

## **ANNEX 3**

# **Public Redacted Version of the Amended Document Containing the Charges**

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/05-01/08**  
Date: **30 March 2009**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Ekaterina Trendafilova (Presiding Judge)  
Judge Hans-Peter Kaul  
Judge Fumiko Saiga

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

**Public Redacted Version**

**Of the Amended Document containing the charges filed on 30 March 2009**

**Source:** The Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court*****to:****The Office of the Prosecutor****Counsel for the Defence of Jean-Pierre  
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The Prosecutor of the International Criminal Court pursuant to his authority under Article 61(3)(a) of the Rome Statute (hereinafter referred to as “Statute”) charges:

## **JEAN-PIERRE BEMBA GOMBO**

With WAR CRIMES and CRIMES AGAINST HUMANITY, as set forth below:

### **I. THE PERSON CHARGED**

1. Jean-Pierre BEMBA GOMBO (hereinafter referred to as “BEMBA”) was born on 4 November 1962 in Bokada, Equateur Province, Democratic Republic of Congo (hereinafter referred to as “DRC”). He is of Ngwaka ethnicity. BEMBA is married to Liliane Teixeira and has five children.

2. Between 1980 and 1986, BEMBA acquired two University degrees; i) *licence en sciences commerciales et financières* and ii) *licence spéciale en économie du développement*. Both degrees were obtained at the *Institut Catholique des Hautes Etudes Commerciales* in Brussels, Belgium. After completing his education BEMBA entered the family business, eventually becoming the General Director of the Scibe Airlift Group.

3. In May 1997, after the overthrow of Mobutu’s Government, BEMBA left the DRC and lived in exile between Brussels, Belgium and Faro, Portugal.

4. During the second half of 1998, BEMBA established his own movement, the *Mouvement de Libération du Congo* (hereinafter referred to as “MLC”), in Kisangani, DRC. The MLC began as a military movement – the “*Armée de Libération du Congo*” (hereinafter referred to as “ALC”). For the purposes of this Amended Document Containing the Charges (hereinafter referred to as “Amended DCC”), the term “MLC” encompasses the term “ALC”, unless otherwise stated.

5. During all times relevant to this Amended DCC, BEMBA was the MLC President and the Commander-in-Chief of the MLC. As of 13 July 2002 BEMBA obtained the rank of a General.

6. In June 2003, BEMBA became one of four DRC vice-presidents in the DRC Transitional Government.

7. In the fall of 2006, BEMBA ran in the Congolese presidential election, and was defeated. On 22 and 23 March 2007, BEMBA's personal guards and Governmental Forces entered into a deadly clash. Twenty days later, BEMBA left the country for Portugal, and lived in exile until his arrest.

8. On 23 May 2008, BEMBA was arrested by the Belgian authorities on the strength of the Warrant of Arrest issued by the Pre-Trial Chamber III of the International Criminal Court. BEMBA was subsequently surrendered to the International Criminal Court on 3 July 2008.

## II. STATEMENT OF FACTS

### A. BACKGROUND

9. The Central African Republic (hereinafter referred to as "CAR") borders the Democratic Republic of the Congo and the Republic of the Congo to the South, Cameroon to the West, Chad to the North, and Sudan to the East. The natural border between the CAR and the DRC is the Oubangui River upon which the CAR Capital City, Bangui, and the city of Mongoumba are situated. In 2002-2003, the population of the CAR was approximately 3.8 million.

10. In 1993, Ange-Félix Patassé (hereinafter referred as to "Patassé") was elected President. Patassé was re-elected for a second presidential term in September 1999, and remained the President of the CAR during all times relevant to the DCC.

11. Patassé's Presidency spanned nearly ten years, during which he faced civilian uprisings, repeated mutinies, and two *coups d'Etat*, the last of which resulted in his overthrow in 2003. The first attempt at a *coup d'Etat* was launched on 28 May 2001 by former President André Kolingba (hereinafter referred to as "Kolingba"). To counter Kolingba's attempted coup, Patassé requested that BEMBA provide MLC troops (also commonly referred to in the CAR as "banyamulenge") to supplement the CAR armed forces in support of the President. In response to Patassé's request for assistance, BEMBA deployed MLC troops to the CAR to

support the Presidency. In May 2001, MLC troops entered Bangui after crossing the Oubangui River. The MLC troops arrived in Bangui with heavy weapons, such as mortars, artillery pieces and machine guns. The MLC was superior to the rebel forces in terms of resources – soldiers and weapons. While the Presidential Guard protected Patassé, the MLC troops were sent to fight the rebel forces. The rebel forces were subsequently defeated.

12. In October 2002, BEMBA deployed MLC troops to the CAR for a second time. The facts and circumstances of the MLC's intervention in the 2002-2003 CAR conflict are set forth below in paragraphs 13 to 18 of this Amended DCC.

### **B. 2002-2003 CAR INTERVENTION**

13. On 25 October 2002, François Bozizé (hereinafter referred to as “Bozizé”), the former Army Chief of Staff of the CAR armed forces, *Forces Armées Centrafricaines* (hereinafter referred to as “FACA”), led forces towards Bangui in an effort to unseat Patassé. In response to Bozizé's attack, Patassé mobilized the CAR national armed forces, including the remaining FACA, as well as the *Unité de Sécurité Présidentielle* (hereinafter referred to as “USP”) and Abdoulayé Miskine's (born Martin Koumtamaji, hereinafter referred to as “Miskine”) mercenaries to launch a counter-offensive.

14. To strengthen his counter-offensive, Patassé requested that BEMBA provide MLC troops to assist in defending him. Thereafter, BEMBA and Patassé agreed that BEMBA would deploy MLC troops to the CAR to support Patassé and fight against Bozizé's rebel troops. In exchange for the provision of MLC troops, BEMBA received the benefit of securing the CAR as MLC's strategic rear base, and deterring potential threats to the MLC from the DRC Government, in particular attacks on the MLC through the CAR route. On or about 26 October 2002, MLC troops entered the CAR to intervene in the conflict. MLC troops remained in the CAR from their entry, on or about 26 October 2002 until 15 March 2003. The circumstances and details regarding BEMBA and Patassé's agreement, and the MLC's intervention in the 2002 CAR conflict are set forth in paragraphs 60 to 85 below.

15. At all times relevant to this Amended DCC, BEMBA was the Commander-in-Chief and President of the MLC. REDACTED REDACTED. REDACTED. REDACTED.

16. The MLC troops entered the CAR from the DRC. On or about 26 October 2002, MLC troops crossed the Oubangui River and entered Bangui where they were deployed to the battlefield. Upon their arrival, MLC troops participated in five days of intense fighting in and around Bangui. As the rebel forces withdrew from Bangui, the MLC troops advanced into former rebel-held areas including *Point Kilomètre* (hereinafter referred to as “PK”) 12, on the outskirts of Bangui. PK 12 is the cross point for two roads; one that leads to Bossembélé (axis north-west), and the second that leads to Damara (axis north-east).

17. From PK 12, the MLC had two possible axes of movement for further operations. The MLC troops divided into two groups, with each group following one of the two roads leading to the north of the CAR. One group of MLC troops moved along the road leading to Damara. From Damara, these MLC troops continued moving to Sibut. The other group of MLC troops moved along the road to Boali, advanced further to Bossembélé and ultimately reached Bossangoa and Bozoum. As they advanced on both routes, MLC troops perpetrated crimes including lootings, rapes, and murders against the CAR civilian population.

