongo were aware of the radio broadcasts, particularly the heads of the BSI[2063] and BSF[2064] intelligence services. In denying that the pillaged property ever arrived in Zongo, those questioned tacitly acknowledged that pillaging had occurred by justifying the ban on crossing the Ubangi River, or by discussing the establishment of a commission which allegedly returned some of the pillaged property. The chief of the notables, one of the persons interviewed even went so far as to point out the towns of Imesse and Dongo as being the crossing-points for the pillaged property.[2065]

649. This document shows not only that in the second half of December 2002, Bemba knew that his soldiers stood accused of pillage and rape, but that such information was accessible to everyone, particularly MLC officials who were responsible for passing this information on to their superiors. This document also shows that, at least from 17 January 2003, Bemba was in possession of information which should have prompted him to carry out a thorough investigation, particularly in the other towns mentioned by those interviewed. The evidence on file showed that Bemba never carried out an investigation into these allegations.

5. *Bemba knew about his troops' crimes from the media*

650. The conflict in the Central African Republic was extensively covered in the media between October 2002 and March 2003.[2066] The concurrent Ituri (DRC) events also generated media interest. The conduct of the ALC troops on both fields of operation made Bemba and the MLC the centre of the media's interest.[2067] The

[2063] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0157
[2064] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158
[2065] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158
[2066] [P45-T201-ENG-ET-p66-L20]/[P45-T201-FRA-ET-p73-L10]
[2067] [P15-T208-ENG-ET-p3-L7-and-L19-23]/[P15-T208-FRA-ET-p3-L12-and-p3-L-25-p4-L2]

international press, and more particularly RFI, were relaying the news about Ituri and the CAR, mainly covering sexual violence crimes and pillaging.[2068] The BBC and the Voice of America were reporting the same kind of information.[2069] These widely circulated media reports were easily accessible on short wave radio in Gbadolite[2070] and covered different regions; both BBC and the Voice of America were broadcasting in English and in French.[2071] The reports dealt with the crimes committed by those the local population called the Banyamulenge; specifically the reports contained information on rape, pillaging, and destruction.[2072]

651. The information available in the press was sufficiently detailed for Bemba to realize its seriousness to require him to launch investigations and prosecutions. The RFI journalists repeatedly interviewed victims, CAR authorities and even representatives of Bozizé's rebels. Some victims gave precise and detailed accounts of what they had suffered.

652. In a 3 November 2002 feature story, RFI broadcasted the testimony of a female inhabitant of Bégoua, in PK12[2073]. She told the following account:

> "They even raped my child, her name is Patricia and she is 12. (…) They entered the houses one by one; he forcibly grabs little girls to rape them. When I come, [I] intervene there, the Banyamulenge there, a little he even wants to kill me with his weapon. If you wish, open your mouth to talk [to] the Banyamulenge, he does not want to, he only wants to kill you."[2074]The journalist concludes the broadcast by

[2068][P15-T208-ENG-ET-p27-L24-p28-L12]/[P15-T208-FRA-ET-p29-L22-p30-L8]
[2069] [P44-T205-ENG-ET-p29-L4]/[P44-T205-FRA-ET-p32-L5]
[2070] [P44-T205-ENG-ET-p53-L19]/[P44-T205-FRA-ET-p59-L12]
[2071] [P44-T205-ENG-ET-p53-L2]/[P44-T205-FRA-ET-p58-L17]
[2072] [P44-T205-ENG-ET-p53-L19]/[P44-T205-FRA-ET-p59-L12]
[2073] EVD-T-OTP-00575/CAR-OTP-0031-0093;Track 5-at-minute 01:24-Transcript-EVD-T-CHM-00015/CAR-OTP-0036-0039; Translation-EVD-T-CHM-00019/CAR-OTP-0056-0278
[2074] EVD-T-CHM-00015/CAR-OTP-0036-0039-at-0040

indicating that the previous day, 2 November 2002, "Bemba allegedly personally went to the neighbourhoods to admonish his troops"[2075].

Although the witness did not specifically recall this story, Defence witness D48 admitted to having heard similar stories on RFI[2076].

653. In a story dated 5 December 2002, RFI's correspondent in the CAR interviewed the parish priest of Gobongo (a Bangui neighbourhood); Maître Ngoungaye, the representative of the Central-African League for Human Rights; a father who witnessed the rape of his wife and daughter; and a woman from PK12.[2077] The Gobongo priest reported that some inhabitants moved far away from Gobongo and that there were crimes by the "Banyamulenge" who crossed the river.[2078] Maître Ngoungaye described in detail the Banyamulenge's rape, murder and pillage in CAR. He also indicated that these crimes took place at PK12 and in the Yembe neighbourhood, on the road to Damara.[2079] The next account was that of an unidentified person, present when his wife and his three-month pregnant daughter were raped in Bégoua. The person stated that the crimes against the entire population of PK12 started on the previous Friday, 29 November 2002, at 08:00 hours. The attack on his house took place at 14:55 hours, when his daughter was raped before the whole family. On their way out, the militia members looted everything they could. The person recounted that his neighbour was killed by the Banyamulenge.[2080] Another resident of PK12 who fled her neighbourhood for PK22 with her husband and children recounted that on entering PK22, Bemba's forces killed people and goats, and stole chickens. They killed her 21 year-old brother-in-

[2075] EVD-T-CHM-00015/CAR-OTP-0036-0039-at-0040
[2076] [D48-T268-ENG-ET-p29-L22]/[D48-T268-FRA-ET-p33-L5]
[2077] EVD-T-OTP-00576/CAR-OTP-0031-0099; EVD-T-CHM-00040/CAR-OTP-0036-0041; Translation-CAR-OTP-0056-02278
[2078] EVD-T-CHM-00040/CAR-OTP-0036-0041-at-0043
[2079] EVD-T-CHM-00040/CAR-OTP-0036-0041-at-0044
[2080] EVD-T-CHM-00040/CAR-OTP-0036-0041-at-0044-and-0045

law because he had no money. She also saw Bemba's forces rape a little girl who later died as a result.[2081]

654. All of this information required Bemba to conduct a criminal investigation to establish the individual criminal responsibility of the perpetrators and to hold them accountable. For example, during the Mongoumba incident, the information available to the MLC was precise enough to substantiate a targeted investigation.[2082]

655. Most of the members of the MLC who were based in Gbadolite ([REDACTED])[2083] as well as in South Africa ([REDACTED]) when these incidents took place, confirmed having heard the reports of the crimes of ALC troops in the press. This information was serious and sufficiently detailed to raise concerns in the MLC high command, who discussed the matter with Bemba. P36 remembers that the information radio broadcasts mentioned crimes on a larger scale,[2084] among which, were many cases of rape.[2085]

656. During the conflict period, Bemba was in Gbadolite. P36, [REDACTED], testified that he was certain that Bemba also heard the accusations made in the media.[2086] P44 is convinced that Bemba was listening to the radio Gbadolite, including the English-speaking programmes, given his fluency in English.[2087] According to P45, Bemba's great passions are the telephone and the news. "He would listen to RFI and watch various TV channels because he had parabolic antennas, which allowed him to follow any information on any channel.[2088] He also

[2081] EVD-T-CHM-00040/CAR-OTP-0036-0041-at-0045
[2082] EVD-T-OTP-00583/CAR-OTP-0031-0136; Track 1,-at-minute 07:54 - EVD-T-OTP-00717/CAR-OTP-0036-0055; EVD-T-OTP-00734/CAR-OTP-0056-0300
[2083] [REDACTED] ; [REDACTED]
[2084] [P36-T214-ENG-ET-p48-L14]/[P36-T214-FRA-CT-p48-L22]
[2085] [P36-T214-ENG-ET-p49-L11]/[P36-T214-FRA-CT-p49-L16]
[2086] [P36-T214-ENG-ET-p48-L18]/[P36-T214-FRA-CT-p48-L26]
[2087] [P44-T205-ENG-ET-p54-L4-11]/[P44-T205-FRA-ET-p59-L25-p60-L4]
[2088] *See e.g.* EVD-T-OTP-00828/CAR-OTP-0068-0002 (at minute 42:36, showing Bemba and Olivier Kamitatu watching the Euro 2000 final match in Bemba's living room in Gbadolite)

had telephone contact everywhere".[2089] P213 states that not only would Bemba listen to the media, but he would also answer journalists' questions about his men's conduct.[2090] Bemba has not contested this, given that in his correspondence with General Cissé and FIDH, he confirms that he heard these allegations on the radio.[2091]

657. Bemba was aware of the importance of the media. He gave a number of interviews and [REDACTED] as to the language to be used when answering the media.[2092] Bemba invited journalists on the Sibut mission[2093] and invited journalists to attend the trials scheduled in Gbadolite.[2094] The MLC needed to preserve a credible image before the signing of the final Sun City agreement, which explains certain actions planned by Bemba to clear the MLC's name.[2095] To be able to adjust his communication strategy, it was imperative that Bemba follow up on the media and take stock of the information being disseminated about the MLC.

658. Any time the interests of the MLC were at stake, Bemba would orchestrate a media campaign. P15 thus recounted that when Laurent Kabila's troops travelled through the Équateur to attack the Mouvement de Libération du Congo, "the troops from Kinshasa committed murders all along the villages that border the way from Zongo to Gemena and a mission was sent ahead. This mission included, among others, the MLC's head of media communication who took note of and identified all signs of crimes committed by President Laurent Kabila's troops." P15 concluded by stating that "at the time, we took note of and collected all evidence, testimonies and photographs of those… those crimes."[2096] Although Bemba was diligent in pursuing allegations concerning the crimes allegedly perpetrated by Kabila's forces, Bemba

[2089] [P45-T201-ENG-ET-p67-L1]/[P45-T201-FRA-ET-p73-L18]
[2090] [P213-T188-ENG-ET-p24-L1-7]/[P213-T188-FRA-ET-p24-L4-12]
[2091] EVD-T-OTP-00453/CAR-OTP-0017-0363;EVD-T-OTP-00391/CAR-DEF-0001-0152
[2092] [P15-T209-ENG-CT-p12-L3]/[P15-T209-FRA-CT-p13-L2]
[2093] [P15-T208-ENG-ET-p50-L19]/[P15-T208-FRA-ET-p53-L9]
[2094] [P15-T211-ENG-ET-p5-L11]/[P15-T211-FRA-ET-p6-L3]; [P45-T204-ENG-ET-p8-L24]/[P45-T204-FRA-ET-p10-L1]
[2095] [P15-T209-ENG-CT-p41-L5-14]/[P15-T209-FRA-CT-p42-L26-p43-L9]
[2096] [P15-T210-ENG-CT-p44-L20-p45-L7]/[P15-T210-FRA-ET-p47-L24-p48-L9]

did not adopt the same approach when it came to the crimes committed by his own troops.

659. On 1 November 2002, the BBC published an article about crimes allegedly inflicted on the Chadian citizens who resided in Bangui[2097]. The BBC mentioned that "… there have been reports of serious violence and looting in the northern suburbs by Congolese fighters supporting President Ange-Félix Patassé." The BBC interviewed Bemba about these crimes and reports that "But the leader of the Congolese rebel group, the Movement for the Liberation of Congo's (MLC) Jean-Pierre Bemba, denied the allegations (…) saying his troops were more than 20 kilometres outside Bangui."

660. The national Central-African press also frequently referred to the behaviour of the Banyamulenge, referring to them sometimes as 'Nyamamulenge', owing to the cruelty they displayed in their commission of crimes.[2098] This local press, in French, was at the disposal of Mustapha, his officials, his troops and Bemba when he visited the CAR.[2099]

6. *Bemba knew about his troops' crimes through his communication devices*

661. Information was essential to the life of the MLC and its president.[2100] The MLC, more particularly its military wing, the ALC, had short-range walkie-talkies, long-range radio, commonly referred to as phonie systems, and Thuraya satellite phones.[2101]

[2097] EVD-T-OTP-00821/CAR-OTP-0030-0274
[2098] EVD-T-OTP-00852/CAR-OTP-0013-0052
[2099] [CHM1-T355-ENG-ET-p54-L15-16]/[CHM1-T355-ENG-ET-p48-L21-22]
[2100] [P15-T207-ENG-CT-p32-L18-25]/[P15-T207-FRA-ET-p33-L24-p34-L6]
[2101] [P15-T207-ENG-CT-p42-L19]/[P15-T207-FRA-ET-p44-L9]

662. In its early days, the MLC had satellite cases, which, with the advance of technology, evolved into Thuraya. Given their cost, the president of the organisation would only allocate satellite communications to important people within it, whether in the political or the military wing. Most of the time, Thuraya use was reserved for operations.[2102]

663. P45 pointed out that Bemba was passionate about telephones, contacting top military commanders on the front line early in the morning to receive reports and issue instructions.[2103] Colonel Mustapha was one of the commanders who had a satellite telephone.[2104] On several occasions, [REDACTED] receiving reports from his front-line commanders [REDACTED] and receive his instructions by radio.[2105] [REDACTED] Bemba would converse not only with one commander, but with all the commanders on the front line.[2106]

664. The MLC installed radio equipment wherever there was communication between its president and the commanders,[2107] the officers in charge in all communities and in all cities under MLC control. This was the case not only at front lines, but also in the capitals of territories, districts and chiefdoms and/or sectors.[2108] The ALC command had its own communications centre. All units had radios such as Manpack and Kenwood telephones that allowed all units, more particularly at the brigade and sometimes at battalion level, to be in permanent contact with the hierarchy through radio systems. Radio operators saw to the proper functioning of the communications centre.[2109] The military staff's communications centre was

[2102] [P36-T213-ENG-ET-p48-L19]/[P36-T213-FRA-CT-p49-L3]
[2103] [P45-T201-ENG-ET-p33-L25]/[P45-T201-FRA-ET-p37-L12]
[2104] [P45-T202-ENG-ET-p15-L25]/[P45-T202-FRA-ET-p17-L25]
[2105] [P45-T203-ENG-ET-p19-L11]/[P45-T203-FRA-ET-p20-L5]
[2106] [P45-T203-ENG-ET-p23-L15]/[P45-T203-FRA-ET-p24-L14]
[2107] [P45-T202-ENG-ET-p28-L6]/[P45-T202-FRA-ET-p32-L16]
[2108] [P45-T202-ENG-ET-p5-L15]/[P45-T202-FRA-ET-p6-L4]
[2109] [P36-T213-ENG-ET-p28-L17]/[P36-T213-FRA-CT-p29-L6]

located next to Bemba's official residence.[2110] It also catered to the needs of the MLC's intelligence services.[2111]

