



Original: English

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

Date: 01/03/2017

THE APPEALS CHAMBER

Before: Judge Christine Van den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chile Eboe-Osuji
Judge Piotr Hofmański

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

Public with Public Annexes A and B

**Public Redacted Version of Appellant's reply to "Observations de la
Représentante légale des victimes sur «Appellants's document in support of
appeal»", ICC-01/05-01/08-3499-Conf**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Helen Brady

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Peter Haynes, QC
Kate Gibson

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

The Office of Public Counsel for the Victims

Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keita

REGISTRY

Registrar

Herman von Hebel

I. INTRODUCTION.....	4
A. Procedural history.....	7
B. Level of confidentiality.....	8
II. RESPONSE TO THE LRV SUBMISSIONS	8
A. Ground II: This was a mistrial.....	8
1. The extent, timing and content of the Prosecution's <i>ex parte</i> submissions violated Mr. Bemba's right to a fair trial	9
2. The Prosecution should have preserved trial fairness by revealing the basis of its suspicions to the Defence within a reasonable time	9
B. Ground III: The conviction exceeded the charges	11
C. Ground IV: Mr. Bemba is not liable as a superior	13
1. Mr. Bemba did not have effective control over the MLC troops in CAR.....	13
2. Mr. Bemba did not have actual knowledge of the alleged crimes	13
3. Mr. Bemba took necessary and reasonable measures	14
4. The finding on causation is invalid.....	16
D. Ground VI: The Trial Chamber erred in its approach to identification evidence	16
E. Ground VII(B): The scope of LRV involvement lead to an unbalanced and unfair trial.....	19
1. The assertion that the Defence did not object to LRV questioning is not true.....	19
2. The use of "follow-up" questions was incompatible with Rule 91(3)	21
3. The Defence witnesses were cross-examined three times	25
4. The assertion of consistency of practice between Trial Chambers is not true.....	27

I. INTRODUCTION

1. The role of legal representatives of victims participating in proceedings before the International Criminal Court is to present the views and concerns of victims at stages of the proceedings determined to be appropriate by the Court and in a manner which is not inconsistent with the rights of the accused and a fair and impartial trial.¹

2. According to the LRV in the present case, if the Judgment of the Trial Chamber were to be modified:²

les intérêts de ses clients en seraient nécessairement affectés, dans la mesure où M. Bemba y est déclaré coupable des crimes dont ils ont été victimes, **et puisque le verdict conditionne toute réparation.**

3. Put simply, she contends that the interest of participating victims at the International Criminal Court is to ensure convictions against accused, given that this is a condition for the payment of reparations.

4. As its name, as well as its constitutive documents, make clear, the primary task of the International Criminal Court is to determine whether or not accused before it are criminally responsible for the crimes with which they have been charged. An acquittal either at first instance, or on appeal, is as much grounded in truth and legitimacy, as a conviction. An acquittal represents neither a failure by the Prosecution, nor the Court. Nor does it mean that the victims have been failed. On the contrary, they have a definitive ruling on the culpability of a person who has been accused of causing them harm.

¹ Article 68(3) Rome Statute.

² ICC-01/05-01/08-3489-Conf-Corr, Corrigendum - Observations de la Représentante légale des victimes sur « *Appellant's document in support of appeal* » daté du 9 janvier 2016, ICC-01/05-01/08-3489-Conf, 17 janvier 2017 ("LRV Observations"), para. 10 (emphasis added).

5. In this case, the Appeals Chamber is seised with determining – on the basis of the evidential record, applicable legal principles, and relevant precedent – whether the Trial Chamber erred in finding Mr. Bemba criminally responsible for the actions of the MLC troops in the Central African Republic between October 2002 and March 2003. Should the Appeals Chamber determine that Mr. Bemba is not criminally responsible for these acts, that would not be a finding which runs counter to the interests of victims. The victims’ interests cannot be framed in solely pecuniary terms.

6. The LRV’s understanding of her role is fundamentally at odds with the idea that her participation is in any way restricted to presenting the views and concerns of her clients. Rather than assisting the Court by facilitating an understanding of the impact of crimes on the individuals personally affected, the LRV has chosen instead exclusively to act as a party to adversarial proceedings and thereby stretched the bounds of victims’ participation beyond anything that those who championed their inclusion in the trial process could possibly have imagined.

7. On not one occasion during the proceedings has the LRV supported a submission of the Defence. On not one occasion has the LRV expressed a view at variance to that of the Prosecution. During trial, when asked by the Presiding Judge whether she would consider giving English transcript references as a courtesy to members of the Defence team, the LRV said that she would not.³ While seemingly insignificant, this refusal is illustrative of how the LRV viewed her role in the proceedings; as unswervingly adverse to and obstructive of the interests of the Defence.

8. In her observations to the current appeal,⁴ the LRV has been similarly unconstrained. She argues that since the Defence appears to call into question

³ T-269-CONF-ENG, 13:6-23.

⁴ LRV Observations.

almost all of the Judgment, the victims are entitled to submit their position on all points raised.⁵ In short, if the Appellant presents an argument, the LRV purports to have the right to counter it, on the basis that the Appellant presented it. As such, ground by ground, the LRV attempts to counter the Appeal Brief in a manner analogous to a party to adversarial proceedings.

9. Indeed rather than fulfil her statutory and regulatory mandate, the LRV has chosen to fore swear it. In determining this appeal the Appeals Chamber will unhappily be ignorant of the views and concerns of victims on appeal because the LRV has done nothing to enlighten it about them, preferring instead to focus uniquely upon the task of countering the Appellant's case. Her submissions upon appeal substantially mirror those of the Prosecution. Where they do not they are inevitably adverse to the Appellant's arguments. Accordingly, within the limitations upon pleadings proscribed by the Appeals Chamber, the Appellant must address the submissions of two adverse parties. Self-evidently, the arms available to Mr Bemba to advance his appeal are less than the sum of those amassed against him, as they were during the trial in which he sought to defend himself. The participation of victims in this case was and is inconsistent with his rights as an accused.

10. Notwithstanding the foregoing submission, in the interests of judicial economy, the Appellant has limited the present reply to obviously novel arguments in the LRV Observations. A failure to address any argument should not be understood as a concession or agreement with the LRV submissions which, given their nature, are contested in full.