18. By 15 March 2003, all of the MLC troops withdrew from the CAR. As a result of BEMBA’s order several weeks before, MLC troops withdrew from Bozoum, Bossangoa, Bossembélé, Damara and Sibut to PK 12. Their final retreat from the CAR was made from PK 12, or through the southern town of Mongoumba to cross the Oubangui River. During their withdrawal, the MLC troops perpetrated crimes including lootings, rapes, and murders against the CAR civilian population. The crimes committed during their advance and withdrawal from the CAR are set forth in paragraphs 48 to 56.

## **C. FORMATION AND RISE OF THE MLC**

### **1. MLC structure**

19. BEMBA’s 1998 ALC military movement evolved into a hierarchically organized politico-military movement by adoption of its 1999 Statute (hereinafter referred to as “MLC Statute”). The MLC Statute enunciated the aim of restoring democracy in the Congo through both political and military means. Accordingly, Article 11 of the MLC Statute identifies the MLC as comprising of four organs: Presidency; General Secretariat; Army (ALC); and the

Political and Military Council. In or about July 1999, the MLC established its headquarters in Gbadolite, DRC.

## 2. BEMBA's role within the MLC

20. At all times relevant to the charges, BEMBA, as the President and Commander-in-Chief of the MLC, had *de facto* and *de jure* control over the MLC.

### a. BEMBA's *De Jure* control

21. By virtue of Article 30 of the MLC Statute, BEMBA was chosen by MLC members as President of the MLC and Commander-in-Chief ("*Commandant en Chef*") of the ALC. According to Article 12 of the MLC Statute, the President of the MLC is responsible for signing and ratifying agreements, including defence agreements, with external partners. BEMBA's tasks in both capacities included convening and presiding over meetings of the ALC, defining the general policy and objectives of military operations, issuing decrees, appointing, promoting, dismissing, and disciplining MLC members. The MLC Statute does not provide for his removal or the election of a new President or Commander-in-Chief.

22. At all times relevant to the charges, BEMBA had the authority and means at his disposal to discipline and punish MLC personnel. The MLC had a code of conduct and a Military Tribunal in Gbadolite to address crimes committed by the MLC troops. In September and October 2000, BEMBA signed decrees related to discipline within the ALC. On 16 November 2002, BEMBA signed a decree establishing a *Conseil de Guerre Supérieur* and a *Conseil de Guerre de Garnison*. BEMBA also took unilateral decisions to arrest civilians or send officers to prison without due trial, and release them from incarceration.

### b. BEMBA's *De Facto* control

23. At all times relevant to this Amended DCC, BEMBA was the MLC President and the supreme authority, treating the MLC as his own enterprise. BEMBA exercised complete command and control over all political and military matters. With respect to political matters, the Politico-Military Council was limited to making recommendations that only BEMBA could authorize.

24. BEMBA was the sole decision-making authority and control for all military matters, despite the MLC's conventional military structure. BEMBA requested the provision of logistics, negotiated the supply of arms on behalf of the MLC, and gave instructions on the delivery and management of supplies.

25. BEMBA had the sole authority to control MLC airplanes, which were used to transport the logistical means and weapons. BEMBA decided on the recruitment and redistribution of troops, and gave instructions for the troops to progress in the field. BEMBA retained personal control of MLC finances, including financial donations from foreign countries.

26. At all times relevant to this Amended DCC, BEMBA retained complete command and control over military personnel either through the chain of command, or bypassing the hierarchy, and giving instructions directly to commanders in the field. The MLC's communication structure included a transmission centre (*Centre de Transmission*), and MLC commanders used long range MLC radios (*Phonies*) and satellite phones. Brigades and battalions used walkie-talkies and Motorolas to communicate, which were distributed on BEMBA's orders. BEMBA had a radio, walkie-talkies, satellite phones, Thurayas and facsimile machines to communicate with MLC commanders. Daily reports were provided to BEMBA either through his Chief of Staff or other subordinates.

### **3. Composition and organisation of MLC troops**

27. The composition and organization of the MLC enabled BEMBA to ensure that his orders would generally be complied with by his subordinates. The MLC army was composed of different ethnic groups. Although predominantly male-dominated, the MLC troops included a small number of females and children.

28. At all times relevant to this Amended DCC, the military strength of the MLC consisted of approximately 20,000 soldiers. The MLC troops, including BEMBA, received basic military training. This training addressed arms drills, deployment, intelligence, disciplinary issues, including a code of conduct, and respect for hierarchy.

29. Consistent with Article 16 of the MLC Statute, the *Etat-Major* reported all military affairs directly to BEMBA. The MLC had brigades headed by brigade commanders who were nominated by BEMBA. A brigade was composed of battalions, each with a battalion commander as well as its own General Staff. Accordingly, each battalion had a G1 in charge of administration; a G2 intelligence officer; a G3 operations officer; a G4 logistics officer; and a G5 planning and liaison officer. The battalions were further sub-divided into companies, platoons and sections.

#### **D. MLC BEHAVIOR IN CONFLICTS PRIOR TO 2002-2003**

##### **1. 2001 intervention in CAR**

30. In 2001, the MLC intervened in the CAR when Patassé requested BEMBA to send MLC troops. BEMBA agreed and ordered MLC troops to deploy to the CAR. The MLC's objectives were to save Patassé's Presidency, and protect the MLC position and interest in the DRC due to the CAR's strategic location.

31. During the MLC's 2001 CAR intervention, MLC troops committed crimes including lootings, rapes, and murders against the CAR civilian population.

##### **2. 2002 attack on Mambasa**

32. Between the 11 to the 29 of October 2002, MLC troops attacked the city of Mambasa located in the Ituri province, DRC. BEMBA directed the Mambasa operation by communicating through the Chief of Staff, or giving orders directly to commanders.

33. During the Mambasa operation, MLC troops committed the crimes of looting, rape and murder. Promises of looting and rape were given to the combatants prior to the attack, and they were subsequently permitted to rape and loot for a few days.

#### **III. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION**

34. All crimes alleged in this Amended DCC occurred between approximately 26 October 2002 and 15 March 2003 in the CAR.

35. At all times relevant to this Amended DCC, an armed conflict existed in the CAR. A nexus existed between this state of armed conflict and the crimes committed by the MLC in the CAR.

36. At all times relevant to this Amended DCC, BEMBA was aware of the existence of an armed conflict in the CAR.

37. Conduct charged as a crime against humanity was part of a widespread or systematic attack directed against the CAR civilian population. With regard to conduct charged as a crime against humanity, BEMBA acted while knowing that the civilian population was being attacked and that his acts comprised part of those attacks.

#### **IV. FACTS RELEVANT TO ARTICLE 7 CHAPEAU ELEMENTS**

38. The crimes against humanity alleged in Counts 1, 3 and 7 of this Amended DCC, occurred in the context of a widespread or systematic attack against the CAR civilian population, within the meaning of Article 7(1) of the Statute. From approximately 26 October 2002 to 15 March 2003, the MLC troops perpetrated mass rapes, mass looting and killings against the CAR civilian population in specific locations as they advanced in, and retreated out of the CAR. These locations include but are not limited to Bangui - PK 12, Boy-Rabé, Fou (also written as Fouh) - Mongoumba, Bossangoa, Damara, Bossembélé, Sibut, Bozoum and Bossemptele.

