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**ASSESSING THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT (ICC)
IN COMBATTING WAR CRIMES: A CASE STUDY OF THE PROSECUTOR V
JEAN-PIERRE BEMBA GOMBA**

By:

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LLB212483949

**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
BACHELOR OF LAWS (LLB) DEGREE.**

2025

DECLARATION

I declare that this dissertation entitled, **ASSESSING THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT (ICC): THE PROSECUTOR V JEAN-PIERRE BEMBA GOMBA** which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution. I understand what plagiarism entails and I'm aware of the university's policy this regard. Thus, where another people's work is cited. I have duly acknowledged. The error or omission in this work are solely mine.

TANIA TARISAI PHIRI

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2025

RECOMMENDATION

I **MWIKA MUSAKUZI** recommend that the dissertation prepared under my supervision by **TANIA TARISAI PHIRI** entitled **ASSESSING THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT(ICC) IN COMBATting WAR CRIMES: THE PROSECUTOR V JEAN-PIERRE BEMBA GOMBA** be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils the requirements pertaining to the format laid down in the governing directed research.



11/11/2025

M.MUSAKUZI

ACKNOWLEDGEMENT

First and foremost, I give all glory and honor to God Almighty for His unending grace, wisdom, and strength throughout the course of my academic journey especially my research. His divine guidance has been my constant source of inspiration and perseverance in times of hardships and uncertainty. I am forever grateful and deeply humbled for the blessings of knowledge, understanding, and resilience that have sustained me from the beginning to the completion of this work. Without His mercy and direction, none of this would have been possible. He started the good work and He has surely finished.

I would like to express my sincere gratitude to my supervisor, Mr. Mwika Musakuzi, for invaluable guidance, patience, and encouragement throughout the of this research. He made this research less stressful because of his kindness and patience towards me his insightful timely feedbacks, constructive criticism, and constant support have been instrumental in shaping both the structure and depth of this study. I am especially grateful for his dedication, availability, and mentorship, which inspired me to approach this work with greater critical thinking and academic discipline.

I would like to extend my gratitude to Ms. Mwanamwambwa, Ms. Mutemwa, Ms. Mwanza, and Ms. Simbotwe who were a constant source of strength and support even with the few kind words and smiles shown to me I really appreciate.

I owe my deepest gratitude to my beloved parents for their unwavering love, prayers, and encouragement those late-night calls when I was almost giving up mummy kept me going, throughout my academic journey. Their moral and emotional support gave me the strength and determination to persevere, even in challenging moments. This achievement is as much theirs as it is mine, and I dedicate this work to them with profound appreciation and love

To my brother and sisters, I am sincerely grateful for their love, encouragement, and constant support. Their belief in me has been a great source of strength and motivation throughout this journey.

Lastly, I would like to thank my friends and study group for their support, encouragement, and collaboration throughout this academic journey. Their shared insights and teamwork greatly contributed to my motivation and understanding you people became my second family away from home.

DEDICATION

This dissertation is dedicated to God Almighty, whose guidance and abundant grace have been a constant source of strength through my academic journey. I also dedicate this to my lovely parents, **Mr. Enasiyo Phiri** and **Mrs. Violet Phiri**, and to my siblings, **Agness Phiri, Fidelis Phiri, Sarah Phiri** and **Blessings Phiri** and my best friend **Sibongile Sakala**. Their unwavering support, love and sacrifices, they made it possible for me to successfully complete my program of study. I am forever grateful to each of you and remain deeply indebted for your encouragement and sacrifice.

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ABSTRACT

This study critically assessed the efficacy of the International Criminal Court (ICC) in combating war crimes, using *The Prosecutor v Jean-Pierre Bemba Gomba* as the axis case study. It explored how evidentiary challenges, political constraints, and lack of sufficient resources influence the ICC's quest for justice. Drawing on legal global analysis, academic literature, and ICC judgements, the study analyzed whether the court has managed to fulfill its mandate to put an end to impunity for war crimes. Findings showed that while the ICC has strengthened global accountability mechanisms, its effectiveness is still bared by structural and procedural shortcomings.

CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.0 INTRODUCTION

The creation of the international criminal court (ICC) marked a watershed moment in the evolution of international criminal justice. As the first permanent international tribunal with jurisdiction to prosecute individuals for the most serious crimes of concern to the global community: genocide, crimes against humanity, war crimes and the crimes of aggression the ICC represents a significant advancement in the development of international criminal law. Established by the Rome Statute in 1998, which entered into force on 1 July 2002, the court was founded on the principle that those responsible for grave violations of international law must not go unpunished, particularly in situations where national legal systems are unwilling or unable to prosecute such crimes.

Although envisioned as a global court of last resort, its jurisdiction is both expansive in theory and restricted in application. Under the Rome Statute, the court is empowered to prosecute individuals for four core crimes: genocide, crimes against humanity, war crimes, and the crimes of aggression however this authority is not universal. The court may only exercise jurisdiction in three specific circumstances; where the alleged crime was committed on the territory of a state party, where the accused is a national of a state party, or when the matter is referred by the United Nations Security Council under Article 13(b) of the statute. This framework provides a mechanism for international accountability but also imposes clear limitations, particularly when dealing with non-member states that have not accepted the court's jurisdiction. The international Criminal Court is not a substitute for national courts. According to the Rome Statute, it is the duty of every state to exercise its criminal jurisdiction over those responsible for international.

Among the main intentions of the ICC being PCI was deterrent promotion alongside consolidating accountability at a global level besides, it was created to prosecute atrocities. However, in trying to achieve its objective, the ICC's power has been watered down by various challenges like limited reach of its jurisdiction, states cooperating in an inconsistent manner, and also a persistent stream of allegations of political bias in that the court is said to focus most on Africa. Though the Rome Statute

legally paves the way for an elaborate transnational justice system, its realization is quite a tough uphill especially in scenarios relating to non-signatories and politically sensitive conflicts. The ICC was mainly set up to take over cases that have exhausted the national courts thus acting in a capacity of a court of last resort and not as a judicial system replacement, this implies that the ICC intervention is necessitated when the national courts fail to prosecute; hence they do not usurp but rather occupy the position where they are lacking. The principle of complementarity required that the ICC helps only when national courts cannot or will not thoroughly carry out investigations or prosecutions in the cases that fall under its jurisdiction. By so doing, they are acknowledging the sovereignty of a state while at the same time providing an international accountability mechanism as a means to fight the scourge of impunity. The fact that the court depends on the cooperation of the respective nationals for the conduct of the investigations, arrest, prosecution, and application of sentences, means that it is at the mercy of the political will of the sovereign states which, as we know, can be drastically different. Since the genesis, the ICC has faced quite a number of operational and political difficulties that have bared its effectiveness. One of the most adamant critiques has to do with its perceived attention to on African states. The majority of cases brought before the ICC are from African countries, which has ignited allegations of discrimination and neo-colonialism. It has been argued that this focus weakens the courts claim to unbiasedness and legitimacy. On the other hand, defenders emphasize that several African states themselves have taken situations to the court and that the occurrence of the conflict with large scale atrocities in Africa partly elaborates this sequence. Political difference also influences the functioning of the ICC. The court's decision and investigations sometimes intersect with complex geopolitical interests, leading to tensions between the ICC and some powerful states. For regional organizations a good example is the big political leaders that hold offices in these big organizations as well as in their states. The security council's authority to defer investigations or prosecutions under Article 16 of The Rome Statute introduces a political element to what is ideally an impartial justice process. This has raised questions that international justice might be used as an instrument of political advantage rather than solely legal adjudication.

Despite the challenges faced by the ICC it has made great contributions towards the international criminal justice system. Its prosecution of persons like Thomas Lubanga

Dyilo, the first person to be incarcerated by the courts for recruiting child soldiers in the Democratic Republic of Congo, and Laurent Gbagbo, former president of Ivory Coast, shows its ability to hold high ranking perpetrators accountable. These cases set important legal precedents in the fight against impunity and raise awareness of international justice mechanism among populations affected by war crimes atrocities. Looking ahead the ICC encounters quite a number of choices and potential reforms to strengthen its credibility and effectiveness in carrying out its mandate. Addressing the perception of bias requires broader engagement with non-African states and ensuring investigations reflect global patterns of atrocity. Increasing state membership and improving cooperation mechanisms could improve the court's jurisdictional reach and enforcement.

These difficulties have tested the courts credibility on the global stage. Questions remain about its ability to deliver consistent and unbiased justice. Despite its promise, the ICC persists to face great legal and political hurdles. These concerns form the basis for deeper inquiry into its role within the international legal system.

1.1 BACKGROUND

The case of **The Prosecutor v. Jean-Pierre Bemba Gomba**¹ offers a compelling lens through which to evaluate the efficacy of the International Criminal Court (ICC) in combating war crimes. As one of the courts most high-profile and controversial proceedings, it illustrates both the potential and limitations of the ICC's prosecutorial and judicial mechanisms, particularly with respect to leadership accountability, the treatment of sexual violence in conflict, and the reliability of its appellate system. The case arose from his alleged responsibility during the conflict in the Central African Republic (CAR) between October 26, 2002, and March 15, 2003.

Jean-pierre Bemba, a former vice president of the Democratic Republic of the Congo (DRC), Was also the president of the Mouvement de Liberation du Congo (MLC) and commander-in-chief of its military wing, 2002, he deployed MLC troops to the Central African Republic (CAR) to support then president Ange- Felix Patasse against a

¹ International Criminal Court (ICC) (2016) The Prosecutor v Jean-pierre Bembe Gomba, Case No. ICC-01/05-01/08, Trial Chamber III Judgement, 21 March 2016. Available at: <https://www.icc-cpi.int/CourtRecords/CR2016-02156.PDF> (Accessed 6 November 2025).

rebellion. 2003. Bemba was not accused of directly committing the crimes but was charged under **Article 28 of The Rome Statute**-the doctrine command responsibility for failing to prevent or punish his subordinates who committed the acts of murder, rape, and pillaging. This was the first ICC case to apply command responsibility as the sole mode of liability, marking a significant development in the courts war crimes jurisprudence

Bemba was arrested in May 2008 and handed over to the ICC in July 2008. His trial began on November 22, 2010, marking one of the ICC's earliest big cases focused on sexual violence in conflict. In 2016, Trial chamber iii convicted Bemba on two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape, and pillaging), sentencing him to 18 years in prison. The conviction was acclaimed as a landmark, particularly for its recognition of sexual violence as a central war crime, and for bolstering the principle that military and political leaders can be held responsible for the conduct of their forces. This initial ruling symbolized a high point for the ICC's ability to enforce international humanitarian law and deliver accountability. However, the case took a pivotal turn during the appeal process, which revealed key institutional vulnerabilities. In 2017, Bemba appealed his conviction, arguing that the Trial chamber had misapplied the legal standards for command responsibility and failed to properly assess his effort to control his troops the court didn't reach the necessary threshold to convict him on the ground of command responsibility only. In a highly controversial 3-2 decision, the Appeals Chamber acquitted Bemba in June 2018, ruling that the Trial Chamber erred in its evaluation of Bemba's actions to prevent or repress the crimes. The majority happened to find that Bemba's criminal liability had not been proven beyond a reasonable doubt, especially in light of his logistical limitations in a foreign territory.