⁵ LRV Observations, para. 11.

A. PROCEDURAL HISTORY

11. On 21 March 2016, Trial Chamber III convicted Mr. Jean-Pierre Bemba (“the Appellant”) of the charges against him.⁶

12. On 4 April 2016, the Appellant filed his notice of appeal.⁷

13. On 5 April 2016, the Appellant filed a request for a variation of the time limit within which to file his document in support of appeal.⁸ The Appeals Chamber granted this request on 15 April 2016 and ordered the filing of the Appeal Brief on 19 September 2016.⁹

14. On 15 April 2016, the Appeals Chamber rendered its “Decision on the participation of victims in the appeal against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”” whereby it authorised the Legal Representative of Victims to file observations within 30 days of the notification of the response to the document in support of the appeal (“LRV Observations”). The Appellant and the Prosecutor were also given a right to reply to the victim’s observations within 30 days of the notification of their observations.¹⁰

15. On 19 September 2016, the Appellant filed his document in support of appeal (“Appeal Brief”).¹¹

16. On 21 November 2016, the Prosecution filed its response to the Appeal Brief (“Prosecution Response Brief”).¹²

⁶ ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, 21 March 2016 (“Judgment”).

⁷ ICC-01/05-01/08-3348.

⁸ ICC-01/05-01/08-3353.

⁹ ICC-01/05-01/08-3370.

¹⁰ ICC-01/05-01/08-3369.

¹¹ ICC-01/05-01/08-3434-Conf, Appellant’s document in support of the appeal, 19 September 2016 (“Appeal Brief”).

¹² ICC-01/05-01/08-3472-Conf.

17. On 30 November 2016, the Appellant requested leave to file a reply to the Prosecution Response Brief.¹³ Leave was granted on 7 December 2016.¹⁴ In the same decision, the Appeals Chamber extended the deadline for the filing of the LRV Observations to 9 January 2017 and the filing of the responses to the LRV Observations from the Appellant and the Prosecution to 9 February 2017.

18. On 20 December 2016, the Appellant filed his reply to the Prosecution's Response.¹⁵

19. On 9 January 2017, the LRV filed her Observations.¹⁶

B. LEVEL OF CONFIDENTIALITY

20. This document is filed confidentially pursuant to Regulation 23*bis*(2), since it responds to confidential submissions. The Defence will file a public redacted version, once public versions of the relevant documents are available.

II. RESPONSE TO THE LRV SUBMISSIONS

A. GROUND II: THIS WAS A MISTRIAL

21. Mr. Bemba does not contest that the Trial Chamber believed (or at least asserted) that the trial against him was fair. Reiterating the Trial Chamber's own findings on the fairness of its own conduct, its own impartiality, and its own ability fairly to judge the Accused despite its (admittedly erroneous)¹⁷ exposure to a wealth of *ex parte* material,¹⁸ does not address the issues raised on appeal.

¹³ ICC-01/05-01/08-3475.

¹⁴ ICC-01/05-01/08-3480.

¹⁵ ICC-01/05-01/08-3483-Conf.

¹⁶ LRV Observations.

¹⁷ ICC-01/05-01/08-2606-Conf, paras. 21-22.

¹⁸ LRV Observations, paras. 18, 26, 30.

22. Whether the Trial Chamber had previously dismissed Defence complaints as to fairness is irrelevant. The question before the Appeals Chamber is whether the *ex parte* exchanges, the disclosure violations, and the invasion of privilege and confidentiality violated the Appellant's right to a fair trial. The degree, duration, and importance of these violations mean that the only appropriate remedy is to vacate the Judgment. The LRV Observations provide no basis for finding otherwise.

1. The extent, timing and content of the Prosecution's *ex parte* submissions violated Mr. Bemba's right to a fair trial

23. The fact that the Judgment in the Article 70 Case was rendered after that in the present proceedings¹⁹ does not erase the impact of the multitude of *ex parte* submissions, upon which the Trial Chamber acted,²⁰ which directly addressed the credibility of Defence witnesses, Defence team members, the Accused, and the credibility of the Defence case.²¹

24. Nor does the Trial Chamber's incidental reliance on some of the 14 witnesses mitigate their wholesale dismissal on other key factual issues such as Mr. Bemba's operational control.²² In fact, the Trial Chamber's reliance, while minimal, compounds the prejudice to the Appellant who relinquished reliance on these 14 witnesses as a result of the ongoing Article 70 investigation, only to have them relied upon to make adverse findings against him.

2. The Prosecution should have preserved trial fairness by revealing the basis of its suspicions to the Defence within a reasonable time

25. In order to attempt to defend the 16-month period in which key information concerning the credibility of its own witnesses was withheld from the Defence, the LRV notes that Mr. Bemba was found guilty of having solicited the false testimony

¹⁹ LRV Observations, para. 20.

²⁰ ICC-01/05-01/08-2421-Conf; ICC-01/05-01/08-2461-Conf; ICC-01/05-01/08-2560-Red; T-303-CONF-Red2.

²¹ Appeal Brief, paras. 59-75.

²² Appeal Brief, paras. 73-74.

of 14 witnesses, and that this renders the Defence arguments “inappropriate” in accordance with the ancient latin maxim “*nemo auditur propriam turpitudinem allegans*”.²³

26. Reliance upon this basic principle of Roman law (the essential purpose of which was to prevent the enforcement of unlawful contracts in civil law)²⁴ is inapposite. In fact, the overarching principle has been codified in multiple domestic jurisdictions and refined by judicial decisions. It is irrelevant to any consideration of the Prosecution’s duty of disclosure at the ICC, which is defined by Rule 77 and Rule 81(2) of the Rules of Procedure and Evidence.

27. The LRV submission moreover, presupposes that the Appellant’s conviction under Article 70 will survive the scrutiny of the Appeals Chamber currently seised of the matter. It falls therefore to be disregarded on that basis alone.

28. Even putting to one side the impropriety of the LRV submissions in this regard, its factual and evidential basis is both simplistic and flawed. The Prosecution and the Trial Chamber both accepted that disclosable material was withheld from the Defence for many months.²⁵ The earliest information indicated only that [REDACTED] was providing false witnesses to the Defence.²⁶ There is literally no evidence that the Appellant’s representatives knew in November 2012 that they were being hoodwinked in this way, less still that the Appellant himself was involved in any “turpitude”.

