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PRE-TRIAL CHAMBER III

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

Registrar: Ms Silvana Arbia

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**Public Redacted Version of ICC-01/05-01/08-26-US-Exp
Prosecutor's Application for Warrant of Arrest under Article 58**

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Summary of the Case

The Central African Republic (hereinafter referred to as "CAR") has been characterised by political instability since its independence in 1960. In 1993, Ange-Felix Patasse (hereinafter referred to as "Patasse") became President of the CAR. After successfully overcoming a number of coup attempts, he faced another armed rebellion in October 2002, when his former Army Chief of Staff of the CAR Armed Forces, General François Bozize (hereinafter referred to as "Bozize") attempted to overthrow him.

At that time, Patasse's national armed forces were largely under-resourced, and Patasse appealed to leaders of foreign armed forces to defend his Presidency. In this context Patasse sought the assistance of Jean-Pierre BEMBA (hereinafter referred to as "BEMBA"), the undisputed leader of the *Movement de Liberation du Congo* (hereinafter referred to as "MLC") a militia from the Democratic Republic of Congo (hereinafter referred to as "DRC"). Patasse and BEMBA reached an agreement where BEMBA would deploy MLC troops to the CAR to defend Patasse. In exchange for MLC's support, BEMBA received inter alia (i) the benefit of retaining the CAR as a conduit for his business activities and; (ii) retaining the CAR as a strategic base for the MLC; (iii) goods such as cars, fuel, money and manufactured goods. At the heart of their agreement was Patasse and Bemba's goal to keep Patasse in power.

Pursuant to the agreement, MLC soldiers, who in the CAR are commonly referred to as the "Banyamulengue", intervened in the CAR on behalf of Patasse from approximately 26 October 2002 to 15 March 2003. During this period, MLC troops perpetrated large scale crimes against the CAR civilian population, including killings, rapes and lootings. These crimes were at least partly committed as part of a

military strategy that included the intended purpose of punishing and humiliating civilians that were perceived to be sympathetic to Bozize's rebel troops.

Of significance is the fact that the MLC troops had committed similar acts under similar factual circumstances on at least two prior occasions in the CAR and in the DRC while under Bemba's control. The Prosecution therefore submits in this application that BEMBA, jointly with another, is a co-perpetrator of the rapes, pillaging and killings which were physically perpetrated by the MLC troops in the CAR.

Relief sought

Pursuant to Article 58(1) of the Rome Statute, the Prosecutor hereby applies¹ to the Pre-Trial Chamber III for the issuance of an arrest warrant against BEMBA, founder and leader of the MLC. Upon investigation of crimes committed in the territory of the CAR from 25 October 2002 through 15 March 2003, the Prosecutor has concluded that there are reasonable grounds to believe that BEMBA bears criminal responsibility under Article 25 of the Rome Statute for crimes against humanity and war crimes.

A. Identification of Jean-Pierre BEMBA as the person against whom the arrest warrant is sought pursuant to Article 58(2)(a) of the Rome Statute

Jean-Pierre BEMBA GOMBO² was born on 4 November 1962 in Bokada, Equateur Province, Democratic Republic of Congo (hereinafter referred to as "DRC"). He is of Ngwaka ethnicity.³

¹ The OTP will furnish a draft French translation of this filing by 4:00 p.m. Thursday, 15 May 2008. This translation is provided as an aid to the Chamber and is not meant to be official or authoritative

² Photos of Jean-Pierre BEMBA are attached as Annex 1

BEMBA is the son of Jeannot Bemba Saolana, one of the most powerful figures in the Mobutu regime and an enormously wealthy businessman. His mother died when he was eleven. BEMBA has three sisters. One of them, Cathy Bemba, is married to François Joseph Nzanga Mobutu, the deposed president's son, a rival for president in the first round of the 2006 presidential election, and now minister of agriculture in Joseph Kabila's Government. BEMBA is married to Lilia Teixeira, the daughter of Antonio Teixeira a Portuguese born businessman residing in South Africa. They have five children.

