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PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Public Document

**Decision on the Prosecutor's Application for a Warrant of Arrest against
Jean-Pierre Bemba Gombo**

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

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Other

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PRE-TRIAL CHAMBER III (“the Chamber”) of the International Criminal Court (“the Court”) was seized on 9 May 2008 of a “Prosecutor’s Application for Warrant of Arrest under Article 58” of the Rome Statute (“the Statute”), with annexes, (“Prosecutor’s Application”),¹ whereby the Prosecutor sought the issuance of a warrant of arrest against Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”).

On 23 May 2008 the Chamber issued a warrant of arrest against Mr Jean-Pierre Bemba pursuant to Article 58(1) of the Statute, observing that the analysis of the evidence and other information submitted by the Prosecutor in connection with his Application would be set out in a decision to be issued later.

**FOR THESE REASONS, THE CHAMBER RENDERS THE FOLLOWING
DECISION:**

¹ ICC-01/05-13-US-Exp.

I. Procedural history

1. By a letter of 18 December 2004, the Central African Republic (the “CAR”) referred to the Prosecutor of the Court a situation in which crimes against humanity and war crimes within the jurisdiction of the Court had allegedly been committed on the territory of the CAR since 1 July 2002.²

2. On 19 January 2005 the Presidency of the Court assigned the situation in the CAR to the Chamber pursuant to regulation 46(2) of the *Regulations of the Court*.³

3. On 2 May 2008 the Prosecutor submitted a request to the Chamber for extension of the page limit for his upcoming application;⁴ the Chamber granted that request on 8 May 2008.⁵

4. On 9 May 2008 the Chamber received the Prosecutor's Application, in which he sought the issuance of a warrant of arrest against Mr Jean-Pierre Bemba on four counts of crimes against humanity and six counts of war crimes.

5. On 21 May 2008 the Chamber rendered a *Decision Requesting Additional Information in Respect of the Prosecutor's Application for Warrant of Arrest under Article 58* of the Statute,⁶ in which it *inter alia* requested the Prosecutor to provide additional information and supporting material on various aspects of his application, in particular on the counts of other forms of sexual violence and murder, both offences being characterised under the dual head of crimes against humanity and war crimes.

² ICC-01/05-16-US-Exp-Anx1-A.

³ ICC-01/05-1.

⁴ ICC-01/05-10-US-Exp.

⁵ ICC-01/05-12-US-Exp.

⁶ ICC-01/05-14-US-Exp.

6. On 23 May 2008 the Prosecutor filed an Application for Request for Provisional Arrest under Article 92 of the Statute,⁷ in which he *inter alia* informed the Chamber that there was a real likelihood that Mr Bemba would flee and attempt to avoid arrest and that it was therefore urgently necessary to send a request for his provisional arrest to the Kingdom of Belgium.

7. On the same day, the Chamber issued a warrant of arrest under seal against Mr Bemba on two counts of crimes against humanity and four counts of war crimes,⁸ observing that a detailed analysis of the evidence and information submitted by the Prosecutor would be developed at a later stage⁹ and requesting the provisional arrest of Mr Bemba¹⁰ under article 95 of the Statute.

8. On 24 May 2008 the warrant of arrest issued on 23 May 2008 was executed by the authorities of the Kingdom of Belgium, who arrested Mr Bemba.¹¹ Following this arrest, the Chamber decided to unseal the warrant of arrest.¹²

9. On 27 May 2008 the Prosecutor submitted additional information and supporting material in response to the Chamber's decision of 21 May 2008 (Prosecutor's Submission on Further Information and Materials).¹³

10. Having examined the Prosecutor's Submission on Further Information and Materials, the Chamber considers that it is necessary to issue a new warrant of arrest to replace the warrant of arrest issued on 23 May 2008. The new warrant of arrest

⁷ ICC-01/05-15-US-Exp.

⁸ ICC-01/05-01/08-1-US.

⁹ ICC-01/05-01/08-1, para. 7.

¹⁰ ICC-01/05-01/08-3-US.

¹¹ ICC-01/05-01/08-6-US-Exp, para. 2.

¹² ICC-01/05-01/08-5.

¹³ ICC-01/05-16-US-Exp.

will refer to the same events in the CAR during the same period, i.e. from 25 October 2002 to 15 March 2003, and will add to the crimes already set out in the warrant of arrest issued on 23 May 2008 two further counts of murder, under the dual head of crimes against humanity and war crimes. This new warrant of arrest will be issued as a separate document and sent to the competent authorities of the Kingdom of Belgium together with the present Decision and a request for the arrest and surrender of Mr Jean-Pierre Bemba.

II. Jurisdiction and admissibility

11. Article 19(1) of the Statute provides that “[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it”. The Chamber considers that, irrespective of the terms of article 19(1) of the Statute, every international court has power to determine its own jurisdiction, even when there is no explicit provision to that effect.¹⁴ Consequently, an initial determination as to whether the case against Mr Jean-Pierre Bemba falls within the jurisdiction of the Court is a prerequisite for the issue of a warrant of arrest against him.¹⁵

12. The Chamber emphasises that, for a crime to fall within the Court’s jurisdiction, it must meet the following three conditions: (i) the crime must be one of the crimes set out in article 5 of the Statute (jurisdiction *ratione materiae*); (ii) the crime must have been committed within the timeframe specified in article 11 of the Statute (jurisdiction *ratione temporis*); and (iii) the crime must satisfy one or other of the two criteria laid down in article 12 of the Statute,¹⁶ namely, it must either have been

¹⁴ Ch. K. Hall, “Challenges to the Jurisdiction of the Court or the Admissibility of a Case”, in O. Triffterer (ed.), *Commentary on the Rome Statute: Observers’ Notes, Article by Article*, (1999), p. 407.

¹⁵ Pre-Trial Chamber I, *Decision on the Prosecution Application under Article 58(7) of the Statute*, ICC-02/05-01/07-1-Corr, para. 13 and Pre-Trial Chamber I, *Decision on the Prosecutor’s Application for a Warrant of Arrest*, article 58, ICC-01/04-01/06-8-Corr, para. 18.

¹⁶ Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga*, ICC-01/04-01/07-55, para. 11; and Pre-Trial Chamber I,

committed on the territory of a State Party to the Statute or by a national of that State, or have been committed on the territory of a State which has made a declaration under article 12(3) of the Statute or by nationals of that State.¹⁷

13. With regard to the first condition, the Chamber finds that there are reasonable grounds to believe that the crimes alleged against Mr Jean-Pierre Bemba were committed in the context of, and associated with, an armed conflict and as part of a widespread or systematic attack directed against the civilian population in the CAR.¹⁸ The Chamber furthermore observes that: murder constitutes a crime against humanity under article 7(1)(a) of the Statute as well as a war crime under article 8(2)(c)(i) of the Statute; rape constitutes a crime against humanity under article 7(1)(g) of the Statute as well as a war crime under article 8(2)(e)(vi) of the Statute; torture constitutes a crime against humanity under article 7(1)(f) of the Statute as well as a war crime under article 8(2)(c)(i) of the Statute; outrages upon personal dignity, in particular inhuman and degrading treatment, constitute a war crime under article 8(2)(c)(ii) of the Statute; and pillaging a town or place, even when taken by assault, constitutes a war crime under article 8(2)(e)(v) of the Statute. Accordingly, in the Chamber's view the first condition, relating to jurisdiction *ratione materiae*, has been met.

14. With respect to the second condition, namely the Court's jurisdiction *ratione temporis*, the Chamber observes that the Statute entered into force for the CAR on 1 July 2002, in accordance with article 126(1), that country having signed the Statute on 7 December 1999 and deposited its instrument of ratification on 3 October 2001. The second condition has therefore been met, since the crimes alleged against Mr Jean-Pierre Bemba are stated to have been committed after 1 July 2002, specifically between 25 October 2002 and 15 March 2003.

Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, ICC-01/04-101, para. 85.

¹⁷ ICC-01/04-101, para. 91 and 93.

¹⁸ See below, paras 32 to 35.

15. With respect to the third condition, namely the two alternative criteria set out in article 12 of the Statute, the Chamber notes that the crimes alleged against Mr Jean-Pierre Bemba are stated to have been committed on CAR territory, and the Chamber accordingly concludes that the third condition has also been met. Moreover, the Chamber points out that Mr Bemba is believed to be a national of the Democratic Republic of the Congo (“DRC”),¹⁹ a State which is also a party to the Statute.