665. Bemba himself had a radio installed in the lounge of his house, near the armchair where he usually sat.[2112] This radio allowed him to contact all units.[2113]Anyone who had access to Bemba's lounge could see that radio.[2114]

666. Bemba used a third means of communication, a Motorola, for short-range communications within the city of Gbadolite.[2115] Once telephone networks were installed, he would communicate by mobile phone to certain places.[2116] Bemba was fully versed in the use of all of his communication devices.[2117]

667. For the operation in the CAR, the ALC used Thurayas and phonies. The available frequency ranges enabled easy radio communication with Bangui or other places in the CAR from Gbadolite. [REDACTED] in contact with commander Mustapha while the latter was in the CAR. [2118]

7. *Bemba knew about his troops' crimes by virtue of his position in the MLC*

668. As Commmander-in-Chief, Bemba was in a position to know about details concerning his army. P15 was very clear about this: "whether [REDACTED] from the political or the military wing, [REDACTED] to the president of the organisation."[2119] This major role in decision-making, even the most minor ones, is reflected in the fact

[2110] [P33-T161-ENG-ET-p27-L21]/[P33-T161-FRA-ET-p29-L17]
[2111] [REDACTED]
[2112] [P15-T211-ENG-ET-p30-L5]/[P15-T211-FRA-ET-p32-L16]; [P36-T213-ENG-ET-p40-L4]/[P36-T213-FRA-CT-p40-L11]
[2113] [P33-T158-ENG-ET-p39-L14]/[P33-T158-FRA-ET-p38-L2]
[2114] [REDACTED]
[2115] [P15-T207-ENG-CT-p46-L20]/[P15-T207-FRA-ET-p48-L14]
[2116] [P45-T201-ENG-ET-p33-L16-21]/[P45-T201-FRA-ET-p36-L27-p37-L6]
[2117] [P15-T207-ENG-CT-p47-L5]/[P15-T207-FRA-ET-p48-L25]
[2118] [REDACTED];[P45-T202-ENG-ET-p28-L18]/[P45-T202-FRA-ET-p33-L2]
[2119] [P15-T207-ENG-CT-p32-L15]/[P15-T207-FRA-ET-p33-L21]

that Bemba orchestrated the withdrawal of the troops involved in the CAR from his living-room "kilometre by kilometre".[2120]

669. Bemba was a controlling person and craved information about his Movement. The MLC delegation involved in the Inter-Congolese negotiations in South Africa were in regular contact with Bemba. During each step of the negotiations, Bemba would call the head of the delegation [REDACTED] 10, 15 or 20 times and also other members of the delegation.[2121] The same applies to the representatives within the military commission; Bemba gave them the instructions they were to follow.[2122] [REDACTED]. Bemba needed to know "every single detail so as to be able to take every single decision."[2123]

670. "[Bemba] was at all times in permanent contact with his commanders because he was the Commander-in-Chief and had to know and be aware of what was happening in the field."[2124] All movements of the troops or on the front line were subordinated to the Commander-in-Chief of the ALC's decision.[2125] When operations were on-going, he would even call over 10 times a day because he wanted to follow the situation and be informed of its progress at all costs.[2126] At times, the Commander-in-Chief would "by-pass" all links of the chain of command and make direct contact with the troops in the field to give them orders.[2127]

[2120] [P15-T209-ENG-CT-p25-L10-and-p34-L18]/[P15-T209-FRA-CT-p26-L16-and-p36-L6]
[2121] [P44-T205-ENG-ET-p26-L9-18]/[P44-T205-FRA-ET-p28-L28-p29-L13]
[2122] [P45-T201-ENG-ET-p13-L24-and-p18-L2-6]/[P45-T201-FRA-ET-p15-L18-and-p19-L28-p20-L5]
[2123] [P45-T201-ENG-ET-p18-L7-p19-L7]/[P45-T201-FRA-ET-p20-L6-p21-L12]
[2124] [P45-T201-ENG-ET-p35-L21]/[P45-T201-FRA-ET-p39-L17]
[2125] [P45-T201-ENG-ET-p56-L6]/[P45-T201-FRA-ET-p62-L15]
[2126] [P36-T213-ENG-ET-p41-L9]/[P36-T213-FRA-CT-p41-L15]
[2127] [P33-T158-ENG-ET-p28-L17]/[P33-T158-FRA-ET-p27-L15]

8. *Bemba knew about his troops' crimes since they were numerous and widespread*

671. The ALC troops committed crimes in most of the cities and places they occupied such as Bangui, PK22, Damara, Sibut, Bossembelé, Bozoum and Mongoumba. These crimes include pillaging, the rape of women and men – and children - and the murder of civilians. They cover the whole period of the conflict, from the first hours following the arrival of the MLC in CAR on 26 October 2002, to the last hours of the troops' withdrawal on 15 and 16 March 2003. Between these two dates, abuses took place everywhere Bemba forces were. The widespread nature of the crimes is extensively covered in the section of this brief on crimes against humanity. Lastly, Bemba knew about his troops' crimes because they were committed throughout the five month armed conflict.

C. Bemba should have known his troops were committing crimes

672. By decision of 21 September 2012, the Chamber gave notice to the parties and participants that, pursuant to Regulation 55(2) of the Regulations, after having heard all the evidence the Chamber may modify the legal characterisation of the facts so as to consider in the same mode of liability the alternate form of knowledge contained in Article 28(a)(i) of the Statute, namely that "owing to the circumstances at the time, the accused should have known that the forces [under his effective authority and control] were committing or about to commit such crimes" is a form of knowledge included in the charges confirmed in the Decision on the Confirmation of Charges.[2128]

673. The direct and circumstantial evidence in this case proves beyond a reasonable doubt that Bemba actually knew of the crimes perpetrated by his forces. The same evidence alternatively proves that Bemba should have known that his forces were committing or about to commit these crimes. As such, his failure to acquire

[2128] ICC-01/05-01/08-2324, para.5

knowledge of his subordinates' crimes was unjustifiable,[2129] given all of the means to obtain information at his disposal.

674. The criteria or indicia developed by the *ad hoc* tribunals defining the standard for "reason to know" is useful when applying this Court's "should have known" requirement. The factors referred to above in paragraph 618 showing Bemba's actual knowledge of his forces' crimes are also relevant in the Chamber's assessment of whether Bemba "should have known" of their commission or the risk of their occurrence.

675. The evidence in this case demonstrates that: (i) Bemba took the necessary measures to secure his knowledge of the conduct of his troops;[2130] (ii) Bemba had general information putting him on notice of crimes committed by his subordinates or of the risk of the occurrence of unlawful acts;[2131] (iii) such available information was sufficient to justify further inquiry or investigation;[2132] and (iv) Bemba failed to punish past crimes committed by the same group of subordinates which is an indication of future risk[2133].

676. In conclusion, on the evidence Bemba clearly had actual knowledge of the crimes committed by his forces. However, should the Chamber find that Bemba had no actual knowledge, the evidence establishes that he had constructive knowledge of his troops' crimes and "should have known" of them. The same evidence discussed

[2129] ICC-01/05-01/08-406, paras. 3, 6
[2130] ICTR, *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, "Judgement", 21 May 1999, para. 227 (stating that Article 28 of the Statute "imposes a more active duty upon the superior to inform himself of the activities of his subordinates"); Fenrick, W., Article 28 , *in* O. Triffterer (Dir. pub.), *Commentary on the Rome Statute of the International Criminal Court*, NomosVerlag, 1999, p. 519.
[2131] ICTY, *Prosecutor v. Delić*, Case No. IT-04-83-T, "Judgement", 15 September 2008, paras. 65-66; ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgement", 31 January 2005, para. 370; SCSL, *Prosecutor v. Fofana et al*, Case No. SCSL-04-14-T, para. 244; ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, "Appeals Chamber Judgement", 29 July 2004, para. 618; ICTY, *Prosecutor v. Galić*, Case No. IT-98-29-T, "Judgement and Opinion", 5 December 2003, para. 704.
[2132] ICTY, *Prosecutor v. Limaj et al*, Case No. IT-03-66-T, "Judgement", 30 November 2005, para. 525; ICTY, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, "Judgement", 26 February 2001, para. 437.
[2133] SCSL, *Prosecutor v Sesay et al*, Case No. SCSL-04-15-T, "Judgement", 2 March 2009, para. 311.

above proves this legal element beyond a reasonable doubt. Bemba should have known and did know that his army was committing rape, pillaging and murdering in CAR because multiple sources, including among his own personnel, the UN, FIDH, and the media all told him so. –

IV. Bemba failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution

677. Despite his material ability to act, Bemba failed to take all necessary and reasonable measures within his power to: 1) prevent the crimes; 2) repress the crimes; and 3) submit matters to competent authorities for investigation and prosecution. Although, the Chamber need only find the breach of one of these duties to hold a commander responsible pursuant to Article 28(a), the evidence proves beyond a reasonable doubt that Bemba breached each of them. This section is divided into three parts that respectively point to the necessary and reasonable measures that were within Bemba's material power to 1) prevent, 2) repress, and 3) submit matters to competent authorities and how he failed to take those measures.

678. Article 28 (a)(ii) provides "[t]hat the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to competent authorities for investigation and prosecution.[2134] Thus, the Statute makes clear that the Prosecution need not prove a breach of all three duties of prevention, repression, and submission in order for the Accused guilty under one of the duties.

[2134] Emphasis added.

679. As the Commander-in-Chief of the ALC, Bemba had an extensive degree of effective authority and control furnishing him with a wide range of powers sufficient, if exercised properly, to ensure that the involvement and conduct of his subordinates in the armed conflict was in conformity with international humanitarian law.[2135] Nonetheless, he failed to use those powers to prevent the commission of the crimes or to discipline his subordinates. Contrary to his basic legal duties as a commander, Bemba did not take all necessary and reasonable measures to mitigate the risk of crimes about to be committed from materializing, stop ongoing crimes, punish crimes already committed, or submit the matters to the competent authorities for investigation and prosecution.

680. The evidence in this section must prove a negative proposition – that is, to prove what Bemba did not do but could have done. It is unnecessary to list all possible necessary and reasonable measures Bemba could have taken.[2136] Rather it is sufficient to prove that Bemba failed to take all necessary and reasonable measures that were within his power. What constitutes necessary and reasonable measures depends on the evidence of Bemba's powers, what the prevailing circumstances allowed, and what actions Bemba actually did take, whether genuine or disingenuous, as well as Bemba's omissions, meaning the measures that he failed to take.[2137]

A. Bemba Failed to Take All Necessary and Reasonable Measures within His Power to Prevent the Commission of Crimes by ALC Troops

[2135] *See supra* paras. 525-613 on Bemba's effective authority and control.
[2136] ICTR, *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, *et al*, Case No. ICTR-99-52-A, "Appeals Chamber, Judgement", 28 November , 2007, para. 792, "Having found that Appellant [Nahimana] had the power to prevent or punish the broadcasting of criminal discourse by RTLM [*Radio Télévision Libre des Mille Collines*], the Trial Chamber did not need to specify the necessary and reasonable measures that he could have taken. It needed only to find that the Appellant had taken none."
[2137] *See* ICTY, *Prosecutor v. Blaškić* Appeal, Case No. IT-95-14-A, "Appeals Chamber Judgement", 29 July 2004, para. 72. "As the Appeals Chamber previously held, "'what constitutes [necessary and reasonable] measures is not a matter of substantive law but of evidence".

681. Bemba failed to make every reasonable and necessary effort to prevent his subordinates from committing murder, rape, and pillaging. His failure to take steps to prevent crimes resulted in their foreseeable commission. At a minimum, a person effectively acting as a military commander must take all necessary and reasonable measures within his power to prevent the commission of the crimes. To prevent crimes a person effectively acting as a military commander should: i) ensure that his forces are adequately trained in international humanitarian law ("IHL");[2138] ii) ensure that his orders and his subordinate commanders' orders comply with IHL and that the orders are calculated to ensure compliance with IHL by subordinate forces;[2139] iii) take disciplinary measures to prevent subordinates' commission of crimes;[2140] and iv) require reports from subordinates that military actions were carried out in accordance with IHL.[2141] A person effectively acting as a military commander must act on his duty to prevent the commission of crimes if he knows that crimes are being prepared or planned or when the commander "has reasonable grounds to suspect subordinate crimes."[2142]

682. Bemba failed to: i) adequately train his forces in IHL; [2143] ii) provide clear orders aimed at ensuring compliance with IHL; [2144] iii) take subsequent disciplinary measures after being aware of previous reported crimes; [2145] and iv) require reports from subordinates that military actions were carried out in accordance with IHL.[2146] These failures created a climate of tolerance for the misconduct of his forces and

[2138] W. Fenrick, "Article 28", in: O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, (Nomos Verlag, 1999), p. 520.
[2139] ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgment", 31 January 2005, para. 374; ICTY, *Prosecutor v. Hadzihasanovic and Kubura*, Case No. IT-01-47-T, "Judgment", 15 March 2006, para. 153.
[2140] *Ibid.*
[2141] *Ibid.*
[2142] ICTY, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, "Judgement", 26 February 2001, para. 445.
[2143] W. Fenrick, "Article 28", in: O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, (Nomos Verlag, 1999), p. 520.
[2144] ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgment", 31 January 2005, para. 374; ICTY, *Prosecutor v. Hadzihasanovic and Kubura*, Case No. IT-01-47-T, "Judgment", 15 March 2006, para. 153.
[2145] *Ibid.*
[2146] *Ibid.*

emboldened them in the perpetration of the charged crimes, exacerbating the scale of crimes and caused, rather than prevented, crimes.

