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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Public Redacted Document

Revised Second Amended Document Containing the Charges

Source: The Office of the Prosecutor

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

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VIII. Charges

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 of his father Jeannot Bemba, 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 Second Amended

Document Containing the Charges (hereinafter referred to as “Second Amended DCC”), the term “MLC” encompasses the term “ALC”, unless otherwise stated.

5. During all times relevant to this Second Amended DCC, BEMBA was the MLC President and the Commander-in-Chief of the ALC. 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 and was defeated in the Congolese presidential election. 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 Second Amended 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 his Presidency. 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 21 of this Second Amended DCC.

B. 2002-2003 CAR intervention

13. On 25 October 2002, François Bozizé (hereinafter referred to as “Bozizé”), former Army Chief of Staff of the CAR armed forces, *Forces Armées Centrafricaines* (hereinafter referred to as “FACA”), led his forces towards Bangui in an effort to unseat Patassé. In response to Bozizé’s attack, Patassé mobilized the CAR national armed forces, including the FACA which remained loyal to him, the *Unité de Sécurité Présidentielle* (hereinafter referred to as “USP”) and the mercenaries of Abdoulayé Miskine’s (born Martin Koumtamaji, hereinafter referred to as “Miskine”) 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 agreed to 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 of attacks on the MLC from the DRC Government, in particular through the CAR route. On or about 26 October 2002, MLC troops entered the CAR. MLC troops remained in the CAR from their entry, on or about 26 October 2002 until 15 March 2003.

15. At least from the time that they were sent into the CAR, BEMBA’s MLC forces targeted the CAR civilian population, at least those that were perceived to be sympathetic to the rebels. The MLC soldiers acted with a sense of impunity as they killed, pillaged and raped. 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.

16. At all times relevant to this Second Amended DCC, BEMBA was the President of the MLC and the Commander-in-Chief of its military wing, called the ALC. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

17. 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.

18. 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).

19. From PK 12, 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 pillaging, rapes, and murders against the CAR civilian population.

20. BEMBA maintained contact with MLC's subordinates during the 2002 intervention. BEMBA and Patassé troops also coordinated their efforts throughout the intervention through contact between the CAR and MLC participants, and the establishment of a joint Coordination/Operation Cell.

21. When the MLC soldiers were deployed to the CAR, they entered Bangui, the capital of the CAR by crossing the Oubangui River by boat. By 15 March 2003, as a result of BEMBA's order, all the MLC troops withdrew from the CAR. 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 pillaging, rapes, and murders against the CAR civilian population. The crimes committed during their advance and withdrawal from the CAR is set forth in paragraphs 46 to 54.

C. Formation and rise of the MLC

1. MLC structure

22. BEMBA's ALC military movement created in 1998 evolved into a hierarchically organized politico-military movement by adoption of the 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 identified 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

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

a. BEMBA's *De Jure* control

24. 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. With respect to political matters, the Politico-Military Council was limited to making recommendations that only BEMBA could authorize. The MLC Statute does not provide for his removal or the election of a new President or Commander-in-Chief.

25. 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*.

b. BEMBA's *De Facto* control

26. At all times relevant to this Second Amended DCC, BEMBA was the MLC President and the supreme authority, treating the MLC as his own enterprise. BEMBA exercised complete authority and control over all political and military matters. BEMBA retained complete authority and control over the military personnel either through the chain of command or, bypassing the hierarchy, and giving

instructions directly to commanders in the field. BEMBA also took unilateral decisions to arrest civilians or send officers to prison without due trial, and release them from incarceration.

27. BEMBA was the sole decision-making authority who exercised control over all military matters, despite the MLC's conventional military structure. BEMBA's decision-making authority and control include:

- (i) Deployment of MLC troops: BEMBA deployed MLC troops to the CAR under his authority and control. [REDACTED]. When necessary, BEMBA authorized the deployment of reinforcement troops.
- (ii) Provision of 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) Provision 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) Travelling to and visiting MLC troops in the CAR: BEMBA supported the MLC troops by travelling to the CAR at least once and addressing them at various locations in the CAR including PK 12, in early November 2002.
- (v) Providing logistical support: BEMBA was the MLC sole decision maker regarding the provision of logistics including weapons, ammunitions and funding, negotiated the supplies of arms on behalf of the MLC, and gave instructions on the delivery and management of supplies.
- (vi) Control over recruitment and distribution of troops: BEMBA had the sole authority to control the 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.