39. In the locations identified in paragraph 38, the MLC troops looted, raped, and killed CAR civilians. Civilian properties were systematically looted, and civilians were forced to cook and clean for the MLC troops against their will and with no payment. Men, women and children were raped by multiple MLC perpetrators in their homes, raped in front of family members, forced to watch rapes of family members, and raped in public locations including streets, fields and farms. Many of the women victims of rapes and gang-rapes contracted HIV, and became pregnant as a result of these rapes. Civilians that were killed included those who tried to prevent or resist rapes, attacks or lootings.

40. The MLC troops committed the crimes alleged in Counts 1, 3 and 7 by targeting a large number of civilian victims. One CAR official conservatively estimates the number of

victims to be about one thousand (1,000), a majority of which were rape victims. Of these, about two hundred and fifty (250) are reported cases of looting. The MLC troops also killed civilians who resisted or attempted to prevent the attacks.

41. MLC troops also systematically targeted the civilian population in each of the locations specified in an organized manner as they advanced in and retreated from the CAR. These crimes against the CAR civilian population took place in the aftermath of military clashes between the MLC and Bozizé's rebels. Once the MLC troops established control over former rebel held territories, they systematically targeted the civilian population by conducting house to house searches, and raping, looting and killing civilians. Lootings, rapes and murders occurred as MLC troops sought to punish perceived rebel sympathizers. Women were raped on the pretext that they were rebel sympathizers. Men were also raped as a deliberate tactic to humiliate civilian men, and demonstrate their powerlessness to protect their families. Many of the women and girls who were raped feared being shot by combatants.

42. These crimes were used as a tool, or one of the means necessary to maintain Patassé's Presidency. By subjecting the CAR civilian population to cruel, inhuman and humiliating attacks, the MLC troops instilled a general climate of fear in the CAR population, with the hope of effectively destabilizing the opposing army.

43. At all times relevant to this Amended DCC, BEMBA knew that his conduct was part of, or intended for his conduct to be part of a widespread or systematic attack on the CAR civilian population.

## **V. FACTS RELEVANT TO ARTICLE 8 CHAPEAU ELEMENTS**

44. The war crimes alleged in Counts 2, 4, 5, 6 and 8 of this Amended DCC occurred in the context of a protracted armed conflict between Bozizé troops and Pro-Patassé troops, including the MLC. For the purposes of this Amended DCC, it is immaterial whether the conflict that involved Bozizé and Pro-Patassé forces be characterized as international or non-international. Each of the proposed counts specifying war crimes arise from conduct which consists of a war crime regardless of characterization. Between approximately the 25 October 2002 and 15 March 2003, Patassé gathered troops from multiple countries including the MLC, a mostly Chadian mercenary force of five hundred (500) troops, led by Miskine known

as the *Bataillon de Sécurité Frontalière* or the Anti-Zaraguina Brigade, and at least one hundred (100) Libyan troops to supplement his national forces. Each group organised itself in its own way, and each group reported to Patassé.

45. Bozizé, as a party to the conflict, was commanding approximately six hundred (600) troops, including troops who defected from FACA. Bozizé's troops engaged in military combat for five months against Patassé's loyalists troops.

46. Although the most intense fighting and the greatest number of atrocities, at least in Bangui, occurred during the first two to three weeks, the fighting continued throughout the five-month period in different locations including, but not limited to Bangui, PK 12, Fou, Mongoumba, Bossangoa, Damara, Bossembélé, Sibut, Bozoum and Bossemptele as the MLC advanced to various areas previously occupied by Bozizé's forces. During this period, the MLC perpetrated a large number of lootings, rapes and murders while engaged in conflict.

47. During all times relevant to this Amended DCC, BEMBA was at all times aware of the existence of an armed conflict.

## VI. FACTS RELEVANT TO INDIVIDUAL CRIMES CHARGED

48. On or about 26 or 27 October 2002, the MLC advanced into Fou, a district of Bangui. During the MLC's occupation of Fou, a group of MLC troops stopped REDACTED and her sister in law, REDACTED. After taking her possessions, REDACTED and REDACTED were taken to a compound, and vaginally raped by multiple MLC perpetrators. REDACTED heard REDACTED, her sister in law, scream as the MLC troops raped her next door.

49. On or about 26 October 2002, near PK 12, armed MLC soldiers arrived at the home of REDACTED's uncle, and entered by force demanding money. REDACTED was then vaginally raped by three men. As a result of the rapes, REDACTED is now HIV positive. Other family members including her REDACTED were also threatened. MLC soldiers then looted the home, killed a dog, and dismantled things to look for money. The MLC perpetrators told her that Patassé gave them orders to kill. REDACTED, was killed in Bossangoa as he tried to stop the MLC soldiers from looting his family's livestock.

50. On or about 30 October 2002, in Boy-Rabé, Bangui, MLC soldiers arrived at REDACTED's residence. They immediately demanded money, stating "donner argent, pas tuer". Thereafter, the MLC soldiers immediately entered the house, vaginally raped her, stole money, and looted the residence. The MLC soldiers shot and killed REDACTED when he tried to prevent the theft of his REDACTED.

51. On or about 8 November 2002 at or near PK 12, MLC soldiers arrived at the REDACTED family compound and fired their guns. REDACTED was sodomized by multiple MLC soldiers on the ground outside, in front of his family. The soldiers then vaginally raped REDACTED's wife, REDACTED. Several MLC soldiers also took REDACTED, and threw him to the ground. REDACTED died. MLC soldiers also vaginally raped REDACTED's three daughters (REDACTED, REDACTED and REDACTED). At the same time, the REDACTED's compound was looted by MLC soldiers. When MLC soldiers came to REDACTED's home in the same compound, MLC soldiers vaginally raped her. When REDACTED, tried to intervene in the rape, he was tied up and beaten.

52. On or about 8 November 2002, at or near PK 12, MLC troops came to REDACTED's home for the third time. When REDACTED resisted their demands, the MLC soldiers declared him a rebel and beat him. MLC soldiers held REDACTED to the ground, and fired numerous shots. His wife, REDACTED was present. Their daughter, REDACTED was next to them and taken away. She was later vaginally raped by MLC soldiers. The REDACTED home was looted at the same time.

53. Between 26 October and 31 December 2002 near Bangui, approximately 22 MLC soldiers took by force eight (8) CAR civilian women (hereinafter referred to as "unidentified victims 1 to 8") to REDACTED, and publicly raped them. Some of the civilian women were vaginally raped by multiple perpetrators while others were also forced to perform fellatio. Although reported, nothing was done about the incident.

54. Between October 2002 and 31 December 2002 near Bangui approximately twenty-two (22) CAR women (hereinafter referred to as "unidentified victims 9 to 30") from PK 12, PK 22 and PK 26 between the ages 12 and 65 years of age were raped, beaten and robbed by MLC troops.

55. Between October 2002 and 31 December 2002 near Bangui approximately five (5) CAR civilian women (hereinafter referred to as “unidentified victims 31 to 35”) were taken by armed MLC soldiers to an open space and repeatedly raped. One woman was shot in the back and died (hereinafter referred to as “unidentified victim 36”).

56. On or about 5 March 2003, at or near Mongoumba, MLC soldiers stopped REDACTED as she fled. After searching her home, she was raped by multiple MLC soldiers. As a result of the rape, she is HIV positive. The home of REDACTED’s parents, REDACTED and REDACTED was looted.