1. *Measures within Bemba's power to prevent crimes*

683. The two legal elements of effective authority and control and the duty to take all necessary and reasonable measures are inter-related and the degree of control can be taken as evidence of the measures within the control of the Accused.[2147] The measures materially available to Bemba determine the extent to which he had the power to act and the extent to which he failed.[2148] A non-exhaustive list of the measures that were within the Bemba's power to prevent the charged crimes includes: integrated IHL training at all levels of ALC troops from foot soldier to general officer;[2149] consistent binding orders to refrain from the commission of crimes and consequences for not following such orders;[2150] ensuring his troops knew the expected standards of conduct of ALC personnel;[2151] investigation and referral of cases to courts-martial to create accountability and deter future crime;[2152] the control of the supply of materials, including weapons and ammunition, to his forces;[2153] withdrawal of his forces;[2154] measures to mitigate risk of crimes such as establishing a clear system of payment or other remuneration;[2155] promotion of members of the military who adhered to IHL; [2156] and demotion, suspension,[2157] or dismissal [2158] of those who failed to adhere to IHL.[2159]

[2147] ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, "Appeals Judgment", 29 July 2004, para. 72.
[2148] ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, "Appeals Judgment", 29 July 2004, para. 417.
[2149] [P45-T201-ENG-CT-p42-L6]/[P45-T201-FRA-CT-p46-L24-p47-L7]; [P15-T207-ENG-CT-p48-L3]/[P15-T207-FRA-CT-p49-L21-p50-L4]
[2150] EVD-T-OTP-00691/CAR-D04-0002-1513
[2151] EVD-T-OTP-00835/CAR-OTP-0069-0369 (video of Bemba directly addressing his troops-at-11:03)
[2152] EVD-T-OTP-00391/CAR-DEF-0001-0152; EVD-T-OTP-00697/CAR-DEF-0002-0580; EVD-T-OTP-00698/CAR-D04-0002-2004
[2153] [P36-T213-ENG-CT-p66-L13-L18]/[P36-T213-FRA-CT-p67-L10-16]
[2154] EVD-T-OTP-00807/CAR-OTP-0064-0265-at-0267
[2155] [P15-T207-ENG-CT-p61-L16-p62-L16]/[P15-T207-ENG-CT-p63-L21-p64-L19]
[2156] EVD-T-OTP-00368/ CAR-OTP-0032-0167
[2157] EVD-T-OTP-00700/ CAR-DEF-0001-0161-at-0164
[2158] [P45-T201-ENG-CT-p46-L15]/[P45-T201-FRA-CT-p51-L26]
[2159] [P36-T216-ENG-ET-p8-22-p9-L23]/[P36-T216-FRA-ET-p9-L5-28]

684. Bemba had the material ability to enact these measures through his means to issue orders via reliable communications methods. He also had means to travel to CAR to issue orders himself via multiple aircraft, investigate and try soldiers for violations to ensure respect for IHL, make use of the chain of command, and use existing reporting systems (Situation Reports and Intelligence Summaries found in the communication logbooks) to evaluate reports as to the level of morale and discipline among soldiers to gauge the risk of crimes.[2160]

2. *Bemba failed to provide adequate training in IHL to his forces*

685. The Accused failed to ensure adequate training of ALC forces. Training soldiers in IHL is indispensable for compliance with IHL and required in order to prevent soldiers from violating IHL.[2161] Compliance with IHL does not happen by accident – there must be training. As General Opande, the jointly-instructed Military Expert recognized, there is a link to training soldiers and preventing crimes.[2162] There is no indication that ALC forces received sufficient training in IHL. But Bemba was fully capable of ensuring that his forces received training. P-15 testified that military training, as a general matter, was "one of the important points for President Bemba."[2163] However, the training was focused on quickly turning people from MLC-controlled territory into soldiers and not on IHL.[2164]

686. The ALC had a Code of Conduct ("Code") that set out some basic disciplinary expectations of members of the ALC and represented the ALC's concepts of

[2160] *See supra* paras.525-613
[2161] *See* ICRC CIL Study Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law (Cambridge University Press, Volume I, 2009) (2005): Rule 142.
[2162] [P219-T197-ENG-CT-p68-L2]/[P219-T197-FRA-CT-p76-L12]
[2163] [P15-T207-ENG-CT-p48-L5]/[P15-T207-FRA-CT-p49-L23]
[2164] [P32-T165-ENG-CT-p62-L21-p63-L1]/[P32-T165-FRA-CT-p62-L3]; [P45-T201-ENG-CT-p43-L3]/[P45-T201-FRA-CT-p47-L22]

discipline.[2165] However, the Code was a wholly inadequate document that, even if fully implemented, failed to ensure minimal adherence to IHL. As seen below, the Code was not widely disseminated, known, or understood within the ALC.[2166] However, even if each ALC member had known of the Code, the Code itself failed to mandate even the most basic protections of civilians and civilian objects as required by customary international humanitarian law regulating non-international armed conflicts.[2167]

687. The Code failed to set out any rules pertaining to the principle of distinction between civilians and combatants.[2168] The Code mentions two prohibitions regarding civilians: murder of a civilian and abuse or assault of a civilian.[2169] The Code does not attempt to define civilians or clarify that civilians are protected against attack, unless and for such time as they take a direct part in hostilities. Such a failure to include customary provisions of IHL caused crimes in that it contributed to the risk that members of the ALC would commit crimes against civilians.

688. The Code also failed to establish any rules requiring the ALC to distinguish between civilian objects and military objectives.[2170] The Code failed to prohibit attacks against civilian objects; failed to provide the ALC with a definition of military objectives; and failed to enforce the customary prohibition against indiscriminate attacks. The Code does not mention the following minimal customary IHL requirements in non-international armed conflicts: proportionality in attack,

[2165] EVD-T-OTP-00700/CAR-DEF-0001-0161
[2166] *See infra* paras.690-692
[2167] ICRC, Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law Study, (Cambridge University Press, Volume I, 2009) (2005): Rules 1, 2, 5, 6 and 7.
[2168] EVD-T-OTP-00700/CAR-DEF-0001-0161
[2169] EVD-T-OTP-00700/CAR-DEF-0001-0161-at-0164
[2170] ICRC, Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law Study, (Cambridge University Press, Volume I, 2009) (2005): Rules 7, 8, 9, 10, 11, and 12.

precautions in attack, specifically protected persons and objects, and specific methods of warfare.[2171]

689. The lack of any detailed rules on the protection of detainees and civilian property is particularly problematic.[2172] The Code indicates that Bemba and the ALC leadership that approved the Code did not put much value in the principles of IHL. The Code provides for the execution of detainees (or what it refers to as "*prisonniers de guerre*") as long as such execution is "authorized".[2173] The Code fails to clarify how authorization could be granted to execute a detainee; this undermined the prohibition of the denial of quarter and the protections for *hors de combat* found in customary IHL and contributed to the risk of prisoners being executed.[2174] Also the Code allowed for the taking of what it termed *butin de guerre* or war booty.[2175] The Code fails to clarify that, though military equipment of the enemy and public property may be seized if required by "imperative military necessity", private property may not, and that pillage is prohibited.[2176] In failing to provide guidance on the seizure of property, the Code, representing the ALC's understanding of IHL to those who even knew of it, contributed to the numerous incidents of pillage.

690. The Code did not provide for basic IHL protections, but Bemba's failure to fully train his troops on the Code further compounded his failure to prevent the commission of crimes during the 2002-2003 CAR conflict. The flawed Code was not adequately disseminated to the troops or incorporated in any training.[2177] The Code

[2171] All of these principles are required in non-international armed conflicts under customary IHL. *See* ICRC Customary International Law Study, Rules. Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law (Cambridge University Press, Volume I, 2009) (2005): Rules 14, 15, 25-69.
[2172] Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law Study (Cambridge University Press, Volume I, 2009) (2005): Rules: 46, 47, and 52.
[2173] EVD-T-OTP-00700/CAR-DEF-0001-0161-at-0163
[2174] [P63-T110-ENG-CT2-p9-L1]/[P63-T110-FRA-CT2-p8-L28]; [P213-T187-ENG-CT-p21-L16]/[P213-T187-FRA-CT-p22-L8]
[2175] EVD-T-OTP-00700/CAR-DEF-0001-0161-at-0163
[2176] ICRC, Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law Study,(Cambridge University Press, Volume I, 2009) (2005): Rules 49 and 50.
[2177] [P33-T159-ENG-CT-p61-L25-p62-L15]/[P33-T159-FRA-CT-p63-L11]; [P36-T213-ENG-CT-p53-L8]/[P36-T213-FRA-CT-p53-L23]

was in French, a language most of the lower-ranking ALC members did not understand.[2178] The Code was not long or complex but Bemba, knowing that his soldiers spoke Lingala, did not order its translation for his forces.[2179] Additionally, many of the soldiers were illiterate.[2180] Indeed, there were members of the ALC who did not even know of the existence of a Code purporting to regulate their behaviour.[2181]

691. The Code was not integrated into any training programs of officers or commanders, the very people that would be expected to enforce the standards established by the Code.[2182] The Code was also not integrated into operations.[2183] In fact, as P36 testified, only commanders and higher ranking members of the ALC had copies of the Code.[2184] P213 stated that PC's (political commissioners) at times in the DRC explained the Code to them but he never received a copy and the Code was not applied uniformly.[2185]

692. Bemba failed to ensure that the officers directly subordinate to him were sufficiently trained in IHL or even in the Code. P33 stated that Colonel Mustapha, the pinnacle of the chain of command of the ALC in CAR and thus a person with a high capacity to command, influence, and shape troop behavior on the ground, had not attended training, as was often the case within the ALC.[2186] He was a soldier who had learned in the field.[2187] Colonel Mustapha's lack of training and his resultant lack of understanding of the Code was amply demonstrated by [REDACTED] the Code had anything to do with regulating the ALC's compliance with IHL but rather that

[2178] [P33-T159-ENG-CT-p62-L16]/[P33-T159-FRA-CT-p64-L2]; EVD-T-OTP-00700/CAR-DEF-0001-0161.
[2179] [P15-T207-ENG-CT-p39-L2]/[P15-T207-FRA-CT-p40-L20]
[2180] [P15-T207-ENG-CT-p39-L2]/[P15-T207-FRA-CT-p40-L20]
[2181] [P33-T159-ENG-CT-p62-L12]/[P33-T159-FRA-CT-p63-L18]
[2182] [P33-T159-ENG-CT-p63-L2]/[P33-T159-FRA-CT-p64-L16]
[2183] [P36-T213-ENG-CT-p53-L22]/[P36-T213-FRA-CT-p54-L6]
[2184] [P36-T213-ENG-CT-p53-L6-p53-L10]/[P36-T213-FRA-CT-p53-L23]
[2185] [P213-T187-ENG-CT-p21-L16]/[P213-T187-FRA-CT-p21-L10]
[2186] [P33-T159-ENG-CT-p33-L13]/[P33-T159-FRA-CT-p35-L3]
[2187] [P33-T159-ENG-CT-p33-L13]/[P33-T159-FRA-CT-p35-L3]

the Code addressed the unconnected topics of the development of the country and patriotism.[2188] [REDACTED].[2189] Colonel Mustapha's total lack of understanding of the significance of the Code is indicative of the understanding that his subordinates had of the Code. If the leader does not understand the contents of the Code his subordinates cannot reasonably be expected to know it either.

693. Additionally, observers from outside the ALC in Bangui were able to verify that the ALC soldiers did not receive training and that they were soldiers who came from other forces, some of whom were as young as 11 years old.[2190] The kind of training they received was not adequate enough to send these men to fight.[2191]

3. *Bemba failed to issue clear orders to ensure respect for IHL and prevent crimes*

694. Prior to and during the 2002-2003 operation in CAR, Bemba failed to issue clear and effective orders to ensure that crimes were not committed by the ALC troops. Further, he failed to clarify ambiguous orders. The military expert General Opande opined that ambiguous orders from a commander can lead to "disaster" and that military commanders must be "absolutely clear" when giving orders to subordinates.[2192] General Opande's expectations about ambiguous orders materialized in evidence where Bemba's orders actually emboldened the perpetrators of crimes at the outset of the conflict. On their deployment, he said:

> "We have prepared you to go into the Central African Republic. **Over there you don't have any fathers, mothers, older brothers, younger brothers.** Your task is the one I have entrusted to you. According to the information we have, enemy is wearing civilian clothing. Anyone

[2188] [REDACTED]
[2189] [REDACTED]
[2190] [P178-T151-ENG-CT-p43-L16]/[P178-T151-FRA-CT-p45-L21]
[2191] [P178-T151-ENG-CT-p43-L16]/[P178-T151-FRA-CT-p45-L21]
[2192] [P219-T197-ENG-CT-p20-L8]/[P219-T197-FRA-CT-p22-L19]

you encounter on the battle-field is an enemy."[2193]

P213 testified that this statement was a license or invitation by Bemba to allow his forces to steal, rape, and murder.[2194]

695. P213's testimony about Bemba's statement is credible and consistent with his prior statement regarding Bemba's order to the ALC at Zongo. P47, a Lingala-speaker, who did not know P213 and could not have known P213's testimony, stated that one of Bemba's ALC subordinate officers gave a similar order to his troops shortly after Bemba gave the initial order at Zongo. An ALC officer spoke to his troops on P47's river ferry stating:

> "At this point in time, we are in Zaire. War is being waged in front of us. Zaire is limited by the middle of the river. As soon as you cross over the middle of the river, you are in the Central African Republic. **You have no children over there. You don't have any women, any wives. You don't have any family there.** All those you find there, men and women, you should kill them, destroy all the houses that we see there beyond Zongo. Destroy everything. This is war time, and in peacetime they will rebuild their country".[2195]

696. These two independent and interlocking accounts clearly show three important facts: 1) that Bemba provided the ambiguous order to the ALC amassed at Zongo; 2) that Bemba's order was restated through the chain of command to Bemba's subordinates showing Bemba's ability to effectively control, impact, and shape his forces' behavior; and 3) that both P47 and P213 are credible as to these events, since

[2193] [P213-T186-ENG-CT-p43-L2-6]/[P213-T186-FRA-CT-p45-L12-16](emphasis added)
[2194] [P213-T186-ENG-CT-p39-L3-p45-L4]/[P213-T186-FRA-CT-p41-L10-p47-L12]
[2195] [P47-T176-ENG-CT-p33-L7]/[P47-T176-FRA-CT-p32-L26](emphasis added)

they have absolutely no way to know what the other has said, and they recount remarkably similar statements independent of each other.