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

3. Composition and organisation of MLC troops

29. The composition and organisation of the MLC enabled BEMBA to ensure that his orders would 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.

30. At all times relevant to this Second 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.

31. 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.

III. Territorial, temporal and material jurisdiction

32. All crimes alleged in this Second Amended DCC occurred between on or about 26 October 2002 and 15 March 2003 in the CAR.

33. At all times relevant to this Second 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.

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

35. Conduct charged as a crime against humanity was part of a widespread 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

36. The crimes against humanity alleged in Counts 1 and 7 of the Confirmation Decision,¹ occurred in the context of a widespread attack against the CAR civilian population, within the meaning of Article 7(1) of the Statute. From approximately 26

¹ ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009 (hereinafter referred to as “Confirmation Decision”), page 185.

October 2002 to 15 March 2003, the MLC troops perpetrated mass rapes, mass pillaging 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.

37. In the locations identified in paragraph 36, the MLC troops pillaged, raped, and killed CAR civilians. Civilian properties were pillaged. 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 female victims of rapes and gang-rapes contracted HIV or became pregnant as a result. Civilians who were killed included those who tried to prevent or resist rapes, attacks or pillaging.

38. The MLC troops committed the crimes alleged in Counts 1 and 7 of the Confirmation Decision² 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 pillaging. The MLC troops also killed civilians who resisted or attempted to prevent the attacks.

39. 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 targeted the civilian population by conducting house-to-house searches and raping and killing civilians.

² Confirmation Decision, page 185.

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 them and demonstrate their powerlessness to protect their families. Many of the women and girls who were raped feared being shot by the MLC attackers.

40. 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.

41. At all times relevant to this Second Amended DCC, BEMBA knew that his conduct was part of a widespread attack on the CAR civilian population.

V. Facts relevant to Article 8 chapeau elements

42. The war crimes alleged in Counts 2, 6 and 8 of the Confirmation Decision³ occurred in the context of a protracted armed conflict between Bozizé troops, on one side, and Patassé troops and the MLC on the other side. For the purposes of this Second Amended DCC, the conflict is characterized as non-international, and each of the proposed counts specifying war crimes arise from conduct which consists of a war crime. On or about 25 October 2002 to 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.

³ Confirmation Decision, page 185.

43. Bozizé, as a party to the conflict, commanded 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.

44. 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 pillaging, rapes and murders while engaged in conflict.

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

VI. Facts relevant to individual crimes charged

46. 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 raped by multiple MLC perpetrators. [REDACTED] heard [REDACTED], her sister in law, scream as the MLC troops raped her next door.

47. 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 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 pillaged the home, killed a dog, and dismantled things to look for money. [REDACTED], was killed in Bossangoa as he tried to stop the MLC soldiers from pillaging his family's livestock.

48. 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, raped her, stole money, and pillaged the residence. The MLC soldiers shot and killed [REDACTED] when he tried to prevent the theft of his [REDACTED].

49. 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 raped [REDACTED]'s wife, [REDACTED]. MLC soldiers also raped [REDACTED]'s three daughters ([REDACTED], [REDACTED] and [REDACTED]). At the same time, the [REDACTED]'s compound was pillaged by MLC soldiers. When MLC soldiers came to [REDACTED]'s home in the same compound, MLC soldiers raped her. When [REDACTED]'s brother, [REDACTED], tried to intervene in the rape, he was tied up and beaten.

50. 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] (ten years old), was next to them and taken away. She was later raped by MLC soldiers. The [REDACTED] home was pillaged at the same time.

51. 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 a ferry boat, and publicly raped them. Some of the civilian women were raped by multiple perpetrators while others were also forced to perform fellatio. Although reported, nothing was done about the incident.

52. 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.

53. 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.

54. 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.