Between 1980 and 1986, BEMBA acquired two University degrees – "*licence en sciences commerciales et financières*" and "*licence spéciale en économie du développement*" - at the "*Institut Catholique des Hautes Etudes Commerciales*" in Brussels. After completing his education BEMBA entered the family business, eventually becoming the General Director of Scibe Airlift. While under his control, Scibe Airlift developed a commercial air-transport network. In the late 1980s, BEMBA branched out into telecommunications (COMCELL), television, and other business ventures, including a private postal company and freight transportation company with operations throughout Africa.

In May 1997, after the overthrow of Mobutu's Government and immediately before Laurent-Désiré Kabila took over power, BEMBA left the DRC and lived in exile between Brussels, Belgium and Faro, Portugal.

On 30 September 1998, BEMBA established the MLC in Kisangani, DRC,⁴ as a military movement – the "*Armée de Libération du Congo*" (hereinafter referred to as

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⁴

“ALC”)⁵ – in order to build an army against Laurent-Désiré Kabila and to stage a rebellion. BEMBA led the MLC from its inception in 1998 throughout the period relevant to this application.⁶

In May 2001 and October 2002, BEMBA sent the MLC troops to the CAR to help Patasse suppress an attempted *coup d’Etat*. Patasse was eventually overthrown by Bozize on 15 March 2003.

In June 2003, BEMBA became one of four DRC vice-presidents in the transitional Government in accordance with the peace agreement “*accord global et inclusif*” signed in Pretoria, South Africa, on 17 December 2002.

In the fall of 2006, BEMBA ran in the first democratic Congolese presidential election since 1965 and was defeated by the current President, Joseph Kabila.

In January 2007, BEMBA was elected DRC Senator. On 22 and 23 March 2007, BEMBA’s personal guards and Governmental forces entered into a deadly clash that resulted in BEMBA’s retreat into the South African Embassy in Kinshasa. Twenty days later, BEMBA left the country and has been living in exile in Portugal ever since. Currently, BEMBA is reportedly residing with his wife and children in his villa in Quinta do Lago, next to Faro, on Portugal’s Algarve.

B. Crimes within the jurisdiction of the Court which Jean-Pierre BEMBA has committed pursuant to Article 58(2)(c) of the Rome Statute

Count 1 (Rape constituting a crime against humanity)

⁵ The MLC and its armed wing, ALC, are collectively referred to as the MLC for the purposes of this application

⁶ [REDACTED]

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, crimes against humanity through acts of rape upon civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8 November 2002, *point kilometre*⁷ 12 (hereinafter referred to as "PK 12"), [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 7(1)(g) and 25(3)(a) of the Rome Statute.

Count 2 (Other forms of sexual violence constituting a crime against humanity)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, crimes against humanity by other forms of sexual violence against civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8 November 2002, PK 12, [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 7(1)(g) and 25(3)(a) of the Rome Statute.

Count 3 (Rape constituting a war crime)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, war crimes through acts of rape upon of civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8 November 2002, PK 12, [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 8(2)(e)(vi) and 25(3)(a) of the Rome Statute.

Count 4 (Other forms of sexual violence constituting a war crime)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, war crimes by other forms of sexual violence against civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8

⁷ PK is a reference used by the population in the CAR to indicate location along the road from Bangui to the north of the country

November 2002, PK 12, [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 8(2)(e)(vi) and 25(3)(a) of the Rome Statute.

Count 5 (Torture constituting a crime against humanity)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, crimes against humanity inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8 November 2002, PK 12, [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 7(1)(f) and 25(3)(a) of the Rome Statute.

Count 6 (Torture constituting a war crime)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, war crimes by inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8 November 2002, PK 12, [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute.

Count 7 (Outrages upon personal dignity constituting a war crime)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, war crimes by humiliating, degrading or violating the dignity, through acts of rape or other forms of sexual violence, of civilian women, men and children in the CAR, including, but not limited to [REDACTED], 8 November 2002,

PK 12, [REDACTED], 26 October 2002, PK 12, and [REDACTED], 5 March 2003, Mongoumba, in violation of Articles 8(2)(c)(ii) and 25(3)(a) of the Rome Statute.

Count 8 (Murder constituting a war crime)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, war crimes, by killing of civilians in the CAR in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute.