16. The Chamber furthermore considers that a “case includes “specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects””,²⁰ and that a “case arising from the investigation of a situation will fall within the jurisdiction of the Court only if the specific crimes of the case do not exceed the territorial, temporal and possibly personal parameters defining the situation under investigation and fall within the jurisdiction of the Court.”²¹

17. In this respect, the Chamber points out that the situation in the CAR was referred to the Prosecutor on 18 December 2004, as required by articles 13(a) and 14 of the Statute, and that the Prosecutor was asked to investigate crimes within the Court’s jurisdiction which had allegedly been committed on the territory of that country since 1 July 2002. On 10 May 2007, the Prosecutor decided to initiate an investigation into the situation in the CAR pursuant to article 53(1) of the Statute. On 22 May 2007, in accordance with article 18(1) of the Statute, he sent letters of notification to the States Parties to the Statute and to those States who would normally exercise jurisdiction over the crimes concerned. According to the

¹⁹ ICC-01/05-16-US-Exp-Anx1-A.

²⁰ ICC-02/05-01/07-1-Corr, para. 14; and ICC-01/04-01/06-8-Corr, para 21.

²¹ ICC-01/04-01/06-8-Corr, para. 21.

Prosecutor, no information has been received by him in response to these notifications.²²

18. Thus the situation in the CAR out of which the case against Mr Jean-Pierre Bemba arises has been defined as occurring on the territory of that country since 1 July 2002.²³ The Prosecutor's Application refers to crimes committed on the territory of the CAR between 25 October 2002 and 15 March 2003.²⁴ The Prosecutor asserts that these crimes were committed: i) as part of a widespread or systematic attack directed against the civilian population;²⁵ and ii) in the context of a non-international armed conflict.²⁶ Accordingly, the Chamber concludes that the case against Mr Jean-Pierre Bemba does indeed relate to the situation in the CAR.

19. Having regard to the foregoing, and on the basis of the evidence and information provided by the Prosecutor, the Chamber concludes that the case against Mr Jean-Pierre Bemba falls within the jurisdiction of the Court.

20. Moreover, article 19(1) of the Statute confers upon the Chamber a discretionary power to examine the admissibility of a case when it has received an application filed under article 58 of the Statute. The exercise of such a discretionary power will depend on the circumstances of the case, with due consideration for the interests of person(s) concerned.²⁷

²² Prosecutor's Application, para 4.

²³ Letter from the Prosecutor to the President of the Court, attached to Decision ICC-01/05-1.

²⁴ Prosecutor's Application; see for example paragraphs 23, 30 and 33.

²⁵ Prosecutor's Application; see for example paragraph 13 with supplementary references, and paragraphs 47 and 62.

²⁶ Prosecutor's Application, paras. 35 and 46.

²⁷ ICC-01/04-01/07-55, para. 17; Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Mathieu Ngudjolo Chui*, ICC-01/04-01/07-262, para. 17 ; ICC-02/05-01/07-1-Corr, para. 18.

21. The Chamber considers that the circumstances in the instant case justify it in ruling on the admissibility of the case, and finds that there is no reason to conclude that Mr Jean-Pierre Bemba's case is not admissible, particularly since there is nothing to indicate that he is already being prosecuted at national level for the crimes referred to in the Prosecutor's Application. On the contrary, it would appear that the CAR judicial authorities abandoned any attempt to prosecute Mr Jean-Pierre Bemba for the crimes referred to in the Prosecutor's Application, on the ground that he enjoyed immunity by virtue of his status as Vice-President of the DRC.²⁸

22. Accordingly, on the basis of the evidence and information provided by the Prosecutor, the Chamber finds the case concerning Mr Jean-Pierre Bemba admissible. This decision does not in any way prejudice any decision on the admissibility of the case which might subsequently be rendered under article 19 of the Statute.²⁹

III. Crimes within the jurisdiction of the Court

23. Under article 58(1)(a) of the Statute, the Chamber shall determine whether there are reasonable grounds to believe that the person concerned has committed a crime within the jurisdiction of the Court.

24. The Chamber observes that, under article 21(3) of the Statute, the expression "reasonable grounds to believe" must be interpreted in a manner consistent with internationally recognized human rights. Thus, in interpreting and applying this concept, the Chamber will be specifically guided by the "reasonable suspicion" standard under article 5(1)(c) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which, as interpreted by the European Court of

²⁸ Further information submitted by the Prosecutor, Annex 6-B.

²⁹ ICC-01/04-01/07-55, para. 21.

Human Rights (“ECHR”), “requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence”.³⁰ In addition, the Chamber will also be guided by the jurisprudence of the Inter-American Court of Human Rights (“IACHR”) on the fundamental right to liberty,³¹ as enshrined in article 7 of the *American Convention on Human Rights*.³²

25. The Chamber moreover recalls that in his Application the Prosecutor appears on occasion to have presented the same facts under different legal characterizations. It wishes to make it clear that the Prosecutor should choose the most appropriate characterization. The Chamber considers that the Prosecutor is risking subjecting the Defence to the burden of responding to multiple charges for the same facts and at the same time delaying the proceedings. It is for the Chamber to characterize the facts put forward by the Prosecutor. The Chamber will revisit this issue in light of the evidence submitted to it by the Prosecutor during the period prior to the confirmation of charges, having regard to the rights of the Defence and to the need to ensure the fair and expeditious conduct of the proceedings.

26. According to the Prosecutor, members of the *Mouvement de Libération du Congo* (“MLC”) [Movement for the Liberation of the Congo] led by Mr Jean-Pierre Bemba, also called *Banyamulenge*, entered CAR territory on or around 25 October 2002 to help the weakened loyalist forces which had remained loyal to Mr Ange-Félix Patassé, the then CAR President, in order to suppress an attempted coup d’état led by Mr François Bozizé, former Chief of Staff of the *Forces armées centrafricaines*

³⁰ ECHR, *Fox, Campbell and Hartley v. United Kingdom*, Judgment of 30 August 1990, vol. 182, Series A, p. 16, para. 32; *K.-F. v. Germany*, Judgment of 27 November 1997, Reports 1997-VII, para. 57; *Labita v. Italy*, Judgment of 6 April 2000, paras. 155; *Berktaş v. Turkey*, Judgment of 1 March 2001, para. 199; *O’Hara v. United Kingdom*, Judgment of 16 October 2001, para. 34.

³¹ See, for example, IACHR, *Bamaca Velasquez v. Guatemala*, Judgment of 25 November 2000, Series C No. 70, paras. 138 to 144; *Loayza-Tamayo v. Peru*, Judgment of 17 September 1997, Series C No. 33, paras. 49 to 55; *Gangaram Panday v. Surinam*, Judgment of 21 January 1994, Series C No. 16, paras. 46 to 51.

³² Also referred to as the “Pact of San José, Costa Rica”, adopted on 22 November 1969.

(“FACA”) [Central African Armed Forces]. On or around 25 October 2002, members of the MLC crossed the Ubangui river from the DRC and commenced hostilities against Mr François Bozizé’s rebel group. The Prosecutor alleges that clashes took place in various locations on the territory between 25 October 2002 and 15 March 2003, when the MLC forces withdrew.

27. According to the Prosecutor, the crimes committed between 25 October 2002 and 15 March 2003 occurred in the context of a widespread or systematic attack against the Central African civilian population pursuant to or in furtherance of the MLC’s policy to commit such acts on Central African territory, within the meaning of article 7(1) of the Statute. The Prosecutor further states that during the same period MLC members committed war crimes in the context of a non-international armed conflict taking place on Central African territory and in association with that conflict, within the meaning of articles 8 (2) (c) and (e) of the Statute.

28. The Chamber points out that, according to the Statute and the *Elements of Crimes*, the material element of each of the crimes within the Court’s jurisdiction comprises both a contextual element and a particular (or specific) criminal act, as set out below. Its analysis is based on the evidence presented in the Prosecutor’s Application³³ and in the further information submitted by him.³⁴

³³ ICC-01/05-13-US-Exp.

³⁴ ICC-01/05-16-US-Exp.

A - Crimes against humanity

(1) Contextual element of crimes against humanity

29. In his Application, the Prosecutor asserts that Mr Jean-Pierre Bemba is criminally responsible for crimes against humanity as referred to in articles 7(1)(g) (rape), 7(1)(g) (other forms of sexual violence), 7(1)(f) (torture) and 7(1)(a) (murder) of the Statute, committed in the CAR during the period 25 October 2002 to 15 March 2003. He alleges that these criminal acts occurred in the context of a widespread or systematic attack directed against the Central African civilian population within the meaning of article 7(1) of the Statute.³⁵

30. In this respect, the Prosecutor alleges that members of the MLC carried out a widespread attack against the civilian population, which they systematically targeted. As they advanced into Central African territory, they attacked the local population, raping, pillaging and killing civilians.³⁶ The Prosecutor adds that these acts were committed in large numbers³⁷ and followed an identical *modus operandi*.³⁸ Moreover, it is alleged that these crimes, such as pillaging and rape, were predominantly committed in an organised manner. They were part of a deliberate tactic which aimed to punish and humiliate those civilians perceived as sympathetic to Mr François Bozizé's rebel troops.³⁹

31. The Prosecutor further states that Mr Jean-Pierre Bemba knew that the MLC members' behaviour in the CAR was part of a widespread or systematic attack directed against the Central African civilian population. Moreover, he adds that Mr

³⁵ Prosecutor's Application, paras. 47 to 62.