VII. BEMBA’S responsibility: Article 28(a) of the Rome Statute

55. BEMBA is criminally responsible by virtue of his superior-subordinate relationship with MLC troops pursuant to Article 28(a) of the Statute, for crimes against humanity and war crimes, as described in Counts 1, 2, 6, 7 and 8 of the Confirmation Decision.⁴

⁴ Confirmation Decision, page 185.

56. 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 authority and control, as a result of his failure to exercise control properly over such forces during the 2002-2003 intervention into the CAR. BEMBA knew 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

57. 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 36 to 45 of this Second Amended DCC. 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.

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

58. At all times relevant to the charges, by virtue of the MLC Statute, BEMBA had formal authority as both President of the MLC and Commander-in-Chief of the ALC. 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 authority over all units of MLC forces. Paragraphs 23 to 31 of this Second Amended DCC are hereby incorporated by reference.

59. BEMBA, himself a recipient of basic military training, was at the head of the ALC military chain-of-command described in paragraphs 16, 27 to 31. 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.

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

60. MLC forces remained subordinate to BEMBA, within his effective authority and control, at all times relevant to the charges. BEMBA had the material ability to effectively control his MLC troops who committed crimes in the CAR. BEMBA's *de jure* authority reinforced by his *de facto* control 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.

61. BEMBA promulgated the MLC's code of conduct which was applicable to all soldiers and governed military discipline. The MLC had a Disciplinary Board that conducted hearings and issued punishments for breaches of this code except for *inter alia*, murder, theft and rape, which it was required to refer to the Martial Court. BEMBA used his wide discretionary powers to issue various military decrees, which included ensuring the implementation of sanctions issued by the Disciplinary Board.

62. 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.

63. 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 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.

64. 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.

65. BEMBA established a military tribunal in Gbapolite to address MLC crimes arising from Mambasa and the CAR 2002-2003 operations. This trial was a sham there was no investigation of massive pillaging, rapes and killings, the charges were insubordination, "attempted extortion" and robbery. With respect to the punishment for the Mambasa crimes, the sentences delivered were disproportionately low in relation to the crimes. Furthermore, 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.

66. As on previous occasions, at all times relevant to this Second Amended DCC, the crimes suffered by the CAR civilian population in 2002-2003 went effectively unpunished; the few punishments meted out were disproportionately low and inadequate.

67. 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.

68. 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. BEMBA appointed [REDACTED] and decided on which battalions to deploy. [REDACTED] gave BEMBA daily reports, either directly or through [REDACTED], on operations and all matters related to MLC troops. BEMBA called [REDACTED] four or five times a day whenever there was an operation.

69. BEMBA retained control of MLC forces through his direct involvement in strategic planning and tactical support of field operations. BEMBA also provided

operational support to [REDACTED]. [REDACTED], BEMBA sent the MLC's 5th 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.

70. Prior to the MLC withdrawal, BEMBA signed a communiqué announcing that MLC troops would leave the CAR gradually starting in mid-February 2003. [REDACTED].

71. [REDACTED]. The authority of Patassé and the CAR Government on their own staff and territory neither excluded nor diminished BEMBA's effective authority and control over his troops, it was 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

72. The commission of crimes as a result of BEMBA's failure to properly exercise control over the MLC troops is intrinsically linked with the facts laid out in paragraphs 91 to 100. Therefore, the evidence referred therein is incorporated under this heading.

73. In addition, BEMBA failed to issue clear and effective orders to ensure that the crimes were not committed by the MLC troops 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.

74. The widespread 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. In the 2002-2003 CAR intervention, the MLC soldiers were allowed to commit the crimes described. BEMBA encouraged a 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.

75. MLC soldiers had been informed about the importance of respecting international humanitarian law. The code of conduct, which regulated military discipline, was written in French, but not distributed to all soldiers. Rather, it had to be translated orally to the MLC soldiers in Lingala by political commissioners whose role was to popularize the code.

76. As a result of the aforementioned, BEMBA's failure to fulfil his duties to prevent crimes increased the risk of their commission by the MLC troops in the CAR.

e. BEMBA knew that the MLC troops were committing or about to commit crimes

77. At all times relevant to the charges contained in this Second Amended DCC, BEMBA maintained *de jure* and *de facto* authority over the MLC forces. 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.