Count 9 (Murder constituting a crime against humanity)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, crimes against humanity by killing of civilians in the CAR in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute.

Count 10 (Pillaging constituting a war crime)

From on or about 25 October 2002 to 15 March 2003, BEMBA committed, jointly with another, war crimes pillaging of villages and towns in the CAR, including, but not limited to, Bangui, Damara, Bossembélé, Sibut, Bossangoa, Mongoumba, PK 12 and PK 22 in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute.

C. Concise Statement of the facts which constitute the crimes pursuant to Article 58(2)(c) of the Rome Statute

I. Procedural history

1. On 21 December 2004, the Prosecution received by way of letter a referral from the Government of the CAR concerning crimes committed after 1 July 2002 on the territory of the CAR. At that time, the CAR Government indicated that it would

transmit detailed information explaining both the facts in relation to the crimes and the details of the relevant criminal proceedings that had taken place, or were taking place, in the CAR.

2. Six months later, in June 2005, the CAR Government provided documentation to the Prosecution regarding the crimes committed in the CAR in 2002-2003, as well as the *procès-verbaux* from the judicial proceedings held in Bangui in relation to these crimes.

3. Pursuant to Article 53 of the Rome Statute and Rule 104 of the Rules of Procedure and Evidence, the Prosecutor conducted a detailed analysis of the information he received from the CAR Government, and sought and obtained additional information from various sources. After reviewing the information received, the Prosecutor concluded that all requirements of Article 53(1) of the Rome Statute were satisfied. Thereafter, the Prosecutor initiated an investigation.

4. On 10 May 2007, the Prosecutor's decision to initiate an investigation was communicated to the CAR Government and by letter to the Pre-Trial Chamber III and the President of the Court. On 22 May 2007, the Prosecutor sent letters of notification to the State Parties to the Rome Statute, as well as to other States pursuant to Article 18(1) of the Rome Statute. Following the notification, no information pursuant to Article 18(2) of the Rome Statute was received.

5. On 22 May 2007, the Prosecutor publicly announced the commencement of an investigation of alleged crimes committed in the CAR.

6. Pursuant to Article 53 (2) of the Rome Statute, the Prosecutor is required to satisfy himself that the case is admissible. The Prosecutor has reviewed all relevant

material. In the light of the analysis carried out, the Prosecutor is satisfied that the case is admissible.

II. Facts

7. The CAR has experienced years of military rule, corruption and severe social turmoil, and therefore suffered a history of political instability. Essentially every ruler of the CAR either obtained power, or was finally overthrown, in a military coup.

8. In September 1993, Patasse became President of the CAR during the first multi-party presidential elections in the country. He was re-elected for a second presidential term in September 1999. After resisting a number of military mutinies over the years, Patasse faced an attempted coup on 28 May 2001 attributed to former President André Kolingba. Patasse countered this attempted coup with the support of foreign forces including BEMBA's MLC troops.

9. On 25 October 2002, the former Army Chief of Staff of the CAR armed forces, *Forces Armées Centrafricaines* (hereinafter referred to as "FACA"), Bozize, led forces towards Bangui, the capital of the CAR, in an attempt to take power.⁸ Patasse did not rely solely on the national armed forces, which were under-resourced and weakened by years of ethnic and political division. Instead Patasse called on foreign armed forces to support him and to defend his power against Bozize's troops.

10. Therefore, the protagonists in the conflict in the CAR in 2002-2003 were the rebel forces under Bozize's command on one side, and the loyalist forces led by

⁸ [REDACTED]

Patasse on the other side. The latter consisted of units from the CAR armed forces and foreign forces, including the troops of the MLC from the DRC.