The dissenting judges strongly disagreed, warning that the majority's reasoning effectively raised the bar for command responsibility, undermined deterrence, and weakened protection for civilians during armed conflict. The acquittal also meant that over 5,000 registered victims were denied reparation thus casting doubt on the ICC'S ability to provide justice to those most affected by war crimes. The second appeal arose from a separate but related case in which Bemba was faced with charges for witness tampering and obstruction of justice during the original trial, along with four co-defendants. In 2018, he was convicted in this second case, but the Appeal

Chamber later reduced his sentence in 2020, leading to his release. Although the conviction was partially upheld, the appellate outcome again raised concerns about the ICC's capacity to protect the integrity of proceedings when faced with interference by influential defendants.

1.2 STATEMENT OF THE PROBLEM

The international Criminal Court (ICC) was created to prosecute individuals responsible for the gravest crimes, including war crimes. However, its ability to deliver consistent credible and victim-centered justice remains under scrutiny. A key example is **The Prosecutor v. Jean-Pierre Bemba Gomba**, in which Bemba was initially convicted in 2016 for war crimes committed in Central African Republic under the doctrine of command responsibility. The conviction was seen as a milestone in holding high-ranking leaders accountable. Yet, the Appeals Chamber's 2018 decision to overturn the conviction raised serious concerns about the ICC's legal consistency, the application of evidentiary standards. And its capacity to uphold justice for victims particularly over 5,000 individuals who were denied reparations as a result. This case serves as an important opportunity to assess whether the ICC is effectively fulfilling its mandate to combat war crimes and discourage future violations from occurring.

1.3 GENERAL OBJECTIVE

To critically evaluate the efficacy of the International Criminal Court in prosecuting war crimes by analyzing the application of command responsibility, the operational, evidentiary, and procedural dynamics of the Bemba case, and the broader impact of the judgement on victim perception of justice, reparations, and the court legitimacy.

1.4 SPECIFIC OBJECTIVES

1. Critically examine the application of the doctrine of command responsibility in *The Prosecutor v. Jean-Pierre Bemba Gomba*.
2. To explore the operational evidentiary, and prosecutorial dynamics that shaped the prosecution of the Bemba case at the ICC.
3. To assess the broader implications of the Bemba judgement on victim perceptions of justice and the legitimacy of the ICC.

1.5 RESEARCH QUESTIONS

1. How did the ICC interpret and apply the doctrine of command responsibility in the Bemba case?
2. What operational, evidentiary, and procedural challenges did the ICC face during the investigation and prosecution of Bemba.
3. How did the outcome of the Bemba case affect victims' perceptions of justice, reparations, and the International criminal courts legitimacy?

1.6 SIGNIFICANCE OF THE STUDY

The significance of the research lies in its contribution to understanding the practical strengths and limitations of the ICC's prosecutorial mechanisms. By analyzing the legal, procedural, and political dimensions of the Bemba trial and its ultimate overturning on appeal, the study provides insights into how the court maneuvers intricate cases involving war crimes and crimes against humanity. It offers an evidence-based assessment that can inform attempts to enhance the ICC's credibility, efficiency, and role in ensuring accountability in post-conflict settings and strengthening international justice and fight against impunity

It seeks do so providing an elaborate and detailed analysis of both the trial and the appeal proceeding that culminated into Bemba's acquittal, the research sheds light on how the ICC addresses evidentiary challenges, applies standards of proof, and navigates issues of due process in high profile cases. It further examines how institutional, logistical, and political factors such as the availability of reliable witness testimony, the management of filed investigations, and the influence of state cooperation- affected the Court's ability to deliver justice effectively.

1.7 SCOPE OF THE STUDY

The study focusses on assessing the effectiveness of the international Criminal Court (ICC) in prosecuting War Crimes, using The Bemba case as a case study. The research specifically examines the legal proceedings, trial judgement and appeals process related to this case, with particular attention to the application of the command

responsibility, the evidentiary standards employed, and the role of the ICC in delivering justice to victims of conflict-related sexual violence and other war crimes.

1.8 LITERATURE REVIEW

Understanding the efficacy of international judicial mechanisms, particularly the international Criminal Court (ICC), has been the subject of important debate. As global efforts to combat War Crimes and ensure accountability have heightened, the ICC has emerged as a principal institution in the enforcement of international Criminal Law. This literature review explores the academic discourse concerning the courts mandate, performance and challenges with particular focus on its prosecutorial strategies. By analytically engaging with current studies, this section sets the foundation for analyzing the ICC's effectiveness through the lens of a landmark case: **The Prosecutor v. Jean -Pierre Bemba Gomba.**²

IVANKA VUJICIC,³An analysis on the Admissibility of Evidence in the International Criminal Court: Case study of The Prosecutor v. Gbagobo & Ble Goud. She explores the challenges surrounding the admissibility of evidence at the international Criminal Court (ICC), with a focus on article 69 of the Rome Statute. Her research centers on the above stated case where she analyzes how evidentiary procedures were applied and the impact these had on the trial's outcome. Vujicic also draws comparison with international tribunals, including the ICTY, ICTR, and the special Court for Sierra Leon, to assess how the ICC's approach differs or aligns with past practices.¹

JETHRO LUNGU,⁴ the role of strategic litigation in the prosecution of conflict-related sexual violence, this study explores the legal and practical challenges of investigating and prosecuting sexual violence in conflict zones, emphasizing the need for ethical, gender-sensitive, and coordinated approaches. It investigates the strategies used in national and international system, including specialized training and survivor-centered practices. Focusing on case studies from Rwanda and the DRC, the research analyzes legal frameworks, international commitments and barriers such as

² The Prosecutor v Jean-Pierre Bemba Gomba

³ Ivanka Vujicic, An Analysis of the Availability of Evidence in the International Criminal Court: Case Study of The Prosecutor v Gbagbo & Ble Goude, University of Lusaka

⁴ Jethro Lungu, The Role of strategic Litigation In The Prosecution of conflict -Related Sexual Violence Cases

evidentiary gaps, social stigma, and institutional weaknesses. It finally aims to evaluate the effectiveness of justice mechanisms in encouraging accountability and assisting survivors.

MUKUMBUTA MIRRIA MAFWAFWA⁵, an analysis of prosecuting rape as an act of genocide: Lessons from the Ad hoc tribunals, Scholarly attention has increasingly focused on the recognition and prosecution of sexual violence, particularly rape, as a grave violation of international law. This study adds to the growing body of literature by tracking the legal evolution of rape as an international crime and evaluating how jurisprudence has shaped the broader framework of accountability for sexual offences. It underscores the importance of expanding access to justice and reparations for victims. In line with the current research that analyzes the role of international criminal institutions, the study focuses on statutory and case law from the ad hoc international legal framework, particularly in improving the prosecution of sexual violence and reinforcing accountability structures.

The Prosecutor v Bagilishema⁶ case at the international Criminal Tribunal for Rwanda (ICTR) shows the challenges in proving command responsibility, a principal also central to the international Criminal Court's (ICC) prosecutions. In this case, Ignace Bagilishema was acquitted due to lack of sufficient evidence linking him to crimes committed by subordinates. This outcome underscores the difficulties in establishing individual Criminal responsibility of leaders for actions of their subordinates. For the ICC, which also applies the doctrine of command responsibility under Article 28 of the Rome Statute, the Bagilishema case illustrates the importance of robust evidence in securing convictions. The case thus serves as an important point in assessing the efficacy of the ICC in combating war crimes, emphasizing the need for strong evidentiary standards in proving command responsibility.

The Prosecutor v. Kunarac⁷ case the International Criminal Tribunal for the former Yugoslavia (ICTY) highlights the prosecution of sexual violence as war crimes and

⁵ MUKUMBUTA MIRRIAM MAFWAFWA, An analysis of Prosecuting Rape as An Act of Genocide: Lessons from The Ad Hoc Tribunals, The University of Lusaka, 2021

⁶ International Criminal Tribunal for Rwanda (ICTR) The Prosecutor v Ignance Bagilishema, Case No. ICTR-95-1A-T, Trial Chamber 1 January, 7 June 2001. Available at: <https://unictr.org/sites/unictr.org/judgements/en/01607.PDF>(Accessed: 6 November 2025)

⁷ International Criminal Tribunal for the Former Yugoslavia (ICTY) (2001) The Prosecutor v Dragoljub Kunarac, Radomir Kavoc and Zoran Vukovic, Case No. IT-96-23-T & IT-96-23/1-T, Trial Chamber Judgement, 22 February

crimes against humanity, a dimension critical to assessing the international Criminal Court's (ICC) efficacy in combating war Crimes. In this groundbreaking case, it gives a significant precedent for the prosecution of sexual violence as both war crimes and crimes against humanity. It further highlights the need for international tribunals like the ICC to hold perpetrators accountable for sexual violence in conflict settings, contributing to broader discourse on justice and accountability in international criminal law.

One of the most celebrated authors **Sebastian Farnham** in his well renowned book **IN War Crimes Justice**,⁸ gives a balanced and insightful analysis of the international Criminal Courts (ICC) functioning in addressing war crimes, emphasizing that its effectiveness must be seen through both legal and political lenses. However, the ICC has succeeded in institutionalizing international accountability and pushing the global norm against impunity, Farnham argues that its operations are often hampered by political considerations and state interests, the courts reliance on state cooperation for arrest, evidence gathering, and enforcement makes it vulnerable to selective adherence and inconsistent application of justice. As a result, powerful states or their allies may evade scrutiny, while weaker states become the primary subjects of prosecution, undermining perceptions of impartiality and the ICC's broader legitimacy. Regardless of these challenges, Farnham recognizes the ICC's symbolic and normative achievement. Through its jurisprudence and the visibility of its proceedings, the court has reinforced expectations that grave violations of international humanitarian law must be punished, influencing domestic legal reforms and adopting a culture of accountability within national jurisdictions. He advocates for assessment of the ICC efficacy that goes beyond numerical outcomes or conviction rates, incorporating its long-term normative impact and addition to global justice discourse.

1.10 METHODOLOGY

2001. Available at: <https://www.icty.org/x/cases/Kunarac/tjug/en/kun-tj010222e.PDF> (Accessed: 6 November 2025)

⁸ Farnham, S. (2025) War Crimes Justice. Publifye AS.

This study uses a qualitative case study approach, focusing on *The Prosecutor v. Jean-Pierre Bemba Gomba* to assess the effectiveness of the ICC in addressing War Crimes. It combines the doctrinal legal research analyzing legal texts, court decisions, and statutes.

1.9 ETHICAL CONSIDERATIONS

The researcher will seek permission from the university to ensure the study meets all ethical standards related to legal research. Proper referencing will be used throughout to uphold academic honesty, and any sensitive details from case studies will be treated with care and confidentiality.

1.10 CONCLUSION

This research aims to critically assess the effectiveness of the International Criminal Court in addressing War Crimes, **using *The Prosecutor v. Jean-Pierre Bemba Gomba*** as a case study. By analyzing legal texts, court judgements, scholarly opinions, the study will contribute to the ongoing discourse on international justice and accountability. The findings are expected to highlight both the strengths and limitations of the ICC in fulfilling its mandate.

1.11 RESEARCH OUTLINE

CHAPTER ONE

serves as the introduction to this thesis. It outlines the background of the study, defines the problem statement, and sets out the research objectives and question. It further discusses the significance, scope, and methodology of the research. Additionally, this chapter presents a review of literature relevant to the topic under investigation.