## **VII. BEMBA’S RESPONSIBILITY: ARTICLES 25 (3)(a), 28(a) OR 28(b) OF THE ROME STATUTE**

57. Primarily, BEMBA is individually criminally responsible pursuant to Article 25(3)(a) of the Rome Statute, for the crimes against humanity and war crimes referred to in Articles 7 and 8 of the Statute, as described in this Amended DCC, which he committed jointly with Patassé through MLC troops. Alternatively<sup>1</sup>, BEMBA is criminally responsible by virtue of his superior-subordinate relationship with MLC troops pursuant to Article 28 (a), or in the alternative Article 28(b), of the Statute, for crimes against humanity and war crimes, as described in this Amended DCC and enumerated in Counts 1 to 8, which were committed by MLC troops under his effective command, or authority, and control as a result of his failure to exercise control properly over these forces.

### **A. ARTICLE 25(3)(a) OF THE ROME STATUTE**

58. BEMBA’s responsibility as a co-perpetrator pursuant to Article 25(3)(a) of the Statute includes crimes carried out by persons used by him where those crimes are a result of BEMBA and Patassé’s common plan. BEMBA’s role within the MLC and his essential contribution to the common plan gave him control over the crimes committed pursuant to this plan.

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<sup>1</sup> Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, Judgment and Sentence, 21 May 1999, paras. 648-650; Prosecutor v. Delalic et al, IT-96-21-A, Appeals Judgment, 20 February 2001, at para. 745.

59. BEMBA intentionally engaged in the conduct described below and both he and Patassé were aware that the implementation of the common plan would, in the ordinary course of events, lead to the commission of crimes; or were aware and accepted the risks involved in implementing their common plan. In addition, BEMBA and Patassé were mutually aware of the factual circumstances that enabled them to control the crimes jointly.

### **1. Agreement and common plan**

60. After Patassé was attacked by Bozizé's forces on 25 October 2002, Patassé called on BEMBA seeking the MLC's intervention. Thereafter, BEMBA and Patassé agreed that BEMBA would provide MLC troops to intervene and support Patassé.

61. Their common plan focused on the primary goal to defend Patassé. Its implementation involved the commission of the charged crimes. The soldiers were not given any other mandate, but instead were given *carte blanche*. By virtue of operating with the "blessing" of Patassé, and pursuant to a broad mandate, the MLC soldiers were allowed to operate in the CAR with a sense of impunity. The MLC soldiers used these crimes, at least in part, as the means to punish the CAR population residing in former rebel-held areas for their perceived rebel sympathy. The MLC troops instilled a general climate of fear in the CAR population, with the intention of destabilizing the opposing army. A benefit of the mandate was the ability to loot.

62. By virtue of their agreement, the common plan and its implementation, BEMBA received the benefit of securing the CAR as MLC's strategic rear base and of deterring potential threats to the MLC as attacks via the CAR would be rendered difficult by the alliance with Patassé. In turn, Patassé received the benefit of MLC intervention in the conflict, for the purpose of securing his position as Head of State, as the first MLC troops arrived in the CAR on or about 26 October 2002.

### **2. Essential contributions**

63. Both BEMBA and Patassé made essential contributions to their common plan.

64. BEMBA's essential contributions to the common plan and its implementation, included:

- (i) Deployed MLC troops: BEMBA deployed MLC troops to the CAR. REDACTED. When necessary, BEMBA authorized the deployment of reinforcement troops.
- (ii) Provided weaponry for MLC troops deployed to the CAR: BEMBA armed the MLC troops with light and heavy weapons, including but not limited to AK-47s, Kalashnikovs, and mortars, and organized their transport to the CAR.
- (iii) Provided for the transportation of troops and supplies: The MLC used airplanes, including Antonovs, helicopters, and boats to transport troops and re-supplies to the CAR, all of which BEMBA controlled.
- (iv) Provided communication means: BEMBA had a radio to communicate directly with the commanders in the field. In addition to radios, the MLC commanders took their own Thurayas to the CAR.
- (v) Travelled to and visited MLC troops in the CAR: BEMBA supported the MLC troops by travelling to the CAR several times and addressing them at various locations in the CAR including PK 12, in early November 2002.
- (vi) Provided logistical support: BEMBA was the MLC sole decision maker regarding the provision of logistics including weapons, ammunition and funding.

65. Patassé's essential contributions to the plan and its implementation included: requesting MLC troops: After Bozizé's rebels launched a *coup d'Etat* against him, Patassé called for BEMBA to send the MLC troops to intervene on his behalf; provided transportation for MLC troops to and within the CAR; and MLC/CAR military leaders to strategic meetings; providing food and PGA (*prime globale d'alimentation*) paid from the CAR Government public funds; providing government bases, including the naval base and Régiment de Soutien/Camp Béal; for MLC troops and providing fuel; and uniforms to the MLC.

### 3. Coordination

66. Both BEMBA and Patassé coordinated their essential contributions through contact between the CAR and MLC participants, and the establishment of a joint Coordination/Operation Cell. BEMBA maintained contacts with Patassé throughout the MLC

intervention in the CAR. BEMBA also maintained contact with MLC's subordinates during the 2002 intervention.

67. When the MLC soldiers were deployed to the CAR, they entered Bangui, the Capital of the CAR by crossing the Oubangui River by boat. The transportation of MLC soldiers was coordinated by Patassé's subordinates. Once the MLC soldiers crossed the Oubangui River, subordinates of Patassé also relayed MLC troops to an area designated for them based on his instructions. These activities were reported back to Patassé daily.

68. Once the MLC soldiers were in the field, their operations were coordinated between Bangui and Gbadolite. The coordination of the MLC and CAR Commanders allowed the Pro-Patassé forces to operate efficiently and deploy either the FACA or the USP to the field to support the MLC, when the MLC was unfamiliar with the territory.

69. Pursuant to Patassé's authorization, a Coordination/Operation Cell was established at Camp Béal, when the conflict started. The Coordination/Operation Cell was manned by both the MLC and FACA members. The purpose of the Coordination/Operation Cell was to monitor operations and address problems encountered by Pro-Patassé forces in the field. Members of the Coordination/Operation Cell attended regular meetings to discuss field operations, and communicated with each other.

#### **4. BEMBA acted with the appropriate *Mens Rea***

70. When BEMBA agreed and planned to the common plan and sent MLC troops to the CAR in October 2002, BEMBA intended for the CAR civilian population, at least, those that were perceived to be sympathetic to the rebels, to be targeted.

71. BEMBA was aware that he could exercise functional control over the crimes jointly with Patassé. BEMBA was the Commander-in-Chief of the MLC and by virtue of his supreme authority, BEMBA retained a monopoly of power over the MLC. As MLC's Commander-in-Chief, BEMBA had the sole authority to deploy MLC troops to the CAR and order their withdrawal when he chose, and as indicated in paragraphs 21 to 26, he had *de jure* and *de facto* authority over the MLC.

72. Patassé used his state leadership in the CAR to ensure implementation of the common plan to maintain his presidency and acknowledged the commission of crimes by the MLC.

73. For all times relevant to this Amended DCC, BEMBA accepted his role as the MLC's Commander-in-Chief, nationally and internationally, by attending meetings with foreign representatives and met with ambassadors to discuss the MLC's activities. BEMBA also made public statements stating that he controlled the MLC.

**a. 2001 intervention in the CAR and 2002 attack on Mambasa**

74. Bemba's intention and knowledge regarding the commission of crimes during the CAR 2002 conflict is based in part on the MLC's behaviour during the 2001 CAR intervention, and during the MLC's attack on Mambasa in 2002.