³⁶ Prosecutor's Application, para. 53.

³⁷ Prosecutor's Application, paras. 49, 51 and 52.

³⁸ Prosecutor's Application, paras. 54, 55, 56, 57, 59 and 60.

³⁹ Prosecutor's Application, para. 50 and 53.

Jean-Pierre Bemba knew that the MLC was taking part in the conflict by fighting Mr François Bozizé's rebel group. In fact, the MLC's participation in the conflict was the sole reason for its presence in the CAR. The Prosecutor asserts that Mr Jean-Pierre Bemba was also aware of the crimes committed by MLC members, since he was physically present in the CAR, where he was informed of the commission of these crimes. Furthermore, the Prosecutor considers that Mr Jean-Pierre Bemba's knowledge of these crimes is apparent from his behaviour after they were committed.⁴⁰

32. The Chamber recalls that, under article 7(1) of the Statute, an act constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population. Article 7(2)(a) of the Statute defines an "attack directed against any civilian population" as a "course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".

33. The reference to a widespread or systematic attack has been interpreted as excluding isolated or random acts from the concept of crimes against humanity. In this regard, the adjective "widespread" refers to "the large-scale nature of the attack and the number of targeted persons", while the adjective "systematic" refers to the "organised nature of the acts of violence and the improbability of their random occurrence". The Chamber is further of the view that the existence of a State or organisational policy is an element from which the systematic nature of an attack may be inferred.⁴¹

⁴⁰ Prosecutor's Application, para. 61.

⁴¹ Pre-Trial Chamber I, *Decision on the Prosecution Application under Article 58(7) of the Statute*, ICC-02/05-01/07-1-Corr, para. 62.

34. Having analysed the evidence, the Chamber considers that there are reasonable grounds to believe that the attack directed against the civilian population in the CAR was widespread and systematic. As proven by a number of documents and witness statements presented by the Prosecutor, the attack against the civilian population, particularly in Bangui, Point Kilomètre 12 ("PK 12"), Point Kilomètre 22 ("PK 22"), Mongoumba, Bossangoa, Damara, Bossembélé, Sibut, Bozoum, Kabo, Batangafo, Kaga-Bandoro and Bossemptélé, took place on a large scale and targeted a large number of civilian victims,⁴² often in the aftermath of a military clash between the MLC and Mr François Bozizé's rebel group.⁴³ This was the case in all locations in which MLC troops were based.⁴⁴ The Chamber considers that there are reasonable grounds to believe that a large number of children, women and men were raped under the pretext that they were sympathetic to the rebels and in order to humiliate them or to demonstrate their powerlessness to protect their families.⁴⁵ According to available information, in July 2003 a medical charity reported 316 cases of rape in the CAR and the *Procureur de la République* [Prosecutor of the Republic] in Bangui received more than 300 reports of rape from survivors of those rapes.⁴⁶ The Chamber also considers that there are reasonable grounds to believe that murders were committed in the context of the systematic attack against the civilian population.⁴⁷

35. The Chamber further considers that the attack against the civilian population was of a systematic nature. Following an analysis of the evidence, it is of the opinion that there are reasonable grounds to believe that, pursuant to the organizational policy, members of the MLC targeted the civilian population in operations

⁴² Prosecutor's Application, Annex 5, p. 69 ; Annex 9-B, p. 1; Annex 11-C, p. 19 ; Further information submitted by the Prosecutor, Annex 6-A, p. 20 ; Annex 16, p. 5, 14 and 15.

⁴³ Further information submitted by the Prosecutor, Annex 6-B, p. 22.

⁴⁴ Further information submitted by the Prosecutor, Annex 16, p. 14.

⁴⁵ Prosecutor's Application, Annex 5, p. 26 ; Annex 10, p. 31 ; Annex 11-B, p. 19 ; Annex 6, p. 1, 3, 4 and 9 ; Annex 9-B, p. 3; Further information submitted by the Prosecutor, Annex 9, p. 18 ; Annex 6-B, p. 22 ; see also Annex 13, p. 54 and 55 ; Annex 9-A, p. 3 and 4.

⁴⁶ Prosecutor's Application, Annex 6, p. 4 and 9.

⁴⁷ Prosecutor's Application, Annex 5, p. 26 ; Annex 10, p. 16 and 59 ; Annex 11-B, p. 13; Further information submitted by the Prosecutor, Annex 9, p. 11 ; Annex 16, p. 13.

conducted “from house to house”⁴⁸ as part of a deliberate tactic to humiliate⁴⁹ and punish civilians who were perceived to be sympathetic to the rebel group led by Mr François Bozizé.⁵⁰ There are reasonable grounds to believe that the crimes of rape and murder were committed systematically.⁵¹ There are reasonable grounds to believe that the murders took place in the context of a widespread commission of rapes.⁵² Furthermore, members of the MLC allegedly received an order from Mr Ange-Félix Patassé to kill young males.⁵³ There are reasonable grounds to believe that civilians who attempted to prevent the attack were killed, while others were threatened.⁵⁴

36. Moreover, in the view of the Chamber, there are reasonable grounds to believe that Mr Jean-Pierre Bemba knew that the conduct of the members of the MLC was part of a widespread or systematic attack on the civilian population of the Central African Republic, since he travelled to the CAR on at least two occasions, and during those visits he was made aware of the complaints of the local population in respect of the crimes allegedly committed by members of the MLC.⁵⁵

⁴⁸ Prosecutor’s Application, Annex 5, pp. 12 and 13; Annex 10, pp. 12, 63 and 64; Annex 11-B, pp. 11 and 18.

⁴⁹ Prosecutor’s Application, Annex 10, p. 31; Further information submitted by the Prosecutor, Annex 16, p. 11.

⁵⁰ Prosecutor’s Application, Annex 11-B, p. 11; Annex 13-B, p. 20.

⁵¹ Prosecutor’s Application, Annex 6, p. 1; Annex 9-A, p. 3; Annex 10, pp. 16 and 59; Further information submitted by the Prosecutor, Annex 9, pp. 15 and 18; Annex 13, pp. 50 and 55; Annex 16, pp. 13, 14.

⁵² Prosecutor’s Application, Annex 5, p. 37.

⁵³ Prosecutor’s Application, Annex 11-B, pp. 6 and 11; Annex 13-B, p. 22; Further information submitted by the Prosecutor, Annex 16, p. 15.

⁵⁴ Prosecutor’s Application, Annex 11-B, p. 14.

⁵⁵ Prosecutor’s Application, Annex 2-B, pp. 24, 35, 56, 57 and 58; Annex 5, pp. 46, 50 and 51; Annex 6, pp. 9 and 10; Annex 13-B, pp. 12, 13, 15 and 16; Further information submitted by the Prosecutor, Annex 6-A, p. 15; Annex 16, p. 17.

(2) Acts constituting crimes against humanity committed in the context of a widespread or systematic attack

37. The Prosecutor alleges that between 25 October 2002 and 15 March 2003 members of the MLC committed crimes against humanity by raping a large number of civilian women, men and children – crimes punishable under article 7(1)(g) of the Statute.⁵⁶

38. Following an analysis of the evidence, the Chamber concludes that there are reasonable grounds to believe that rapes, constituting crimes against humanity and punishable under article 7(1)(g) of the Statute, were committed on the territory of the CAR, *inter alia* in PK 12, PK 22, Damara and Mongoumba, during the period 25 October 2002 to 15 March 2003.⁵⁷

39. The Prosecutor alleges that, between 25 October 2002 and 15 March 2003, members of the MLC committed crimes against humanity, namely other forms of sexual violence against civilian women, men and children – crimes punishable under article 7(1)(g) of the Statute.⁵⁸ He states that members of the MLC ordered people to undress in public in order to humiliate them.⁵⁹

40. The Chamber notes that article 7(1)(g) of the Statute requires other forms of sexual violence to be of comparable gravity to the crimes set forth in that subparagraph. The Chamber is of the opinion that the facts submitted by the

⁵⁶ Prosecutor's Application, p. 9.