29. It is, of course, a matter of surmise as to the extent to which proper and timely disclosure of the (undoubtedly disclosable) material in the Prosecution’s possession might have altered the course of the Defence case. It is the Appellant’s case that it

²³ LRV Observations, para. 27.

²⁴ See L’adage « Nemo auditur », http://local.droit.ulg.ac.be/sa/rfd/doc/1956_Hannequart.pdf.

²⁵ ICC-01/05-01/08-3255, para. 83; ICC-01/05-01/08-3472-Conf, para. 51.

²⁶ Appeal Brief, para. 16.

would inevitably have led to a reconsideration of the evidence he would adduce.²⁷ The LRV has no basis to suggest that at the point at which the Prosecution chose to avoid its disclosure obligations, it was able to justify its decision on the basis of proven wrongdoing by the Appellant, nor would any suspected wrongdoing justify the Prosecution's exempting of itself from its disclosure obligations under the Rules of Procedure and Evidence.

B. GROUND III: THE CONVICTION EXCEEDED THE CHARGES

30. The Trial Chamber convicted Mr. Bemba of murder as a war crime and a crime against humanity, rape as a war crime and a crime against humanity, and pillage as a war crime on the basis of the testimony of V1 and V2.²⁸ Mr. Bemba was convicted of only three underlying acts of murder. One of these three was based only on the testimony of V1.²⁹ Given that this additional evidence was only belatedly notified to Mr. Bemba at the end of the Prosecution case, the Trial Chamber's reliance on it to convict him was impermissible.³⁰

31. The LRV excuses the Trial Chamber's reliance on this evidence on the basis that the LRV was not authorised to present evidence to the Single Judge during the confirmation hearing, and as such V1 and V2's statements could **only** be notified **after** the trial commenced.³¹ By this reasoning, any evidence which was either "not authorised" or indeed "unavailable" at the confirmation stage could be relied upon to convict the Accused on the basis of its earlier unavailability. Taken to its logical conclusion an accused could be committed for trial on a single charge of murder, only to be confronted with multiple allegations, arising from evidence adduced by the participating victims, and be convicted on that basis. Such a process would

²⁷ See Appeal Brief, paras. 14, 76-91, 107, 113.

²⁸ Judgment, paras. 624(c), 633(l), 640(o), 640(p).

²⁹ Judgment, paras. 549, 624(c), 625, 629.

³⁰ *Lubanga* AJ, para. 129: First, given the strong link between the right to be informed in detail of the nature, cause and content of the charges and the right to prepare one's defence, only information made available before the start of the trial hearings may be taken into account.

³¹ LRV Observations, para. 47.

make a mockery of the Appeals Chamber's ruling that "a trial must commence based on a set of clearly defined charges",³² as well as the whole confirmation process.

32. The submission is also disingenuous. The Prosecution and the participating victims have enjoyed close cooperation in this case. They had a shared focal point in the CAR in the shape of the NGO, OCODEFAD.³³ The vast majority of victims who gave evidence for the Prosecution were also participants in the proceedings.³⁴ The LRV provided important documents relevant to the crime base,³⁵ as well as the Central African command structure,³⁶ relied upon by the Prosecution.³⁷ That the Prosecution had scant evidence of underlying acts of murder, and literally no direct evidence of crimes in Mongoumba would have been obvious to the LRV during the pre-confirmation phase of the case. The suggestion that she had neither the possibility nor the authority to alert the Prosecution to the fact that she was in possession of such evidence bears no sensible analysis.

33. The assertion that the disclosed statements of V1 and V2 gave the Accused sufficient time to prepare his defence to these additional charges, overlooks the fact that, due to the Appeals Chamber's unambiguous prohibition,³⁸ the Accused could not have anticipated that he was being required to defend against, for example, a charge of murder in Mongoumba, which fell outside the Second Revised Amended DCC.³⁹ The Appellant's primary complaint is, moreover, of form not notice. The

³² *Lubanga* AJ, para. 129.

³³ T-45-CONF-ENG, 19:5-22:20; T-54-CONF-ENG, 26:15-29:12; T-55-CONF-ENG, 30:2-6; T-67-CONF-ENG, 32:18-35:10; T-76-CONF-ENG, 25:1-30:12; T-81-CONF-ENG, 43:7-44:6; T-83-CONF-ENG, 16:4-17:19. *See also* ICC-01/05-01/08-3153-Conf, para. 111.

³⁴ Judgment, para. 21.

³⁵ *See, for example*, CAR-V20-0001-0177; CAR-V20-0001-0165.

³⁶ CAR-V20-0001-0134; CAR-V20-0001-0189; CAR-V28-0001-0075; CAR-V28-0001-0064; CAR-OTP-0069-0043; CAR-OTP-0069-0045.

³⁷ ICC-01/05-01/08-3079-Conf-Corr, fns. 60, 78, 82-84, 413, 415, 1673.

³⁸ *Lubanga* AJ, para. 129.

³⁹ ICC-01/05-01/08-856-Conf-AnxA.

document containing the charges should be definitive and not an ever moving set of goalposts.

C. GROUND IV: MR. BEMBA IS NOT LIABLE AS A SUPERIOR

1. Mr. Bemba did not have effective control over the MLC troops in CAR

34. The LRV dismisses the Appellant's submissions on effective control on the basis that effective control is not a live question in the appeal. According to the LRV, the fact that Mr. Bemba was the military superior of the MLC troops is not under discussion because this was the mode of responsibility that allowed him to be prosecuted and convicted.⁴⁰

35. Taking this to its logical conclusion, no accused could ever challenge a conviction as a commander, or indeed an aider or abettor, or member of a joint criminal enterprise, on the basis that this was the mode of responsibility pursuant to which he was prosecuted and convicted. This is circular logic in its most base form. Effective control is an issue properly raised on appeal, and the LRV's Observations do not address the gaping errors in the Trial Chamber's findings thereon.⁴¹

2. Mr. Bemba did not have actual knowledge of the alleged crimes

36. The LRV Observations amount to little more than repeating the Trial Chamber's conclusions,⁴² and do not address the Appellant's argument concerning the Trial Chamber's failure to consider evidence that Mr. Bemba was receiving a wealth of counter-information, from sources he trusted, that the allegations of crimes were exaggerated or incorrect.⁴³

⁴⁰ LRV Observations, para. 53: *La qualité de M. Bemba en tant que chef militaire ou de personne faisant effectivement fonction de chef militaire n'est plus sujet à discussion car c'est le mode de responsabilité qui a permis de le poursuivre et de le condamner pénalement.*

⁴¹ Appeal Brief, paras. 129-296.