75. In May to June 2001, Patassé was faced with a *coup d'Etat* and sought BEMBA's assistance. BEMBA deployed unpaid MLC troops to the CAR under similar circumstances resulting in the perpetration of crimes such as rapes and lootings upon the CAR population. BEMBA and other MLC hierarchy possessed items looted during the 2001 CAR operation. When the 2001 crimes were reported to BEMBA, BEMBA did not take any measure to punish the direct perpetrators. No measures were taken to punish the direct MLC perpetrators for crimes including rapes and lootings.

76. In October 2002, prior to the MLC's intervention in the CAR, MLC troops conducted an offensive to capture Mambasa in the DRC. Unpaid MLC soldiers victimized the civilian population mainly by lootings and rapes. BEMBA controlled the Mambasa operation from his home and received regular reports.

77. BEMBA established a military tribunal in Gbabolite to address MLC crimes arising from Mambasa and the CAR 2002-2003 operations. This trial was a sham. With respect to Mambasa crimes, the sentences delivered were disproportionately low in relation to the crimes. None of the soldiers convicted served a full prison sentence. With respect to the CAR 2002-2003 operation, only several low rank soldiers were tried for thefts. These soldiers received light sentences and were later granted amnesty.

78. As on previous occasions, at all times relevant to this Amended DCC, the crimes suffered by the CAR civilian population in 2002-2003 either went effectively unpunished, or the punishments rendered were disproportionately low and inadequate.

**b. 2002-2003 CAR conflict**

79. BEMBA's *Mens Rea* can further be inferred from the following facts relating to the 2002-2003 conflict in the CAR. When the civilian population was victimized, MLC perpetrators told the victims that because they were part of the civilian population previously held by rebel troops, they were party to the Bozizé rebels. Victims were told that, "thanks to Jean-Pierre Bemba, the MLC were lucky to have sexual intercourse with CAR women".

80. When the MLC troops crossed the Oubangui River to enter the CAR, MLC Commanders told MLC troops, words to the effect that the CAR population were not family members and to "kill and destroy everyone that you find on your way".

81. BEMBA and other MLC commanders were informed about the crimes committed against the civilian population in PK 12. BEMBA acknowledged to the local population that he was informed of looting and stated that abuses were unavoidable. After the PK 12 lootings, there were also radio broadcasts about the lootings.

82. BEMBA was informed about the crimes of rape and looting while they were happening. Commanders told him about the crimes. MLC political advisors and MLC intelligence regarding the occurrences in the field informed him about the crimes orally and in writing. MLC members told BEMBA REDACTED about cases of theft, rape, pillaging and murder.

83. BEMBA possessed an item looted in the 2002 CAR intervention.

84. BEMBA had access to the field commanders whom he contacted whenever he wanted via the radio. The crimes committed by the MLC soldiers were broadcast in the media. Radio stations, including British Broadcasting Corporation (hereinafter to as "BBC"), Radio France Internationale (hereinafter referred to as "RFI"), Voice of America, provided information about the crimes and BEMBA regularly followed the press. Journalists also told him about the

abuses committed by the MLC soldiers in the CAR. The proceeds of the lootings were carried away by MLC soldiers right in front of MLC and CAR Commanders.

85. BEMBA had the required knowledge of the crimes based on his constant communication with Patassé. Patassé routinely ordered field assessment missions to obtain first hand information on developments from the field. Patassé was informed by his subordinates of the crimes committed by MLC against the CAR civilians and civilian unrests. A Minister of Patassé's own Cabinet informed him that he was the victim of looting.

## **B. ARTICLE 28 OF THE ROME STATUTE**

### **1. Article 28(a) of the Rome Statute**

86. BEMBA's criminal responsibility as a military commander pursuant to Article 28(a) of the Statute emanates from crimes within the jurisdiction of the Court committed under his effective command and control, or effective authority and control, as a result of his failure to exercise control properly over such forces prior to, and during, the 2002-2003 intervention into the CAR. BEMBA knew or, owing to the circumstances at the time, should have known that the MLC soldiers were committing or about to commit such crimes and failed to take all necessary and reasonable measures within his power to prevent or repress their commission of crimes or failed to submit the matter to the competent authorities for investigation and prosecution.

#### **a. MLC troops committed crimes**

87. MLC soldiers are directly responsible for physically committing, through direct means, crimes against humanity and war crimes under Articles 7 and 8 of the Statute as described in paragraphs 48 to 56 of this Amended DCC.<sup>2</sup> MLC troops committed these crimes in the context of a military operation authorized by BEMBA, which involved acts to terrorise the CAR population and annihilate their ability to support the rebels.

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<sup>2</sup> Prosecutor v. Naser Oric, IT-03-68-A, Appeals Chamber Judgment, 3 July 2008, at para. 47-8.

**b. BEMBA was a military commander or person effectively acting as a military commander**

88. At all times relevant to the charges, by virtue of the MLC Statute, BEMBA had formal authority as both President and Commander-in-Chief of the MLC. BEMBA acted, both internally and externally, as the ultimate MLC authority in both political and military matters. As supreme commander, BEMBA exercised both *de jure* and *de facto* control over all military matters and operations. This ensured that BEMBA retained command over all units of MLC forces. Paragraphs 20 to 26 of this Amended DCC are hereby incorporated by reference.

89. BEMBA, himself a recipient of basic military training, was at the head of the MLC military chain-of-command described in paragraphs 15, 26 and 29. BEMBA gave direct orders to his subordinate commanders which were dutifully executed by the MLC troops. BEMBA, as the highest military commander, had an obligation to ensure the responsible command of troops subordinate to him, in compliance with an internal military disciplinary system, as well as rules of international humanitarian law.<sup>3</sup>

**c. BEMBA exercised effective command and control, or effective authority and control over forces committing crimes within the jurisdiction of the Court**

90. MLC forces remained subordinate to BEMBA, within his effective command, or authority, and control, at all times relevant to the charges.<sup>4</sup> BEMBA had the material ability to effectively control the crimes committed by his MLC troops in the CAR. BEMBA's *de jure* authority, reinforced by his *de facto* command, gave him various powers to prevent or repress crimes committed by MLC troops, or to submit the matter to the competent authorities for investigation and prosecution.

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<sup>3</sup> Article 87, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; ICRC Commentary on the Additional Protocols, para. 3553, p. 1019.

<sup>4</sup> Prosecutor v. Zlatko Aleksovski, IT-95-14/1-T, Judgment, 25 June 1999, at para. 106; Prosecutor v. Tihomir Blaskic, IT-95-14-T, Judgment, 03 March 2000, at para. 303; Prosecutor v. Kunarac and al., IT-96-23-T and IT-96-23/1-T, 22 February 2001, at para. 398

91. BEMBA promulgated the MLC's code of conduct which was applicable to all soldiers and governed military discipline. The MLC had a Disciplinary Board which conducted hearings and issued punishments for breaches of this code. BEMBA used his wide discretionary powers to issue various military decrees, which included ensuring the implementation of sanctions issued by the Disciplinary Board, and extending the territorial jurisdiction of the *Tribunal de Grande Instance de Lisala* to protect persons and property in Basoko and the Equateur, DRC.

92. From as early as Mid-2001, the MLC had a military judicial system to which BEMBA could have submitted matters for investigation and prosecution. BEMBA issued further military decrees concerning prosecution and sentencing of MLC troops for crimes they committed, including the establishment of a *Conseil de Guerre Supérieur* and *Conseil de Guerre de Garnison*. BEMBA controlled this system and appointed the military judges. Furthermore, BEMBA had unfettered ability to unilaterally arrest, detain or release subordinates at will. BEMBA exercised this power, particularly in situations where subordinates attempted to object to his military decisions.