11. The MLC was created by BEMBA in 1998 as a military movement. A political wing was subsequently founded in 1999.⁹ BEMBA was the undisputed leader of this movement at the time of the events relevant to this case; every important decision within the MLC was made by him.¹⁰ BEMBA not only decided the political objectives,¹¹ he also exercised full command and control over the military wing.¹² BEMBA exercised his command and control over the military wing either through the chain of command, or bypassing the hierarchy and giving orders directly to commanders on the field.¹³

12. Under BEMBA's leadership and control, the MLC soldiers were mobilized in the DRC and arrived in the CAR towards the end of October 2002. They remained in the CAR throughout the conflict until 15 March 2003, pursuant to the agreement with Patasse to ensure that he would remain in power.¹⁴

13. During their presence in the CAR, the MLC perpetrated large scale crimes against the CAR civilian population, including rapes, pillaging and killings.¹⁵ Once they established control over the targeted areas, the perpetrators entered houses, looted, raped¹⁶ and killed those who resisted or opposed them.¹⁷

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¹⁶ Ibid at 0231 to 0233

14. Between 11 and 29 October 2002, just before their intervention in Bangui, MLC soldiers killed, raped and looted while attacking Mambasa in western Ituri, DRC, in an operation called "*effacer le tableau*" (this incident is herein commonly referred to as "Mambasa").

D. Summary of the evidence and other information establishing reasonable grounds to believe that Jean-Pierre BEMBA has committed crimes within the jurisdiction of the Court pursuant to Article 58(2)(d) of the Rome Statute

I. Legal framework and request for sealing and related measures

1. Requirements of Article 58(2)(d) of the Rome Statute

15. Consistent with the requirements of Article 58(2)(d) of the Rome Statute, the Prosecution in the present application furnishes a summary of the evidence and other information sufficient to establish reasonable grounds to believe that BEMBA has committed crimes within the jurisdiction of the Court.

16. For the purposes of this application, the Prosecution relies primarily on the following categories of evidence and information:

a. statements taken from victims of crimes committed by the MLC in the territory of the CAR;

b. statements taken from other witnesses;

c. [REDACTED]

[REDACTED]

[REDACTED];

¹⁷ AI, *Central African Republic: Five months of war against women*, November 2004, CAR-OTP-0004-0511 at 0514 to 0515. This document is attached as Annex 6

d. [REDACTED]
[REDACTED];

e. documents and reports provided by a variety of sources, including, but not limited to: (i) the CAR judicial authorities; and (ii) open sources.

The Prosecution, in consultation with VWU, is monitoring the security conditions of the witnesses in accordance with Article 68 (1) of the Rome Statute.

17. These materials are relied upon for the purposes of establishing both (i) reasonable grounds to believe that BEMBA has committed crimes within the jurisdiction of the Court pursuant to Article 58(1)(a) of the Rome Statute and (ii) the necessity of his arrest pursuant to Article 58(1)(b) of the Rome Statute.

2. Request for sealing and *Ex Parte* closed proceedings

18. The Prosecution requests that: (i) this application be received by the Pre-Trial Chamber III under seal; (ii) the existence of this application also be sealed and; (iii) any proceedings conducted in connection with this application be held *ex parte* in closed sessions. The Prosecution also requests that any determination by the Pre-Trial Chamber III to issue a warrant of arrest be sealed from the public until such time that the necessary arrangements are in place to allow for unsealing.

19. The Prosecution's request for sealing the arrest warrant is based on several reasons. In particular public awareness of this application, related proceedings and/or the Pre-Trial Chamber's determination prior to the arrangements securing BEMBA's arrest, could cause BEMBA to flee and to obstruct or endanger the investigation or the proceedings of the Court.

20. First, it can be reasonably anticipated that BEMBA will be informed about the application, related proceedings, and/or the Pre-Trial Chamber's decision through public sources. After being informed of the Pre-Trial Chamber's decision it is likely that BEMBA will attempt to hide or flee, thus impeding the effort to arrest him. BEMBA has both the necessary connections and means to evade service of the warrant of arrest by virtue of his financial and professional background as well as his status as a leader of the MLC.

21. Second, BEMBA's knowledge of the International Criminal Court (hereinafter referred to as "ICC") proceedings could cause him to obstruct or endanger the investigation by (i) intimidating, corrupting or influencing potential witnesses, or even (ii) arranging false testimonies. BEMBA's history of intimidation suggests that once he garners knowledge of the ICC proceedings, he may attempt to contact the Prosecution's witnesses seeking to influence or taint future testimony.