CHAPTER TWO: APPLICATION OF THE DOCTRINE OF COMMAND RESPONSIBILITY IN THE BEMBA CASE

This chapter explores the doctrine of command responsibility as developed in International Criminal law, focusing on its codification under Article 28 of the Rome

Statute and its interpretation by international tribunals, it examines the rationale behind holding superiors accountable for crimes committed by subordinates, the evidentiary threshold for establishing effective control and knowledge, and the duty to prevent or punish violations. With particular attention to *The Prosecutor v Jean-Pierre Bemba Gomba*, highlighting how the Trial Chamber initially relied on command responsibility to secure a conviction, and how the Appeal was later overturned it underscores the deficiencies and weaknesses exposed in this case such as difficulty of proving knowledge, the ambiguity surrounding effective control and challenges of attributing responsibility to a remote commander-thereby illustrating both the importance and fragility of command responsibility as a mechanism for ensuring accountability

CHAPTER THREE: THE EVIDENTIARY, PROSECUTORIAL, AND OPERATIONAL CHALLENGES

this chapter explores the practical challenges that shaped the prosecution of Bemba at the ICC. It analyzes the evidentiary hurdles, such as conflicting witness testimony, weak corroboration, and allegations of coaching, alongside the prosecutorial strategies pursued by the office of the Prosecutor, including reliance on command responsibility and contested disclosure practices. Operational dynamics -including state cooperation, logistical difficulties in investigating crimes in conflict zones, and resource constraints are also assessed. The chapter further considers the Article 70 proceedings on witness tampering, evaluating how these factors collectively influenced the case outcome and raised questions about the ICC's capacity to deliver justice effectively.

CHAPTER FOUR: ASSESSING POSSIBLE REFORMS

This chapter assesses the potential reforms to strengthen the effectiveness of the ICC's approach to command responsibility and the prosecution of war crimes. It critically examines proposals aimed at clarifying the evidentiary standards for effective control and knowledge, improving prosecutorial strategies, and addressing structural limitations within the court. By evaluating both scholarly recommendations and lessons drawn from the Bemba case, the chapter seeks to highlight practical and doctrinal

reforms that could enhance accountability while ensuring fairness to accused commanders.

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

This final chapter summarizes the key finding of the study, drawing conclusions about the ICC's efficacy in prosecuting war crimes through the lens the Bemba case. It offers recommendation for enhancing the courts effectiveness and suggests areas for future research to address identified gaps and challenges.

CHAPTER TWO

APPLICATION AND DEVELOPMENT OF THE DOCTRINE OF COMMAND RESPONSIBILITY

2.0 INTRODUCTION

The doctrine of command responsibility also called superior responsibility is a fundamental principle of international criminal law that attributes liability to military and civilian superiors for the crimes committed by their subordinates under their control. Under this doctrine, a commander can be criminally liable if he or she knew or should have known of a subordinate's crimes and failed to take necessary and reasonable measures to prevent or punish them⁹. It is Codified under the Article 28 of the Rome Statute, the doctrine attempts to close the gap between individual liability and the systematic nature of mass atrocities, ensuring the that leaders are held accountable for their derelictions of control that facilitate grave violations. This chapter examines the doctrine's application in *The Prosecutor v Jean-Pierre Bemba Gomba*, the first ICC case to apply Article 28. It considers how the Trial Chamber relied on command responsibility to convict Bemba, and how the Appeals Chamber later overturned the decision, thereby exposing both the potential and the limitation of command responsibility as a mechanism for accountability.

2.1 THE HISTORICAL DEVELOPMENT OF COMMAND RESPONSIBILITY

The root of command responsibility can be traced to the early 20th century, particularly the Hague Convention of 1899 and 1907, which stipulated the duties of commanders in warfare. The doctrine of command responsibility first emerged in the aftermath of the second World war as a response to the atrocities committed on a massive scale by military forces under hierarchical command structures. The seminal case was the *Trail of General Tomoyuki Yamashita* before a U.S. military commission in 1945. Yamashita was convicted and sentenced to death for crimes committed by Japanese troops in the Philippines, despite no evidence of his direct order or participation in the atrocities. The tribunal reasoned that as a commander, Yamashita bore a duty to

⁹ *Yamashita v Styer* 327 US 1(1946)

control his forces and prevent violations of the laws of war, and his failure to do so amounted to criminal liability¹⁰. This precedent was controversial particularly because the judgement offered little clarity on the required mental element, but it established the principle that commanders could be held liable for crimes of omission for failing to prevent or punish subordinates. Similar analysis was applied in the International Military Tribunal at Nuremberg and the International Military Tribunals for the Far East (Tokyo Trials), where superiors were prosecuted not only for ordering crimes but also for failing to exercise proper control over their forces. These early decisions laid the foundation for command responsibility as a principle of customary international law, though they left unresolved ambiguities regarding the thresholds of knowledge and control.

The doctrine was significantly developed in the jurisprudence of the ad hoc tribunals established in the 1990s. The international Criminal Tribunal for Rwanda confronted complex cases of systematic violence where senior leaders were geographically and hierarchically distant from the crimes on the ground. The case of Celebici case, 1998), the tribunal highlighted the three essential elements of command responsibility: superior-subordinate relationship with effective control, knowledge or constructive knowledge of crimes, and failure to prevent or punish¹¹. The judgement clarified that “effective control meant the material ability to prevent or punish, rather than formal rank alone. Later, in Halilović (ICTY, 2005), the tribunal acquitted the accused, finding that effective control had not been established, thereby underscoring the evidentiary importance of proving actual authority. Through these decisions, the tribunals refined the doctrine by differentiating command responsibility as a form of liability for omission, distinct from ordering or participating in crimes. These developments directly informed the drafting of Article 28 of The Rome Statute, which codified command responsibility into the International Criminal Court and created a structured basis for holding military and civilian leaders accountable for failing to control their subordinates.

¹⁰ Ibid

¹¹ Celebici case, ICTY, 1998

2.2 CODIFICATION OF COMMAND RESPONSIBILITY UNDER ARTICLE 28 OF THE ROME STATUTE

The adoption of the Rome Statute in 1998 was a turning point in the history of international law because it gave formal recognition to the doctrine command responsibility in Article 28. Before this, the principle had developed mainly through customary international law and the jurisprudence of earlier tribunals, such as the International Criminal Tribunal for Rwanda. In those forums, judges had relied on case law to interpret and apply the concept, often leading to inconsistencies and debate about its scope and meaning. By including command responsibility in the Rome Statute, the drafters of the treaty sought to remove these uncertainties and to establish a clear, uniform, and binding framework that would apply before the International Criminal Court. This codification not only strengthened accountability for military and civilian but also showed the international community's commitment to ensuring the individuals in positions of authority cannot escape liability for crimes committed by their subordinates when they fail to exercise proper control¹². Article 28 of the Rome Statute is significant it provides, for the first time in treaty law, a comprehensive and detailed codification of the doctrine of responsibility. Prior to its adoption, the principle had developed through customary international law and the jurisprudence of the ad hoc tribunals, but without a universally accepted written formulation. Its inclusion in the Statute therefore represents both a consolidation in the articulation of superior responsibility. Article 28 of the Rome Statute stipulates the distinction between military responsibility of commanders and that of civilian superiors it creates liability not for direct commission of offences but for failure to stop or punish offences committed by subordinates under their effective authority and control.

For military commanders under Article 28(a) of the Rome Statute states that the military commanders will be held accountable for the offences of their subordinates that are under their control if they knew or, owing to the circumstances, should have known that their forces were committing or about to commit such crimes and despite

¹² Schabas, W, *The International Criminal Court: A commentary on the Rome Statute* 2nd ed Oxford University press, 2016)

their knowledge or presumed knowledge they did not take necessary steps to prevent or repress their actions as their superior commander¹³.

According to Article 28(b) civilian superiors they are to be held accountable only were they knew, or consciously disregarded information that clearly stated that their subordinates were committing or about to commit such offences and they happen to have failed to take the necessary precautions to prevent or repress the crimes or report the matter to the competent authorities the knowledge threshold of the superiors is higher you must establish sufficient proof that the superior knew or had consciously disregarded the information which clearly indicated that crimes were being committed or about to be committed ¹⁴

2.3 KEY ELEMENTS OF COMMAND RESPONSIBILITY

The doctrine of command responsibility, which is codified under Article 28 of The Rome Statute of the International Criminal Court (ICC), highlights the foundational or essential elements to prove the liability of military and civilian superiors for crimes committed by their subordinates. These elements serve to delineate the circumstances under which a superior can be held accountable for the actions of their subordinates and them failing to take reasonable steps to prevent or punish the commission of international crimes;¹⁵ The key components include the existence of a superior-subordinate relationship, the knowledge element, and a failure to take necessary and reasonable precautions.

1. Superior- Subordinate relationship;

Means that the commander has the material ability to instruct, discipline, and control the actions or conduct of their troops for example a field commander who deploys units, enforce discipline, and sanction soldiers for misconduct has effective command and control¹⁶. This relationship must be characterized by the superior's effective control the ability to issue order, supervise, and sanction subordinates for misconduct. In simpler or practical terms, the superior must have the authority to deploy troops, enforce discipline, and take corrective or punitive actions when violations happen. It was stated by The International

¹³ Rome Statute of the International Criminal Court, 17th July 1998

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

Criminal Tribunal for the Former Yugoslavia (ICTY), in *Prosecutor v Delalic (Celebici Case)*, it clarified that effective control is the decisive criterion in determining whether a superior can be held accountable for the actions of his subordinates. Hence the relationship is not merely formal or nominal it must be functional, with the capacity to avert or repress criminal acts committed by those under their authority.¹⁷

2. Knowledge;

The second element pertains to the knowledge of the superior concerning the criminal actions of the subordinates. Article 28 differentiates between military and civilian superiors in this regard. For military commanders, liability extends to both knowledge and constructive knowledge (they should have known) this standard covers both actual and constructive knowledge, identifying that commanders are under a duty to remain informed about the actions of their troops while for civilians, liability requires actual knowledge or conscious disregard of clear information clearly showing that the subordinates were taking part in unlawful acts¹⁸. This distinction highlights the differing degrees of control and access to information typically present to civil and military authorities. It was further reinforced by The ICTY that a superior cannot escape liability through deliberate blindness or deliberate ignorance of information that would have exposed ongoing criminal conducts.¹⁹

3. Failure to act;

The obligation to take necessary and reasonable measures means that superiors are expected to actively exercise their authority to prevent crimes or punish perpetrators. The superior must have failed to take necessary punitive measures to prevent or repress the crime or to report the matter to the relevant authorities. Repressive measures can include investigating, discipline, or referring suspects for prosecution²⁰. This duty is both preventive and punitive in nature. Preventive measures include creating disciplinary mechanisms, issuing

¹⁷ *Prosecutor v Delalic and Others (Celebici Case) (Appeals Judgement) ICTY-96-21-A (20 February 2001)*,

¹⁸ *Ibid*

¹⁹ *The Prosecutor v Tihomir Blaskic, IT-95-14' Trial Chamber, Decision of 3 March 2000*

²⁰ *Ibid*

vivid operational orders prohibiting unlawful conduct, or taking immediate actions to stop ongoing violations. Repressive measures, on the other hand, entail investigating allegations, disciplining offenders, or reporting incidents to appropriate authorities. It was stated in the Prosecutor v Halilovic (ICTY, 2005), What will amount to “necessary and reasonable measures” depends on the superior’s position, authority, and the operational circumstances at the time. Liability will not arise on mere occurrence of crimes but from the superior’s demonstrable failure to exercise present authority in response to them.²¹

These elements show that liability is not automatic; it is contingent upon proof of omission in fulfilling their duties or responsibility that comes from the superior’s position of authority. In other word liability on military commanders or civilian superiors is not automatically held criminally liable because a crime occurred that was committed by a junior under their command. Instead the prosecution must establish or prove that the superior had effective control, was or should have known of the crime, and failed to take reasonable steps that were available to them. This ensures that there is a balance between accountability and fairness.