697. The alarming message imparted by Bemba and understood by the ALC troops was precisely what P213 understood: that their Commander-in-Chief just gave them permission or license to "[kill] anyone you come across on the battlefield."[2196] Additionally, ALC troops told P213 that they understood Bemba's order to permit them to rape as well.[2197] The ALC troops' understanding was not unusual, considering that they normally operated in a very permissive environment in which crimes were tolerated.[2198]

698. Bemba had the means to issue orders from Gbadolite to the ALC in the CAR. He used long-range radio and his Thuraya satellite phone to communicate with his commanders in the CAR. At least eight witnesses independently confirmed this fact, as well as Thuraya phone records and the MLC communication logbooks.[2199] Bemba could have just as easily issued orders to his commanders and troops demanding that they respect IHL and to cease the commission of the crimes. However, he failed to do so and instead acted to embolden the perpetrators of crimes by rejecting reports of crimes and falsely claiming that the reports of crimes were political propaganda, spread principally by the French.[2200]

699. Bemba had several opportunities in his visits to the CAR to issue clear orders aimed at ensuring compliance with IHL, but failed to do so. During his visits to P12 and to PK22 on 2 November 2002, Bemba met with his forces and Colonel Mustapha after seeing a significant number of civilian corpses strewn along the road.[2201] Bemba

[2196] [P213-T186-ENG-CT-p44-L11]/[P213-T186-FRA-CT-p46-L21]
[2197] [P213-T187-ENG-CT-p34-L8]/[P213-T-187-FRA-CT-p35-L9]
[2198] [P213-T187-ENG-CT-p52-L3-p58-L11]/[P213-T187-FRA-CT-p52-L27-p59-L13]
[2199] *See supra* paras. 569-571.
[2200] EVD-T-OTP-00832/CAR-OTP-0013-0106-at-0109
[2201] [P213-T187-ENG-CT-p24-L24-p27-L2]/[P213-T187-FRA-CT-p25-L13-p27-L21]

did not mention the civilian corpses or talk about the crimes but instead spoke to his troops in order to boost their morale.[2202]

700. At PK 12, Bemba failed to use his speech to the troops as an opportunity to address the crimes committed up until that point in the conflict.[2203] Bemba did generally mention discipline to his troops, however, such routine orders that were not enforced or mandated through meaningful follow-up, such as investigations and prosecutions, are insufficient and do not constitute all necessary and reasonable measures[2204] - especially in this case, where a lack of consequences significantly contributed to the risk that crimes would be committed. Surely, the ALC troops who heard him also noticed that Bemba took no action after his speech to ensure that crimes were genuinely punished. ALC troops knew there were no consequences for their crimes. Bemba's failure to punish could only have been seen by the ALC troops he addressed as Bemba's implicit acceptance that Bemba's speech mentioning discipline was not binding on them.[2205]

701. Bemba's ambiguous orders and actions emboldened the ALC units in CAR. This is most vividly proven through his order to Colonel Mustapha to "wipe out" or "clean out" (*balayer* in French) the village of Mongoumba.[2206] Before the attack on Mongoumba on 5 March 2003 Colonel Mustapha spoke with Bemba on their

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[2202] [P213-T187-ENG-CT-p24-L24-p27-L2]-L/[P213-T187-FRA-CT-p25-L13-p27-L21]
[2203] [P36-T215-ENG-CT-p21-L15]/[P36-T215-FRA-CT-p24-L19]; [P213-T187-ENG-CT-p27-L19-p28-L25]/[P213-T187-FRA-ET-p28-L15-p29-L18]
[2204] ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgement", 31 January 31, 2005, para. 374: "The International MilitaryTribunal for the Far East has held that a superior's duty may not be discharged by the issuance of routine orders and that more active steps may be required: The duty of an Army commander in such circumstances is not discharged by the mere issue of routine orders…[.] His duty is to take such steps and issue such orders as will prevent thereafter the commission of war crimes and to satisfy himself that such orders are being carried out."
[2205] ICTY, *Prosecutor v. Halilovic*, Case No. IT-01-48-T, "Judgement", 16 November 2005, para. 96. "[P]unishment is an inherent part of prevention of future crimes. It is insufficient for a commander to issue preventative orders or ensure systems are in place for the proper treatment of civilians or prisoners of war if subsequent breaches which may occur are not punished. This failure to punish on the part of a commander can only be seen by the troops to whom the preventative orders are issued as an implicit acceptance that such orders are not binding."
[2206] [P169-T136-ENG-CT-p34-L18]/[P169-T136-FRA-CT-p35-L2]

Thuraya phones.[2207] Mustapha was angry because members of his ostensible allies, CAR authorities, had taken pillaged items from ALC troops crossing into the DRC over the Ubangui River near Mongoumba where the CAR authorities were stationed.[2208] Mustapha told Bemba this story and Bemba ordered Mustapha to "wipe out" or "clean out" the village of Mongoumba in retaliation for the event.[2209] During the early morning hours of 5 March 2003, ALC units attacked the inhabitants of Mongoumba committing a series of serious crimes.[2210] After almost five months of conflict and hundreds of reports of serious crimes, Bemba simply told Mustapha to "wipe out" Mongoumba. Knowing that such orders would contribute to the risk of the commission of additional atrocities Bemba did not bother to clarify his order or ensure that IHL was respected.

702. Bemba's order to "wipe out" Mongoumba is primarily, but not only, based on the testimony of P169. However, P169's testimony is corroborated by the call records of Bemba's Thuraya phone and by the fact that Mongoumba was indeed "wiped out" by ALC forces on 5 March 2003.[2211] The call records show that Bemba called Mustapha at 21:15 hours on 4 March 2003.[2212] Then on the day of the attack, 5 March 2003, Bemba called Mustapha 16 times for a total of at least 17 minutes of conversation time.[2213] The call records indicate Bemba's persistence in trying to reach Mustapha on theday of the Mongoumba attack.[2214] These calls are consistent with P169's testimony, consistent with the attack, and consistent with Bemba's control and knowledge of the attack. Bemba's order to "wipe out" Mongoumba resulted in

[2207] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0915 (Item number 157); [P169-T136-ENG-CT-p34-L1]/[P169-T136-FRA-CT-p34-L22] (P169 puts the conversation toward the end of February);*see supra* describing how each number belongs to Bemba and Mustapha. *See supra* paras.569-571.
[2208] [P169-T137-ENG-CT-p48-p49]/[P169-T137-FRA-CT-p49]
[2209] [P169-T136-ENG-CT-p34-L18]/[P169-T136-FRA-CT-p35-L2]; [P169-T137-ENG-CT-p49-L13]/[P169-T137-FRA-CT-p50-L14]
[2210] *See supra* section on Mongoumba attack.
[2211] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0915 (Item number 157); *see supra* paras.569-571 (describing how each phone number belongs to Bemba and Mustapha)
[2212] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0915 (Item number 157)
[2213] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0915 (Item numbers 160, 165, 167-169, 173, 176-182, 184, 185, and 200)
[2214] EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0915 (Item numbers 170-172, 185)

numerous rapes, murders, and pillaging. Bemba knew that his order would cause this catastrophic result.

4. *Bemba failed to adopt subsequent preventative measures after being aware of previous crimes*

703. During the course of the conflict in CAR, Bemba had many opportunities to change course and put in place measures to prevent additional crimes from occurring. However, Bemba failed to do so even after he knew crimes were being committed or were about to be committed. The duty to prevent crimes is inherently related to the duty to punish them.[2215]

704. By at least 30 October 2002, a few days after the arrival of the first ALC troops in Bangui, Bemba was informed that his forces had committed crimes in CAR.[2216] Bemba stated that he immediately launched an investigation and Bemba ordered the arrest of seven ALC troops by ALC officers.[2217] The arrest of the seven troops demonstrates how quickly Bemba was able to gain knowledge of crimes committed in Bangui and how quickly he was able to order that measures be taken to arrest the perpetrators.

705. On 2 November 2002, Bemba met with President Patassé who informed him of the crimes and Bemba saw the aftermath of crimes committed by his forces while travelling by car to PK12 and PK22.[2218] Bemba also met with General Lamine Cissé in Bangui on that day. General Cissé reminded Bemba of the "bad memories" of pillage in 2001.[2219] After his 2 November 2002 visit to Bangui, having gained the knowledge of the crimes of his forces, Bemba did not take any genuine necessary and reasonable

[2215] *See* ICTY, *Prosecutor v. Halilovic*, Case No. IT-01-48-T, "Judgement", 16 November 2005, para. 96.
[2216] *See generally* EVD-T-OTP-00393/CAR-DEF-0002-0001
[2217] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2218] [P213-T187-ENG-CT-p19-L16-p20-L16]/[P213-T187-FRA-CT-p20-L13-p21-L12]
[2219] EVD-T-OTP-00444/CAR-OTP-0013-0053-at-0054

measures. At several other times Bemba knew about crimes but failed to take action.[2220]

706. Even prior to Bemba's knowledge of crimes being committed in 2002 and 2003, he was aware of allegations of ALC crimes committed in Bangui in May 2001. He knew that he had discipline problems among his forces at the highest levels. On 8 July 2001, Bemba claimed that the commander of the May 2001 operation had been arrested for "poor supervision of troops".[2221] Commander Bokolembe was the commander of the 2001 operation and was not arrested.[2222] Bemba's statement shows that he was well aware of the problem of troop supervision and that poor supervision could lead to the commission of crimes by ALC troops. After this statement Bemba took no subsequent preventative measures to ensure that the unit involved received disciplinary measures or additional training to prevent further misconduct.[2223] He was aware that if he did nothing the ALC troops' propensity to commit crimes either would stay static or, being emboldened by Bemba's failure to take any meaningful action, would increase and flourish in such an environment of permissiveness. Bemba understood this high risk and consciously chose not to mitigate it by implementing *any* measures, much less *all* necessary and reasonable ones, to prevent crimes from occurring.

707. Other MLC leaders knew of crimes in the Bangui 2001 operation. In January 2002, [REDACTED] spoke to a representative from Amnesty International after it reported that the ALC unit in Bangui committed rapes and pillage against Central African citizens during the 2001 operation.[2224] [REDACTED] stated that "as regards rapes committed by ALC troops who were operating in the Central African Republic,

[2220] *See supra* para.617.
[2221] EVD-T-OTP-00425/CAR-OTP-0008-0409
[2222] EVD-T-CHM-00028/CAR-OTP-0069-0372-at-0422; [D18-T319-ENG-ET-p42-L25]/[D18-T319-FRA-ET-p46-L6]
[2223] EVD-T-OTP-00450/CAR-OTP-0017-0349; EVD-T-OTP-00451/CAR-OTP-0017-0351 (note the absence of the record within the court-martial statistics)
[2224] EVD-T-OTP-00404/CAR-OTP-0004-0577-at-0592

I will do whatever I can to ensure that sanctions are taken against the supervisors of these troops and, moreover, some officers have already had sanctions imposed on them."[2225] There is no evidence, however, that what [REDACTED] said was actually true. There is no indication that anyone in the MLC was ever punished for crimes committed in the May 2001 Bangui operation. The court-martial statistics for the ALC[2226] contain no reference to any trials of alleged crimes committed by anyone in the 28th Battalion, the battalion that was in Bangui in 2001.[2227] There is no evidence that Bemba ever adopted subsequent preventative measures, such as additional training or additional orders, aimed at preventing these crimes from occurring in the future. A reasonable commander would have implemented measures aimed at preventing future crimes or allegations of crimes throughout his forces and especially within the 28th Battalion, the same battalion that would be used during the next operation in Bangui in 2002-2003.

708. At the time of the ALC's initial commission of crimes in Bangui in October 2002, Bemba had not convened any courts-martial charging rape, pillage, or murder.[2228] Bemba had the ability to refer rape cases to court-martial but despite serious prior allegations of rape had failed to do so.[2229] During the entire 2001-2003 period, there were at least 50 prosecutions of individuals for crimes that defied Bemba's power (such as treason), affected Bemba's money (such as embezzlement), and challenged Bemba's military authority (such as refusing to obey orders).[2230] These 50 individuals prosecuted constitute roughly half of the total number of 109 individuals prosecuted in ALC courts-martial.[2231] The court-martial statistics demonstrate Bemba's willingness and ability to punish behaviour that directly

[2225] EVD-T-OTP-00404/CAR-OTP-0004-0577-at-0592
[2226] EVD-T-OTP-00450/CAR-OTP-0017-0349; EVD-T-OTP-00451/CAR-OTP-0017-0351. The court martial statistics show a record of the ALC courts-martial conducted from 15 June 2001 until 19 February 2003.
[2227] EVD-T-CHM-00028/CAR-OTP-0069-0372-at-0422
[2228] EVD-T-OTP-00450/CAR-OTP-0017-0349; EVD-T-OTP-00451/CAR-OTP-0017-0351
[2229] EVD-T-OTP-00404/CAR-OTP-0004-0577-at-0591-0592
[2230] EVD-T-OTP-00450/CAR-OTP-0017-0349; EVD-T-OTP-00451/CAR-OTP-0017-0351
[2231] EVD-T-OTP-00450/CAR-OTP-0017-0349; EVD-T-OTP-00451/CAR-OTP-0017-0351; 27 individuals were prosecuted on 18 February 2003: EVD-T-OTP-00594/DRC-OTP-0100-0315-at-0348

affected his power leaving allegations of rape, pillage and murder unaddressed. Bemba's men understood Bemba's failure to punish crimes such as rape, despite Bemba having known of allegations of rape, as tacit acceptance of rape and other unaddressed crimes.[2232]

709. Bemba's men knew that Bemba condoned and tolerated rape. Despite hundreds of allegations of rape during Bemba's time as Commander-in-Chief of the ALC there is only one record of an ALC court-martial for rape.[2233] And that court-martial could not have had a general deterrent effect on crimes in CAR since the trial did not occur until 6 January 2003, more than two months into the armed conflict in CAR. Indeed, though rape was rampant within the ALC, P36 could not recall a specific case dealing with the punishment of a rape.[2234]

710. Bemba knew first-hand that his failure to take measures to repress and punish crimes affected the commission of future crimes. Bemba's unwillingness to investigate and prosecute rape led to additional rapes. Situation Reports (SITREPS) in ALC communication logbooks establish Bemba's failure.[2235] On 7 September 2002, the ALC commander of Isiro sector reported to Bemba that an ALC unit in Poko, DRC had been involved in the "rape of girls" including a 12 year old girl.[2236] Bemba failed to act and on 24 September 2002, General Bule sent a message directly to Bemba stating that an ALC officer (PL or platoon leader) reported that the same ALC

[2232] ICTR, *Prosecutor v Bagilishema*, Case No. ICTR-95-1A-T, "Judgement", 7 June 2001, para. 50: "The Chamber is of the view that, in the case of failure to punish, a superior's responsibility may arise from his or her failure to create or sustain among the persons under his or her control, an environment of discipline and respect for the law. For example, in Celebici, the Trial Chamber cited evidence that Mucic, the accused prison warden, never punished guards, was frequently absent from the camp at night, and failed to enforce any instructions he did happen to give out. In Blaskic, the accused had led his subordinates to understand that certain types of illegal conduct were acceptable and would not result in punishment. Both Mucic and Blaskic tolerated indiscipline among their subordinates, causing them to believe that acts in disregard of the dictates of humanitarian law would go unpunished. It follows that command responsibility for failure to punish may be triggered by a broadly based pattern of conduct by a superior, which in effect encourages the commission of atrocities by his or her subordinates."
[2233] EVD-T-OTP-00451/CAR-OTP-0017-0351-at-0354
[2234] [P36-T215-ENG-ET-p31-L2]/[P36-T215-FRA-ET-p28-L28]
[2235] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1550-1551
[2236] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1523

unit had committed numerous "human rights violations" including rapes of girls and women.[2237] General Bule went on to state that the ALC unit that committed the rapes was the same unit that was in a previous report about crimes at Poko.[2238] Both the Isiro sector commander and Bule's reports of human rights violations and multiple rapes of girls and women were left unaddressed. There were no investigations or prosecutions addressing the reported crimes of which Bemba clearly had knowledge.[2239]

711. Bemba's failure to take measures against past crimes significantly increased the risk that the same crimes would be repeated in the future. Indeed, Bemba's troops' commission of crimes was widespread and prevalent because they had no reason to fear punishment.