78. BEMBA, upon deploying the MLC troops to the CAR for the 2002-2003 military operation, knew that his MLC troops were committing or were about to commit crimes within the jurisdiction of the Court rape, looting and murder.

i. BEMBA received regular reports of MLC activities in the CAR

79. BEMBA had actual knowledge that his MLC troops were committing crimes during the 2002-2003 CAR conflict. 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 *Radio France Internationale* (hereinafter referred to as "RFI") that if his MLC troops had perpetrated serious crimes against the CAR civilian population, they would have been arrested and tried under MLC's military laws.

80. BEMBA also was, at all times relevant to the charges, in possession of information indicating that his MLC troops were committing rapes, murders, and pillaging in the CAR. BEMBA was informed, orally and in writing, about the crimes of rape and pillaging while they were happening. Commanders and MLC political advisors repeatedly told him about the crimes. MLC intelligence and security advisors also reported the occurrences in the field. MLC members told BEMBA [REDACTED] about cases of theft, rape, pillaging and murder. BEMBA was also in contact with journalists who brought to his attention the abuses committed by his troops in the CAR.

81. Moreover, the occurrences of rape, murder and looting by the MLC troops were 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. Journalists told BEMBA about the abuses perpetrated by MLC troops in the CAR, and the proceeds of the looting were carried away by MLC soldiers in front of MLC and CAR commanders.

82. BEMBA and other MLC commanders were also specifically informed about the crimes committed against the civilian population in PK 12. After BEMBA's visit in PK12, the MLC commander of operations in CAR gave a speech in which he excused the troops' misconduct and promised to ensure their discipline. After the PK 12 lootings, there were also radio broadcasts about other lootings.

83. BEMBA was in close contact with, and had access to, his field commanders via various communication devices. 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.

84. 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. MLC commanders took their own Thurayas to the CAR.

85. BEMBA went to Bangui and to the CAR at least once 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.

86. 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, as outlined in paragraph 65.

ii. Conclusion: BEMBA had the requisite *Mens Rea*

87. 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 committed crimes and operated with a sense of impunity in the CAR, which was created and perpetuated by BEMBA's failure to prevent or repress crimes. 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.

88. 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.

89. Given BEMBA's effective control over all MLC military operations, BEMBA knew 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.

90. 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.

91. As outlined in paragraphs 23 to 31 above, BEMBA's power as President of the MLC and Commander-in-Chief of the ALC, 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.

92. As outlined in paragraphs 77 to 86 above, BEMBA knew that the MLC troops were committing or about to commit crimes listed in paragraphs 46 to 54.

93. 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 described in paragraphs 46 to 54. 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.

94. BEMBA failed to prevent and repress the commission of the crimes during the 2002-2003 CAR intervention. BEMBA did not issue clear and efficient orders during the operation to ensure that no crimes would be committed by the MLC troops.

95. BEMBA neither implemented appropriate measures to stop the commission of the crimes nor disciplined his MLC troops.

96. 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. Despite knowing that crimes had been committed

as early as the first weeks of the operations in the CAR, BEMBA delayed giving the order for withdrawal of battalions or units for at least a month.

97. BEMBA failed to discipline the troops appropriately and encouraged a sense of impunity. The proceeds of CAR lootings were carried away by MLC troops in plain view of MLC and CAR commanders.

98. 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.

99. 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.

100. 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.

VIII. Charges

Count 1 (Rape constituting a Crime against Humanity)⁵

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed 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 28(a) 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.

⁵ Confirmation Decision, page 185
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Count 2 (Rape constituting a War Crime)⁶

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed 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 28(a) 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)⁷

From on or about 26 October 2002 to 15 March 2003, Jean-Pierre BEMBA committed 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 28(a) of the Rome Statute.

⁶ Confirmation Decision, page 185

⁷ Confirmation Decision, page 185

2002, PK 12; [REDACTED], 8 November 2002, PK 12; [REDACTED], 8 November 2002, PK 12; [REDACTED], [REDACTED], [REDACTED], 5 March 2003, Mongoumba.



Luis Moreno-Ocampo, Prosecutor

Dated this 18th Day of August 2010

At The Hague, The Netherlands