2.4 SIGNIFICANCE AND CRITICISM OF COMMAND RESPONSIBILITY

The codification of command responsibility in Article 28 of The Rome Statute is important as it consolidates customary international Criminal law into treaty law, establishing legal certainty and consistency. By incorporating jurisprudence from the International Criminal court of former Yugoslavia and the International Criminal Court of Rwanda and earlier precedents, the Rome Statute strengthens the accountability of both military and civilian leaders, ensuring they cannot evade responsibility by claiming ignorance or delegation of authority. This provision also strengthens the ICC’s role in combating impunity, as it prevents leaders from shielding themselves under their subordinates or from claiming ignorance of atrocities committed under their watch. In other word’s it makes sure that the superiors take full responsibility for the action of their subordinates who are under their control provided the three elements to prove

²¹ Prosecutor v Halilovic, Case No.IT-01-48-T, Judgement (ICTY Trial Chamber, 16 November 2005).

command responsibility are mate²². For example, in *The Prosecutor v Jean-Pierre Bemba Gomba*, the ICC found Bemba guilty of crimes committed by troops under his command in the Central African Republic, emphasizing that a commander cannot evade responsibility by asserting limited direct involvement if he fails to stop or punish crimes by subordinates. This case shows the ICC's strengthened role in combating impunity, as Article 28 prevents leaders from shielding themselves behind hierarchical distance or bureaucratic delegation. The provision thus promotes accountability across both military and civilian spheres, contributing to the broader goal of deterring atrocities and reinforcing the rule of law.

However, criticism persist. The higher the knowledge threshold for civilians in contrast to military commander's risk uneven enforcement and may shield stronger political leaders from accountability. The translation of effective control also poses challenges in modern conflict involving non-state armed groups and fluids and command structure. Finally, the flexible but vague concept of 'effective control' and 'necessary and reasonable measures' has generated inconsistent application due to the variations or difference in its interpretation, as seen in *Bemba Appeals Judgement*. Critics argue that unless clarified these ambiguities may weaken the deterrent effect of Article 28 of the Rome Statute.²³ Despite these problems, the codification of command responsibility remains a cornerstone of international criminal law, emphasizing that leadership carries accountability and that the chain of command is not a shield for atrocities. Continuous jurisprudential development and clear standards are important to ensure that Article 28 fulfills its intended role in deterring war crimes and strengthening international justice.

2.5 APPLICATION IN ICC OF JURISPRUDENCE

The application of command responsibility within ICC jurisprudence has been relatively limited but highly significant. Article 28 had been tested primarily in the case *The Prosecutor v Jean-Pierre Bemba Gomba*, which became the ICC's first and most detailed interpretation of superior's responsibility. The Bemba proceedings provided an opportunity for the Court to clarify how "effective control", and "necessary" and "reasonable measures", and distinct standards of military and civilian superiors should

²² Antonio Cassese, *international Criminal Law* (3rd edn, OUP 2013)

²³ *Ibid*

be comprehended in practice²⁴. In Bemba, the ICC expanded on the doctrine of command responsibility by distinguishing between the obligations of civilians and military superiors. This distinction reflects the textual formulation in Article 28(b) of the Rome Statute and aligns with earlier interpretations by the ICTY in the Prosecutor v Blaskic (Judgement) ICTY-95-14-A (29 July 2004) and also clarified the subsequent meaning of “necessary and reasonable measures “. The jurisprudence emerging from Bemba thus represents a landmark clarification and limitations of the command responsibility doctrine within the ICC. It affirms the willingness of the ICC to hold high ranking officials accountable for the actions of their subordinates; on the other hand, it extends to demonstrate the caution in extending liability without vivid evidence of effective control and failure to act.

2.6 CONCLUSION

The doctrine of command responsibility has grown from early war crimes trials to its codification in Article 28 of the Rome Statute. Its application in cases like Bemba exhibit both its significance and its challenges, more especially in defining concepts such as “effective control” and “reasonable measures”. But this comes not without criticism, it remains a key tool in ensuring that leaders cannot ignore crimes committed under their authority.

²⁴ The prosecutor v Jean-Pierre Bemba Gomba (Appeals Judgement) ICC-01/05-01/08-3636-Red (8 June 2018)

CHAPTER THREE

THE EVIDENTIARY, PROSECUTORIAL AND OPERATIONAL CHALLENGES

3.1 INTRODUCTION

This chapter examines the evidentiary, prosecutorial, and operational challenges that the international Criminal Court faces in its effort to combat war crimes, focusing on the case of *The Prosecutor v Jean-Pierre Bemba Gomba*. As one of the most prominent ICC cases, Bemba's trial and appeal points out the important procedural and substantive obstacles in implementing international criminal justice. These challenges are critical to assessing the overall efficacy of the ICC, since the legitimacy and effectiveness of the court depend not only on its ability to issue indictment but also on its proficiency in securing credible evidence, conduct fair and efficient prosecution and overcome operational hindrances in practice.

3.2 EVIDENTIARY CHALLENGES

Evidentiary challenges are among the most significant obstacles facing the ICC. Collecting reliable evidence in conflict-affected contexts is inherently difficult. Unlike domestic courts, which at many times if not all the times have access to police investigations, forensic laboratories, and robust witness protection mechanisms that have been put in place, the international criminal court works in a delicate environment where violence, displacement, and lack of stability undermines the integrity of the evidentiary process they must exercise due diligence in order to maintain their integrity as an international body. When we take a look at the Bemba case we see that the prosecution's case was reliant on testimonial evidence from witnesses who described the transgressions that were committed by the Mouvement de Liberation de Congo troops in the Central African Republic. However, their dependence on such testimony posed grave challenges. Witnesses were susceptible to coercion, lapses in recollection the time given in order for them remember and tell what they could recollect from the event was not enough in addition, the prosecution relied heavily on middle men for the collection of evidence, a practice that was faulted for diminishing the reliability or credibility of the material evidence submitted to the court in other words it was very hard to trust that the evidence that had passed through the hands of some third party could be credible and not prone to tampering.

The trial chamber initially imprisoned Bemba, holding that the evidence that established his effective control over the MLC forces and his failure to stop or punish the crimes committed. Nevertheless, the appeals chamber reversed the conviction, concluding that the evidence did not prove beyond all reasonable doubt that Bemba had requisite knowledge Bemba possessed the necessary awareness and exercised enough authority and command over the MLC forces.

3.3 WITNESS RELIABILITY AND CREDIBILITY

Witness testimony continues to serve as the cornerstone of most international criminal proceedings, largely because physical, forensic, or documentary evidence is often scarce or rare or inaccessible in war-torn or unstable regions. Witness credibility still remains the backbone of international criminal trials, given the rareness of tangible or documentary evidence in conflict zones. However, reliance on witnesses raises quite a number of concerns with regards to credibility, consistency, and protection. With reference to the Bemba case, many witnesses were found coached or tampered with, which undermined the reliability of the evidence. These irregularities cast doubt on the veracity and consistency of critical evidence presented at trial. As a result, the appeals chamber highlighted that the evidentiary record contained significant weaknesses, owing in part to such compromised testimonies eventually noted shortcomings or weakness in the trial record due to these issues²⁵. Similar challenges emerged in other ICC situations such as the Kenyan cases, where witness intimidation, retraction, and instances of witness tampering drastically weakened the prosecutions ability to meet its burden of proof. These patterns of events that kept reoccurring just shows the broader dilemma, although witnesses are frequently vital in piecing together the sequence of events in international proceedings, their testimonies are also inherently vulnerable, requiring thorough examination, strong protective mechanisms, and cautious verification against any available supporting material evidence.²⁶

²⁵ Ibid

²⁶ The prosecutor v. Paul Gicheru, Case No ICC-01/09-01/20-153-Red (15 July 2021)

3.4 ADMISSIBILITY AND EVIDENTIARY STANDARDS

The international court applies strict rules of admissibility and proof in order to strike a balance between ensuring procedural fairness for the accused and advancing the broader objective of justice for victims and the affected communities²⁷. The court used very stringent evidentiary standards to balance fairness to the accused with the target of being just. However, applying these standards to difficult international crimes is cumbersome. In the Bemba case the prosecution found it difficult to admit reports from non-governmental organizations (NGO's) and United Nations bodies. Whatever documentation that was presented before the chamber was contested on the basis of hearsay, authenticity and reliability as a result of these concerns the credibility of the evidence and weight of it was lower before the Appeals Chamber. This did not only complicate the prosecutions ability to produce a consistent factual narrative but also to showed the tension between formal evidentiary rules and the nature of the information typically available in atrocity context, further questions of whether the ICC's evidentiary rules, influenced by common law traditions, are fit for mass atrocity trials arose.

3.5 EVIDENCE OF SEXUAL VIOLENCE

According to Article 68(1) of the Rome Statute the courts shall take necessary steps and precautions to safeguard the physical and psychological well-being, dignity and privacy of the victims and witnesses,²⁸ One of the most serious and pressing milestones in The Bemba proceeding was collecting and presentation of proof in relation to the widespread acts of sexual violence. Survivors frequently dreaded retaliation, social stigma, and re-traumatization, which diminished their readiness to provide testimony before the court. Moreover, when statements were given, supporting evidence was often inconsistent or limited this in itself made it really cumbersome to produce a fully reliable evidentiary record. The ICC sought to address these concerns by putting in place protective measures that safeguard victims by authorizing closed (in camera) testimony, anonymity orders, and confidentiality

²⁷ Article 69(4) of the Rome Statute

²⁸ Article 68(1) of The Rome Statute

safeguards²⁹. Despite these efforts, huge gaps, weaknesses, and evidentiary shortcomings still remained. This underscored the ongoing challenges of establishing crimes of sexual violence before international courts where such offences of sexual violence are not only widespread but are specifically underrated, under-documented, and legally difficult to prove. The Bemba case therefore conveys a wider systematic challenge in the international criminal justice: the difficulty in harmonizing the need for victim protection with the requirement of establishing a sound or comprehensive evidentiary record that can uphold a conviction.

3.6 VICTIM PARTICIPATION

The Rome statute which authorizes for victims the unprecedented opportunity for them to participate directly in the court proceedings, which is a significant departure and innovation compared to earlier international tribunals such as the ICTY and ICTR where victim involvement was far more limited³⁰. However, balancing victim participation with the right of the accused remains challenging. Achieving a reasonable equilibrium between the victims that are taking part in the proceeding and the procedural rights of the of the accused has proven to be a huge challenge for the courts. In Bemba, over 5,000 victims were allowed to take part in the proceeding, placing a huge administrative and evidentiary burden on the court. Despite this broadened scope of justice on the courts, it also delayed the proceedings and complicated the evidentiary management you can imagine the bulk of having 5,000 victims and each having to give their own side of the story that just doubled if not tripled the work load on the courts and having to make sure that there was no mix-up of testimonies was another issue. While this showed a significant step in broadening access to justice and a voice to those that were affected by the atrocities that had taken place, it also placed considerable administrative, logistics, and evidentiary strains on the court's performance³¹. The addition of such huge number of participants not only increased the scope accountability and recognition, but this also slowed the pace of the proceeding and made the evaluation and management of the even more difficult and complex. This exhibited the promise and the difficulty of victim participation

²⁹ Rules 70-72 RPE.