5. *Bemba's failures to prevent crimes created of a climate of toleration of crimes*

712. Bemba fostered a command climate that tolerated ALC troops speaking openly about rape occurring in CAR.[2240] P213 stated that his friends in the ALC joked openly about going from door to door and raping women and children in CAR.[2241] They spoke about rape without fear of reprisal or punishment.[2242] P213 concludes that the rapes happened on a large scale based on the stories told to him.[2243] The atrocious stories told by P213's friends are entirely consistent with what actually happened: the ALC units in CAR openly committed rape on a widespread basis.

[2237] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1550-1551
[2238] EVD-T-OTP-00702/CAR-D04-0002-1514-at-1550-1551
[2239] EVD-T-OTP-00450/CAR-OTP-0017-0349; EVD-T-OTP-00451/CAR-OTP-0017-0351
[2240] [P213-T187-ENG-CT-p33-p34-L1]/[P213-T187-FRA-CT-p34-L1]
[2241] [P213-T187-ENG-CT-p33-p34-L1]/[P213-T187-FRA-CT-p34-L1]
[2242] [P213-T187-ENG-CT-p35-L1]/[P213-T187-FRA-CT-p36-L1]
[2243] [P213-T187-ENG-CT-p33-p34]/[P213-T187-FRA-CT-p34-L1]

713. Bemba was not concerned with preventing crimes but rather with expediency, military wins, and political gains.[2244] When asked by Patassé why his men committed crimes, Bemba brushed his question off and replied that he had a disciplined army and that the "army has to perform its task in a very brief period of time."[2245] Bemba was also concerned that if he punished his forces they would desert his cause. P45 highlighted the ALC's fear that punishing soldiers who have an "empty tummy" would lead to desertion.[2246]

714. Bemba's command climate allowed for rampant impunity with regard to pillage. P213 stated that once a town or locality was occupied ALC troops were entitled to "loot" civilian property for one day and the Code of Conduct would only apply after one day of permitted looting.[2247] This pillaging commonly occurred and was a reward for ALC troops who did not receive any payment for their services to the ALC. P213's testimony is supported by the ambiguity of the Code of Conduct itself, which condoned the taking of "war booty" and provided no guidance to the ALC as to what "war booty" may constitute.[2248] Tolerating such behaviour greatly contributed to impunity for other crimes as well. Once ALC troops understood the expected standards of behaviour to be flexible they understood they could commit other crimes with impunity.

715. Bemba condoned acts of pillage in Bangui. P33 stated that Bemba provided a list of personnel to whom vehicles pillaged in Bangui were to be distributed among his subordinates.[2249] P33 was able to identify the pillaged vehicles by make, model, and colour.[2250] CAR-OTP-0035-0282, for example, clearly shows one of the vehicles

[2244] [P45-T201-ENG-CT-p51-L11]/[P45-T201-FRA-CT-p57-L4]
[2245] [P213-T187-ENG-CT-p21-L13]/[P213-T187-FRA-CT-p22-L8]
[2246] [P45-T201-ENG-CT-p50-L5]/[P45-T201-FRA-CT-p55-L25]
[2247] [P213-T187-ENG-CT-p54-p58]/[P213-T187-FRA-CT-p55-L20]
[2248] EVD-T-OTP-00700/CAR-DEF-0001-0161-at-0163
[2249] [P33-T159-ENG-CT-p42-L15]/[P33-T159-FRA-CT-p43-L28]
[2250] [P33-T159-ENG-CT-p43-L12]/[P33-T159-FRA-CT-p44-L25-L28]

matching the description P33 gave. His condoning of the crime of pillage certainly contributed to the commission of pillage rather than preventing it.

716. Bemba failed to provide payment to ALC troops,[2251] which exponentially increased the risk that they would steal to provide for themselves.[2252] Bemba knew that lack of payment substantially increased the risk that his forces would commit crimes.[2253] Bemba knew this risk had previously materialized in DRC where the ALC had "ransomed" the civilian population.[2254] The food provided to the ALC in CAR - beans, fou fou, and palm oil[2255] was not sufficient to provide for the troops' needs and they pillaged animals to supplement their food.[2256] The lack of payment and adequate food fostered a climate described as "Article 15" where one had to look out for oneself and steal what was needed to live.[2257] Indeed, P119, a Central African witness, who had no familiarity with the term 'Article 15' testified that one of Bemba's men told her that Bemba had instructed his troops to apply Article 15 in CAR.[2258] Once the ALC troops realized that stealing for survival was expected of them, they also stole for personal gain. Their unchecked criminality and breakdown of discipline allowed them to believe that they were entitled to take whatever they pleased, including chastity and lives.

717. Bemba speeches to and meetings with the troops at PK 12[2259] and PK 22[2260] were perfect opportunities for him, being fully aware of crimes committed and impending

[2251] [P45-T201-ENG-CT-p47-L1]/[P45-T201-FRA-CT-p52-L11]; [P33-T159-ENG-CT-p36-L22]/[P33-T159-FRA-CT-p38-L10]; [P36-T213-ENG-CT-p30-L7]/[P36-T213-FRA-CT-p30-L26]
[2252] [P213-T187-ENG-CT-p50-L1]/[P213-T187-FRA-CT-p51-L1]; [P36-T213-ENG-CT-p30-L7]/[P36-T213-FRA-CT-p30-L26]
[2253] [P45-T201-ENG-CT-p49-L3]/[P45-T201-FRA-CT-p54-L21]
[2254] [P45-T201-ENG-CT-p47-48-L18]/[P45-T201-FRA-CT-p52-L11]
[2255] [P36-T216-ENG-CT-p12-L5-20]/[P36-T216-FRA-CT-p16-L10]
[2256] [P36-T216-ENG-CT-p12-L5-20]/[P36-T216-FRA-CT-p16-L10]
[2257] [P45-T202-ENG-CT-p5-L4]/[P45-T202-FRA-CT-p5-L20]
[2258] [P119-T82-ENG-CT-p34-L1]/[P119-T82-FRA-CT-p34-L3]
[2259] [P213-T186-ENG-ET-p62-L5]/[P213-T186-FRA-ET-p64-L1]
[2260] [P213-T187-ENG-CT-p5-L9]/[P213-T187-FRA-CT-p5-L1]

crimes, to put a stop to them. On 2 November 2002,[2261] Bemba had just seen at PK 12 unarmed[2262] male and female[2263] civilian corpses,[2264] [REDACTED].[2265] This occurred on the road to PK 12 but Bemba did not raise the topic in his speech to the troops at PK 12 - "He did not mention the bodies."[2266] Bemba said, "I want you to continue with this work and to complete the work."[2267] Bemba didn't criticize them for anything.[2268]

718. Bemba refused to take any action above and beyond his perfunctory speech on discipline to his troops. [REDACTED].[2269] [REDACTED].[2270] No commander was relieved of his duties. Instead, he decided to defend his commanders' actions in the media and in correspondence to the UN and FIDH and, later, confirmed their promotions.[2271]

719. Rather than disciplining commanders by dismissing them relieving them of their command or demoting them, Bemba took measures to encourage impunity. Bemba could have withheld the promotion of Colonel Mustapha, the ALC brigade commander in CAR; instead Bemba pinned the Colonel rank on Mustapha's epaulettes himself in March 2003.[2272] Withholding the promotion from Mustapha and instructing him to properly control Bemba's Echo Brigade in order to later receive the promotion would have been at least one reasonable measure to prevent crimes. Bemba failed to do so.

[2261] EVD-T-OTP-00575/CAR-OTP-0031-0093,Track 5-at min.01:24; EVD-T-CHM-00015/CAR-OTP-0036-0039
[2262] [P213-T187-ENG-CT-p23-L7]/[P213-T187-FRA-CT-p23-L26]
[2263] [P213-T187-ENG-CT-p23-L13]/[P213-T187-FRA-CT-p24-L1]
[2264] [P213-T187-ENG-CT-p22-L3]/[P213-T187-FRA-CT-p22-L21]
[2265] [REDACTED]
[2266] [P213-T187-ENG-CT-p21-L20]/[P213-T187-FRA-CT-p22-L14]
[2267] [P213-T187-ENG-CT-p21-L21]/[P213-T187-FRA-CT-p22-L15]
[2268] [P213-T187-ENG-CT-p21-L22]/[P213-T187-FRA-CT-p22-L16]
[2269] [REDACTED]
[2270] [REDACTED]
[2271] EVD-T-OTP-00727/CAR-OTP-0046-0111 ;[P15-T207-ENG-CT-p27-L14]/[P15-T207-FRA-ET-p28-L17]; EVD-T-OTP-00832/CAR-OTP-0013-0106-at-0109.
[2272] EVD-T-OTP-00727/CAR-OTP-0046-0111

720. Crimes were committed by the ALC troops in the presence of their commanders, who supported them, took no action to stop them or, on other occasions, actively participated in their commission. The proceeds of pillaging were carried away by ALC troops in public and in plain (video-taped) view.[2273] This flagrant disregard of law and discipline running at different levels in the ALC forces[2274] is another indication of Bemba's failure to put in place a proper mechanism to ensure effective compliance with international humanitarian law and discipline by his troops, and to enable him to fulfil his duty to repress the crimes.

721. Perhaps nothing shows Bemba's refusal to prevent crimes more than the attack in Mongoumba in March 2003. After having heard about and seen crimes for months, Bemba ordered Colonel Mustapha to "wipe out" Mongoumba. This order, without any clarification or an accompanying order to ensure compliance with IHL, was tantamount to an order to commit the very crimes the same ALC forces had committed in the previous months. Having never been genuinely punished for their actions, the ALC troops took Bemba's order as a continuing and clear authorization for the ALC troops to commit rape, murder, and pillage on a mass scale in their devastation of the town of Mongoumba. Bemba's order to "wipe out" the town of Mongoumba was not simply the irresponsible or negligent words of the Commander-in-Chief, but a signal to the ALC troops that all their previous criminal activity was condoned and approved by the MLC chain of command. The order also clearly shows that any past measures Bemba took were deceptions designed only to give the appearance that Bemba was controlling his forces' behaviour appropriately as required by law. With this incident, Bemba's actions legally fulfilled all elements of Article 28.[2275] The incident proves he had control, knowledge, and that, in taking

[2273] EVD-T-OTP-00345/CAR-OTP-0039-0058-at-0060-video-at-minutes 17:45-and-29:07
[2274] [P173-T144-ENG-CT-p32-L14]/[P173-T144-FRA-CT-p33-L20]
[2275] ICTR, *Prosecutor v Kayishema and Ruzindana*, Case No. ICTR-95-1-T, "Judgement", 21 May, 1999, paras. 223-224: It is only necessary to consider whether the accused "knew or had reason to know and failed to prevent

no measure to prevent the crimes, gave his forces further license to commit rape, pillage, and murder.

B. Bemba failed to take all necessary and reasonable measures within his power to repress the commission of crimes by his troops

722. The duty to "repress" includes a duty on the person effectively acting as a military commander to stop ongoing crimes from continuing to be committed.[2276] As stated by the Pre-Trial Chamber in its Confirmation Decision, "[i]t is the obligation to 'interrupt a possible chain effect, which may lead to other similar events'".[2277] The duty to repress also includes a duty to punish forces after the commission of crimes. The Pre-Trial Chamber also held that the duty to punish "may be fulfilled in two different ways: either by the superior himself, taking the necessary and reasonable measures to punish his forces, or, if he does not have the ability to do so, by referring the matter to the competent authorities."[2278] A commander must make every reasonable effort (take all necessary and reasonable measures) to repress crimes in a genuine manner.[2279] Thus, the implementation of sham measures or measures calculated to exonerate the commander's subordinates is a failure to take measures to repress crimes. Rather it implicitly encourages their continued commission. In circumstances where the perpetrators know of the implementation of sham measures they will understand them signalling the commander's willing promotion or emboldening of their conduct, which exacerbates the commission of crimes.[2280]

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or punish the commission of the crimes" when he did not in fact order them. When the accused ordered the crimes, "then it becomes unnecessary to consider whether he tried to prevent; and irrelevant whether he tried to punish." "However, in all other circumstances, the Chamber must give full consideration to the elements of 'knowledge' and 'failure to prevent and punish'".

[2276] Confirmation Decision para. 439 (citations omitted).

[2277] Confirmation Decision para. 439 citing R. Arnold in : O. Triffterer (ed.), Commentary on the Rome Statute of the International Criminal Court,-Observers'Notes, Article by Article, (Nomos Verlag 2nd ed., 2008), p. 838.