II. The armed conflict in the Central African Republic in 2002 and 2003

22. On 25 October 2002, Bozize, the former Army Chief of Staff of the FACA, led a rebel movement to conduct a *coup d'Etat* against Patasse's Government,¹⁸ which was repelled by the FACA. On or about the 26 October 2002, Patasse launched a counter-offensive against Bozize with 1,000 soldiers of the national armed forces FACA, around 500 troops of the USP – a specialized presidential body staffed primarily with loyalists from Patasse's home region –, and forces from outside the CAR. Among the foreign forces supporting Patasse were approximately 1,000 to

¹⁸ AI, *Central African Republic: Five months of war against women*, November 2004, CAR-OTP-0004-0511 at 0513

1,500 MLC troops, 500 troops of mercenaries led by Miskine and 100 Libyan troops. There were also other groups with some foreign affiliation.¹⁹

23. On or about 26 October 2002, MLC troops crossed the Ubangui river from Zongo, DRC, entered Bangui²⁰ and commenced fighting with Bozize's rebels.²¹ The greatest volume of crimes, at least in Bangui, occurred during a two to three week period after the beginning of the conflict.²² Nationwide, fighting continued throughout the five-month period in different locations, including, but not limited to Bangui, Bossembélé, Damara, Sibut, Bossangoa, Mongoumba,²³ Bozoum and in PK 12²⁴ and PK 22.²⁵

24. During the course of their presence, MLC combatants were deployed to strategic locations including Camp Béal, PK 12 and PK 13 to prevent the return of Bozize's men to Bangui after his forces were repelled at the end of October 2002.²⁶ When the MLC occupied strategic areas, they participated in "house to house operations".²⁷ During the course of their presence, they looted, raped and shot civilians.²⁸

¹⁹ Namely, a group called *Lutte contre le Terrorisme International (LCTI)* led by Paul Barril, a former French military officer, and the *Société Centrafricaine de Protection de Surveillance (SCPS)*

²⁰ Maps of Bangui and the CAR are attached as Annexes 7 and 8

²¹ [REDACTED]

²² United Nations Resident Coordinator (UNRC), *Humanitarian Update: Central African Republic, 07 March 2003*, CAR-OTP-0004-0645 at 0648. This document is attached as Annex 9

²³ [REDACTED]

²⁴ [REDACTED]

²⁵ [REDACTED]

²⁶ [REDACTED]

²⁷ UNRC, *Humanitarian Update: Central African Republic, 07 March 2003*, CAR-OTP-0004-0645 at 0645 to 0648

²⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. By 9 November 2002, forces of the MLC and USP had re-asserted control over the northern districts of Bangui.²⁹ The MLC took control of Bossembélé on 25 November 2002 and Damara around 7 December 2002.

26. On 21 January 2003, BEMBA and Patasse agreed in a phone call that MLC troops would commence withdrawal from the CAR by 15 February 2003.

27. On 14 February 2003, BEMBA told Radio France Internationale (hereinafter referred to as "RFI") that the MLC forces stationed in the CAR would begin to withdraw through Zongo port and Bangui airport. Since there were approximately 1,500 MLC soldiers, they were not expected to leave with equipment in one day. Hence, BEMBA announced that the gradual withdrawal of all the MLC contingents from the CAR would begin on 15 February 2003.

28. On 15 February 2003, the first contingent of MLC troops reportedly left Bangui on schedule. In the meantime Government forces and MLC troops continued their counter-offensive aimed at re-establishing control over most of the territory. By the end of February, Government forces and MLC troops had recaptured the towns of Bozum, Sibut and Bossangoa.³⁰

29. On 20 February 2003, BEMBA rejected Patasse's request to keep MLC troops in the CAR to prevent further rebel attacks on Bangui, saying that MLC troops had accomplished their mission of preventing Patasse's removal.

²⁹ AI, *Central African Republic: Five months of war against women*, November 2004, CAR-OTP-0004-0511 at 0513

³⁰ UNRC, *Humanitarian Update: Central African Republic*, 7 March 2003, CAR-OTP-0004-0645

30. In March 2003, Bozize's forces recaptured territory as MLC forces began their withdrawal between 10 and 15 March 2003.