⁵⁷ Prosecutor's Application, Annex 2-B, pp. 26 and 36; Annex 3-A, p. 28; Annex 4, p. 46; Annex 5, pp. 15, 29, 30, 34, 36, 37, 44, 70 and 71; Annex 6, pp. 5 to 8; Annex 9-A, pp. 3 and 4; Annex 10, pp. 11, 30, 31, 39, 46-59 and 63; Annex 11-B, pp. 8, 13, 15, 16, 19 and 23; Annex 11-C, pp. 4 to 12; Annex 13-B, pp. 21 to 28; Annex 13-C, pp. 8 to 10. Further information submitted by the Prosecutor, Annex 9, pp. 18 to 20; Annex 6-B, pp. 18 to 22; Annex 13, pp. 54 to 55; Annex 16, pp. 5, 12 and 13.

⁵⁸ Prosecutor's Application, p. 9.

⁵⁹ Further information submitted by the Prosecutor, p. 8.

Prosecutor do not constitute forms of sexual violence of comparable gravity to the other crimes set forth in article 7(1)(g) of the Statute. Accordingly, following an analysis of the evidence, the Chamber concludes that there are no reasonable grounds to believe that other forms of sexual violence of comparable gravity constituting crimes against humanity and punishable under article 7(1)(g) were committed on the territory of the CAR during the period 25 October 2002 to 15 March 2003.⁶⁰

41. The Prosecutor alleges that, between 25 October 2002 and 15 March 2003, members of the MLC committed acts of torture constituting crimes against humanity by inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence upon civilian women, men and children in the CAR, crimes punishable under article 7(1)(f) of the Statute.⁶¹

42. Following an analysis of the evidence, the Chamber concludes that there are reasonable grounds to believe that acts of torture constituting crimes against humanity and punishable under article 7(1)(f) of the Statute were committed on the territory of the CAR, *inter alia* in PK 12 and PK 22, during the period 25 October 2002 to 15 March 2003.⁶²

43. The Prosecutor alleges that between 25 October 2002 and 15 March 2003 members of the MLC committed crimes against humanity by killing civilians in the CAR, crimes punishable under article 7(1)(a) of the Statute.⁶³ In particular, civilians

⁶⁰ Prosecutor's Application, Annex 5, pp. 12 and 37; Annex 6, pp. 3 and 5; Annex 11-B, p. 23; Annex 11-C, p. 25.

⁶¹ Prosecutor's Application, p. 10.

⁶² Prosecutor's Application, Annex 5, pp. 16, 36, 37 and 70; Annex 6, p. 7; Annex 10, p. 31; Annex 11-C, pp. 24 and 25; Annex 13-B, pp. 20, 21 and 24.

⁶³ Prosecutor's Application, p. 11.

were killed if they attempted to resist looting or to protect family members who were targets of rape.⁶⁴

44. Following an analysis of the evidence, the Chamber is satisfied that there are reasonable grounds to believe that murders constituting crimes against humanity punishable under article 7(1)(a) of the Statute were committed on the territory of the CAR, *inter alia* in PK 12, PK 22, Bossangoa and Damara, during the period 25 October 2002 to 15 March 2003.⁶⁵

45. The Chamber concludes that there are reasonable grounds to believe that, between 25 October 2002 and 15 March 2003, crimes against humanity falling within the jurisdiction of the Court were committed on the territory of the CAR – crimes punishable under articles 7(1)(g) (rape), 7(1)(f) (torture) and 7(1)(a) (murder) of the Statute – and that Mr Jean-Pierre Bemba was aware that those acts were part of a widespread and systematic attack directed against the civilian population of the Central African Republic.

B – War crimes

(1) Contextual element of war crimes

46. The Chamber recalls that war crimes may arise either in the context of an international armed conflict or of an armed conflict not of an international character, and in association with such conflict. In his Application, the Prosecutor maintains that it is immaterial whether the conflict under consideration in the instant case is

⁶⁴ Further information submitted by the Prosecutor, p. 9.

⁶⁵ Prosecutor's Application, Annex 5, pp. 13, 33 and 36; Annex 10, pp. 11, 12 and 16; Annex 11-B, pp. 13 and 14; Further information submitted by the Prosecutor, Annex 6-A, p. 16; Annex 9, pp. 11 and 17; Annex 16, pp. 5 and 13.

characterised as international or non-international, given that each of the counts proposed under the head of war crimes arises from conduct which constitutes a war crime, irrespective of how the conflict is characterized. He nevertheless asserts that, in the context of his Application, there are reasonable grounds to believe that an armed conflict of a non-international character existed in the CAR between the rebel group of Mr François Bozizé and Mr Ange-Félix Patassé's troops, which included the MLC.⁶⁶

47. Although the Chamber is of the view that the Prosecutor's Application and the Annexes thereto contain evidence which might lead it to characterise the armed conflict either as an "international conflict" or as a "conflict not of an international character", it concurs with the Prosecutor's view, while reserving the right to revisit this issue at a later stage.

48. Articles 8(2)(c) and 8(2)(e) of the Statute set forth the crimes committed in the context of an armed conflict not of an international character. Article 8(2)(f) of the Statute provides:

Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

49. In the Prosecutor's view, the intensity of the armed conflict is reflected in the high number of troops involved in the events in the CAR and the impact on the civilian population over a period of five months. Although the most intense fighting and the greatest volume of atrocities, at least in Bangui, occurred during the first two to three weeks, the conflict continued for five months throughout the country,

⁶⁶ Prosecutor's Application, para. 35.

between 25 October 2002 and 15 March 2003.⁶⁷ MLC troops established bases at various points along the principal axes of the conflict and dominated a sufficient part of CAR territory.⁶⁸

50. Furthermore, according to the Prosecutor the two groups who clashed during the conflict were led by Mr Ange-Félix Patassé and Mr François Bozizé respectively. In addition to the troops who remained loyal to him, Mr Ange-Félix Patassé gathered combatants from various countries (about 1 500 MLC troops headed by Mr Jean-Pierre Bemba, a mostly Chadian mercenary force of 500 combatants known as the *Bataillon de sécurité frontalière* or the Anti-Zaraguina Brigade, led by Mr Abdoulaye Miskine, and at least 100 Libyan combatants), who were assigned different tasks and whose military operations in the field were coordinated as a single unified force.⁶⁹ Mr François Bozizé, his opponent in the conflict, had under his command approximately 600 men, who had defected from the FACA.⁷⁰

51. The Prosecutor further alleges that the MLC troops led by Mr Jean-Pierre Bemba committed, over a prolonged period of time, a large number of sexual crimes, pillaging and murder in the context of an armed conflict or in association with such conflict. He maintains that the occurrence of the crimes followed the movement of the MLC troops, as the fighting progressed to the northern part of the country, and then on their retreat towards the DRC. He adds that, once the MLC troops acquired control over the targeted areas, large-scale crimes against civilians were committed, at least partly to humiliate and punish sympathizers and supporters of Mr François Bozizé. The Prosecutor therefore concludes that the crimes were committed as a direct result of the conflict.⁷¹

⁶⁷ Prosecutor's Application, para. 37.

⁶⁸ Prosecutor's Application, para. 42.

⁶⁹ Prosecutor's Application, para. 37.

⁷⁰ Prosecutor's Application, para. 38.

⁷¹ Prosecutor's Application, para. 44.

52. The Prosecutor adds that, as leader of the MLC, Mr Jean-Pierre Bemba was aware of the existence of an armed conflict on the territory of the CAR. He alleges that, when exercising his command and control over the MLC troops, Mr Bemba gave instructions directly to the commanders in the field and had regular contacts with them during the MLC's operation in the CAR. Moreover, he visited his troops in the CAR on at least two occasions and publicly acknowledged his participation as the Commander in Chief of the MLC troops in the conflict in that country.⁷²

53. Following an analysis of the evidence, the Chamber is of the opinion that there are reasonable grounds to believe that, during the period 25 October 2002 to 15 March 2003, there was an armed conflict of a certain level of intensity and of a non- international character within the meaning of article 8(2)(f) of the Statute, over a prolonged period of time and over the entire territory of the CAR, between the rebel group of Mr François Bozizé and the loyalist forces of Mr Ange-Félix Patassé, supported by MLC troops led by Mr Jean-Pierre Bemba⁷³. In the Chamber's view, there are reasonable grounds to believe that members of the MLC progressed from Bangui to the northern part of the CAR and set up strategic bases, thereby dominating part of the territory of the CAR, in which they conducted military operations continuously for five months.⁷⁴

54. Following an analysis of the evidence, the Chamber concludes that there are reasonable grounds to believe that both groups had a hierarchical structure enabling

⁷² Prosecutor's Application, para. 45.