³⁰ Article 68(3) of The Rome Statute

³¹ The Prosecutor v. Thomas Lubanga Dyilo (Decision on the Arrangement for participation of victims) ICC-01/04-1119(18 January 2008).

at the ICC: it strengthens victims by taking into account their role in the process, yet at the same time risking overburdening judicial efficiency and creating tensions with the rights of the accused.

3.7 PROSECUTORIAL CHALLENGES

The prosecution faces quite a number of hindrances arising from both legal requirements and resource constraints. The evidentiary threshold-proof beyond all reasonable doubts mirrors that of domestic systems, yet the magnitude and intricacy of international crimes make it far more challenging to fulfill³². In the Bemba proceedings, the prosecution was reliant on the doctrine of command responsibility, arguing that Bemba, as leader of the MLC failed to take the necessary and reasonable actions to prevent or punish for the atrocities committed by his forces in the Central African Republic. The Appeals Chamber ultimately annulled Bemba's conviction, finding that the Trial Chamber had erred in its evaluation of both evidence and applicable standards of proof. This reversal led to the identification of prosecutorial defects, particularly the challenge of proving effective authority and knowledge under Article 28 of the Rome Statute. It also exhibits how excessive dependence on a narrow legal theory can jeopardize an entire prosecution.

Compounding these doctrinal difficulties, the office of the prosecutor was required to work within the confines of highly limited resources, which, when measured against the immense scale of the crimes under investigation, proved not to be enough; disclosure repeatedly delayed, staff were overstretched and overburdened, and the practical challenge of coordinating complex transnational investigations introduced more shortcomings into the proceedings. The Bemba case became an indicative of the manner in which prosecutorial strategy, institutional fragility, and systematic limitations merge to weaken the broader quest of justice in the realm of international criminal law.

³² The ICC's Evidence problem' (Volkerrechtsblog, 14 February 2024) <https://Voelkerrechtsblog.org/the-iccs-evidence-problem/>. Accessed 7 October 2025.

3.8 BURDEN OF PROOF

Article 28 of the Rome Statute establishes the doctrine of command responsibility which requires that military commanders or superiors to be held Criminally liable if they knew or should have known that their subordinate were committing crimes and were not able to take all necessary and reasonable measures to prevent or repress them. The prosecution in Bemba was required to establish not only the occurrence of war crimes and crimes against humanity, but also that Bemba, in his capacity as a commander, exercised effective control over the offender and neglected to implement reasonable measures³³. This evidentiary responsibility was demanding because command responsibility, as outlined under Article 28 of the Rome Statute, requires you to establish both causal link and a failure of oversight³⁴. The Appeals Chamber subsequently determined that the trial Chamber had misjudged, misinterpreted and misapplied this standard, especially in its assessment of whether Bemba had retained genuine practical control despite being miles away from his troops that were operating far from his direct presence in the Central African Republic. This evidentiary burden, highlighting the challenge of applying command responsibility within intricate command hierarchies. A very good example is the Bemba's situation, communication lines between him and his troops that were in the field in Central Africa were often inconsistent, orders were sometimes conveyed indirectly, and local commanders had significant autonomy in operational decisions. Looking at the circumstances it proved very problematic to prove if Bemba could realistically stop the crimes in such circumstances. Over the years we've had international cases with similar challenges, such as the Bosnian and Rwanda commanders, where prosecutors found it difficult to establish the exact threshold of effective control. These examples underscores that the onus of Article 28 of the Rome Statute is not merely procedural but also conceptual, requiring the court to carefully balance fairness to the accused with accountability for leadership failures in complex conflict settings.

³³ Art 28 of the Rome Statute

³⁴ Ibid

3.9 LENGTH AND COMPLEXITY OF PROCEEDINGS

The Bemba proceedings extended for more than four years was quite a long time if you ask me, culminating in a first-instance judgement in 2016 only for it to be followed by an appeal decision in 2018. Such lengthy proceedings do not strengthen but instead weaken the confidence of the public in the courts effectiveness and go further to question the courts ability to deliver timely justice which does not paint a very good picture for an international body. Prolonged trials also escalate financial expenditure you can imagine how much was spent in those four years, overburden institutional resources, and this also created a risk of the witnesses getting tired cause four years just a lot to be going back and forth over the same matter or even withdrawal of witnesses, which in turn was going to compromise the quality of testimony³⁵. For instance, in Bemba's case, the length of the process raised quite a number of concerns relating to its reliability of witnesses who were required to testify years after the occurrence of the incidents in question, with the likelihood of affecting memory recall and consistency. These challenges are not unique to the Bemba proceeding only but are indicative of broader structural at the ICC. The court has at many times been criticized for drawn-out cases a good example away from the Bemba case is the Kenyatta situation, which were undermined by repeated adjournments which later laid to it crumbling because of the evidentiary and witness issues. Such patterns show underlying weaknesses in prosecutorial strategy, case preparation, and the institutional design of the long and cumbersome trials underscores the tension between ensuring procedural fairness and delivering justice within a reasonable timeframe³⁶.

3.10 DISCLOSURE OBLIGATION

Prosecutors at the ICC are subject to particular stringent disclosure requirements, which are designed to protect the rights of the accused and to ensure that the utmost level of fairness is observed during the proceedings. These obligations require the prosecution to make available not only the evidence it seeks to rely on but also any

³⁵ Hibbert, Sarah. The Bemba Acquittal: A Blow to the ICC's Legitimacy in a Time of Crisis. *Temple International and Comparative Law Journal*, vol. 34, no 1, 2019, pp. 95-127.

³⁶ International Criminal Court. Decision on the Withdrawal of Charges against Mr. Kenyatta. ICC-01/09-02/11-1005, Trial Chamber V(B), 13 March 2015. Available at: <https://www.icc-cpi.int/court-record/icc-01/09-02/11-1005>.

material that may likely help the opposing which is the defense or undermine the prosecution's own case³⁷. While these rules are primary to maintaining due process, in practice they many at time create great challenges. Because of the demand to review and disclose vast quantities of evidence can make the proceeding go at a slow pace, create logistical complications, and sometimes expose the prosecution to allegations of partiality or misconduct. In the Bemba case, these disclosure duties became a pivotal point of contention. The defence contended that the prosecution was unable to disclose certain vindicating materials within a timely manner, as a result hindering their ability to prepare sufficient or reasonable grounds of defence. This matter re-emerged during the appeal proceedings, where the defence exposed the indicative of procedural unfairness. The debate highlights the continued tension between the practical limitations of international investigations such as resource constraints, dependence on third party cooperation, and the sheer problematic nature of conflict-related evidence and the stringent legal obligations that imposed on prosecutors to make sure transparency and fairness in trial proceedings is observed.

3.11 OPERATIONAL CHALLENGES

The effective functioning or operation of the international criminal justice mechanism is often limited by a range of operational challenges. These challenges are come up as a result of practical. Logistical, and procedural limitations that can interfere or affect the ability of institutions such as the international criminal court to run its investigations, to prosecute, and adjudicate cases with due diligence. But because of limited, dependence on state cooperation, and the complex of managing big volumes of evidence many times contribute to the procedural delays and barriers that may impede the smooth conduct of proceedings³⁸. These operational challenges show the friction between the ICC's far-reaching mandate to uphold international accountability and the practical realities of carrying out sensitive investigations in post-conflict environment. They demonstrate how procedural and logistical limitations can affect the efficiency of

³⁷ Art 67(2) of the Rome Statute

³⁸ Kai Ambos, *Treatise on International Criminal Law: Foundations and General Part* (2nd edn, Oxford University Press 2014) 256.

trials, cause delays, and shape both prosecution and defence approaches, emphasizing the wider problems inherent in managing international criminal justice.³⁹

3.12 DEPENDANCE ON STATE COOPERATION

The international criminal court does not possess its own enforcement powers and is therefore highly dependent on the cooperation of states to carry out important functions such as carrying arrests, protecting witnesses, and gathering evidence. This reliance can significantly affect the ability to function properly, particularly when states interests or political consideration to interfere. For example, in the prosecutor v Jean-Pierre Bembe Gomba, the courts investigations were intricate by only partial cooperation from the Central African Republic and the Democratic Republic of Congo⁴⁰ Authorities is these were sometimes hesitant or selective in giving full access to witnesses and useful documentation, emulating the politically sensitive nature of the case⁴¹. Such limitations hindered the prosecutions the prosecution's ability to gather comprehensive evidence and delayed investigative processes, thereby undermining the whole or overall effectiveness of prosecutorial efforts⁴².

3.13 WITNESS PROTECTION AND SECURITY

Ensuring the safety of witnesses is of utmost importance with regards to the operational obligations of the international criminal court, as the credibility and integrity of the trials are highly dependent on the voluntariness of the witnesses to give honest testimonies. When in fact in practice the courts protective measures that's have been put in place are hindered by financial and logistical resources, as well as the level of state cooperation offered by the host states and other state actors. The protection of witnesses does not demand for immediate measures during trial but also long-term arrangements that extends beyond the confines of the court room proceedings, something that has proven to be a big challenge for the International Criminal Courts to guarantee in all circumstances⁴³. In the Bemba case the hopelessness of witnesses

³⁹ Carsten Stahn, 'The Law and practice of the international Criminal Court'(2019) 29 EJIL 115.

⁴⁰ Prosecutor v Jean-Pierre Bemba Gomba (ICC-01/05-01/08) Trial Chamber VII, 'Judgement Pursuant to Article 74 of the statute '(21 March 2016) para 30.

⁴¹ William Criminal Court (5th edn, Cambridge University press 2017)210.

⁴² Carsten Stahn, 'The Law and Practice of the international Criminal Court' (2019) 29 EJIL 120.

⁴³ William A Schabas, An Introduction to the international Criminal Court (5th edn, Cambridge University Press 2017) 212

became precisely apparent. Many witnesses publicly expressed fear for their safety or well-being and that of their families, highlighting the danger that a related to testifying in cases that involved powerful or influential political and military figures ⁴⁴. Others' were subject to threats and tampering, followed by attempts made to influence or discredit their testimony⁴⁵. These developments placed a huge burden on the ICC's witness protection program, which was already functioning with inadequate capacity. The matter exposed structural gaps, particularly in maintaining relocation, anonymity, and long-term security for those who worked with courts. The challenges faced in Bemba shows the bigger problems that were encountered by the international criminal courts in ensuring the cooperation of states in enforcing protective measures. Without excessive national assistance, the court is at many times without many alternatives, thereby exposing witnesses to continued risk or danger.⁴⁶ This does not only reduce the safety of the individual involved in the proceedings but also threatens the reliability of evidence and the overall fairness of the proceeding, making the witness protection one of the pressing operational challenges facing the international justice system.