[2278] Confirmation Decision para. 440 (emphasis added) (citations omitted).

[2279] *See* ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-A, "Appeals Chamber Judgment", 17 July 2008, paras. 220-239 (affirming the Trial Chamber finding that measures to repress must be genuine and not a sham.") ICTY *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgment", 31 January 2005, paras. 172-175 and 435-445.

[2280] ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Appeals Chamber Judgment", 17 July 2008, para. 301 (stressing "that a superior's failure to punish a crime of which he has actual knowledge is likely to be understood

1. *Bemba failed to take all measures available to him*

723. As the ALC Commander-in-Chief, Bemba had the full power to implement several feasible disciplinary and investigatory measures that were capable of repressing and punishing the charged crimes. Bemba's range of powers included the power to order investigations,[2281] arrests,[2282] detentions,[2283] the dismissal of his soldiers,[2284] and convening of courts-martial within the MLC's military judicial system.[2285] Bemba also had the power to overturn court-martial acquittals and find an accused guilty when the court-martial failed to do so.[2286] In the spectrum of powers military commanders may possess, Bemba was at the pinnacle of power as the ALC Commander-in-Chief. Bemba was able to order that the above measures be carried out rapidly.[2287]

724. Furthermore, there were no impediments to Bemba ordering investigations and prosecutions of his forces in the CAR. The military and civilian court systems were functioning and the ALC/MLC had the capability of carrying out investigations in the CAR.[2288] The justice systems in MLC controlled territory were not perfect, but they were fully functioning and capable of rendering justice.[2289] But Bemba had no intention of pursuing genuine justice.[2290]

725. Notwithstanding Bemba's power to repress crimes and his awareness and acknowledgement of the crimes committed by his subordinates, he failed to repress

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by his subordinates at least as acceptance, if not encouragement, of such conduct with the effect of increasing the risk of new crimes being committed.").
[2281] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156; EVD-T-OTP-00701/CAR-D04-0002-1511
[2282] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2283] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2284] [P36-T215-ENG-CT-p18-L5]/[P36-T215-FRA-CT-p16-L13]
[2285] EVD-T-OTP-00697/CAR-DEF-0002-0580; EVD-T-OTP-00393/CAR-DEF-0002-0001
[2286] [P45-T201-ENG-CT-p58-L1]/[P45-T201-FRA-CT-p64-L9]
[2287] [P45-T202-ENG-CT-p8-L6]/[P45-T202-FRA-CT-p9-L2]
[2288] [D48-T267-ENG-CT-p84-L13-p85-L10]/[D48-T267-FRA-CT-p92-L18-p93-L20]
[2289] [D48-T268-ENG-CT-p5-L18-p6-L21]/[D48-T268-FRA-ET-p6-L6]
[2290] [P33-T159-ENG-CT-p8-L7]/[P33-T159-FRA-CT-p8-L23]

crimes by conducting proper investigations to identify and punish the perpetrators. During the entire conflict and the period thereafter only two processes were undertaken that had the capacity to constitute measures to repress crimes. However, once the facts of the inquiries are scrutinized it is clear that the measures were not reasonable or genuine and did not fulfil the legal requirement that he take all necessary and reasonable measures to repress the commission of crime.

726. The first process undertaken by Bemba was an investigation resulting in the arrest in Bangui of seven soldiers who were later subject to a sham trial, on charges related to insubordination, attempted extortion and robbery.[2291] The second process was an investigation into pillage in Zongo, DRC, which resulted in no disciplinary action by Bemba. These two processes, described below in more detail, only related to the crime of pillage and not to the more serious crimes of rape and murder.

727. There were no investigations related to the more serious crimes of rape or murder,[2292] despite the allegations of rape that Bemba received.[2293] There were no other actions taken that could be plausibility characterized as measures under Article 28(a)(ii).[2294]

2. *"Investigation", Arrest and "Trial" of seven ALC soldiers*

728. After hearing of ALC violations of human rights in CAR on the radio, Bemba ordered a commission of inquiry ("Bangui Inquiry") into the events.[2295] On 30 October 2002, Lieutenant Colonel Romain Mondonga, Captain Augustin Gbendo

[2291] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0049-0054; EVD-T-OTP-00451/CAR-OTP-0017-0351-at-0353
[2292] EVD-T-OTP-00451/CAR-OTP-0017-0351-at-0353; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0049-0054
[2293] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0049-0054
[2294] [P45-T202-ENG-CT-p18-L1]/[P45-T202-FRA-CT-p20-L6]; [P36-T215-ENG-CT-p16-L11]/[P36-T215-FRA-CT-p14-L27];[D19-T289-ENG-CT-p2-L24-p3-L3]/[D19-T289-FRA-CT-p3-L3] (D-19, a witness who took pains to design his testimony to assist Bemba, readily admitted that during the entire course of the conflict the only arrests for crimes were the arrests of the seven ALC soldiers at the beginning of the conflict.
[2295] EVD-T-OTP-00391/CAR-DEF-0001-0152

and three other ALC officers to Bangui.[2296] In Bangui the investigators were to investigate rumours of pillage committed by ALC leaders and soldiers of the 28th Battalion of Zongo.[2297] Bemba ordered the arrest of ALC soldiers for contravening orders and Colonel Mustapha quickly arrested seven ALC soldiers.[2298] The Bangui Inquiry provided only statements of the suspects as evidence for the judicial dossier.[2299] The seven accused were charged with violations of orders,[2300] robbery, and the attempted extortion of goods including 10 litres of petrol, some aspirin, 60 Euros, a bottle of perfume, three compact discs, and two mobile phones.[2301] On 7 December 2002, the seven accused were tried by court-martial where they were convicted and received sentences ranging from three to twenty-four months.[2302] After the trial was over and the international attention faded, Bemba released the seven accused after they spent, at most, a few months in confinement.[2303]

729. Both the investigation and court-martial were seriously flawed, not effective, and did not constitute a reasonable measure under Article 28.[2304] The investigative and judicial process conducted presented no guarantees of impartiality and independence from Bemba and were characterized by many irregularities. The investigation was flawed for numerous reasons: no CAR victims or witnesses were interviewed, no non-suspect ALC soldiers were interviewed, no physical evidence was collected, the responsibility of commanders was not investigated, the most

[2296] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2297] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0002
[2298] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364 and EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0049
[2299] *See generally* EVD-T-OTP-00393/CAR-DEF-0002-0001
[2300] That ALC forces could be charged with violating ALC orders shows that the orders were binding and indicative of Bemba's effective authority and control.
[2301] EVD-T-OTP-00711/CAR-OTP-0017-0358
[2302] EVD-T-OTP-00711/CAR-OTP-0017-0358
[2303] [P45-T202-ENG-CT-p13-L5]/[P45-T202-FRA-CT-p14-L17]
[2304] ICTY, *Prosecutor v. Limaj et al.*, (Trial Chamber), Case No. IT-03-66-T, "Judgement", 30 November 30, 2005, para. 529: "A superior's duty to punish the perpetrators of a crime encompasses the obligation to conduct an effective (emphasis added) investigation with a view to establishing the facts. The obligation on the part of the superior is to take active steps to ensure that the perpetrators will be punished. To that end, the superior may exercise his own powers of sanction, or if he lacks such powers, report the perpetrators to the competent authorities."

serious crimes of rape and murder were not investigated, and the accused were not represented by counsel during questioning.[2305]

730. The court-martial process was seriously flawed as well: the trial date was set before the investigative report or dossier was forwarded to the prosecutor,[2306] the accused were notified of their 09:00 hours trial the morning of trial on 5 December 2002 at 06:00 hours,[2307] no witnesses testified and no evidence other than the statements of the suspects was used for the conviction.[2308] The accused were all represented by the same unlicensed counsel.[2309] Additionally, the charged offences were not offences that would have normally resulted in an ALC court-martial.[2310] The judges lacked legal training and independence since the military officers of the panel, General Bule, Colonel Mongapa, Lieutenant Colonel Makutano, and Major J.P. Wabo, all fell under Bemba's military chain of command and, without any mechanism to prevent Bemba's influence, were obliged to follow the orders of their Commander-in-Chief.[2311] The judges were there simply to implement orders from Bemba.[2312]

731. The combined irregularities clearly show that the entire process was not consistent with basic due process. In order for a prosecution of crimes to be reasonable under Article 28, the procedures used should at least comport with the minimum requirements of a fair trial.[2313] However, the dossier shows a myriad of

[2305] EVD-T-OTP-00393/CAR-DEF-0002-0001
[2306] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0001 (document finalized on 27 November 2002)-and-at-0098 trial set on 26 November 2002.
[2307] EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0067-0073
[2308] EVD-T-OTP-00393/CAR-DEF-0002-0001
[2309] EVD-T-OTP-00393/CAR-DEF-0002-0001
[2310] [P45-T204-ENG-CT-p36-L25-p40-L3]/[P45-T204-FRA-CT-p41-L14-p45-L14]
[2311] EVD-T-OTP-00700/CAR-DEF-0001-0161
[2312] [P33-T159-ENG-CT-p7-L19-p8-L6]/[P33-T159-FRA-CT-p8-L5]
[2313] *See* ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-A, "Appeals Chamber Judgment", 17 July 2008, paras. 220-239 (affirming the Trial Chamber finding that measures to repress must be genuine and not a sham."); ICTY *Prosecutor v. Strugar*, Case No. IT-01-42-T, "Judgment", 31 January 2005, paras. 172-175 and 435-445.

irregularities and violations of basic procedural fairness so far below this standard, as to make impossible to consider the trial itself a reasonable measure.

732. The trial was not genuine or intended to be genuine. Rather it was a show-trial for the international media.[2314] The early release of the convicted persons was yet another factor demonstrating the duplicity and unreasonableness of the Bemba actions. Bemba felt that the charges were unfounded and due to a vilification campaign launched by the French. He therefore released the convicted persons before they completed their sentences.[2315]

733. Bemba ordered the arrests, investigation, and trial to simply create an image of accountability and to provide cover for his inaction. [2316] His own knowledge and distribution of pillaged vehicles[2317] demonstrates his willingness to condone the crime of pillage rather than punish its commission.

734. P45 testified about the early release of the seven convicted persons and his testimony is independently supported by P213's testimony. During his testimony P213 mentioned "Captain Willy" [REDACTED] who was court-martialled due to events in Bangui.[2318] He confirmed that "Captain Willy" was Willy Bomengo.[2319] While not having any specific knowledge of the court-martial or of the DCC of the Prosecution that Bomengo was released prior to serving his 24 month sentence, P213 unknowingly volunteered that Bomengo did not serve his sentence when P213 stated that he went with Willy to Kinshasa during the transition, which occurred in mid-

[2314] [P15-T208-ENG-CT-p6-L17]/[P15-T208-FRA-CT-p7-L1] (P15 was referring specifically to the 18 February 2003 trial but his reasoning extends to the trial of 5-7 December 2002 as well).
[2315] [P45-T202-ENG-CT-p14-L3]/[P45-T202-FRA-CT-p25-L21]
[2316] [P33-T159-ENG-CT-p9-L11]/[P33-T159-FRA-CT-p10-L1]; [P213-T188-ENG-CT-p44-L14-p45-L1]/[P213-T188-FRA-CT-p45-L9]
[2317] [P33-T159-ENG-CT-p42-L15]/[P33-T159-FRA-CT-p43-L28]
[2318] [P213-T187-ENG-CT-p37-L13]/[P213-T187-FRA-CT-p38-L19]
[2319] [P213-T187-ENG-CT-p62-L14]/[P213-T187-FRA-CT-p63-L18]

2003.[2320] According to the sentence Bomengo received he should have been confined until October 2004. However, Bomengo never served 24 months. As General Opande pointed out this type of "punishment" resulted in the encouragement of crimes and that it was inapposite to discipline.[2321] The Bangui Inquiry and the prosecutions pursuant to its actions to "investigate" were sham proceedings and did not excuse Bemba of his legal duty to take all necessary and reasonable measures to repress crimes.

3. *Zongo "Inquiry" of December 2003*

735. Between 26-28 December 2002 a commission of inquiry ("Zongo Inquiry") was established to investigate allegations of pillage in Zongo.[2322] The Zongo Inquiry was established pursuant to Bemba's order.[2323] The summary report of the Zongo Inquiry lists information about the composition of the commission, the circumstances leading to the opening of the inquiry, the course of the inquiry, and the findings of the inquiry.[2324]

736. The genesis of the Zongo Inquiry was that Bemba and other MLC members had heard RFI radio reports of pillaging and rape in Bangui.[2325] The inquiry also mentions that Bemba had ordered the previous Bangui Inquiry and that Bemba had referred the Bangui Inquiry's investigation to a court-marital.[2326] The Zongo Inquiry was composed of five MLC officials and the actual inquiry was conducted by Pascal Zanzu Sele and Jean Kamba Tujibikile, the presiding judge and prosecutor, respectively, of the 5-7 December 2002 court-martial in Gbadolite.[2327] The judge and

[2320] [P213-T187-ENG-CT-p61-L9]/[P213-T187-FRA-CT-p62-L13]; [P45-T203-ENG-CT-p39-L8-p40-L7]/[P45-T203-FRA-CT-p42-L2]
[2321] [P219-T198-ENG-CT-p41-L17]/[P219-T198-FRA-CT-p46-L8]
[2322] EVD-T-OTP-00392/CAR-DEF-0001-0155
[2323] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156
[2324] EVD-T-OTP-00392/CAR-DEF-0001-0155
[2325] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156
[2326] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156
[2327] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158

prosecutor interviewed eight prominent MLC officials in Zongo about pillaging, but did not interview ALC soldiers despite having brought Colonel Mongapa in order to summon ALC soldiers for interviews.[2328]

737. The inquiry found no evidence to establish "from a legal standpoint" that ALC soldiers had committed the crime of pillaging.[2329] The findings of the inquiry go on to state imply that the allegations could be blamed on a demonization campaign conducted by Central African opponents and France who were hostile to the MLC's intervention in CAR and to Patassé.[2330] The Zongo Inquiry was completed on 3 January 2003 and forwarded to Bemba by at least 4 January 2003 when he used the findings to report to General Lamine Cissé, the Special Representative of the UN Secretary General in Bangui, that the allegations of crimes were due to misinformation meant to manipulate public opinion.[2331]

738. The Zongo Inquiry was not genuine and thus not a "reasonable" measure. Rather it was a clear attempt to vindicate the ALC and to whitewash its actions in the CAR. The investigation enabled Bemba to claim to General Cissé and the UN that he had investigated the matter and that the allegations of crimes were an attempt to manipulate public opinion.[2332] Bemba stated this to General Cissé knowing that the crimes of rape and murder were never addressed by *any* investigation, sham or not. The findings of the investigation are on their face implausible since the Zongo Inquiry was limited to the geographic area of Zongo and limited to interviews with eight MLC officials. Further the findings are unsupported by the summaries of interviews conducted – not one person stated that the allegations were untrue and cooked up by France or Central African opponents as the investigators concluded.