⁷³ Prosecutor's Application, Annex 2-A, pp. 51 to 53; Annex 2-B, pp. 5, 6, 10, 11, 73 and 75; Annex 3-B, pp. 19 and 20; Annex 4, pp. 44, 45 and 51; Annex 5, pp. 8, 11, 54 and 80; Annex 9-A, p. 1; Annex 9-B, p. 2; Annex 9-C, pp. 1 and 2; Annex 10, pp. 15, 16 and 22; Annex 11-A, pp. 8 and 13; Annex 13-A, pp. 10 and 11; Annex 13-B, pp. 5 and 19; Annex 13-C, p. 6; Further information submitted by the Prosecutor, Annex 6-A, pp. 9 and 10; Annex 9, p. 15.

⁷⁴ Prosecutor's Application, Annex 2-B, pp. 7 and 19; Annex 3-B, p. 23; Annex 5, pp. 11, 20 and 35; Annex 6, p. 3; Annex 9-A, p. 1; Annex 11-B, p. 5; Further information submitted by the Prosecutor, Annex 9, p. 15; Annex 13, pp. 30 and 38; Annex 14, p. 32.

them to act under responsible command with operational and disciplinary powers⁷⁵ and a sufficient level of internal organisation. It is of the view that the group led by Mr Jean-Pierre Bemba was organised hierarchically as a conventional army comprising brigades, battalions, companies, sections and platoons⁷⁶ and had the ability to plan and execute military operations.⁷⁷ There are reasonable grounds to believe that the MLC was an organised movement over which Mr Jean-Pierre Bemba assumed both political leadership⁷⁸ and superior military command.⁷⁹ Similarly, the Chamber considers that there are reasonable grounds to believe that the rebel group led by Mr François Bozizé was also organised hierarchically and had the ability to plan and execute military operations, Mr François Bozizé and the members of his rebel group having formerly been part of the FACA.⁸⁰

55. Having examined the evidence provided by the Prosecutor, the Chamber considers that there are reasonable grounds to believe that the alleged crimes were committed in the context of the armed conflict in the CAR between 25 October 2002 and 15 March 2003, and in association with this conflict.⁸¹ There are reasonable grounds to believe that a large number of crimes, such as rape, pillaging and murder, were perpetrated by the MLC throughout their progression across the CAR during clashes with troops of Mr François Bozizé.⁸² Moreover, the Chamber considers that Mr Jean-Pierre Bemba was aware of the factual circumstances

⁷⁵ Prosecutor's Application, Annex 2-A, pp. 42, 43 and 47; Annex 2-B, pp. 23, 24, 26, 27, 35 and 41; Annex 3-B, p. 15; Annex 4, p. 58; Annex 6, p. 10.

⁷⁶ Prosecutor's Application, Annex 2-A, pp. 18, 19 and 45; Annex 4, p. 19.

⁷⁷ Further information submitted by the Prosecutor, Annex 13, p. 42.

⁷⁸ Prosecutor's Application, Annex 3-A, p. 20; Annex 4, pp. 19, 22 and 64. See also articles 12 and 30 of the Constitution of the *Mouvement de Libération du Congo*, Annex 12, pp. 2 and 5.

⁷⁹ Prosecutor's Application, Annex 2-A, pp. 17, 25, 28 and 41; Annex 2-B, pp. 6 and 40, Annex 3-A, pp. 19, 36 and 38; Annex 3-B, p. 26; Annex 4, pp. 29, 31, 37, 47, 59, 61, 62, 63 and 64. Annex 13-B, pp. 19 and 29; see also articles 12, 14 and 30 of the Constitution of the *Mouvement de Libération du Congo*, Annex 12, pp. 2, 3 and 5.

⁸⁰ Prosecutor's Application, Annex 6, p. 1; Annex 11-B, pp. 4 et 5; Further information submitted by the Prosecutor, Annex 9, p. 7.

⁸¹ Prosecutor's Application, Annex 5, pp. 8 and 13; Annex 6, p. 5; Annex 10, pp. 15 and 16; Annex 11-C, p. 25.

⁸² Prosecutor's Application, Annex 5, pp. 8 and 13; Annex 6, p. 5; Further information submitted by the Prosecutor, Annex 6-A, p. 20; Annex 16, p. 12.

establishing the existence of an armed conflict when he sent members of the MLC to the CAR at the request of Mr Ange-Félix Patassé in order to block an attempted coup d'état led by Mr François Bozizé, and that he issued orders to the commanders in the field.⁸³

(2) Conduct which formed the basis of war crimes perpetrated in the context of or in association with an armed conflict.

56. The Prosecutor alleges that between 25 October 2002 and 15 March 2003 members of the MLC committed war crimes in the CAR by raping civilian women, men and children, crimes punishable under article 8(2)(e)(vi) of the Statute. These rapes were perpetrated in the context of military combat, on the ground that the civilians allegedly sympathised with the rebel group of Mr François Bozizé.⁸⁴

57. Having examined the evidence, the Chamber concludes that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003 acts of rape constituting war crimes were committed on the territory of the CAR, in but not limited to PK 12 and PK 22, in Damara and in Mongoumba, crimes punishable under article 8(2)(e)(vi) of the Statute.⁸⁵

58. The Prosecutor alleges that between 25 October 2002 and 15 March 2003 members of the MLC committed acts of torture constituting war crimes by inflicting

⁸³ Prosecutor's Application, Annex 2-A, pp. 52 and 53; Annex 2-B, pp. 6, 7 and 11; Annex 3-B, pp. 16 and 18; Annex 4, pp. 34, 37, 44, 47, 51 and 61; Annex 5, pp. 9, 50, 55 and 61; Annex 6, p. 1; Annex 11-B, p. 11; Annex 11-C, p. 17; Annex 13-A, pp. 10 and 11; Annex 13-B, pp. 12 and 13; Further information submitted by the Prosecutor, Annex 6-A, p. 13.

⁸⁴ Prosecutor's Application, p. 9, para. 44.

⁸⁵ Prosecutor's Application, Annex 2-B, pp. 26 and 36; Annex 3-A, p. 28; Annex 4, p. 46; Annex 5, pp. 15, 29, 30, 34, 36, 37, 44, 70 and 71; Annex 6, pp. 5 to 8; Annex 9-A, pp. 3 and 4; Annex 10, pp. 11, 30, 31, 39, 46-59 and 63; Annex 11-B, pp. 8, 13, 15, 16, 19 and 23; Annex 11-C, pp. 4 to 12; Annex 13-B, pp. 21 to 28; Annex 13-C, pp. 8 to 10; Further information submitted by the Prosecutor, Annex 9, pp. 18 to 20; Annex 6-B, pp. 18 to 22; Annex 13, p. 54 and 55; Annex 16, pp. 5, 12 and 13.

severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian women, men and children in the CAR, crimes punishable under article 8(2)(c)(i) of the Statute.⁸⁶

59. Having examined the evidence, the Chamber concludes that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003 acts of torture constituting war crimes were committed on the territory of the CAR, in but not limited to PK 12 and PK 22, crimes punishable under article 8(2)(c)(i) of the Statute.⁸⁷

60. The Prosecutor alleges that between 25 October 2002 and 15 March 2003 members of the MLC committed outrages upon personal dignity constituting war crimes by humiliating or degrading civilian women, men and children or violating their dignity in some other way, through acts of rape or other forms of sexual violence, crimes punishable under article 8(2)(c)(ii) of the Statute.⁸⁸

61. Having examined the evidence, the Chamber concludes that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003 outrages upon personal dignity constituting war crimes were committed against civilian women, men and children on the territory of the CAR, in but not limited to Bangui, PK 12 and Mongoumba, crimes punishable under article 8(2)(c)(ii) of the Statute.⁸⁹

62. The Prosecutor asserts that between 25 October 2002 and 15 March 2003 members of the MLC committed other forms of sexual violence constituting war

⁸⁶ Prosecutor's Application, p. 10.

⁸⁷ Prosecutor's Application, Annex 5, pp. 16, 36, 37 and 70; Annex 6, p. 7; Annex 10, p. 31; Annex 11-C, pp. 24 and 25; Annex 13-B, pp. 20, 21 and 24.

⁸⁸ Prosecutor's Application, pp. 10 and 11.