3.14 LOGISTICAL AND RESOURCE CONSTRAINTS

The investigation of international crimes within conflict-affected regions demands substantial financial and operational resources in other word the investigation and operation process for it to be carried properly it requires that a lot of money to be invested. The international criminal court functions with a limited budget, which compels it to prioritise certain cases over others. In the Bemba case, the considerable physical distance between The Hague and Central African Republic posed significant logistical challenges, these challenges made it cumbersome for both the gathering of evidence and the effective involvement of the victims and it slowed down the evidence

⁴⁴ The prosecutor v Jean-Pierre Bemba Gomba (ICC-01/05-01/08) Trial Chamber III, 'Judgement pursuant to Art 74 of the Statute' (21 March 2018) para 30.

⁴⁵ The prosecutor v Jean-Pierre Bemba Gomba (ICC-01/05-01/08) Appeals Chamber, Judgement on the Appeals of Mr. Bemba Gomba and the prosecutor (8 June 2018) para 35

⁴⁶ Ibid

collection process and victim participation. This showed the operational limits of the court in large scale investigation.⁴⁷

3.15 APPLICATION IN THE BEMBA CASE

The Bemba proceedings clearly shows the intersection of evidentiary, prosecutorial, and operational challenges. The prosecutions reliance on contested witness testimony, together with difficulties in proving effective control under Article 28, undermined the case. Operation barriers, including weak state cooperation and logistical challenges, exacerbated these evidentiary and prosecutorial problems.⁴⁸

3.16 CRITICAL EVALUATION

The Bemba proceeding exposed the structural challenges of enforcing accountability through the ICC. While the courts mandate is far-reaching, its reliance on state cooperation, resource limitations and stringent evidentiary standards hampered its ability to secure convictions. In contrast to the ICTY and ICTR highlights that similar challenges were present in earlier tribunals, through the ICC's broader mandate and victim participation regime add more complexity. These matters suggest that the ICC's effectiveness carrying out its mandate which combating war crimes is far more dependent on the political will and institutional reforms concerning legal framework.⁴⁹

3.17 CONCLUSION

These evidentiary, Prosecutorial, and operational challenges remain a big hurdle for the international criminal courts in fulfilling its mission to combat war crimes. The Bemba case serves as an important case study, highlighting weaknesses in evidence, prosecutorial burdens, and operational dependence on how these states can shape

⁴⁷ de Vos, C.M. 2013 'investigating from afar: The ICC's evidence problem', Leiden Journal of international Law, online, 8 November. Available at: <http://leiden-journal-of-international-law/article/investigating-from-afar-the-iccs-evidence-problem/BF004CD77EEB378B3C865302A9DC023A> (Accessed: November 2025).

⁴⁸ Farnham, S. (2025) War Crimes Justice. Publifeye AS, 4 March 2025

⁴⁹ Miles Jackson, Causation and the Legal Character of Command Responsibility after Bemba at the International Criminal Court, Journal of International Criminal Justice, Volume 20, Issue 2, May 2022, pages 437-458, <https://doi.org/10.1093/jicj/mqac018>

trial outcomes. To strengthen its efficacy, the ICC must refine its evidentiary practices, streamline prosecutions, and secure better international cooperation. Ultimately, addressing these challenges is very important in enhancing the credibility and effectiveness of the court in carrying out its duties.⁵⁰

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CHAPTER FOUR

ASSESSING THE POSSIBLE REFORMS

4.0 INTRODUCTION

This chapter assesses the potential reforms that can strengthen or empower the effectiveness of the international Criminal Court (ICC)'s approach to command responsibility and the prosecution of war crimes. It further analytically examines proposals targeted at elucidating the evidentiary standards for effective control and knowledge, enhancing prosecutorial strategies, and addressing structural barriers within the court system. By evaluating both scholarly recommendations and lessons drawn from the case of the Prosecutor v Jean-Pierre Bemba Gomba the chapter seeks to show practical and doctrinal reforms that could enhance accountability while making sure that fairness to accused commanders is observed.

4.1 CLARIFYING EVIDENTIARY STANDARDS FOR COMMAND RESPONSIBILITY

One of the core difficulties that were highlighted in the Bemba case were; the lack of clarity in the evidentiary threshold or the ambiguity in the evidentiary standards for establishing effective control and knowledge under Article 28 of the Rome statute. The Appeals Chamber's decision to overturn Bemba's conviction showed the necessity for more precise criteria to determine when a commander possesses enough authority over subordinates to held criminally liable. The ruling illustrated that the ICC has many at the time struggled to provide uniform guidance on what constitute sufficient evidence to prove control and awareness, particularly in complex operational settings that involve non-state armed groups or decentralized command structures. This uncertainty has birthed both doctrinal and practical difficulties, because prosecutors may face challenges in meeting evidentiary requirements, and commanders may be exposed to liability based on incomplete or inferential information.

Scholars have recommended that the ICC should create a more systematic and predictable framework for interpreting effective control. This could include formulating a set of objective measures, such as the commander's formal power to issue directives, the demonstrated capacity to enforce compliance, access to

communication and reporting networks, and the degree of operational autonomy that is exercised by subordinates. When this is clearly defined, these measures can function as evidentiary benchmarks, thereby mitigating judicial ambiguity and prompting fairness in command responsibility prosecutions. Moreover, current scholarship highlights the importance of differentiating between actual knowledge and constructive knowledge. Bloch, example, contends that international law increasingly supports establishing actual knowledge rather than a lower “should have known” threshold, compelling prosecutors to provide direct evidence linking the commander to both awareness of criminal acts and the ability to prevent or punish them.⁵¹

Establishing explicit evidentiary standards also carries important implications for the ICC’s legitimacy and ability and credibility. As Cryer et al, note, clearly stated that standards do not only foster legal certainty but also safeguard commanders from liability based on assumptions rather than concrete proof of control and awareness⁵². By supplying judges, prosecutors, and defense teams with transparent clear criteria, the court can improve procedural fairness, strengthen doctrinal consistency, and reduce the danger of appellate reversals due to lack of enough or sufficient evidence. Some commanders have further suggested that the ICC issue practical guidelines specifying the types of evidence most probative for showing control and knowledge, including written orders, operational reports, testimony from subordinates, and communications intercepts.⁵³

By incorporating such reforms into the ICC practice would assist reconcile two often competing objectives: ensuring commanders are accountable for crimes committed under their authority, and protecting the rights of the accused by grounding or rooting liability in verifiable evidence rather than circumstantial or surrounding inference.

4.2 IMPROVING PROSECUTORIAL STRATEGIES

The prosecutor v Jean-Pierre Bemba Gomba case revealed important shortcomings or deficiencies in the office of the prosecutors (OTP) investigative and prosecutorial

⁵¹ R Bloch, ‘Should Have Known Better? The Standard of Knowledge in Command Responsibility’ (2023) International Law Studies, U.S. Naval War College.

⁵² R Cryer et al, *An Introduction to International Criminal Law Procedure* (4th edn, CUP 2019) 376.

⁵³ C C Jalloh, ‘International Criminal Court, Command Responsibility, and Jean-Pierre Bemba Gomba’ (2018) 16 JICJ 591, 602.

methodologies. The Appeals Chamber held that the prosecution had failed to convincingly demonstrate that Bemba possessed the necessary knowledge of crimes committed by the Mouvement de Liberation du Congo (MLC) forces, or that he omitted to take all requisite and reasonable measures to avert or punish those offences.⁵⁴ These findings exposed a systematic issue within the OTP's approach namely, the insufficient linkage between the evidentiary record and the legal thresholds required to establish command responsibility under Article 28 of the Rome Statute.⁵⁵ One key lesson that emerged from Bemba is the need for the OTP to better integrate investigative and legal analysis functions from the earliest stage of case development. Scholars have noted that weak coordination between investigators, analysts, and trial lawyers often produces fragmented evidentiary narratives that appellate judges can later exploit.⁵⁶ To mitigate this, a more integrated model where investigative teams work alongside legal advisers to align fact-gathering with the statutory element of command responsibility would ensure a more coherent evidentiary foundation before the confirmation of charges.⁵⁷

Beyond improving analytical integration, the OTP must strengthen its field investigation capacity to ensure the timely collection of reliable corroborated evidence. The independent Expert Review of the International Criminal Court (IER) (2020) recommended a decentralized and flexible investigation model that embeds investigators closer to crimes scenes, supported by robust logistical and technological resources.⁵⁸ Implementing such a model would rectify the current overreliance on secondary accounts and post hoc reconstructions, enabling the OTP to build contemporaneous, verifiable records of command structures and operational hierarchies. By employing digital forensics, open-source intelligence, and chain-of-command mapping techniques, the OTP could substantiate claims of effective control

⁵⁴ The prosecutor v Jean-Pierre Bemba Gomba (Judgement) (ICC, Appeals Chamber, ICC-01/05-01/08 A) 8 June 2018.

⁵⁵ Rome Statute of The International Criminal Court (Adopted 17 July 1998, Entered into force 1 July 2002) 2187 UNTS 90, art 28.

⁵⁶ Dapo Akande and Antonios Tzanakopoulos, 'The International Criminal Court and the Bemba Judgement: Lessons on Command Responsibility' (2019) 17 *Journal of International Criminal Justice* 705.

⁵⁷ Chantal Meloni, *Command Responsibility in International Criminal Law* (2nd edn, TMC Asser Press 2021) 132-134.

⁵⁸ Chantal Meloni, *Command Responsibility in International Criminal Law* (2nd edn, TMC Asser Press 2021) 132-134.

and knowledge with concrete, verifiable data rather than inference or hearsay.⁵⁹ Witness protection and management also remains important to prosecutorial success. In Bemba, inconsistencies in witness testimony and credibility challenges undermine the prosecution's case.⁶⁰ The main focus of reforms should be on bettering the victims and witness's unit (VWU) to provide comprehensive protection mechanisms, including relocation assistance and psychological support. Strengthening these frameworks would encourage candid participation from insider witnesses those who are in close proximity with the commanders, whose accounts are often decisive in proving a commander's awareness of crimes.⁶¹

As Jalloh observes, prosecutorial strategies rooted in robust evidentiary standards and empirical fact-linkages can lower the frequency of appellate reversals and high-profile acquittals that threaten the ICC's legitimacy.

4-3 ADDRESSING STRUCTURAL AND INSTITUTIONAL LIMITATIONS

Beyond evidentiary and prosecutorial reforms, the international Criminal Court (ICC) must also contend with deep-seated structural and institutional deficiencies that hinder its effectiveness in adjudicating cases of command responsibility. These difficulties include chronic resource limitation, susceptibility to political manipulations it is sometimes subject to interference from high ranking political officials, and inadequate cooperation from state parties', states fail to cooperate with ICC's investigations, prosecutions, and enforcement of its decisions.⁶² Such systematic weaknesses not only impede the ICC's operational efficiency but also erode its credibility as a truly independent and effective judicial body within the international criminal justice architecture

A viable reform strategy would entail strengthening mechanisms for state cooperation under the Rome Statute. A critical challenge lies in the court's dependence on state cooperation for executing arrest warrants, gathering evidence, and facilitating witness

⁵⁹ Alex Whiting, 'Investigation and Prosecution at the International Criminal Court: Lessons from Practice' (2020) Harvard International Law Journal Online 1.

⁶⁰ Prosecutor v Jean-Pierre Bemba Gomba (Judgement) (ICC, Trial Chamber III, ICC-01/05-01/08-3343) 21 March 2016, paras 742-743.