31. In mid-March 2003, Bozize's forces entered Bangui. MLC troops continued raping, killing and looting civilian property as they retreated towards the DRC.³¹

32. On 15 March 2003, Bozize returned unopposed to Bangui and divested Patasse of his presidency.

III. Characterization of the armed conflict pursuant to Article 8 of the Rome Statute

33. The foregoing establishes that from 25 October 2002 to at least 15 March 2003 there was an armed conflict between the armed groups supporting Bozize and the armed groups supporting Patasse.

34. The existence of an armed conflict in the CAR from October 2002 to March 2003 has been acknowledged by the United Nations (hereinafter referred to as "UN"). In the Secretary General's report to the United Nations Security Council (hereinafter referred to as "UNSC"), the Secretary General stated that "human rights violations were committed during the armed conflict at the end of October 2002".

35. For the purpose of this application, the Prosecution respectfully submits that it is immaterial whether the conflict that involved Bozize's forces on one side and Patasse's forces, including the MLC, on the other side, is characterized as international or non-international. Each of the proposed Counts specifying war crimes arise from conduct which constitutes a war crime regardless of

³¹ AI, *Central African Republic: Five months of war against women*, CAR-OTP-0004-0511 at 0515

characterization. However, the Prosecution asserts that it has established in the instant application reasonable grounds to believe that an armed conflict of a non-international character existed in the CAR between the Bozize troops and the Patasse troops, including the MLC.

36. An armed conflict of a non-international character is defined as a protracted armed conflict between Governmental authorities and organized armed groups or between such groups within a State³². In order to distinguish an “armed conflict of a non-international character” from situations of internal disturbances and tensions³³ the intensity of the conflict and a certain degree of organization of the parties needs to be established³⁴.

37. The high number of troops involved in the CAR conflict and the impact on the civilian population over a period of five months reflects the intensity of the armed conflict. Patasse gathered troops from multiple countries – about 1,500 MLC troops headed by BEMBA, a mostly Chadian mercenary force of 500 troops led by Miskine known as *Bataillon de Sécurité Frontalière* or the Anti-Zaraguina Brigade, and at least 100 Libyan troops – to perform different tasks and co-ordinate their military operations on the field as one unified force. In addition, other groups were assisting.³⁵ Although the most intense fighting and the greatest volume of atrocities, at least in Bangui, occurred during the first two to three weeks,³⁶ the conflict continued for five months throughout the country. During this period, a large

³² See Article 8(2)(f) sentence 2 of the Rome Statute; *Tadic* Jurisdiction Appeal Decision, 2 October 1995, para 70; *Milosevic* Decision on Motion for Judgement of Acquittal, ICTY Case No IT-02-54-T, 16 June 2004, para 17

³³ Article 8(2)(f) sentence 1 of the Rome Statute

³⁴ See Article 8(2)(f) of the Rome Statute; *Tadic* Trial Judgement, para 562; *Limaj* Trial Judgement, para 85 and 89

³⁵ Namely, an armed group called *Lutte contre le Terrorisme International (LCTI)* led by Paul Barril, a former French military officer, and the *Société Centrafricaine de Protection de Surveillance (SCPS)*

³⁶ UNRC, *Humanitarian Update : Central African Republic, 07 March 2003*, CAR-OTP-0004-0645 at 0648

number of sexual abuses took place; civilians were deprived of their belongings, displaced or even killed.³⁷

38. Bozize, as a party to the conflict, was commanding approximately 600 troops including troops who defected from the FACA. Bozize's troops engaged in military combat for five months with Patasse's loyalist forces; during this time, they seized and maintained control over several towns. On 15 March 2003 Bozize's troops launched a final attack and overthrew Patasse's regime.