⁴² LRV Observations, paras. 54-56.

⁴³ Appeal Brief, paras. 297-308.

37. The Appellant is criticised for having “waived” measures granted by the Trial Chamber following its notification of a possible modification of the legal characterisation of the charges under Regulation 55. According to the LRV, this proves that Mr. Bemba could not demonstrate that he did not have actual knowledge of the crimes, and that he “should have known” because of his position in the MLC.⁴⁴

38. These arguments have no footnotes, so it is unclear what is being impugned as the alleged “waiver”. Regardless, following the Trial Chamber’s decision not to re-characterise the charges under Regulation 55, the only question with which the Appeals Chamber is seised is whether the Trial Chamber erred in finding that Mr. Bemba had actual knowledge of the crimes in question. The Trial Chamber’s erroneous conflation of the “actual knowledge” standard with the “constructive” (or should have known) standard is just one of the errors which undermines its finding.⁴⁵ The others are set out the Appeal Brief, and remain unaddressed by the LRV.⁴⁶

3. Mr. Bemba took necessary and reasonable measures

39. There is nothing contradictory in the Appellant’s position either at trial, or on appeal. The measures taken by Mr. Bemba do not demonstrate effective or operational control over the MLC troops. The LRV’s simplistic, one-dimensional observations reveal the same misunderstanding as the Trial Chamber, and conflate the concept of “effective control” with that of overall “command”.⁴⁷ Primary disciplinary authority rested with the Central Africans.⁴⁸ Mr. Bemba maintained an organic link with the MLC troops, and the residual aspects of command which

⁴⁴ LRV Observations, paras. 57-58.

⁴⁵ Appeal Brief, paras. 292-296.

⁴⁶ Appeal Brief, paras. 297-324.

⁴⁷ Appeal Brief, paras. 175-185.

⁴⁸ Appeal Brief, paras. 211-215.

remained with the MLC were insufficient to demonstrate effective control on the part of the commander-in-chief.

40. It is perfectly possible, for any number of reasons, for investigations to be launched or measures taken to suppress crimes by somebody who had no effective control over their perpetrators. To cite one oft-used but very poignant example, as Commander-in-Chief of the French Army, François Hollande ordered an investigation into the allegations of widespread rape committed by French troops in the Central African Republic. Neither this measure,⁴⁹ nor the failure of the French authorities to identify any credible allegations,⁵⁰ demonstrate effective control on the part of President Hollande at the time the crimes were alleged to have been committed, or a failure on his part to take necessary and reasonable measures.

41. Nor is there an inconsistency between the measures taken and the state of Mr. Bemba's knowledge. Apart from the arrest, trial, and imprisonment of the only soldiers identified as having engaged in criminal activity,⁵¹ the remainder of measures instituted by the MLC were self-evident attempts to build on the scant and inconsistent information Mr. Bemba was receiving; three separate investigations and delegations sent to gather credible information as to the veracity of rumours of crimes,⁵² and personal pleas from Mr. Bemba to the head of FIDH and the UN Special Representative in the CAR to provide the MLC with any information, and to solicit assistance in further investigations.⁵³ These measures are demonstrative of

⁴⁹ «Hollande sera "implacable" si les viols en Centrafrique sont avérés», http://www.liberation.fr/societe/2015/04/30/accusation-de-viols-en-centrafrique-hollandesera-implacable-si-les-faits-sont-averes_1279094; « Les enfants violés parlent : «Le soldat français m'a dit qu'il fallait mettre son bangala dans ma bouche », <http://www.camer.be/41865/11:1/centrafrique-les-enfants-violes-parlent-le-soldat-francais-ma-dit-quil-fallait-mettre-son-bang-dans-ma-bouche-central-african.html>; «Les forces internationales accusées de nouveaux viols en Centrafrique», http://www.lemonde.fr/afrique/article/2016/04/01/les-forces-internationales-accusees-de-nouveaux-viols-en-centrafrique_4893712_3212.html.

⁵⁰ See, for example, http://www.lepoint.fr/monde/viols-en-centrafrique-par-des-soldats-francais-fin-de-la-premiere-enquete-03-01-2017-2094429_24.php.

⁵¹ Judgment, para. 597.

⁵² Judgment, paras. 582, 601, 614.

⁵³ Judgment, paras. 605, 610; T-267-CONF-ENG, 54:23-55:10; T-269-CONF-ENG, 55:5-8.

Mr. Bemba's imperfect knowledge, and his hunt for additional information, which was never forthcoming.⁵⁴ They do not demonstrate either effective control, or actual knowledge of crimes, or any inconsistency in the Appellant's pleadings.

4. The finding on causation is invalid

42. The LRV does not engage with the Appellant's argument that the Trial Chamber failed to define the applicable legal standard.⁵⁵

43. Her arguments in support of a particular legal threshold,⁵⁶ and her discussion of the findings of the Pre-Trial Chamber,⁵⁷ are irrelevant to the central question facing the Appeals Chamber; whether the Trial Chamber's failure to define the legal standard constitutes reversible error. Similarly, her observations are silent as to the Trial Chamber's misstatement of the relevant evidence and findings,⁵⁸ and its conflation of the measures and causation requirements.⁵⁹

D. GROUND VI: THE TRIAL CHAMBER ERRED IN ITS APPROACH TO IDENTIFICATION EVIDENCE

44. The Trial Chamber failed to carry out any or any adequate assessment of the identification evidence in relation to the perpetrator(s) of each alleged underlying act of the crimes charged. It erred in accepting that the **cumulative effect** of the evidence relating to all the underlying acts,⁶⁰ permitted it to hold the Appellant liable for each underlying act of rape and pillage based on that **cumulative assessment** of identification criteria.⁶¹

⁵⁴ Appeal Brief, paras. 287-291.

⁵⁵ Appeal Brief, paras. 381-388.

⁵⁶ LRV Observations, para. 65.

⁵⁷ LRV Observations, para. 65.