⁶¹ Rod Rastan, 'The International Criminal Court and the Challenges of Witness Protection' (2017) 15 Journal of International Criminal Justice 1023.

⁶² Dapo Akande, 'The international Criminal Court and the issue of Non-Cooperation' (2019) 17 Journal of International Criminal Justice 1033.

protection.⁶³ Unlike domestic courts' the ICC lacks an enforcement arm and must depend entirely on voluntary state compliance under part 9 of the Rome Statute.⁶⁴ However, the inconsistent and often politically instigated responses of states- especially in cases implicating powerful political or military figures have significantly curtailed the court's effectiveness. To mitigate these difficulties, the Assembly of states Parties (ASP) could consider adopting a more robust compliance regime under the Rome Statute.⁶⁵ This may include the introduction of graduated sanctions for continuous non-cooperation, such as suspension of voting rights, financial penalties, or public censure.⁶⁶ On the other hand, incentive-based mechanisms- such as financial assistance for judicial capacity building or preferential access to ICC technical support could motivate adherence among less resourced states.⁶⁷ The creation of a dedicated cooperation Review Mechanism within the ASP could further institutionalize supervision, ensuring that the members states adhere to their obligations under Article 86-89 of the Rome Statute.⁶⁸ The ICC's limited financial resources continue to hinder its ability to undertake thorough investigations and prosecutions, particularly in cases that have to do with armed groups operating across borders.⁶⁹ The court's yearly budget remains modest in comparison to the scope of its jurisdictional responsibilities, often leading to selective investigations and delayed proceedings.⁷⁰ Improved and predictable funding from states parties, coupled with targeted capacity-building initiatives, would allow the court to deploy specialized investigative units capable of tracing command orders, logistical chains, and patterns of responsibility in large scale atrocities.⁷¹ Investment in regional collection, and local partnerships could further strengthen investigative efficiency and responsiveness such reforms are particularly

⁶³ Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge University Press 2019) 284

⁶⁴ Rome Statute of the international Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 86-89.

⁶⁵ Assembly of State Parties, Report of the Bureau on Non-Cooperation (ICC-ASP/18/36, 6 December 2019)

⁶⁶ D Akande and A Tzanakopoulos, 'Treaty Law and ICC Cooperation' (2018) 66 *International and Comparative Law Quarterly* 267.

⁶⁷ du Plessis, M. (2021) *Ten Years of the ICC: Challenge and Opportunities*. Institute for Security Studies Paper No.235

⁶⁸ Assembly of State Parties (2022) *Strengthening the International Criminal Court and the Assembly of State Parties* (resolution ICC-ASP/21/Re.1)

⁶⁹ Murungu, C. (2020) 'The Funding Crisis of the ICC and its Impact on Accountability', *African Journal of International Criminal Justice*, 18, pp. 112-130.

⁷⁰ Assembly of State Parties, (2022) *Strengthening the International Criminal Court and the Assembly of the States Parties* (Resolution ICC-ASP/22/Res.10).

⁷¹ Stahn, C. and Jalloh, C. (2020) 'Command Responsibility and the ICC: Challenge In Attribution', *Journal of International Criminal Justice*, 18, pp. 765-787.

relevant to command responsibility cases, which often complex evidentiary chains linking senior commanders to crimes committed by subordinates in remote or unstable context.⁷²

Institutional independence is also compromised by political interference both overt and subtle from powerful states seeking to shield their national or allies from prosecution.⁷³ The security Council's referral and deferral powers under Article 13(b) and 16 of Rome Statute, while valuable in theory, have at times been exercised selectively, reinforcing perceptions bias and double standards.⁷⁴ Revising the modalities of security Council involvement or introducing checks such as requiring a supermajority for deferral resolutions could enhance the court's autonomy.⁷⁵ The ICC has faced criticism for protected trials, inconsistent evidentiary standards, and occasionally divergent interpretations of command responsibility.⁷⁶ Establishing clearer jurisprudential guidelines empowering judicial training, and adopting advanced case management tools would help reduce delays and harmonize judicial reasoning.⁷⁷ By promoting coherence and predictability, such reforms would strengthen the ICC's legitimacy and foster greater confidence among both victims and states parties.⁷⁸

In conclusion, addressing the ICC's structural and institutional shortcomings needs a holistic reform agenda that integrates improved cooperation mechanisms, improved resource allocation, and strengthened judicial governance. These reforms are important not only for the effective prosecution of command responsibility cases but also for reaffirming the ICC's standing as credible and impartial instrument of international justice.⁷⁹

4.4 DOCTRINAL AND PRACTICE REFORMS: LESSONS FROM BEMBA

The judgement in *The Prosecutor v Jean-Pierre Bemba Gomba* provides critical insights into the complex balance between ensuring accountability for senior military

⁷² Dapo Akande and Charles Jalloh, 'Command Responsibility and the ICC: Challenge in Attribution' (2020) 18 *Journal of International Criminal Justice* 765.

⁷³ Peskin, V. (2008) *International Justice in Rwanda and Balkans: Virtual Trials and the struggle for state Cooperation*. Cambridge University Press.

⁷⁴ United Nations Security Council (2002) Resolution 1422 (12 July 2002), UN Doc S/RES/1422.

⁷⁵ Whiting, A. (2021).

⁷⁶ Margaret M deGuzman, 'Judicial Consistency and the Legitimacy of International Criminal Law' (2018) 16 *International Criminal Law Review* 452.

⁷⁷ ICC, *Judicial Reforms and Case Management Review* (2022) ICC-C/22/INF.3.

⁷⁸ William A Schabas (n 2) 414-418

⁷⁹ Carsten Stahn (n 3) 292

or political leaders and maintaining the principles of fairness and due process which proved to be a big challenge.⁸⁰ However, the eventual acquittal showed the need for more stringent evidentiary substantiation in cases of command responsibility, it simultaneously reaffirmed the significance of protecting the procedural and substantive rights of the accused. A re-envisioned approach to command responsibility must, therefore, seek to correct the doctrinal boundaries of liability without weakening the core guarantees of justice afforded to defendants.⁸¹ One of the most key lessons that were drawn from the Bemba case is the need for greater doctrinal clarity concerning the scope of and content of the “all necessary and reasonable measures” standard brought out in Article 28 of the Rome Statute.⁸² The ambiguity surrounding what will amount to sufficient preventive or punitive actions has resulted in inconsistent judicial interpretation and overextension of prosecutorial authority in some instances.⁸³ Developing authoritative guidelines or interpretive principles on this provision could encourage coherence and predictability in future cases with similar facts. Such guidance might draw from comparative legal resources, including military manuals, international humanitarian law commentaries, and jurisprudence from ad hoc tribunals such as the international Criminal Tribunal for the former Yugoslavia (ICTY) and the international Criminal Tribunal for Rwanda (ICTR).⁸⁴

A good example, is the ICTY’s decision in the *Celebici* and *Hadzihasanovic* gave an elaborate reasoning on the threshold of effective control and the measures that expected of commanders in complex operational environments, this was central in understanding command responsibility, which directly involves assessing a commander’s level of control and the actions they should take to avert or punish crimes committed by their subordinates.⁸⁵ Similarly, UN investigative reports and customary

⁸⁰ The prosecutor v Jean-Pierre Bemba Gomba, Case No. ICC-01/05-01/08, Trial Chamber III Judgement, 21 March, 2016. Available at: <https://www.icc-cpi.int/CourtRecords/CR2016-02156.PDF> (Accessed :5 November 2025)

⁸¹ Human Rights Watch, “Command Responsibility is Not a Form of Strict Liability” (24, June 2004). Available at: <https://www.hrw.org/news/2004/06/24/command-responsibility-not-form-strict-liability> (Accessed: 5 November 2025)

⁸² Rome Statute of the International Criminal Court, 17 July 1998, UN Doc. A/CONF.183/9, Art 28. Available at: <https://www.icc-cpi.int/resource-library/document/rs-eng.pdf> (Accessed: 5 November 2025)

⁸³ Carsten Stahn, Responsibility to protect and Command Responsibility’ (2019) 18 *Leiden Journal of International Law* 889.

⁸⁴ Antonio Cassese, *International Criminal Law* (3rd edn, Oxford University Press 2013) 283-285

⁸⁵ Prosecutor v Delalic and Others (*Celebici*) (Judgement) ICTY-96-21-A (20 February 2001) Paras 195-203; Prosecutor v Hadzhasanovic and Kubura (Judgement) ICTY-47-A (22 April 2008) Paras 38-4

military doctrines provide valuable benchmarks when it comes to assessing the reasonableness of a commander's actions in preventing or repressing crimes. Integrating these comparative insights into ICC jurisprudence would enhance legal certainty while making sure that the doctrine of command responsibility remains rooted in realistic expectations of command behavior. Beyond doctrinal refinement, Bemba also underscores the need for practical and institutional reforms to complement legal development.

4.5 CONCLUSION

In conclusion, the effectiveness of the ICC in applying command responsibility is dependent on comprehensive reform. Clarifying evidentiary thresholds, improving prosecutorial methodology and addressing structural limitations, addressing institutional weaknesses are vital steps forward. the court can more effectively discharge its mandate or duty to combat impunity for grave international crimes while preserving the integrity of the Criminal process.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

This last chapter synthesizes the findings of the whole study titled 'Assessing the Efficacy of the International Criminal Court in Prosecuting War Crimes: A Case Study of The Prosecutor v. Jean Pierre-Bemba Gomba'. It summarizes the fundamental recognitions drawn from the preceding chapters, draws conclusions concerning The International Criminal Court's (ICC) effectiveness in tackling war crimes through the doctrine of command responsibility, and presents recommendations to better the its prosecutorial and institutional framework. Finally, it outlines areas that need further academic inquiry to tackle enduring challenges within the ICC's jurisprudence and operations as it carries its mandate as international criminal court (ICC).

5.2 SUMMARY OF KEY FINDINGS

The research indicates that's while the ICC constitutes a pivotal development in the fight against impunity however its efficiency remains or continues to be restricted. A reality that was highlighted in The Bemba case which exposed both the doctrinal and procedural weaknesses.⁸⁶

CHAPTER ONE

The first chapter introduces the study by outlining the background and context of the international criminal court's (ICC) as a global institution created under the 1998 Rome statute to prosecute individuals responsible for genocide, crimes against humanity, and war crimes. The chapter shows the importance of the ICC in promoting accountability and justice, while recognizing the continuous problems it faces in affectively carrying out its duty. The Prosecutor v Jean-Pierre Bemba Gomba case is

⁸⁶ Rome Statute of The International Criminal Court, 2187 UNTS 3 (entered into force 1 July 2002)

presented as significant instance that tests the court's efficacy, specifically in addressing command responsibility and sexual violence in conflict. The chapter further recognizes the problem of the study the increasing concern over the ICC's effectiveness and credibility following Bemba's incarceration and later acquittal its questions whether the courts prosecutorial strategies, evidentiary standards, and judicial processes are enough for maintaining justice in complex cases. The objective of the study to assess the ICC's performance in prosecuting war crimes through the Bemba case, while examining the legal and procedural challenges faced and evaluating the broader justice. The significance of the study lies in its contribution to the ongoing debates with regards to the ICC's role in empowering global accountability and its ability to deliver fair and consistent judgement. Through the lens of The Bemba case, the study seeks to provide insights into both the advancement and limitations of the ICC in fulfilling its mandate to end impunity of war crimes.