⁸⁹ Prosecutor's Application, Annex 4, p. 46; Annex 5, pp. 12, 15, 16, 34, 36, 37 and 70; Annex 6, pp. 3, 5, 7; Annex 10, pp. 11, 30, 31, 39, 46 to 59, and 63; Annex 11-B, pp. 8, 10, 13, 15, 19, 23 and 27; Annex 11-C, pp. 4 to 12, 24 and 25; Annex 13-B, pp. 21, 22, 23 and 24; Annex 13-C, pp. 8 to 10; Further information submitted by the Prosecutor, Annex 9, p. 18.

crimes against civilian women, men and children in the CAR, crimes punishable under article 8(2)(e)(vi) of the Statute.⁹⁰ He maintains that members of the MLC ordered people to remove their clothes in public to humiliate them.⁹¹

63. The Chamber considers that in the present circumstances the matters referred to by the Prosecutor in the preceding paragraph, which are characterized as other forms of sexual violence, may be characterized as outrages upon personal dignity constituting a war crime. In light of its finding in paragraph 61 of the present Decision, the Chamber considers it unnecessary to address the Prosecutor's allegations in the preceding paragraph under the head both of outrages upon personal dignity and of other forms of sexual violence. Having examined the evidence provided by the Prosecutor, at this stage of the proceedings the Chamber considers that there are no reasonable grounds to believe that between 25 October 2002 and 15 March 2003 other forms of sexual violence constituting war crimes were committed on the territory of the CAR, crimes punishable under article 8(2)(e)(vi) of the Statute.

64. The Prosecutor maintains that between 25 October 2002 and 15 March 2003 members of the MLC committed murders constituting war crimes by killing civilians in the CAR, crimes punishable under article 8(2)(c)(i) of the Statute. The civilians were killed in particular when they tried to oppose pillaging, or to protect family members from being raped.⁹²

65. Having examined the evidence, the Chamber concludes that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003 murders constituting war crimes were committed on the territory of the CAR, in but not

⁹⁰ Prosecutor's Application, p. 9.

⁹¹ Further information submitted by the Prosecutor, p. 8.

⁹² Prosecutor's Application, p. 11; Further information submitted by the Prosecutor, p. 9.

limited to PK 12 and PK 22, Bossangoa and Damara, crimes punishable under article 8(2)(c)(i) of the Statute.⁹³

66. The Prosecutor alleges that between 25 October 2002 and 15 March 2003 members of the MLC committed war crimes by pillaging towns and villages in the CAR, including but not limited to Bangui, Damara, Bossembélé, Sibut, Bossangoa, Mongoumba and PK 12 and PK 22, crimes punishable under article 8(2)(e)(v) of the Statute.⁹⁴

67. Having examined the evidence, the Chamber concludes that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003 acts of pillage constituting war crimes were committed on the territory of the CAR, in but not limited to Bossangoa, Mongoumba, Bangui, PK 12, Bossembélé and Damara, crimes punishable under article 8(2)(e)(v) of the Statute.⁹⁵

68. The Chamber concludes that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003 war crimes within the jurisdiction of the Court were committed on the territory of the CAR, namely crimes punishable under article 8(2)(e)(vi) (rape), 8(2)(e)(vi) (other forms of sexual violence), 8(2)(c)(i) (torture), 8(2)(c)(ii) (outrages upon personal dignity), 8(2)(c)(i) (murder) and 8(2)(e)(v) (pillaging) of the Statute, and that Mr Jean-Pierre Bemba was aware of the factual circumstances establishing the existence of an armed conflict.

⁹³ Prosecutor's Application, Annex 5, pp. 13, 33 and 36; Annex 10, pp. 11, 12 and 16; Annex 11-B, pp. 13 and 14 ; Further information submitted by the Prosecutor, Annex 6-A, p. 16; Annex 9, pp. 11 and 17; Annex 16, pp. 5 and 13.

⁹⁴ Prosecutor's Application, p. 11.

⁹⁵ Prosecutor's Application, Annex 2-A, p. 46; Annex 2-B, pp. 23 and 26; Annex 3-A, pp. 28, 29, 35 and 36; Annex 4, p. 46; Annex 5, pp. 12, 29, 35, 44, 55, 74 and 78; Annex 9-B, p. 2; Annex 9-C, pp. 1 and 2; Annex 10, pp. 10, 12, 62, 63 and 64; Annex 11-A, p. 10; Annex 11-B, pp. 6, 8, 17, 21 and 27; Annex 11-C, p. 16; Annex 13-B, p. 22; Annex 13-C, pp. 8, 9 and 13; Further information submitted by the Prosecutor, Annex 9, pp. 16 to 18; Annex 13, pp. 52 and 55; Annex 16, pp. 5 and 13.

IV. Individual criminal responsibility

69. The Prosecutor maintains that between 25 October 2002 and 15 March 2003 Mr Jean-Pierre Bemba, the undisputed leader of the MLC, militarily intervened in the CAR at the request of Mr Patassé, then President of the CAR. After successfully overcoming a number of coup attempts, Mr Patassé faced another armed rebellion in October 2002 led by Mr Bozizé, former Chief of Staff of the FACA.

70. In order to fight this rebellion, Mr Patassé called for support from foreign armed forces. The Prosecutor further alleges that these foreign forces included combatants from the armed wing of the MLC, a movement described as a militia from the DRC led by Mr Jean-Pierre Bemba. The Prosecutor maintains that the deployment of MLC troops to the CAR was the result of an agreement between Mr Patassé and Mr Bemba, whereby on the one hand the military forces of Mr Bemba would enable Mr Patassé to remain in power and, in exchange, Mr Bemba would receive from Mr Patassé an assurance that the CAR would continue to serve as a conduit for his business activities and as a strategic base for the MLC, and that he would also receive goods such as cars, fuel, money and manufactured goods.⁹⁶

71. The Prosecutor further alleges that, for the duration of the period referred to in the Prosecutor's Application pursuant to the agreement made with Mr Patassé, Mr Jean-Pierre Bemba, jointly with another, is responsible as a co-perpetrator under article 25(3)(a) of the Statute for crimes against humanity and war crimes as set out in pages 8 to 11 of his Application.

72. The Chamber considers that there are reasonable grounds to believe that Mr Jean-Pierre Bemba is criminally responsible for the crimes referred to in

⁹⁶ Prosecutor's Application, p. 5, paras. 68, 70, 72.

paragraphs 29 to 68 of the present decision. The Chamber considers that Mr Bemba was the undisputed leader of the MLC, and that he organised the deployment and control of the MLC troops in the CAR, thus contributing substantially to the commission of the alleged crimes. Moreover, the Chamber finds that Mr Jean-Pierre Bemba was aware of the risk of such crimes being committed when he sent certain MLC combatants to the CAR.

73. The Chamber is of the view that there are reasonable grounds to believe that from 25 October 2002 to 15 March 2003, as the head of the MLC, Mr Jean-Pierre Bemba sent MLC combatants to the CAR in response to Mr Patassé's call, and that this decision was taken in implementation of a common agreement.⁹⁷ The Chamber considers that the substance of this agreement was based on a mutual commitment between Mr Patassé and Mr Bemba, allowing the former to receive military assistance from Mr Bemba in order to ensure that he would remain in power, and enabling the latter to prevent the CAR from allying itself with the government then in power in Kinshasa.⁹⁸ Mr Bemba would thus not only secure the strategic and logistical support of Mr Patassé – the territory of the CAR served as a rear base for the MLC – but could also expect a range of material benefits.⁹⁹

74. The Chamber is of the opinion that the existence and implementation of such an agreement can be deduced *inter alia* from the coordination on the ground between Mr Jean-Pierre Bemba's MLC¹⁰⁰ and Central African troops¹⁰¹ - essentially the troops

⁹⁷ Prosecutor's Application, p. 5, paras. 68, 70, 72; Annex 2-A, p. 52; Annex 2-B, pp. 14, 15; Annex 3-A p. 39; Annex 3-B p. 10; Annex 4, pp. 35, 36; Annex 5, pp. 8, 9 and 61; Annex 13-A, pp. 10, 11, 13; Annex 13-B p. 10; Further information submitted by the Prosecutor Annex 1-B, pp. 14, 15; Annex 5, p. 69; Annex 11, p. 1; Annex 13, p. 61; Annex 15, pp. 13, 32-34; Annex 16, paras. 69-82.

⁹⁸ Prosecutor's Application, paras. 70, 102; Annex 2-A, p. 52; Annex 2-B, pp. 11, 12; Annex 3-B, p. 16; Annex 4, pp. 35, 36.

⁹⁹ Prosecutor's Application, paras. 70, 100; Annex 3-B, p. 9; Further information submitted by the Prosecutor, Annex 5, p. 63; Annex 6-B, p. 15.

¹⁰⁰ Prosecutor's Application, paras. 108, 109; Annex 4, pp. 37, 51, 59; Annex 11-B, p. 4.