[2328] [D48-T267-ENG-CT-p36-L15]/[D48-T267-FRA-CT-p40-L22]; EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0156-0158
[2329] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158
[2330] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158
[2331] [D48-T267-ENG-CT-p53-L19-p54-L11]/[D48-T267-FRA-CT-p59-L20]; EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158; EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364
[2332] EVD-T-OTP-00453/ CAR-OTP-0017-0363-at-0364

739. The report says that the RFI alleged rape and pillaging but the report does not even purport to address the crime of rape at all. Despite not having investigated the matter of rape, Bemba used the report from the Zongo Inquiry to conclude, unreasonably, that the information related to crimes was due to misinformation.[2333] The rest of the report of the Zongo Inquiry discusses interviews with MLC officials in Zongo but not Bangui and the rest of the ALC locations in CAR, where the crimes had taken place. No investigator actually took the "reasonable" step to cross the Ubangui River to Bangui, which is less than a kilometre from Zongo, to investigate anything in the CAR, interview victims, visit hospitals and morgues, or interview ALC officers and soldiers. Despite having brought Colonel Mongapa for the express purpose of summoning ALC soldiers, the commission failed to do so.

740. In Bangui and the rest of the CAR Zongo Inquiry investigators would have likely seen scenes similar to those depicted in a video showing ALC troops openly pillaging.[2334] Bemba knew ALC troops habitually pillaged due to reports and due in part to his lack of enforcement and due to their lack of training and payment.[2335] But more than any other reason, Bemba knew that his troops were pillaging and would continue to pillage because he was complicit in pillaging. In Gbadolite, Bemba distributed pillaged cars from CAR. Additionally, Bemba's strategy to avoid a mutiny or mass desertion was to provide his troops with the opportunity to take what they called war booty.[2336]

741. Pascal Zanzu and Jean Kamba, who knew pillage had already occurred since they both were involved in the Gbadolite court-martial of seven ALC troops for

[2333] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364
[2334] EVD-T-OTP-00345/CAR-OTP-0039-0058-at-0060 (video-at-minutes 17:45 and 29:07)
[2335] *See e.g.* EVD-T-OTP-00702/CAR-D04-0002-1514-at-1522-1523-1546. (Messages showing reports of pillage).
[2336] [P45-T201-ENG-CT-p50-L5]/[P45-T201-FRA-CT-p55-L25] "Of course, it's very difficult to punish a soldier who has an empty tummy because otherwise they are all going to desert."

conduct related to pillage in the CAR, nevertheless concluded otherwise in their report.[2337] They interviewed Papy Boukula, the commander in charge of intelligence at the Zongo outpost.[2338] [REDACTED].[2339] [REDACTED].[2340] Yoko Godaba, the President of the piroguiers, reported information about one of the vehicles to Zanzu and Kamba, the two investigators.[2341] Thus, the reference in the Zongo Inquiry to a "demonization campaign" as the explanation for the reports of pillage was not founded in fact. [REDACTED][2342] and of the pillaged vehicles.[2343]

742. To conclude this section, Bemba took only two actions that could be capable of constituting measures to repress the crime of pillage. However, neither action was calculated to repress the crime of pillage. Instead Bemba cynically used the powers available to him to create sham investigations and prosecutions in a manipulative attempt to claim he had addressed the problem and to divert international attention from ALC crimes being committed in CAR. Additionally, Bemba's actions to embolden and promote crimes supports that all of his other actions to "repress" amounted to a disingenuous sham. Thus Bemba's actions do not fulfil any of the "all", "necessary" or "reasonable" requirements in Article 28(a)(ii).

743. Bemba's actions to address crimes were disingenuous. However assuming *arguendo* that Bemba's two actions constituted reasonable measures under Article 28(a)(ii) these actions were wholly inadequate, faulty, and disproportionate to address the mass crimes that had taken place and were continuing to take place in CAR.[2344] Had Bemba's actions constituted two examples of necessary and reasonable

[2337] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0158; EVD-T-OTP-00393/CAR-DEF-0002-0001-at-0054
[2338] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0157
[2339] [REDACTED]
[2340] [REDACTED]
[2341] EVD-T-OTP-00392/CAR-DEF-0001-0155-at-0157
[2342] [REDACTED]
[2343] [P33-T159-ENG-CT-p37-L13-p38-L8]/[P33-T159-FRA-CT-p38-L24]
[2344] [P36-T215-ENG-CT-p17-L17]/[P36-T215-FRA-CT-p15-L28]; Even P36 stated that he regarded the measures taken to punish to be insufficient. Due to his high level within the MLC P36 has an obvious incentive to minimize the failure to properly repress crimes but yet admits that the measures were insufficient, that officers

measures, Bemba still failed to take "all" necessary and reasonable measures within his power to repress the commission of crimes. As established above, Bemba had a significant degree of effective authority and control to prevent and repress the ALC's commission of crimes in CAR. Bemba's two actions of the Bangui Inquiry and the Zongo Inquiry, though manifestly unreasonable, were the only arguably plausible measures taken during the entire course of the five month conflict.[2345] At best, Bemba's actions could only be said to have addressed a small percentage of the crimes of pillage, but not the crimes of rape and murder since none of Bemba's actions addressed or pretended to address the ALC commission of the crimes of rape and murder.

4. *The Propaganda Video at Sibut*

744. On or about 20 February 2003 an MLC delegation along with journalists arrived in Sibut to shoot a video intended to exonerate the MLC and blame the Bozizé forces for crimes.[2346] The approximately one hour-long video shows members of the Sibut community and shows interviews with prominent members of that community.[2347] The video is plainly a piece of self-serving MLC propaganda. The MLC officials present at Sibut failed to remove armed suspected perpetrators from interview scenes with potential victims.[2348] The video clearly shows ALC troops walking around the general area where the interviews took place.[2349] No genuine attempt to investigate alleged crimes would allow the perpetrators of the crime to be in a position to influence or intimidate the persons to be interviewed. After the helicopter left with the video equipment the armed ALC troops were still in Sibut and the

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weren't replaced, and that Bemba was satisfied that he had fulfilled his duty to repress crimes by having established the commission that, in fact, only investigated pillaged that had occurred during the first few days of the conflict.

[2345] [P45-T202-ENG-CT-p18-L1]/[P45-T202-FRA-CT-p20-L6]; [P36-T215-ENG-CT-p16-L11]/[P36-T215-FRA-CT-p14-L13]

[2346] EVD-T-D04-00008/CAR-DEF-0001-0832

[2347] EVD-T-D04-00008/CAR-DEF-0001-0832

[2348] EVD-T-D04-00008/CAR-DEF-0001-0832 (*see e.g.* at minute mark 11:48, clearly showing Major Kamisi, the Poudrier Battalion Commander, anxiously sitting to the right of an interviewee).

[2349] EVD-T-D04-00008/CAR-DEF-0001-0832

interviewees would have known not to state any derogatory information, lest they be subject to revenge attacks. Additionally, the majority of the questions posed by MLC officials were not calculated to actually seriously investigate any allegations but rather to prompt the person being interviewed to state their gratitude toward President Bemba and his troops.[2350] The fact that Bemba could quickly send in MLC personnel by helicopter to areas such as Sibut establishes that he had the material ability to investigate genuinely if he so desired.

745. At a minimum, a genuine and reasonable investigation would have separated the witnesses, ensured their safety from intimidation from the perpetrators of the crimes, and asked specific questions intended to elicit the truth of what actually happened in Sibut. It is clear from the supposed mayor of Sibut who was interviewed that the MLC was not interested in finding out whether the ALC had committed crimes. For example, when, in response to a question about allegations of loyalist crimes heard on the radio, he responded that the "loyalists" – meaning Banyamulenge - committed some crimes but were not as bad as the [Bozizé] rebels.[2351] The interviewer made no attempt to ask the mayor to elaborate or clarify what he meant by "the "some crimes" committed by "loyalists.[2352] The MLC officials at the scene were not interested in getting to the truth of allegations but instead their goal was to have as many people on camera who would complain about the Bozizé rebels' crimes and thank President Bemba for his actions.

746. A legitimate investigation would have been feasible had Bemba possessed the genuine will to seek the truth. Looking at the Sibut video as an indication of the MLC methods of investigation, it is clear that neither Bemba nor the MLC had any interest in establishing the truth but instead were interested in countering derogatory information about the MLC. There is a difference. Bemba wished to establish that

[2350] EVD-T-D04-00008/CAR-DEF-0001-0832
[2351] EVD-T-D04-00008/CAR-DEF-0001-0832-at-minute 14:30
[2352] EVD-T-D04-00008/CAR-DEF-0001-0832

these allegations did not happen rather than openly inquire into what happened. Bemba had the powers of investigation but he did not set out to investigate these crimes. He set out to clear his name.

C. The Accused failed to take all necessary and reasonable measures within his power to submit the matter to competent authorities for investigation and prosecution

747. Since Bemba was the "competent authority" and had the material ability to arrest, investigate and prosecute, his only action that could plausibly be considered a "submission" under Article 28(a)(ii), his single letter to General Cissé, was not a submission at all.

748. Where the material ability to prevent and punish crimes resides squarely with a person effectively acting as a military commander he or she is not relieved of the duty to take all necessary and reasonable measures to prevent and repress crimes by a token submission of the matter to another entity that does not have the authority to do so. To hold otherwise would allow a culpable commander to escape punishment where he does nothing to prevent or punish crimes but perfunctorily requests an entity with no mandate to investigate and prosecute, and is entirely unrelated to his military organization, to investigate and prosecute crimes that properly fall under his jurisdiction. This applies even more so when the request is met with an invitation that is never followed up.

1. *Letter to and Response from General Cissé*

749. On 4 January 2003 Bemba sent a letter to General Cissé, the Special Representative of the UN Secretary General in Bangui.[2353] The letter requested General Cissé and the UN's assistance to investigate alleged crimes in CAR. In the letter Bemba demonstrated his knowledge of the ALC's crimes in CAR that he had heard about from his own officers and RFI radio but he downplayed the crimes.[2354]

750. Bemba's letter to General Cissé was not a genuine and reasonable attempt to submit the matter to a competent authority as required by Article 28. First, the letter came several months after the first allegations of crimes were known to Bemba. Second, Bemba had prejudged the information on rape, pillage, and murder as being misinformation. He made this prejudgement before investigating the information. Third, after General Cissé replied stating his willingness to remain at Bemba's disposal for initiatives to investigate the crimes, Bemba failed to followed up.

751. Bemba's *pro forma* or perfunctory sending of such a letter must be seen for what it really was: Bemba's superficial attempt to discharge his duty without actually possessing a genuine will to carry out what he had proposed – to shed light on the allegations of crimes.[2355] The absence of any response or follow up, let alone a genuine response, to General Cissé's offer to remain at Bemba's disposal for any initiative towards an inquiry, clearly shows that Bemba never actually intended to establish any sort of investigation and prosecution but instead intended only to perfunctorily wash his hands of the matter by writing a letter.

752. Moreover, and perhaps more importantly, General Cissé was not a competent authority under Article 28. In order for an entity or person to be considered a

[2353] EVD-T-OTP-00453/CAR-OTP-0017-0363
[2354] EVD-T-OTP-00453/CAR-OTP-0017-0363
[2355] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364

competent authority under Article 28(a)(ii) the authority must have the capacity and power to both investigate and prosecute. General Cissé and the UN, as such, did not have authority or ability to investigate and prosecute. They were not "competent authorities" under Article 28. Therefore Bemba's sending of the letter was not only done disingenuously, but was legally ineffective. Bemba was sophisticated enough to understand that General Cissé had no general criminal jurisdiction to undertake what were actually Bemba's duties. Indeed, a report to competent authorities must be 'likely to trigger' an investigation into the reported crimes.[2356]

753. Furthermore General Cissé's response did not discharge Bemba from his duty to take all necessary and reasonable measures within his power.[2357] In his short response letter General Cissé wrote that he remained at Bemba's disposal for any initiative towards an inquiry and that the CAR and Chad had agreed to set up an international commission of inquiry.[2358] General Cissé's response was met with silence. The statement that CAR and Chad were about to create an international investigatory commission did nothing to relieve Bemba of his duty to prevent and repress crimes committed by his forces. Bemba could not have reasonably relied on Cissé's reference to an agreement of a commission. Bemba never inquired into whether the commission was actually created - it was not - and never inquired into whether such a commission would have the authority to prosecute his troops for their crimes in CAR. His failure to respond to the matter after receiving Cissé's letter demonstrates his avoidance of the issue altogether.

[2356] ICTY, *Prosecutor v. Boskoski and Tarculovski*, Case No. IT-04-82-A, "Appeals Chamber Judgement", 19 May 2010, para. 234, "The Appeals Chamber recalls that under the correct legal standard, a report to the appropriate authorities may be sufficient to discharge the obligation to punish offending subordinates: whether it is indeed sufficient depends on the circumstances of each case. If, for instance, the superior knows that the appropriate authorities are not functioning or if he knows that a report was likely to trigger an investigation that was sham, such a report would not be sufficient to fulfil the obligation to punish offending subordinates."
[2357] EVD-T-D04-00008/CAR-DEF-0001-0826
[2358] EVD-T-D04-00008/CAR-DEF-0001-0826

754. Bemba avoided following up on General Cissé's response until years later, when the issue of his submission of matters to a competent authority suddenly became serious to him, as he faced serious criminal charges at the ICC in these proceedings. The former lawyer representing him inquired into the matter for him and disclosed the letter to the Prosecution.[2359] In the Defence letter to the UN on 21 April 2011, it is clear that Bemba, through his former lawyer, was pretending not to know that no CAR-Chad commission was ever created or would have been created, a fact that was clear to him at least as soon as Bozizé took power on 15 March 2003.[2360] Bemba cannot now claim to have thought that a commission had been created and that he discharged his duty by referring the matter to the UN. Article 28 requires persons effectively acting as military commanders to make all necessary and reasonable submissions to competent authorities. It is patently unreasonable for Bemba to allow more than eight years to lapse without ever responding to Cissé's letter and, then, once facing a criminal trial, pretend to be ignorant as to the creation of a commission that was never created. In any case, as the UN official implied in his response to the Defence, no potential commission could have ever been possible considering the overthrow of then-President Patassé, a fact of which Bemba was well aware[2361]. After receiving Cissé's letter Bemba made no attempts on his own to either prevent further crimes or investigate and prosecute perpetrators.