⁵⁸ Appeal Brief, paras. 394-413.

⁵⁹ Appeal Brief, paras. 389-393.

⁶⁰ LRV Observations, para. 84.

⁶¹ Appeal Brief, paras. 465-471.

45. The fact that Victim A was attacked by someone in a FACA uniform, and Victim B was attacked by someone speaking Lingala, and Victim C was attacked in a particular area in which MLC were (also) present, does not allow the Trial Chamber cumulatively to assess that “in these three incidents, sufficient identification criteria were cumulatively present”. This was the Trial Chamber’s sweeping approach to this crucial contested issue. It was manifestly insufficient to support findings beyond reasonable doubt as to the identity of perpetrators.

46. In any event, the LRV misunderstands and/or misstates the Chamber's findings on the identification of perpetrators. The LRV asserts that the Trial Chamber relied on a number of criteria in order to establish the perpetrators’ identity, and these criteria were the subject of specific findings on the identity of the perpetrators for each incident of rape, pillage, and murder.⁶² This is not correct. While the Trial Chamber listed the evidence concerning identification criteria when discussing individual incidents, its findings on identification are generalised.⁶³ There are no specific findings for each of the underlying acts. The LRV Observations are inaccurate.

47. Similarly, the LRV submissions on attacks by Sango speakers are unhelpful. Firstly, her assertion that P23, P110 and P112 “confirmed” that the Banyamulenge did not speak Sango, is incorrect.⁶⁴ Later in P110’s testimony, she repeated that the Banyamulenge in fact spoke Sango.⁶⁵ P23 indicated that the perpetrators spoke

⁶² LRV Observations, para. 85.

⁶³ Judgment, paras. 626-628, 634, 642.

⁶⁴ LRV Observations, para. 87.

⁶⁵ T-126-CONF-ENG, 49:14-23: Q. Madam Witness, let me read an excerpt of your statement to the investigators, and I quote. This is the question that was put to you about those people you referred to as the Banyamulenge. Question: "How did they speak to women?" Your answer: "This is what they said, 'Madam, can you come like that?', and sometimes they spoke Sango." Can you confirm that this is your statement, Witness? A. Yes, I acknowledge having made that statement. Q. Can you repeat exactly what they said in Sango when they said, "Madam, you can come like that"? A. "Walli gasi." (phon) T-126-CONF-ENG, 50:16-22: Relating to those who were calling to the woman passing by whom you say was killed, this was the question: "So what language did they speak to her in?" Your answer: "In Sango." Investigator's question: "What did she answer them?" Your answer: "She didn't even answer. She ran away." Do you confirm this? A. Yes, this is what I said.

Sango, and later identified the perpetrators as the “public forces at the time”, namely Bozizé’s rebels.⁶⁶ P112 said that one of the Zaïrois indeed spoke Sango, but then drew a distinction between him, and the “shoe shiners”.⁶⁷

48. This evidence not only illustrates the flaws in the LRV submissions, but also demonstrates the Appellant’s central point; that the Trial Chamber failed to give a reasoned opinion. This evidence would have formed part of a reasonable Trial Chamber’s consideration of whether the Prosecution had established beyond reasonable doubt that the perpetrators in each case were, in fact, subordinates of the accused. All of this (in some cases confused and difficult) evidence relating to language, uniform, location and physical characteristics was simply brushed aside by sweeping conclusions. As long as there was some reference to “Lingala”, or “FACA uniforms”, or “Banyamulenge” or “Ranger boots” in relation to each incident, this was enough to draw a blanket conclusion, in one paragraph of reasoning, for all of the charged crimes.⁶⁸ This is wildly insufficient and amounts to an error warranting the Appeals Chamber’s intervention.

49. In one respect, however, the LRV’s submissions contain a significant and important concession. In listing the cumulative criteria relied upon by the Trial Chamber, she refers to “ *la langue parlée par les agresseurs, leur tenue, la présence (exclusive ou non) du MLC dans le secteur ou moment où l’acte a lieu [...]*”.⁶⁹ In fact the Judgment contains no such concession. The Trial Chamber apparently relied upon the alleged exclusive presence of the MLC as a critical evidential component of its identification of the perpetrators.⁷⁰ The LRV’s modification reflects a more realistic approach to the evidence (and in so doing asserts an error by the Trial Chamber), namely that it revealed that in the areas of Bangui, PK12 and PK22 in late October

⁶⁶ T-53-CONF-ENG, 39:6-25, 42:10-24.

⁶⁷ T-129-CONF-ENG, 53:14-17.

⁶⁸ Judgment, paras. 626-628, 634, 642.

⁶⁹ LRV Observations, para. 85 (emphasis added).

⁷⁰ Judgment, para. 634.

and early November, when all but 3 of the underlying crimes were committed,⁷¹ all factions of both warring parties were at some time present, similarly dressed, similarly armed and mostly capable of speaking different languages.⁷² Mere presence in an area in such circumstances, which the, LRV now contends, is evidentially of little or no weight.

E. GROUND VII(B): THE SCOPE OF LRV INVOLVEMENT LEAD TO AN UNBALANCED AND UNFAIR TRIAL

1. The assertion that the Defence did not object to LRV questioning is not true

50. The LRV appears to justify her regular recourse to repetitive or leading questions on the basis that the Defence had the opportunity to object to such questions, “*mais ne l’avait pas fait*”.⁷³

51. Throughout the trial, Defence objections to the LRV questions were systematic, consistent, and took varied forms. As a first step, the Defence filed written filings challenging the form and content of LRV questions for which authorisation was sought.⁷⁴ These filings objected to LRV questions on the basis that they were leading;⁷⁵ or otherwise in an inappropriate form;⁷⁶ or unrelated to the charges;⁷⁷ or not relevant to the personal interests of victims;⁷⁸ or failed to articulate any questions;⁷⁹ were repetitive of questions put by the Prosecution;⁸⁰ or were out of

⁷¹ Appeal Brief, para. 472.

⁷² Appeal Brief, paras. 462-478.

⁷³ LRV Observations, para. 113.