¹⁰¹ Prosecutor's Application, pp. 111-113; Annex 3-B, p. 5; Annex 4, p. 59; Annex 5, p. 49; Annex 9-B, p. 2; Annex 11-A, p. 13; Annex 11-C, pp. 17, 18; Annex 13-B, pp. 10, 29; Further information submitted by

of the Presidential Security Unit – during the MLC’s military operation in the CAR.¹⁰²

75. The Chamber is of the opinion that there are reasonable grounds to believe that Mr Jean-Pierre Bemba was *de jure* and *de facto* Commander in Chief of the Congolese Liberation Army, founded in 1998. The Chamber further considers that in 1999, when the military movement acquired a political wing and was transformed into a politico-military movement, the MLC, Mr Bemba became its President, as evidenced by the MLC constitution. The Chamber therefore considers that there are reasonable grounds to believe that Mr Jean-Pierre Bemba had the status and the power to enter into and implement any military agreement, in particular in the CAR.¹⁰³

76. In the view of the Chamber, the evidence adduced in support of the Prosecutor’s Application shows that Mr Jean-Pierre Bemba, as first and only President of the MLC and as Commander-in-Chief of its military wing, performed the functions accorded to him as such by the MLC constitution.¹⁰⁴ Mr Bemba had full powers to devise and carry out the civilian and military activities of the MLC. From this range of political and military options, Mr Bemba decided *inter alia* to send¹⁰⁵ and keep MLC combatants in the CAR, and to withdraw¹⁰⁶ his troops, without having to consult the other members of the MLC.¹⁰⁷ Mr Bemba had full authority to announce the withdrawal of his troops from the CAR on 15 March 2003, a decision which he

the Prosecutor, Annex 12-A, pp. 77, 81-85, 87, 89-91; Annex 12-B, pp. 81, 83; Annex 13, pp. 31, 46; Annex 15, p. 18; Annex 16 para. 40.

¹⁰² Prosecutor’s Application, p. 5, paras. 26, 73, 102; Annex 9-A, p.1; Annex 9-B, p. 1; Annex 13-B, p. 29; Further information submitted by the Prosecutor, Annex 9, p. 15; Annex 16, paras. 77-79.

¹⁰³ Prosecutor’s Application, p. 5, paras. 11, 75-78; Annex 4, p. 17; Annex 12, pp. 2, 5, articles 12, 30.

¹⁰⁴ Prosecutor’s Application, paras. 39, 75, 87, 88; Annex 2-A, p. 17; Annex 4, pp. 18, 19, 29, 31, 61, 62, 64.

¹⁰⁵ Prosecutor’s Application, para. 87; Annex 2-A, pp. 52, 53; Annex 2-B, p. 6; Annex 3-B, p. 26; Further information submitted by the Prosecutor, Annex 5, p. 51.

¹⁰⁶ Prosecutor’s Application, paras. 78, 93, 96, 101; Annex 4, pp 22, 50; Further information submitted by the Prosecutor, Annex 7, p. 16; Annex 8; Annex 11, p. 1.

¹⁰⁷ Prosecutor’s Application, paras. 45, 88; Annex 2-A, p. 52; Annex 2-B, p. 6; Further information submitted by the Prosecutor, Annex 5, p. 51.

implemented, and which marked the end of the crimes perpetrated against civilians in the CAR by MLC troops and the fall of the regime they had come to defend.¹⁰⁸

77. Mr Jean-Pierre Bemba was the only person in a position to appoint,¹⁰⁹ dismiss¹¹⁰ and punish¹¹¹ members of the MLC, whether they were in charge of the political or of the military affairs of the movement. He retained control of the situation on the ground by being kept regularly informed by his commanders based in the CAR and by frequently exchanging information with them;¹¹² through written reports or oral communication by long-range radio, cell and satellite telephones;¹¹³ and by visiting the field to address his troops directly.¹¹⁴

78. In light of the foregoing, the Chamber considers that there are reasonable grounds to believe that, as a result of his authority over his military organisation, Mr Jean-Pierre Bemba had the means to exercise control over the crimes committed by MLC troops deployed in the CAR.¹¹⁵

79. The Chamber further considers that there are reasonable grounds to believe that Mr Jean-Pierre Bemba, jointly with another person,¹¹⁶ made a decisive contribution to the operation in the CAR by guaranteeing logistical support to the combatants, in particular by providing them with weapons, ammunition and means of

¹⁰⁸ Prosecutor's Application, para. 101; Annex 2-B, p. 12.

¹⁰⁹ Prosecutor's Application, paras. 40 and 80; Annex 2-A, pp. 17 and 18; Annex 3-B, p. 8; Additional information submitted by the Prosecutor, Annex 5, p. 21.

¹¹⁰ Prosecutor's Application, para. 81; Annex 3-B, p. 7; Additional information submitted by the Prosecutor, Annex 5, p. 73.

¹¹¹ Prosecutor's Application, paras. 41, 82, 83 and 84; Annex 2-A, p. 42.

¹¹² Prosecutor's Application, paras. 45, 89, 92, 95, 108 and 109; Annex 2-B, pp. 7-8; Annex 13-B, pp. 19 and 29.

¹¹³ Prosecutor's Application, para. 89; Annex 2-A, pp. 31, 32 and 35; Annex 3-A, pp. 39 and 40.

¹¹⁴ Prosecutor's Application, paras. 45 and 105-107; Annex 5, pp. 41, 49 and 54; Annex 13-B, pp. 12, 14 and 18.

¹¹⁵ Prosecutor's Application, paras. 87 and 92; Annex 2-A, pp. 25, 27 and 29; Annex 3-A, pp. 19, 20, 24, 36 and 37.

¹¹⁶ Prosecutor's Application paras. 11, 72, 73, 99, 101, 102, and 110-113; Annex 2-B, p. 62; Annex 3-B, pp. 19 and 20.

communication.¹¹⁷ The Chamber is of the opinion that there are reasonable grounds to believe that Mr Jean-Pierre Bemba provided the coordination and follow-up and controlled the funding¹¹⁸ of the entire military operation in the CAR, to the extent that without his essential contribution, the operation could not have taken place.

80. In the view of the Chamber, Mr Jean-Pierre Bemba, in his capacity as Commander-in-Chief of the troops deployed to the CAR, was aware that his decision to send certain combatants, identified as Banyamulenge,¹¹⁹ who had already distinguished themselves by their brutal treatment of civilians on two occasions,¹²⁰ involved a risk, namely the commission of serious crimes in the CAR. Mr Jean-Pierre Bemba knew that acts of violence, in particular theft, rape and murder, had been committed in 2001 when Mr Jean-Pierre Bemba sent the MLC to quell an attempted coup by Mr Kolingba against Mr Patassé.¹²¹ Mr Jean-Pierre Bemba also knew that in October 2002, just before their intervention in the CAR, MLC troops had committed similar crimes in Ituri (DRC), particularly in Mambasa.¹²² Accordingly, the Chamber considers that there are reasonable grounds to believe that Mr Bemba was similarly aware that his combatants, who were not paid,¹²³ resorted to the practice of obtaining resources by pillaging the property of the civilian population.¹²⁴ The Chamber

¹¹⁷ Prosecutor's Application, paras. 99, 103-105, 107 and 111; Annex 2-A, pp. 38-40; Annex 2-B, pp. 9, 50, 63 and 76; Annex 3-A, p. 39; Annex 3-B, pp. 13 and 22; Annex 11-B, p. 7; Annex 11-C, p. 14; Additional information submitted by the Prosecutor, Annex 12-A, pp. 88 and 114.

¹¹⁸ Prosecutor's Application, paras. 89-91, 108, 109 and 111; Annex 2-A, p. 20; Annex 2-B, pp. 18 and 64; Annex 4, pp. 23, 24, 37, 39 and 42; Additional information submitted by the Prosecutor, Annex 5, p. 27.

¹¹⁹ Prosecutor's Application, p. 5; Annex 5, p. 9; Annex 10, pp. 6, 9 and 14; Annex 13-B, p. 6; Additional information submitted by the Prosecutor, Annex 12-B, p. 87.

¹²⁰ Prosecutor's Application, paras. 14 and 115; Annex 3-A, pp. 28-30; Annex 4, pp. 52 and 57.

¹²¹ Prosecutor's Application, paras. 70, 74, 115 and 117; Annex 6, p. 2; Additional information submitted by the Prosecutor, Annex 2-B, p. 16, 17; Annex 3, pp. 5-9, para. 42; Annex 12-A, p. 75; Annex 15, p. 31.