93. BEMBA had unparalleled authority to effect changes in the command structure, which gave him additional power to ensure that commanders implemented MLC disciplinary rules. BEMBA had the sole authority to appoint, promote, demote, remove, or dismiss MLC commanders. In addition, BEMBA had the power to recall troops who did not comply with military rules.

94. BEMBA had the power to order the competent authorities to initiate investigations into crimes and other disciplinary breaches committed by MLC troops. After a visit by the Special Representative of the Secretary General of *Mission de l'Organisation des Nations Unies en République Démocratique du Congo* (hereinafter referred to as "MONUC") who asked BEMBA to take action, BEMBA ordered REDACTED to investigate crimes allegedly perpetrated by MLC troops in Mambasa in 2002 and during the 2002-2003 CAR conflict.

95. Furthermore, BEMBA had the authority to ensure compliance and implementation of investigations and prosecutions into troop discipline and crimes committed. BEMBA had the ability to interfere with, and influence, hearings by obliging the competent authorities to follow his instructions. Further, BEMBA had the authority to frustrate the effectiveness of

any military sanction, which included using his power to grant amnesty. Lastly, BEMBA had the authority to define the objectives of military operations, which also gave him the power to ensure that any concept of operation did not conflict with the code of conduct or result in crimes against civilians.

96. At all times relevant to the charges, BEMBA maintained *de facto* control over all three battalions of MLC troops operating in the CAR. BEMBA made the decision to order MLC troops into the CAR to defend Patassé. BEMBA appointed REDACTED and decided on which battalions to deploy. REDACTED gave BEMBA REDACTED, either directly or through REDACTED, on operations and all matters related to MLC troops. BEMBA REDACTED four or five times a day whenever there was an operation.

97. BEMBA retained control of MLC forces through his direct involvement in strategic planning and tactical support of field operations. BEMBA also provided operational support REDACTED. REDACTED. BEMBA sent the MLC's 5<sup>th</sup> battalion to the CAR. During the operations, BEMBA, while in military uniform ("*tenue de combat*"), visited PK 12 in Bangui where his commanders and troops assembled to meet their Commander-in-chief. BEMBA was accompanied by other high ranking members of the MLC military. BEMBA talked to his troops about discipline and informed them that he would personally respond to disciplinary infractions.

98. Prior to the MLC withdrawal, BEMBA signed a communiqué announcing that MLC troops would leave the CAR by 15 March 2003. REDACTED. BEMBA gave the order to launch an offensive to allow Patassé to gain more time before the withdrawal and secured the transportation of some MLC troops during the withdrawal.

99. Although some operational instructions came from the CAR authorities, REDACTED. The operational authority of Patassé and the CAR government neither excluded nor diminished BEMBA's effective command and control over his troops, which he maintained throughout the period relevant to these charges – BEMBA gave orders, his subordinates obeyed.

**d. Crimes were committed as a result of BEMBA's failure to exercise control properly over MLC troops**

100. The commission of crimes as a result of BEMBA's failure to exercise control of the MLC troops properly is intrinsically linked with the facts laid out in paragraphs 121 to 130. Therefore the evidence referred therein is incorporated under this heading.

101. In addition, BEMBA failed to issue clear and effective orders to ensure that the crimes were not committed by the MLC troops prior to, as well as during, the 2002-2003 operation in CAR. During his visits BEMBA talked to his MLC troops about discipline. However, nothing changed - the MLC troops continued to commit crimes including looting, rape and murder. They further committed serious acts of violence in Damara, Bossembélé, Bozoum, Bossangoa and Mongoumba. The MLC force committed crimes until the moment of their withdrawal.

102. The widespread and systematic nature of MLC crimes during the 2002-2003 CAR conflict illustrates BEMBA's failure to pay due regard to international humanitarian law in his operational decision making. During prior military operations such as the one in Mambasa in 2002, MLC troops were given promises of looting and rape and they were allowed to continue doing so for a number of days; BEMBA enabled MLC soldiers to use looting, killing and violence against women as premeditated tools of war. In the 2002-2003 CAR intervention, the MLC soldiers were given *carte blanche* and were operating with a sense of impunity. BEMBA encouraged this sense of impunity by his failure to discipline the MLC troops appropriately. The absence of a salary for the MLC troops was a factor that further fuelled the commission of crimes against civilians. A benefit of their mandate was their ability to loot. In addition, the MLC troops were organized in a manner which allowed for, and resulted in, the commission of crimes.

103. Lastly, BEMBA did not ensure adequate training of the MLC troops in international humanitarian law in accordance with Article 87 of the Additional Protocol I to the Geneva Conventions.<sup>5</sup> The manual drafted for that purpose was never reproduced. The code of conduct was written in French and had to be translated orally to the MLC soldiers in Lingala by the political commissaries. Furthermore, after February 2000, the MLC troops were no

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<sup>5</sup> Article 87, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; ICRC Commentary on the Additional Protocols, para. 3553, p. 1019.

longer taught about rules designed to protect the civilian population. The code was not communicated and properly disseminated to the troops.

104. As a result of the aforementioned BEMBA failed to exercise control properly over the MLC troops which resulted in the commission of the crimes.

**e. BEMBA knew or, owing to the circumstances at the time, should have known that the MLC troops were committing or about to commit crimes**

105. At all times relevant to the charges contained in this Amended DCC, BEMBA maintained *de jure* and *de facto* authority over the MLC forces. Paragraphs 20-29 are hereby incorporated by reference. BEMBA fully accepted his role as the *de facto* and *de jure* Commander-in-Chief and made public statements acknowledging his control over the MLC troops.

106. BEMBA, upon deploying the MLC troops to the CAR for the 2002-2003 military operation, knew, or owing to the circumstances at the time, should have known that his MLC troops were committing or were about to commit crimes within the jurisdiction of the Court, including rape, looting and murder.

**(i) BEMBA received regular reports of MLC activities in the CAR**

107. BEMBA had actual knowledge that his MLC troops were committing crimes during the 2002-2003 CAR conflict. He was in close contact with, and had access to, his field commanders via various communication devices. The occurrence of rape, murder and looting by the MLC troops was so widespread throughout the CAR during the relevant timeframe, that the crimes were extensively covered by the international media. RFI, BBC and the Voice of America, in particular, reported the MLC troops' abuses, looting and rape in the CAR in 2002-2003. BEMBA regularly monitored the press and listened to the radio. Furthermore, journalists told BEMBA about the abuses perpetrated by MLC troops in the CAR.

108. BEMBA was, at all times relevant to the charges, in possession of information indicating that his MLC troops were committing crimes in the CAR. BEMBA's knowledge of

the crimes is reflected both in the content of his public statements and private meetings during the relevant timeframe. BEMBA announced on RFI that he knew that serious crimes were perpetrated by his MLC troops against the CAR civilian population and that he was prepared to punish them.

109. BEMBA continued to receive information during the conflict period. MLC political advisors repeatedly reported to BEMBA cases of rape, pillaging and murder perpetrated by the MLC troops in the CAR. Moreover, officials from security and intelligence services informed him about widespread looting. BEMBA was also in contact with journalists who brought the abuses committed by his troops in the CAR to his attention.

110. The MLC had an established reporting system that allowed for the constant flow of information from the CAR to the MLC headquarters. REDACTED. REDACTED. Furthermore, BEMBA would also ask for reports or information directly from the commanders in the field.