⁷⁴ ICC-01/05-01/08-1679-Conf; ICC-01/05-01/08-1716-Conf; ICC-01/05-01/08-1750-Conf; ICC-01/05-01/08-1776-Conf; ICC-01/05-01/08-1780-Conf; ICC-01/05-01/08-1852-Conf; ICC-01/05-01/08-1866-Conf; ICC-01/05-01/08-1892-Conf; ICC-01/05-01/08-2259-Conf; ICC-01/05-01/08-2288-Conf; ICC-01/05-01/08-2303-Conf; ICC-01/05-01/08-2305-Conf. Objections to follow-up questions or presentation of evidence by the LRV were also filed throughout the proceedings, *see*, for example, ICC-01/05-01/08-1936-Conf; ICC-01/05-01/08-2004-Conf; ICC-01/05-01/08-2125-Conf.

⁷⁵ *See*, for example, ICC-01/05-01/08-2259-Conf, paras. 20-23, 33.

⁷⁶ *See*, for example, ICC-01/05-01/08-1679-Conf, para. 3.

⁷⁷ *See*, for example, ICC-01/05-01/08-1892-Conf, para. 2; ICC-01/05-01/08-1780-Conf, paras. 1-2, 11.

⁷⁸ *See*, for example, ICC-01/05-01/08-1716-Conf, paras. 4-5, 7, 13.

⁷⁹ *See*, for example, ICC-01/05-01/08-2303-Conf, para. 14.

time;⁸¹ or provided a justification which was a cut-and-paste from the request for an unrelated witness.⁸² The Defence acted diligently.⁸³ The objections were many.

52. In addition to written filings, objections were consistently raised during the testimony of witnesses. In fact, the repeated nature of the Defence's oral objections to the LRV "follow up" questions led to criticisms on the part of the Presiding Judge:⁸⁴

PRESIDING JUDGE STEINER: Mr Haynes.

MR HAYNES: Have you authorised the asking of this question? I'm not aware that you have.

PRESIDING JUDGE STEINER: As far as I understood, this is a question arising from the transcript.

MR HAYNES: The transcript last Friday.

PRESIDING JUDGE STEINER: Yes.

MR HAYNES: And no application has been made under the order for the conduct of proceedings that you made last November, which you suggested, or indeed ordered that it should. I mean I am concerned that Rule 91 is simply being circumnavigated by the legal representatives. All they do is anchor a question in the transcript and then ask a question which hasn't got leave of the Court. Now, the legal representatives do not have an unfettered right to question witnesses. Their right to question witnesses is anchored in the authority of the Court, and so far as we are aware, this question has no authority from the Court. It could have been notified on Friday evening or yesterday so that we could make observations on it. It hasn't been. It's simply been sprung upon us. Now, it may be a perfectly proper question, I simply don't know, but it seems to me that this is a practice that you discouraged at the start of the proceedings and you ought to discourage in practice [...]

PRESIDING JUDGE STEINER: Mr. Haynes, this is not the first time you raise the very same issue, and if we have time

⁸⁰ See, for example, ICC-01/05-01/08-1852-Conf, paras. 2-5, 11; ICC-01/05-01/08-1892-Conf, paras. 3-6, 9, 19.

⁸¹ See, for example, ICC-01/05-01/08-2305-Conf, paras. 3, 8.

⁸² See, for example, ICC-01/05-01/08-2288-Conf, para. 11.

⁸³ The Prosecution never filed a response to a request by the LRV to examine witnesses, not even to indicate that it intended to put questions which the LRV proposed to ask. Neither did the Chamber seek its guidance on the appropriate scope of LRV questions.

⁸⁴ T-160-CONF-ENG, 13:7-25; 14:10-19.

to revisit the transcripts, I can show you that, at least two or three other times you have raised the same concerns, and the Chamber ruled that the legal representatives are entitled to ask questions that arise out of the transcripts. They are not under the obligation to notify in advance if questions arise from a transcript, and I agree with the Prosecution that the Defence is always allowed to challenge the merits or the content of the question, but legal representatives are allowed to add questions that are purely related to what has been said during the questioning by the Prosecution. So this is the ruling, and if the Defence intends to make a formal challenge to that, the Chamber will analyse properly the challenge [...].

53. The Defence filed a compendious motion on the practice and procedure of LRV witness examination, which provided the Trial Chamber with concrete examples of repetitive questions, leading questions, non-neutral questions, non-authorised questions, and questions based on the personal knowledge of the LRVs as Central Africans themselves.⁸⁵ Rather than “analys[ing] properly the challenge”,⁸⁶ the Trial Chamber dismissed it in three paragraphs. Request for leave to appeal was denied.⁸⁷

54. No sensible argument can be made that the Defence could have objected to the LRV questioning, and failed to do so. The record of the case rightly reflects otherwise.

2. The use of “follow-up” questions was incompatible with Rule 91(3)

55. In her Observations, the LRV acknowledges that she was permitted by the Trial Chamber to ask so-called “follow up” questions without any prior authorisation from the Trial Chamber, thereby circumventing the requirement in

⁸⁵ ICC-01/05-01/08-2733-Conf.

⁸⁶ T-160-CONF-ENG, 14:19.

⁸⁷ ICC-01/05-01/08-2800.

Rule 91(3) of the Rules.⁸⁸ In reality the term “follow up questions” is merely a euphemistic synonym for questions for which no prior authority had been given.

56. In defending this practice as harmless, the LRV ignores the Trial Chamber’s own proscription that a request to ask “additional questions” was subject to leave, and that any request “must explain both the nature and the details of the proposed questioning as well as specify in what way the personal interests of the victims are affected”.⁸⁹ The Trial Chamber ignored its own procedure. The resultant practice was incompatible with the Rules of Procedure and Evidence.

57. The fact that the Defence had the right to object to each “follow up” question, or could address these questions in re-examination cannot justify their unfettered use.⁹⁰ Proceedings before the ICC must be expeditious.⁹¹ Chambers have a duty effectively to manage proceedings; to protect the welfare and dignity of witnesses and protect them from oppressive questioning. Justifying procedural anomalies on the basis that “the Defence can object to every question” or can routinely resort to re-examination is incompatible with expediency. More significantly, the obligation to ensure victims’ participation in a manner consistent with the rights of the accused rests with the Trial Chamber, not the Defence.⁹²

58. The LRV justifies the lack of authorisation for “follow up” questions on the basis that all questioning was subject to the “strict control” of the Trial Chamber. As such, the LRV hits upon the central problem. What the Trial Chamber viewed as being relevant to the views and concerns of the victims was so broad that, in reality, the Chamber transformed the LRV into a party. In response to Defence objections about the scope of LRV questioning, the Trial Chamber held that “victims **have a general interest in the proceedings** and in their outcome. As such, they have an

⁸⁸ LRV Observations, para. 94.