¹²² Prosecutor's Application, paras. 14 and 117; Annex 4, p. 47; Annex 6, p. 18; Additional information submitted by the Prosecutor, Annex 4, paras. 8, 11-13, and 153; Annex 5, pp. 40-41 and 43.

¹²³ Prosecutor's Application, para. 91; Annex 2-A, pp. 21, 23 and 44; Annex 3-B, pp. 24 and 25; Annex 4, p. 42.

¹²⁴ Prosecutor's Application, para. 48; Additional information submitted by the Prosecutor, Annex 4, para. 13; Annex 15, p. 39.

further considers that there are reasonable grounds to believe that Mr Bemba had given “carte blanche”¹²⁵ to his troops for the military operation in the CAR.

81. In the view of the Chamber, Mr Jean-Pierre Bemba was in a position to oppose the implementation of the agreement by withholding his assistance or by withdrawing his troops before acts of violence were perpetrated. On the contrary,¹²⁶ when informed of the commission of such crimes, he deliberately kept his troops in the CAR and continued to justify their presence on the ground by the need to respect the terms of the common agreement and to comply therewith.¹²⁷

82. The Chamber is further of the opinion that there are reasonable grounds to believe that, considering the factual circumstances, Mr Jean-Pierre Bemba knew that, in such a climate of impunity,¹²⁸ sending his troops to the CAR would lead in the normal course of events to the commission of crimes such as those described in paragraphs 29 to 68 of this Decision. Mr Jean-Pierre Bemba took this risk as a result of his decision to send MLC combatants to the CAR and to keep them there despite being aware that crimes had been committed. During his visits to the CAR, notably in early November and December 2002,¹²⁹ Mr Jean-Pierre Bemba was informed of the complaints of the local inhabitants regarding the crimes committed by members of the MLC. He also learnt of the existence of these crimes from several sources, either from the daily reports of his commanders and political staff or from public reports.¹³⁰

¹²⁵ Prosecutor’s Application, paras. 71 and 116; Annex 4, pp. 53, 60 and 61.

¹²⁶ Prosecutor’s Application, paras. 61 and 119-121; Annex 2-B, pp. 26, 36, 42 and 58; Additional information submitted by the Prosecutor, Annex 5, pp. 42 and 46.

¹²⁷ Additional information submitted by the Prosecutor, Annex 5, pp. 42 and 46; Annex 17, p. 84.

¹²⁸ Prosecutor’s Application, paras. 48, 61, 72, 74, 119 and 120; Annex 3-A, p. 32; Annex 4, p. 53; Annex 5, pp. 34, 56 and 57; Annex 6, pp. 2 and 14; Annex 9-C, p. 4; Annex 13-B, pp. 19 and 29; Annex 13-C, p. 7.

¹²⁹ Prosecutor’s Application, paras. 106-107; Annex 5, pp. 41 and 46-54; Annex 13-B, pp. 12, 13, 14, 16 and 18; Additional information submitted by the Prosecutor, Annex 6-B, p. 21; Annex 12-B, p. 41.

¹³⁰ Prosecutor’s Application, paras. 48, 60 and 106; Annex 2-B, pp. 22-24, 35, 57 and 58; Annex 4, p. 46; Annex 5, pp. 31, 32, 40, 41, 45, 46, 53, 72 and 77; Annex 6, p. 9 (letter from BONUCA to Mr Bemba dated 4 January 2003), 10 (UNDP project set up on 28 November 2002); Annex 9-A; Additional information submitted by the Prosecutor, Annex 17, p. 83.

83. The Chamber considers that there are reasonable grounds to believe that Mr Jean-Pierre Bemba was aware of the importance of his leadership role and that he used it,¹³¹ for example, by knowingly distributing vehicles to his commanders which had been acquired as a result of the pillaging committed in the CAR.¹³² The Chamber further notes that he portrayed himself as the unchallenged leader of the MLC at national and international level.¹³³

84. Accordingly, The Chamber considers that there are reasonable grounds to believe that Mr Jean-Pierre Bemba is criminally responsible under article 25(3)(a) of the Statute, jointly with another person, or through other persons, for the crimes set out in paragraphs 29 to 68 of this Decision. The Chamber will determine the most appropriate mode of criminal responsibility in the case in light of the evidence submitted to it before the confirmation hearing.

V. The need to arrest Mr Jean-Pierre Bemba under article 58(1)(b) of the Statute

85. Under article 58(1)(b) of the Statute, the Chamber may only issue a warrant of arrest if it is satisfied that the arrest of the person appears necessary:

“(i) To ensure the person’s appearance at trial;

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.”

¹³¹ Prosecutor’s Application, paras. 86 and 114; Annex 2-B, p. 69.

¹³² Prosecutor’s Application, para. 61; Annex 3-A, p. 36.

¹³³ Prosecutor’s Application, paras. 85 and 86; Annex 4, pp. 49-51; Annex 12, p. 5, article 30; Additional information submitted by the Prosecutor, Annex 5, pp. 36, 37, 65 and 73.

86. In his Application, the Prosecutor contends that the issuance of a warrant of arrest is necessary (i) to ensure Jean-Pierre Bemba's appearance at trial; and (ii) to prevent him from obstructing or endangering the investigation.¹³⁴

87. The Chamber recognises that, in light of Mr Jean-Pierre Bemba's past and present political position, his international contacts, his financial and professional background, and the fact that he has the necessary network and financial resources, he may abscond and avoid the execution of the arrest warrant.¹³⁵

88. The Chamber recalls that many of the victims and witnesses are financially destitute and that, in view of their place of residence, Mr Jean-Pierre Bemba could easily locate them, and that this places them at particular risk.¹³⁶

89. Lastly, the Chamber concludes that, in his capacity as President of the MLC, Mr Jean-Pierre Bemba continues to exercise *de facto* and *de jure* authority over this movement; that he can rely on the movement's network and his former soldiers to influence the witnesses in his case; and that his past behaviour indicates that he will do so.¹³⁷

90. On the basis of the evidence and information it has received and without prejudice to any subsequent decision under article 60 of the Statute and rule 119 of the Rules,¹³⁸ the Chamber considers that the arrest of Mr Jean-Pierre Bemba appears necessary pursuant to article 58(1)(b)(i) and (ii) of the Statute, both to ensure his

¹³⁴ Prosecutor's Application, para. 122.

¹³⁵ Prosecutor's Application, para. 123.

¹³⁶ Prosecutor's Application, para. 124.

¹³⁷ Prosecutor's Application, para. 125.

¹³⁸ ICC-01/04-01/07-55, para. 64; and ICC-01/04-01/07-262, para. 68.

appearance at trial and to ensure that he does not obstruct or endanger the investigation or the court proceedings. In reaching this decision, the Chamber has taken account of internationally recognized human rights in accordance with article 21(3) of the Statute.¹³⁹

FOR THESE REASONS, THE CHAMBER

a) **DECIDES** to issue a warrant of arrest against Jean-Pierre BEMBA GOMBO, as a separate document in place of the warrant issued on 23 May 2008, for his alleged criminal responsibility within the meaning of article 25(3)(a) of the Statute in the commission of crimes against humanity and war crimes under the following counts:

- i) rape as a crime against humanity under article 7(1)(g) of the Statute;
- ii) rape as a war crime under article 8(2)(e)(vi) of the Statute;
- iii) torture as a crime against humanity under article 7(1)(f) of the Statute;
- iv) torture as a war crime under article 8(2)(c)(i) of the Statute;
- v) outrages upon personal dignity, in particular humiliating and degrading treatment, as a war crime under article 8(2)(c)(ii) of the Statute;
- vi) murder as a crime against humanity under article 7(1)(a) of the Statute;
- vii) murder as a war crime under article 8(2)(c)(i) of the Statute;
- viii) pillaging a town or place as a war crime under article 8(2)(e)(v) of the Statute.

¹³⁹ Article 5(1)(c) and 5(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; ECHR, *W v. Switzerland*, Judgment of 26 January 1993, Vol. 254, Series A; *Hesse v. Austria*, No. 26186/02, Judgment of 25 January 2007, and *Walter v. Austria*, No. 34994/97, Decision of 27 April 2000.

b) **DECIDES** that the warrant of arrest, as well as this Decision and a request for the arrest and surrender of Jean-Pierre Bemba Gombo, shall be transmitted by the Registrar of the Court to the competent authorities of the Kingdom of Belgium.

Done in English and French, the French version being authoritative.

[signed]

Judge Fatoumata Dembele Diarra
Presiding Judge

[signed] 10/6/08

Judge Hans-Peter Kaul

[signed]

Judge Ekaterina Trendafilova

Dated this 10 June 2008

The Hague, The Netherlands