111. The MLC had a functioning communication system with a transmission centre (*Centre de Transmission*). To facilitate communication between him and MLC commanders, BEMBA possessed a radio, walkie-talkies, satellite phones, Thurayas and facsimile machines. MLC commanders were provided with long range radios (*Phonies*) and satellite phones, while brigades and battalions were equipped with walkie-talkies and Motorolas.

112. BEMBA went to Bangui and to the CAR several times during the conflict period to meet with MLC commanders and MLC troops. In early November 2002, BEMBA visited his troops in the northern districts of Bangui and addressed them with respect to crimes they had committed. During one visit, BEMBA was approached by the local population at the school of Begoa in Bangui and received complaints about abuses committed against CAR civilians by his troops.

113. BEMBA's knowledge of the crimes being committed can also be inferred from his constant communication with Patassé. Patassé routinely ordered field assessment missions and was informed by his subordinates of the crimes committed by MLC troops against the CAR civilians. Moreover, a Minister of Patassé's own Cabinet informed Patassé's that he was a victim of looting.

- (ii) BEMBA had knowledge of the criminal conduct of his MLC troops from prior military operations

114. BEMBA knew that MLC troops were about to commit such crimes, due to his knowledge of his troops' behaviour during previous military operations under similar circumstances. Unpaid MLC troops perpetrated the crimes of looting, rape and murder, from May to June 2001 in the CAR and in early October 2002 in Mambasa, DRC. BEMBA knew about the 2001 crimes in the CAR and the 2002 crimes in Mambasa through receiving regular reports about MLC activity in these regions. Paragraphs 74-78 are hereby incorporated by reference.

- (iii) BEMBA's *Mens Rea* inferred by his control over the military operation

115. BEMBA's *Mens Rea* is further inferred through statements made by his soldiers to the civilian population they victimized. MLC perpetrators told their victims that "thanks to Jean-Pierre Bemba, the MLC were lucky to have sexual intercourse with CAR women". Additionally, when the MLC troops crossed the Oubangui River to enter the CAR, MLC soldiers were instructed by their commanders that they should "kill and destroy everyone that you find on your way". These statements and instructions were in furtherance of the military concept of operation authorized by BEMBA.

116. BEMBA's knowledge that the MLC troops were committing crimes is evident from his establishment of a military tribunal at Gbadolite to address both the MLC crimes in 2002 in Mambasa and the crimes arising from the CAR 2002-2003 operation. However, the trials conducted at Gbadolite were a sham. Paragraphs 77-78 are hereby incorporated by reference.

- (iv) Conclusion: BEMBA had the requisite *Mens Rea*

117. The crimes charged herein were not sporadic or isolated events; rather, they are the direct consequence of the modus operandi of the MLC forces in military operations: MLC troops operated with a sense of impunity in the CAR in an environment of lawlessness created and perpetuated by BEMBA. A contributing factor to this sense of impunity was that BEMBA deployed unpaid troops in the CAR during the 2002-2003 conflict providing a

further incentive for the commission of crimes against the CAR civilian population by the MLC troops, including looting.

118. BEMBA's continued failure to prosecute or punish crimes perpetrated by his troops further encouraged the sense of impunity with which they operated in the CAR during the 2002-2003 conflict. The proceeds of CAR lootings were carried away by MLC troops in plain view of MLC and CAR commanders. Vehicles that had been looted in the CAR were distributed by BEMBA to the top MLC officials.

119. Given BEMBA's effective control of all MLC military operations, as stated in paragraphs 88 and 99, BEMBA knew, or, owing to the circumstances at the time, should have known that his troops had committed or were about to commit the crimes charged for the purpose of terrorizing and punishing those elements of the CAR civilian population perceived as sympathising with Bozizé's forces.

120. The facts set out above indicate that at a minimum BEMBA received admonitory information indicating the likelihood of his troops' illegal acts. At the very least, BEMBA was put on notice of the above-mentioned crimes. Despite his proactive duty to remain apprised of the acts of his subordinates, BEMBA failed to initiate further inquiries although he had available means to do so. His response to that information was that he did not believe what the media were reporting and dismissed it merely as "French propaganda" and isolated cases.

**f. BEMBA failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution.**

121. As outlined in paragraphs 88 to 95 above, BEMBA's power as Commander-in-Chief and political leader of the MLC, was broad. Within this capacity BEMBA had the power *inter alia* to:

- issue decrees, orders and instructions to provide special measures for troop discipline
- appoint, promote, demote and dismiss commanders within the MLC structure
- unilaterally arrest or detain his subordinates in relation to disciplinary matters

- request the competent authorities to initiate investigations into troop discipline
- recourse to the MLC Military Tribunal and Disciplinary Board to prosecute troops in relation to discipline
- ensure compliance with investigations and prosecutions
- grant amnesty
- define the objectives of military operations – i.e. could give direct orders to ensure that the concept of operation did not involve the commission of crimes against the civilian population.

122. As outlined in paragraphs 105 to 120 above, BEMBA knew or should have known that the MLC troops were committing or about to commit crimes listed in paragraphs 48 to 56.

123. BEMBA's degree of effective control was extensive. Thus, he had a wide scope and variety of necessary and reasonable measures at his disposal to address the crimes as described in paragraphs 48 to 56. However, BEMBA failed to adequately implement those measures. He failed to discharge his duty to prevent, repress, punish or refer the commission of the crimes to the competent authorities for investigation and prosecution.

124. BEMBA failed to prevent and repress the commission of the crimes during the 2002-2003 CAR intervention. The MLC troops were not adequately trained in humanitarian law. The international humanitarian law was not given due regard in the operational decision making. He did not issue clear and efficient orders prior to, and during, the operation to ensure that the crimes were not committed by the MLC troops.

125. BEMBA neither implemented appropriate measures to stop the commission of the crimes nor did he discipline his MLC troops.

126. BEMBA failed to issue appropriate orders to repress the commission of the crimes. He did not discipline the battalion or brigade commanders in charge of the soldiers responsible for the crimes. Further, BEMBA chose not to exercise his supreme authority and control to withdraw battalions or units as a result of the abuses.

127. BEMBA created an atmosphere of lawlessness. He failed to discipline the troops appropriately and encouraged a sense of impunity. BEMBA detained the perpetrators to placate the civilians just to later release and relocate them. The proceeds of CAR lootings were carried away by MLC troops in plain view of MLC and CAR commanders. BEMBA, himself, possessed and distributed looted items. In addition, he gave the MLC troops *carte blanche*.

128. BEMBA failed to use his ultimate authority to establish an effective system to punish and discipline the MLC soldiers for their crimes including looting, rape and murder. During his visits BEMBA talked to MLC troops about discipline but the crimes did not stop. The MLC troops continued to commit exactions. Serious acts of violence were committed in Damara, Bossembélé, Bozoum, Bossangoa and they committed a massacre and rape at Mongoumba. The MLC crimes continued until the moment of their withdrawal.

129. BEMBA often denied the commission of the crimes by the MLC troops even when he was informed by some of the senior MLC officers. He referred to the information as “French propaganda”, and declared that public opinion had been manipulated and misinformed. In spite of the widespread and systematic nature of the MLC crimes, BEMBA would state that there seemed to be no evidence for rape and other crimes.