CHAPTER TWO

Chapter Two examined command responsibility under Article 28 of The Rome Statute, emphasizing its complexity and inconsistent interpretation. The Trial Chamber's conviction of Bemba at the outset indicated advancement in prosecuting crimes and its fight in combatting war crimes, however the Appeals Chamber overturned it because of lack of sufficient evidence to prove 'evidence of effective' and 'knowledge'. The chapter further examine the how this principle establishes liability for military and civilian superiors who fail to prevent or punish crimes committed by their subordinates through in-depth analysis of The Bemba case

CHAPTER THREE

Chapter Three explored evidentiary and operational challenges, such as unreliable witnesses, weak corroboration, and poor state cooperation. The Article 70 witness tampering proceedings further undermined procedures. It delves into the operational and evidentiary challenges that made the course of the Bemba proceedings. These included unreliable witness testimonies, weak corroboration of testimonies, and weak corroboration from states involved in the investigation such deficiencies hampered the prosecutions ability to establish command responsibility beyond reasonable doubt. Overall the chapter shows that these challenges that are faced by the are not isolated

incidents but indicative of broader institutional weaknesses within the ICC's prosecutorial framework. The analysis shows the necessity for a stronger investigative mechanism, improved state collaboration, and reinforced evidentiary safeguards to improve the courts effectiveness in future prosecutions.

CHAPTER FOUR

Chapter four centers on proposed reforms designed to strengthen the international Criminal Court in the aftermath of *The Prosecutor v Jean-Pierre Bemba Gomba*. The chapter focusses on three critical areas of the reform vivid evidentiary standards, advance prosecutorial practices, and enhance institutional autonomy as vital to improving the court's overall effectiveness and legitimacy. It emphasizes that the divergent rulings between the Trial and Appeals Chamber in *The Bemba* case exposed important uncertainties in the ICC's evidentiary framework, particularly concerning the application of command responsibility under Article 28 of The Rome Statute. Furthermore, the chapter calls for greater institutional autonomy in order to reduce the ICC's dependence on state cooperation and political pressure. Overall, Chapter four concludes that reinforcing clear evidential standards, advancing procedural practices and improving institutional autonomy would not only persistent address the shortcomings shown by *The Bemba* case but also it will also ensure that the ICC operates as a more consistent, separate, and effective guardian of international criminal justice.

5.4 GENERAL CONCLUSION

The Bemba case highlights both the potential and instability on international criminal justice. The original conviction upheld the accountability for commanders, but however the subsequent acquittal revealed the ICC's evidentiary deficiencies.⁸⁷ The Appeals Chamber emphasized that the doctrine of command responsibility needs proof of the superior's material ability to prevent or punish crimes.⁸⁸ This underscored the necessity for a more precise evidentiary framework.

⁸⁷ W Schabas, *An Introduction to the International Criminal Court* (6th edn, CUP 2020)

⁸⁸ *Ibid*

The ICC's credibility depends on consistent, transparent, and fair prosecution, despite these shortcomings, the Bemba case contributed to the jurisprudential development by correcting standards for command responsibility. But the Court's procedural and political vulnerabilities continue to limit its overall impact.⁸⁹

5.3 RECOMMENDATIONS

The following recommendations seek to address ongoing ambiguities and challenges in the implementation of Article 28 of The Rome Statute and enhance the overall effectiveness of international criminal justice. These recommendations focus on correcting or rectifying the concept of command responsibility, strengthening security capacity, improving prosecutorial review, increasing institutional independence, and reinforcing witness protection. Together, these measures are designed to ensure accountability, safeguard the integrity of legal proceedings and promote the protection of those engaging with the international Criminal Court system.

- 1. Clarify Command Responsibility;** In order to effectively carry out its mandate the Assembly of States Parties should provide interpretive guidance on 'effective control' and 'knowledge' under Article 28 of the Rome Statute; this is to promote greater consistency and fairness and accountability, it is suggested or recommended that the Assembly of State Parties take proactive steps to issue formal interpretive guidance addressing these terms. Specifically, correcting the threshold for what would amount to 'effective control' Including the nature., extent, and indicators of such would help establish when a legal superior commander is to held legally responsible or liable for the actions of their subordinate. Furthermore, providing concrete criteria or examples showing the scope of 'knowledge', such as defining what it means to 'should have known', would ensure that legal practitioners and adjudicators apply Article 28 consistently and predictably in proceedings before the international criminal court.

- 2. Strengthen Investigative Capacity;** The ICC must improve the field operations and forensic evidence collection to reduce reliance on witness testimony; Thus, the ICC must invest highly in field operations, deploy

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multidisciplinary investigative teams equipped with forensic, digital, and psychological expertise to collect robust physical and electronic evidence. Using developed or sophisticated technologies such as geopolitical, satellite imagery, and digital cybersecurity measures can help investigators document crime scenes more effectively and minimize the dangers of tampered or fabricated evidence. Ultimately, by improving its investigative capacity, the ICC can build cases that are less reliant on the frailties of human recollection and more rooted in objective, scientific findings, which can enhance both its effectiveness and credibility.

3. Enhance Prosecutorial Review; The office of the Prosecutor should ensure robust internal scrutiny before pursuing complex command testimony; The complexity of cases before the court, including those that have to do with command responsibility and wide spread systematic crimes, demands meticulous scrutiny and transparency at every stage of prosecution. It is recommended that the OTP adopts clear peer review mechanisms and transparent criteria for case selection based on the gravity and evidence available. Such important decisions should undergo structured internal debate and where it is needed, reference should be made to independent panels to review the strength of evidence and legal theories before forging ahead. Moreover, when it comes to such problematic and failed cases they must be used directly as lessons to inform future practices. Training programs for prosecutors must focus on international best practices in disclosure, cooperation with defence counsel, and managing exculpatory evidence are pivotal for ensuring that prosecutorial decisions are both fair and well-founded. By integrating these checks into its processes, the ICC will maintain public trust and legal integrity in its prosecutorial functions.

4. Increase Institutional Independence; The court's operational and financial autonomy must be protected from political interference the courts must be free from any interference be it internal or external forces especially from state parties whose interest might be implicated in ongoing probes. To achieve this, states must provide consistent and sufficient funding, independent from shifting political winds, ensuring that crucial activities such

as investigations, prosecutions, and witness protection are never compromised. Equally, appointments to judicial and prosecutorial posts should be transparent, merit-based, and balanced in terms of geography and gender, reducing the risk of external influence and ensuring all regions are represented. Oversight bodies must have genuine authority to investigate claims of misconduct against personnel or judges. It is a well-founded fact that the ICC also benefits from forging partnerships with other international organizations, civil society, and national judicial systems to share resources and expertise, in doing so it further supports its independence and broadens its reach.

5. Reinforce Witness protection; Reinforcing witness protection remains fundamental to the ICC's capacity to prosecute without endangering the individuals whose testimonies are important to cases. Several witnesses face significant threats, harassment, or retaliation in the aftermath of their cooperation with the court. The ICC must broaden the scope and resourcing of its witness protection program including safe relocation, psychological support, and guarantee anonymity in courtrooms when warranted. Legal tools such as closed sessions and in-camera testimony should be more frequently utilized to shield vulnerable witnesses from exposure. Sanctions for intimidation or tampering must be swift, public, and strictly enforced, acting as a powerful deterrent. The ICC should also secure long-term support for witnesses and their families, extending beyond the conclusion of cases to mitigate ongoing dangers. If they are Such all-encompassing protection mechanisms to reinforce the ICC's moral authority that would encourage future cooperation from witnesses.

6. Promote Outreach and Legitimacy; Finally, the ICC must encourage outreach and legitimacy they achieve this by proactive engagement with affected communities, a practice that grounds international justice in local realities. They should have dedicated outreach teams and organize frequent forums for dialogue, ensuring that victims and survivors have avenues to understand procedures, express concerns, and participate in these justice

processes. These efforts must be multilingual, culturally sensitive, and flexible to meet up with the diverse needs across different societies. Collaboration with local NGO's and media amplifies outreach and help contextualize proceedings for ordinary citizens. Furthermore, the ICC should create ongoing feedback mechanisms so that these communities' experiences shape court practices, increasing responsiveness to their needs. When it comes to effective outreach it is not only a matter of visibility but an existential one for the court's legitimacy and long-term success; when communities identify themselves as partners in achieving justice, the ICC's work can affect real, lasting change that can be long lasting.

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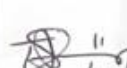
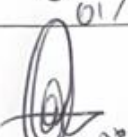
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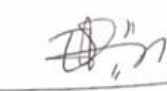
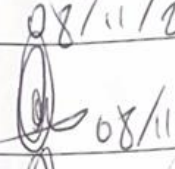
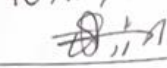
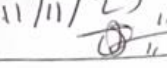
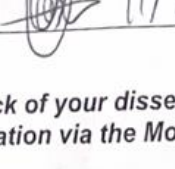
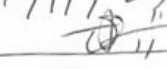
SCHOOL OF LAW

L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: TANIA TARISA PHIRI STUDENT NUMBER: 220212483949
SUPERVISOR: MR. M. MUSAHAZI TOPIC: ASSESSING THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT (ICC) IN COMBATING WAR CRIMES: A CASE STUDY OF THE PROSECUTOR V. JEAN-PIERRE BEMBA GOMBA

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Tania, the layout of Chapter 1 is missing and I am deleting the Bibliography from the proposal and the chapter is chapter one (1)	 01/08/2025	1/08/2025 
Chapter 1 – Introduction	Hi Tania, Chapter layout is OK but there are some typos you need to correct on, proceed to chapter 2	 08/08/2025	08/08/2025 
Chapter 2 –	This is okay you can proceed to 3 though the number of pages is less	 14/08/25	14/08/2025 
Chapter 3 –	Hi Tania this is very okay you can proceed to chapter 4	 11/09/25	11/09/2025 
Chapter 4 –	Hi Tania, I am adding a conclusion and summarizing some parts that were repeated. move to chapter 5	 03/11/25	3/11/2025 

Chapter 5 – Conclusions & Recommendations	Hi Zaid, This looks good to me. I have no recommendations just beef up to meet the page limit	 08/11/2025	08/11/2025 
Abstract, Table of Contents, Bibliography and Appendices	Nil	 08/11/25	08/11/2025 
First Draft	Nil	 08/11/25	10/11/2025 
Second Draft	Nil	 11/11/25	11/11/25 
Final Draft	Nil	 11/11/25	11/11/25 

***NOTE:** Please attach this form to the back of your dissertation at the end of the research, before submission of the dissertation via the Moodle e-learning platform.

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 SCHOOL OF LAW ASSESSING THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT (ICC) IN COMBATING WAR CRIMES: A CASE STUDY OF THE PROSECUTOR V JEAN-PIERRE BEMBA GOMBA By: TANIA TARISAI PHIRI LLB212483949 AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 2025 i DECLARATION I declare that this dissertation entitled, ASSESSING THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT (ICC): THE PROSECUTOR V JEAN-PIERRE BEMBA GOMBA which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 I understand what plagiarism entails and I'm aware of the university's policy this regard. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 Thus, where another people's work is cited. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 I have duly acknowledged. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 The error



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or omission in this work are solely mine. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 TANIA TARISAI PHIRI 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 2025 ii iii ACKNOWLEDGEMENT First and foremost, I give all glory



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