⁸⁹ ICC-01/05-01/08-1023, para. 19; T-42-CONF-ENG, 18:6-14.

⁹⁰ LRV Observations, para. 94.

⁹¹ Article 64(2), Rome Statute.

⁹² Article 68(3), Rome Statute.

interest in making sure that **all pertinent questions are put to witnesses.**⁹³ Put more straightforwardly, if the LRVs formed the view that the Prosecution or Defence had failed to put all relevant questions, they had a standing authorisation to put the questions themselves.

59. As such, there was no issue in the proceedings in which the victims could not justify a personal interest. The LRVs were bestowed with the discretion to ask any questions that the parties themselves could ask. LRVs were granted authorisation to question **every witness** for whom a request was made. While the LRVs were asked to rephrase questions on the basis that they were, for example, leading⁹⁴ or speculative,⁹⁵ **not one question** was disallowed on the basis that it was not relevant to the victims' views and concerns. The following example, cited by the LRV as demonstrating the Trial Chamber's "strict control", bears review:⁹⁶

PRESIDING JUDGE STEINER: Yes, Mr Haynes?

MR HAYNES: Well, it strikes me that there's so much wrong with that on a number of levels. Firstly, it's not a question you have authorised. Secondly, had you been asked to authorise it, you would almost undoubtedly have refused to allow it, it having no basis. But rather more worryingly, we are concerned about the practice that rose up of reminding Central African witnesses by both the legal representatives of victims that they are Central African citizens at the start of the examination and then protesting that they are not here to give evidence, and it seems to me implicit in that suggestion in that question about the Chinese Embassy is Mr Zarambaud purporting to give evidence to the witness, and I would ask you to keep a weather eye on the reminder of unauthorised questions in this examination. That seems to me to be a question that wasn't authorised and simply would never have been.

⁹³ ICC-01/05-01/08-1729, para. 15 (emphasis added).

⁹⁴ T-61-CONF-ENG, 32:18-19; T-108-CONF-ENG, 25:21-22.

⁹⁵ T-63-CONF-ENG, 52:3-7; T-94-CONF-ENG, 2:17-2.

⁹⁶ T-329-CONF-ENG, 34:11-23.

60. The Presiding Judge dismissed the Defence objection, and directed that the witness answer the question.⁹⁷ The suggestion that there was “strict control” is farcical. In truth, there was no distinction between the LRVs and the Prosecutor.

61. The LRV further attempts to justify its unfettered resort to “follow up” questions on the basis that the Defence did not disclose witness statements, only “non-detailed” summaries of anticipated testimony.⁹⁸ Her submissions in this regard are a simple misrepresentation of the record of the case. The LRV’s asked “follow-up” questions during all phases of the case to Prosecution and Defence witnesses alike, whether or not their evidence had been prefaced by interviews, witness statements or summaries.

62. To cite but a few examples, during the examination of P36, Maître Douzima-Lawson asked five authorised questions, and 10 follow-up questions.⁹⁹ She asked 10 follow-up questions of P47,¹⁰⁰ 12 follow-up questions of P169,¹⁰¹ seven follow-up questions of P45,¹⁰² 6 follow-up questions to P213.¹⁰³ This was the LRV’s consistent practice throughout both the Prosecution and Defence case. There was no correlation between this practice and the level of detail in Defence witness summaries. Nor can the variance in statutory disclosure obligations on the Prosecution and Defence be invoked to justify the improper scope of victims’ participation.

63. Even if the LRV is correct that the LRVs in *Lubanga* received only authorisation for “topics” rather than specific questions – regardless, and unlike “follow-up”

⁹⁷ T-329-CONF-ENG, 35:21.

⁹⁸ ICC-01/05-01/08-3494, para. 96.

⁹⁹ T-216-CONF-ENG, 11:5-10, 11:16-17, 11:21-12:4, 15:13-18, 18:12-18, 19:12-18, 19:23-24, 20:3-8, 20:17-23, 20:25-21:4.

¹⁰⁰ T-178-CONF-ENG, 31:4-13, 31:15-17, 31:23-24, 32:7-10, 32:14-15, 32:20, 33:10-17, 37:2-6, 37:12, 37:15.

¹⁰¹ T-138-CONF-ENG, 43:9-10, 44:4-5, 44:10-13, 44:20, 46:25-47:3, 47:11-13, 47:24, 49:24-50:2, 50:5-6, 51:18-52:1, 52:4-13, 56:25-57:3.

¹⁰² T-202-CONF-ENG, 38:10-14, 40:10-17, 41:7-15, 42:5-8, 44:8-13, 44:22, 44:24-45:8.

¹⁰³ T-188-CONF-ENG, 55:22-56:6, 57:10-13, 56:9-11, 56:19-58:1, 58:12-14, 58:16-59:4.

questions – this authorisation was received **in advance**. It was also received in the context of meticulous monitoring by the *Lubanga* Trial Chamber. In *Bemba*, questions were justified on the basis that “victims have a general interest in the proceedings and their outcome”.¹⁰⁴ In *Lubanga*, a “general interest in the outcome of the case or in the issues or evidence the Chamber will be considering” was deemed insufficient to warrant the questioning of witnesses.¹⁰⁵ LRVs were required to establish, for example, “involvement in or presence at a particular incident which the Chamber is considering”, or “identifiable harm” from that incident.¹⁰⁶ The LRVs questioned only 25 of the 67 witnesses heard.¹⁰⁷ The assertion that the LRVs in *Lubanga* were subject to lesser control or scrutiny is manifestly false.

3. The Defence witnesses were cross-examined three times

64. The Appellant never asserted that LRVs are prohibited from challenging a witness’ credibility.¹⁰⁸ Rather, the Appellant challenged the unswerving consistency of the LRV’s practice of attacking the credibility of Defence witnesses,¹⁰⁹ and the manner in which this was carried out.¹¹⁰

65. In any event, the LRV’s assertion of a right to challenge the credibility of witnesses is flawed.¹¹¹ Firstly, Trial Chambers have consistently required that LRV questioning be neutral.¹¹² As such, questions relevant to credibility are the exception, rather than the rule,¹¹³ and will be prohibited “unless the LRV **can demonstrate** that the witness gave evidence that goes **directly against** the interests of the victims represented”.¹¹⁴ No such demonstration was ever solicited or

¹⁰⁴ ICC-01/05-01/08-1729, para. 15 (emphasis added).