755. A commander cannot discharge his duty under Article 28 by perfunctorily referring matters to the UN without any genuine follow-up. [2362] Bemba's submission of the matter to General Cissé ignores the fact that Bemba himself had court-martial convening authority, which included the powers of investigation and prosecution.

[2359] EVD-T-OTP-00704/CAR-D04-0002-1455
[2360] EVD-T-OTP-00704/CAR-D04-0002-1455
[2361] EVD-T-OTP-00705/CAR-D04-0002-1462
[2362] ICTY, *Prosecutor v. Boskoski and Tarculovski*, Case No. IT-04-82-A, "Appeals Chamber Judgement", 19 May 2010, para. 234. "The Appeals Chamber recalls that under the correct legal standard, a report to the appropriate authorities may be sufficient to discharge the obligation to punish offending subordinates: whether it is indeed sufficient depends on the circumstances of each case. If, for instance, the superior knows that the appropriate authorities are not functioning or if he knows that a report was likely to trigger an investigation that was sham, such a report would not be sufficient to fulfil the obligation to punish offending subordinates."

Bemba had a functioning court-martial system, open and available for him to refer cases to it. Bemba had no need to refer to outside agencies. It was feasible for the MLC to investigate in CAR as demonstrated by the investigation commencing on 30 October 2002.[2363] The MLC justice system was functioning, if poorly, as demonstrated by the 5-7 December 2002 court-martial.[2364]

2. *Letter to and Response from FIDH*

756. On 20 February 2003 Bemba wrote to FIDH President Kaba after having spoken to him on the telephone.[2365] Bemba's letter came in response to the FIDH report entitled "War crimes in the Central African Republic: When the elephants fight, the grass suffers", which Bemba received on 13 February 2003.[2366] In his letter Bemba described the Bangui Inquiry and court-martial process of seven[2367] individuals to Sidiki Kaba. Bemba also mentioned that he intended to cooperate with an international commission of inquiry that was yet to be established.[2368]

757. Thus, Bemba, knowing that General Cissé stated that there was agreement on a putative CAR-Chad commission of inquiry but had not stated it had been created, wrote to FIDH on 20 February 2002 acting as if the CAR-Chad commission of inquiry were a *fait accompli* and acting as if he would cooperate.[2369] Bemba's letter is an empty gesture considering that none of his stated intentions were ever carried out, despite the fact that he had all the resources available to carry out what he had stated. The

[2363] EVD-T-OTP-00393/CAR-DEF-0002-0001
[2364] EVD-T-OTP-00393/CAR-DEF-0002-0001
[2365] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2366] *See* EVD-T-OTP-00591/CAR-OTP-0055-0893-at-0900 (item number 349); EVD-T-OTP-00840/CAR-OTP-0073-0850 EVD-T-OTP-00395/CAR-OTP-0001-0034. The report was sent to the OTP and Bemba on 13 February 2003 -at-21:48, Bemba tried to call Sidiki Kaba, showing that Bemba had received the report. By 20 February 2003 when Bemba sent his letter to Mr. Kaba, Bemba had read the report and disputed it in his letter.
[2367] Bemba states in letter that there were eight soldiers accused of pillaging but only seven were arrested and tried.
[2368] EVD-T-OTP-00391/CAR-DEF-0001-0152
[2369] EVD-T-OTP-00391/CAR-DEF-0001-0152

letter shows Bemba's awareness of what he could have done to prevent and punish crimes and how he could have handled the situation.

758. The same "competent authority" reasoning with regard to General Cissé is equally valid, perhaps even more so, with regard to Bemba's letter to FIDH. FIDH is an NGO in the field of human rights. It is certainly not a competent authority under Article 28. FIDH has no investigation and prosecution authority. In his letter to FIDH Bemba pretended as if the onus was on FIDH to provide him with proof of the allegations. However, it was Bemba's duty as the person effectively acting as the military commander to ensure that an investigation was conducted and the perpetrators were brought to justice.

759. In his letter to Mr. Kaba, Bemba tries to side step the information contained in the FIDH report by pretending to have addressed the crimes reported.[2370] He pretends that his court-martial of seven low-ranking ALC soldiers for petty theft addressed FIDH's information pertaining to rape, pillage, and murder contained in its report. Bemba knew at the time that MLC judicial proceedings related solely to pillage and it was simply false to imply otherwise. Bemba had done absolutely nothing to address rape and murder and did not plan to. On 14 February 2003, a day after receiving the FIDH report, Bemba responded to the report in the media and his response demonstrates his unwillingness to punish the crimes of his troops in CAR.

760. In his 14 February 2003 media statement Bemba opined that FIDH's allegations were of a political character and he conflated his perception that France was against him with the report of FIDH.[2371] Though FIDH's report never accused Bemba of having directly committed any crimes, Bemba stated that "I challenge anyone to say that Jean-Pierre Bemba raped a single girl in the Central African Republic, and I

[2370] EVD-T-OTP-00391/CAR-DEF-0001-0152-at-0153
[2371] EVD-T-OTP-00832/CAR-OTP-0013-0106-0109

challenge anyone to say that I gave the order to rape."[2372] With that statement, Bemba deftly avoided FIDH's actual allegations, which were that he had failed in his duties under Article 28 of the Rome Statute. Bemba also referred to the arrests (unrelated to FIDH's information on rape and murder) he had ordered as proof of his diligence in pursuing the allegations. Lastly, though Bemba knew it was his duty to investigate crimes as the ALC Commander-in-Chief, he put on the onus on others to prove the crimes before he would be willing to bring the authors of the crimes to justice.[2373]

761. Bemba's words and reactions to the FIDH report make clear that he did not intend to take his obligations to prevent, repress, and submit crimes seriously. His words about the FIDH report stand in stark contrast to the empty platitudes he wrote to Cissé where he stated that he would not allow intolerable crimes to go unpunished.[2374] Instead of punishing crimes Bemba planned to connive and avoid responsibility. Bemba's facile dismissal of crimes as a campaign of misinformation also served to embolden ALC perpetrators, sending the clear message that Bemba would protect and condone their criminal behaviour.[2375] Bemba's reaction to P45 telling Bemba of atrocities[2376] and to the 13 February 2003 FIDH report summarises Bemba's general attitude toward his duties to take measures. Once informed of crimes Bemba's reaction was to 1) deny the crimes 2) call the crimes French propaganda and 3) point to this arrest of 7 or 8 ALC troops as having been a sufficient solution to his problem. Bemba did not intend on actually investigating and prosecuting his forces for the crimes they committed in CAR.

D. Bemba's failures affected the conduct of the entire MLC

[2372] EVD-T-OTP-00832/CAR-OTP-0013-0106-at-0109
[2373] EVD-T-OTP-00832/CAR-OTP-0013-0106-at-0109
[2374] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364
[2375] EVD-T-OTP-00453/CAR-OTP-0017-0363-at-0364; EVD-T-OTP-00832/CAR-OTP-0013-0106-at-0109
[2376] [P45-T201-ENG-CT-p65-L22-p66-L9]/[P45-T201-FRA-CT-p72-L12]

762. Bemba's acts and omissions constituted a wilful dereliction of his duties as a commander. Bemba was not simply negligent but knew what he had to do and deliberately avoided acting as a reasonable and responsible commander should under the law. He was clearly not intent on getting to the truth of what happened. He was intent on refuting claims of atrocities that made him and the MLC look bad. And, as such, the "investigations", "trial", and "referrals" were simply not calculated as genuine efforts and he failed to take reasonable and necessary steps to investigate and prosecute.

763. Bemba never had a genuine will to take crimes seriously and seriously address crimes. He immediately dismissed the information about crimes almost as soon as he heard it. He did not want to accept it. Bemba's mentality, coming from the leader, infected and permeated through the entire organization. If Bemba, the military commander, did not take something seriously then his subordinates would not have taken that thing seriously either.

764. "As a leader of the MLC, I would say that he was a courageous individual, but, well, he was characteristically a very authoritarian individual, and was a tyrant. Those were his defining characteristics. He was also quite insensitive towards human suffering."[2377] Bemba was all too willing to sacrifice justice for victims in order to gain political power within the MLC and in Kinshasa. Had he taken the crimes seriously it probably would have resulted in him investigating, arresting, and trying a number of people very important to his military power. He could not sacrifice his military power because it would have limited his negotiation power in Kinshasa and would have weakened him within the MLC. So he choose to protect the criminals in his lust for power he was willing to overlook any moral obstacle to preserve his power.

[2377] [P45-T202-ENG-ET-p18-L7-10]/[P45-T202-FRA-ET-p20-L12]

V. Crimes committed by Bemba's forces as a result of his failure to exercise control properly

765. To prove beyond a reasonable doubt that the Accused's subordinate forces committed crimes as a result of Bemba's failure to exercise control properly the Prosecution must prove that Bemba's acts and omissions increased the risk that his forces would commit crimes. The legal element requires the Prosecutor to establish a link between the crimes committed by the ALC troops and Bemba's failure to exercise control properly over them. The Prosecution is not required to establish a direct causal link. Rather, the Prosecution must prove that Bemba's failures increased the risk that the ALC troops would commit the crimes.[2378]

766. Pre-Trial Chamber II's interpretation of this legal provision is the most reasonable reading of the law. To require a demonstration that "but for" the acts or omissions of the Accused the crimes would not have been committed would be to create an untenable interpretation of Article 28(a) which would have the effect of requiring proof of a counter-factual that could not be empirically tested.[2379] A "but for" test would essentially remove the distinction between the actual perpetrators and the commander because it would make the commander's "omission an integral element of the crime".[2380]

767. This legal element applies to the Accused's failure to take necessary and reasonable measures to prevent crimes before they were committed. It also applies to his failure to take measures to repress crimes or submit them to the competent authorities after the crimes occurred, as these failures increased the risk of further crimes being committed during the intervention period, which were then committed

[2378] ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo ("confirmation Decision"), 15 June 2009, paras. 420-426.
[2379] *Ibid,* para. 425.
[2380] ICC-01/05-01/08-406, Amicus Curiae Observations on Superior Responsibility Submitted Pursuant to Rule 103 of the Rule of Procedure and Evidence, 20 April 2009, para. 45.

by Bemba's troops.[2381] Bemba's conduct affected the risk of crimes far beyond the scope of his direct acts and omissions.[2382]

768. The level of the 'increased risk' is determined by reference to the significance of Bemba's failure to take necessary and reasonable measures to prevent the crimes, repress the crimes or submit the matter to the competent authorities.[2383]

769. The Prosecution has proved this element beyond a reasonable doubt. The Accused increased the risk that his forces would commit crimes by failing to take measures to ensure compliance with IHL, by sending forces that had previously been accused of committing similar crimes, and by failing to punish forces who committed crimes during the initial stages of the armed conflict to create an atmosphere of general deterrence within the ALC deployed to the CAR. In order to avoid repetition, the Prosecution refers to paragraphs 685-721 above in the section on failure to take all necessary and reasonable measures as proof that Bemba increased the risk that his forces would commit crimes.

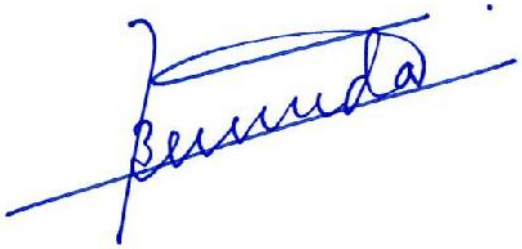
[2381] *Ibid*., para. 424. *See also* Darryl Robinson, How Command Responsibility got so complicated: A culpability contradiction, its obfuscation, and a simple solution, pp.45-46 and pp.54-56 available at http://www.law.unimelb.edu.au/files/dmfile/download0e2c1.pdf.http://www.law.unimelb.edu.au/files/dmfile/download0e2c1.pdf.

[2382] ICC-01/05-01/08-406, Amicus Curiae Observations on Superior Responsibility Submitted Pursuant to Rule 103 of the Rule of Procedure and Evidence, 20 April 2009, para. 45.

[2383] PTC II did not specify what level of increase to the risk of crimes being committed it is necessary for the Prosecution to establish. However, the Prosecution's approach is consistent with PTC II's conclusions on the facts–see ICC-01/05-01/08-424, Confirmation Decision, 15 June 2009, para. 501; See also Guénaël Mettraux, The Law of Command Responsibility (Oxford University Press, 2009) pp.87-89. This approach is also consistent with the findings of the Trial Chamber of SCSL, *AFRC* Case, Case No. SCSL-04-16-T, "Judgment", 20 June 2007, para. 1740, in which it held that it was not necessary to show that the measures taken by the Accused would actually have prevented or punished the subordinates who committed the crime, provided he "took all steps reasonably open to him in an attempt to do so".

CONCLUSION

770. Bemba's guilt beyond a reasonable doubt is well established by the totality of the evidence in this case. Bemba gave his troops the license to commit mass crimes of rape, murder, and pillaging against the civilian population in the CAR. The crimes continued only because Bemba allowed it. The Chamber must hold Bemba accountable for the crimes committed by his subordinate MLC troops under his effective authority, as a result of his deliberate failure to exercise control properly. Finally, the Chamber's Judgement should also underscore the particular heinous nature of the crimes committed by the MLC and their extraordinary scale, as well as the high level of culpability underlying Bemba's total dereliction of his duties as a commander.



Fatou Bensouda, Prosecutor

Dated this 22th Day of April 2016

At The Hague, The Netherlands