130. BEMBA failed to take all necessary and reasonable measures within his power to ensure a proper investigation and prosecution of the crimes committed by his troops. The investigation and Court Martial established in this regard as for previous MLC military operations, were a sham. Only seven or eight MLC soldiers were tried in relation to the 2002-2003 Bangui operation. Six out of them were charged with insubordination, one of whom was also charged with “attempted extortion”. Another of them was charged with robbery. There were no soldiers charged with rape, looting or murder. In addition, none of them served a full prison sentence. Approximately one month following their convictions, BEMBA granted them amnesty. Upon receiving amnesty, the soldiers were re-integrated into the MLC.

## **2. Article 28(b) of the Rome Statute**

131. In the alternative, BEMBA is charged with criminal responsibility pursuant to Article 28 (b) of the Statute, for crimes within the jurisdiction of the Court with respect to a superior

and subordinate relationship not described in Article 28(a) of the Statute. BEMBA, as the political and military leader of the MLC, is criminally responsible pursuant to Article 28(b) of the Statute for the crimes against humanity and war crimes referred to in Articles 7 and 8 of the Statute, and as described in this Amended DCC, committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates.

132. At all times relevant to the charges there existed a superior-subordinate relationship between BEMBA and the MLC troops as indicated in paragraphs 88 to 95. The MLC troops, the physical perpetrators of the crimes described in paragraphs 48 to 56, were under the effective authority and control of BEMBA. The crimes committed against the CAR population during the relevant timeframe were committed by BEMBA's subordinates as a result of the failure of BEMBA to exercise control properly over them.

133. The Statute distinguishes between thresholds for superior and subordinate relationship under Article 28 (a) and (b). BEMBA had the required *Mens Rea* pursuant to Article 28(b)(i) of the Statute as he knew or consciously disregarded information which clearly indicated that his subordinates were committing or were about to commit crimes against the CAR population as indicated by the evidence described in paragraphs 107 to 120. The crimes were committed by subordinates under the effective authority and control of BEMBA. BEMBA failed to take all necessary and reasonable measures within his power to prevent or repress their commission of the crimes or to submit the matters to competent authorities for investigation and prosecution.

134. The evidence supporting the remaining elements of Article 28(b)(ii) and (iii) are set forth in paragraphs 87 to 99, 100 to 104 and 121 to 130 of this Amended DCC, which are hereby incorporated by reference.

## VIII. CHARGES

### **Count 1 (Rape constituting a Crime against Humanity)**

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed, jointly with another, Ange-Félix Patassé, crimes against humanity through acts of

rape upon civilian men, woman and children in the Central African Republic, in violation of Articles 7(1)(g) and 25(3)(a) or 28(a) or 28(b) of the Rome Statute.

Civilian men, women and children in the Central African Republic include, but are not limited to REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 October 2002, PK 12; REDACTED, 30 October 2002, Boy-Rabé; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 8 November 2002, PK 12; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 5 March 2003, Mongoumba; Unidentified Victims 1 to 8, 26 October and 31 December 2002, Bangui; Unidentified Victims 9 to 30, October 2002 and 31 December 2002, Bangui; Unidentified Victims 31 to 35, October 2002 to 31 December 2002, Bangui.

## **Count 2 (Rape constituting a War Crime)**

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed, jointly with another, Ange-Félix Patassé, war crimes through acts of rape upon civilian men, women and children in the Central African Republic, in violation of Articles 8(2)(e) (vi) and 25(3)(a) or 28(a) or 28(b) of the Rome Statute.

Civilian men, women and children in the Central African Republic include, but are not limited to REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 October 2002, PK 12; REDACTED, 30 October 2002, Boy-Rabé; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 8 November 2002, PK 12; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 5 March 2003, Mongoumba; Unidentified Victims 1 to 8, between 26 October and 31 December 2002, Bangui; Unidentified Victims 9 to 30, between October 2002 and 31 December 2002, Bangui; Unidentified Victims 31 to 35, between October 2002 and 31 December 2002, Bangui.

### **Count 3 (Torture constituting a Crime against Humanity)**

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed, jointly with another, Ange-Félix Patassé, crimes against humanity by inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian men, women and children in the Central African Republic, in violation of Articles 7(1)(f) and 25(3)(a) or 28(a) or 28(b) of the Rome Statute.

Civilian men, women and children in the Central African Republic include, but are not limited to REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 October 2002, PK 12; REDACTED, 30 October 2002, Boy-Rabé; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 8 November 2002, PK 12; REDACTED, on or about 5 March 2003, Mongoumba; Unidentified Victims 1 to 8, between 26 October and 31 December 2002, Bangui; Unidentified Victims 9 to 30, between October 2002 and 31 December 2002, Bangui; Unidentified Victims 31 to 35, between October 2002 and 31 December 2002, Bangui.

### **Count 4 (Torture constituting a War Crime)**

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed, jointly with another, Ange-Félix Patassé, war crimes by inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian men, women and children in the Central African Republic, in violation of Articles 8(2)(c)(i) and 25(3)(a) or 28(a) or 28(b) of the Rome Statute.

Civilian men, women and children in the Central African Republic include, but are not limited to REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 October 2002, PK 12; REDACTED, 30 October 2002, Boy-Rabé; REDACTED, 8 November 2002, PK 12; REDACTED, 8 November 2002, PK 12; REDACTED, 8 November 2002, PK 12; REDACTED, 8 November 2002, PK 12;

REDACTED, 8 November 2002, PK 12; REDACTED, on or about 8 November 2002, PK 12; REDACTED, on or about 5 March 2003, Mongoumba; Unidentified Victims 1 to 8, between 26 October and 31 December 2002, Bangui; Unidentified Victims 9 to 30, between October 2002 and 31 December 2002, Bangui; Unidentified Victims 31 to 35, between October 2002 and 31 December 2002, Bangui.

### **Count 5 (Outrages upon personal dignity constituting a War Crime)**

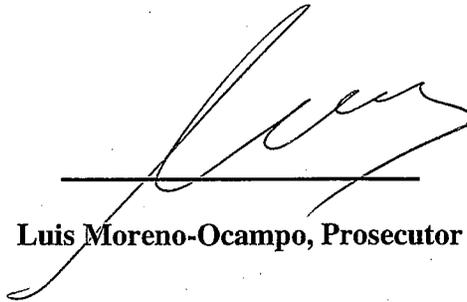
From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed, jointly with another, Ange-Félix Patassé, war crimes by humiliating, degrading or otherwise violating the dignity of civilian men, women and children in the Central African Republic, in violation of Articles 8(2)(c)(ii) and 25(3)(a) or 28(a) or 28(b) of the Rome Statute.

Civilian men, women and children in the Central African Republic include, but are not limited to REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 or 27 October 2002, Fou; REDACTED, 26 October 2002, PK 12; REDACTED, 30 October 2002, Boy-Rabé; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 8 November 2002, PK 12; REDACTED, 8 November 2002, PK 12; REDACTED, on or about 5 March 2003, Mongoumba; Unidentified Victims 1 to 8, between 26 October and 31 December 2002, Bangui; Unidentified Victims 9 to 30, between October 2002 and 31 December 2002, Bangui; Unidentified Victims 31 to 35, between October 2002 and 31 December 2002, Bangui.

### **Count 6 (Murder constituting a War Crime)**

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed, jointly with another, Ange-Félix Patassé, war crimes, by the killing of men, women and children civilians in the Central African Republic, in violation of Articles 8(2)(c)(i) and 25(3)(a) or 28(a) or 28(b) of the Rome Statute.





**Luis Moreno-Ocampo, Prosecutor**

Dated this 30<sup>th</sup> day of March 2009  
At The Hague, The Netherlands