¹⁰⁵ ICC-01/04-01/06-1119, para. 96.

¹⁰⁶ ICC-01/04-01/06-1119, para. 96.

¹⁰⁷ *Lubanga* TJ, para. 20, fn. 62.

¹⁰⁸ LRV Observations, paras. 107-108.

¹⁰⁹ Appeal Brief, para. 529.

¹¹⁰ Appeal Brief, paras. 530-540.

¹¹¹ LRV Observations, paras. 107-108.

¹¹² ICC-01/05-01/08-1023, para. 23; ICC-02/11-01/15-205, para. 37.

¹¹³ ICC-01/04-01/06-2127, para. 28.

¹¹⁴ ICC-01/04-01/07-1665, para. 90. *See also* ICC-01/05-01/08-1471, para. 13; T-117-CONF-ENG, 3:20-22.

provided in the present proceedings. The LRV was permitted openly to attack the credibility of each Defence witness, over Defence objection.¹¹⁵

66. The LRV's attempt to minimise the practice of representatives giving evidence during the putting of questions, is unpersuasive. She excuses the remark to D50 that "I raised this question as a Central African Republic citizen myself, who was there and who heard about these things"¹¹⁶ on the basis that it is "normal" for a LRV to "urge" a Defence witness to reply.¹¹⁷ She also points to the fact that D50 indicated that he knew the LRVs as Central African lawyers.¹¹⁸

67. It may never be possible to quantify the impact of the fact that the LRVs (and their political leanings and connections) were known to the Defence witnesses who came from the CAR. This is not speculation on the part of the Appellant; the LRVs themselves were open, in front of Defence witnesses, about their political differences, and their status within the Central African regime:

Now, it's also possible that when you saw lawyers from the Central African Republic here in the courtroom, you may have some concerns because you are giving testimony confidentially, and perhaps you fear that someone from the Central African Republic might reveal your identity.¹¹⁹

I'm not criticizing President Patassé... perhaps you're aware of my personal opinion regarding the situation in the Central African Republic, but here my purpose is to ask questions in order to enable the Chamber to understand these events.¹²⁰

¹¹⁵ See, for example, T-334-CONF-ENG, 46:11-49:5; T-330-CONF-ENG, 25:10; T-329bis-CONF-ENG, 4:23-5:6; T-258-CONF-ENG, 52:12-15; T-250-Red-ENG, 59:2-3.

¹¹⁶ T-255-CONF-ENG, 45:25-46:1.

¹¹⁷ LRV Observations, para. 110.

¹¹⁸ LRV Observations, para. 110.

¹¹⁹ T-255-CONF-ENG, 28:1-4.

¹²⁰ T-258-CONF-ENG, 49:2-5.

68. As regrettable as this situation was, any suggestion that the personal testimony on the part of LRVs was limited to situations in which it was “normal” to “urge” Defence witnesses to respond, is unsustainable. Testimony from the LRVs, on key live issues in the case, was a regular occurrence.¹²¹ Defence objections were dismissed.¹²²

4. The assertion of consistency of practice between Trial Chambers is not true

69. The suggestion that the modalities of LRV participation in the *Bemba* case were consistent with those established in other Trial Chambers is not correct.¹²³

70. The following admonition from Trial Chamber II in the *Katanga* case would have been utterly foreign in Mr. Bemba’s trial:¹²⁴

PRESIDING JUDGE COTTE: Could you please restrict your questions to the victims you are representing and move away from this very broad framework and return to what conventionally legal representatives of the victims ask witnesses [...] Mr Luvengika, please come back to let’s not say conventional or traditional questions, we are not prisoners of tradition, but what would appear to be more specific questions relevant with the mandate of a legal representative who would like to find out information about the mistreatment suffered by the victims you represent, because I am afraid we are spending a lot of time on general issues that would be more relevantly covered by other people in this Chamber than you.

71. Had the two LRVs in the *Bemba* case been subject to the same reasonable restrictions, it is likely that the evidential record would have looked very different.

¹²¹ See, for example, T-91-CONF-ENG, 63:10-18; T-234-CONF-ENG, 36:9-23; T-329-CONF-ENG, 34:11-23.

¹²² ICC-01/05-01/08-2733-Conf; ICC-01/05-01/08-2751-Conf; ICC-01/05-01/08-2800.

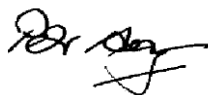
¹²³ LRV Observations, para. 117.

¹²⁴ ICC-01/04-01/07-T-252-ENG, 42:18-20; 43:8-13.

72. In no other case have the LRVs had a blanket right to ask so-called “follow-up” questions, with no prior explanation of their relevance (let alone without authorisation from the Trial Chamber), of each witness. Other Trial Chambers have consistently required written requests from LRVs seeking leave to ask identified questions, normally within a timeframe of seven days from the testimony.¹²⁵ In the one case which differed in procedure, the *Ongwen* Trial Chamber did not require “an advanced written note” of intended questions, but held that “applications to question may be presented orally” and “the necessity or propriety of questions asked will be addressed on a case-by-case basis”.¹²⁶ In all cases, **prior** authorisation was required, as mandated by Rule 91(3) of the Rules.

73. After receiving authorisation, the LRVs in other cases have never jumped dramatically off script, and been permitted to ask an additional 20 or 30 questions on the basis that they are unconvinced that the parties have everything covered. The practice in *Bemba* was unique. It was also erroneous, utterly prejudicial, and should be recognised as such.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 1 March 2017

¹²⁵ ICC-01/09-01/11-847, para. 19; ICC-01/09-01/11-460, para. 73; ICC-01/04-01/07-1665, para. 87; ICC-01/05-01/08-1023, para. 18; ICC-02/11-01/15-205, para. 37; ICC-01/04-02/06-619, para. 10.

¹²⁶ ICC-02/04-01/15-497, para. 10.

It is hereby certified that this document contains a total of 7,812 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.