39. With respect to the MLC, Article 12 of the 1999 MLC Constitution³⁸ (hereinafter referred to as "MLC Constitution") demonstrates that the MLC was an organised movement over which BEMBA assumed both political leadership and superior military command.³⁹

40. Article 16 of the MLC constitution indicates the military structure and its chain of command with G1 up to G4 officers⁴⁰ and a Chief of Staff⁴¹ who reported to the Commander in Chief of the Army - BEMBA.⁴² Further, in practice the MLC was

³⁷ [REDACTED]

[REDACTED] UNRC, *Central African Republic Weekly Humanitarian Update*, 10 November 2002, CAR-OTP-0004-0651 at 0651 to 0652. This document is attached as Annex 9;

[REDACTED]

³⁸ The MLC constitution is attached as Annex 12

³⁹ See Article 12, 1999 MLC Constitution, CAR-OTP-0005-0198 at 0199; [REDACTED]

⁴⁰ Conventional armies are organized into different levels of command namely strategic, tactical and operational. Within this structure, key military activities such as logistics and operations are assigned to principal staff members for coordination. Staff stationed at the army headquarters who are responsible for coordinating and planning are classified as "G" staff with respect to their scope of responsibility. The four key conventional classifications for headquarters staff are: G1 (in Charge of Personnel); G2 (in Charge of Intelligence); G3 (in Charge of Operations); and G4 (in Charge of Logistics). Headquarter Staff are subordinate to the Army Chief of Staff

⁴¹ [REDACTED]

⁴² [REDACTED]

composed of brigades, battalions, companies, sections and platoons⁴³ and the troops received different training including, but not limited to arms drills, recruitment and deployment.⁴⁴ The MLC was hierarchically organized almost as a conventional army⁴⁵ with the ability to plan and execute military operations.⁴⁶

41. In January 2003, BEMBA established a military tribunal which he presented as intended to investigate and prosecute crimes allegedly committed by members of the MLC on the territory of the DRC during late 2002.⁴⁷ This is supported by BEMBA's public declarations of his intention to inquire into the allegations of abuses by MLC troops. "Trials" before MLC's military tribunals were ultimately held in Gbadolite, DRC, in February 2003. The creation of a military tribunal identifies BEMBA's capability to sanction members of the MLC for human rights violations. The Prosecution submits that the functioning of the military tribunal shows that it was part of a cover up.

42. In addition to proving that an armed conflict existed, the Prosecution must establish the temporal and geographical scope of the armed conflict⁴⁸. The MLC dominated a sufficient part of the CAR territory and conducted operations in a continuous and planned manner during the five-month period. MLC troops established bases at various points along their way in late 2002 and early 2003.⁴⁹

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46 Ibid at 0359

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48 *Prosecutor v. Tadic*, Decision on the Defence Motion for the Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995, para. 70

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; AI, *Central African Republic: Five Months of War against Women*, November 2004, CAR-OTP-0004-0511 at 0513 and 0516 to 0517

43. Further the Prosecution must prove that there is a nexus or association between the conduct and the armed conflict. The armed conflict has to play a substantial part in the perpetrator's ability and decision to commit a crime, the manner in which it was committed or the purpose for which it was committed⁵⁰.

44. The MLC troops were mobilized to CAR for the purpose of defending Patasse and his power against Bozize's rebels. During the MLC's presence in the CAR crimes arose in particular areas where fighting took place.⁵¹ The incidents of crime were not only geographically extensive, their occurrence followed the movement of the MLC and the loyalist forces as the fighting progressed to the northern part of the country as rapes were reported to have been committed by MLC troops in Damara on 18 November 2002, in Mabo on 12 January 2003 and in Bossembélé in early February 2003.⁵² After the MLC and the CAR Government forces recaptured Bozoum, Sibut and Bossangoa in February 2003, crimes surfaced immediately. Furthermore, MLC troops committed rapes and other crimes when retreating towards the DRC in March 2003.⁵³ Once the MLC troops acquired control over the targeted areas, large scale crimes against civilians were committed, at least partly to humiliate and punish sympathizers and supporters of Bozize.⁵⁴ Consequently, the crimes occurred only as a direct result of the conflict.⁵⁵ In other words, absent the conflict the MLC would not have been in the CAR and the crimes would not have been committed. Clearly, under these circumstances there is a direct correlation between the crimes and the conflict.

⁵⁰ *Prosecutor v. Kunarac et al*, Judgement, IT-96-23 & IT-96-23/1-A, App.Ch., 12 June 2002, para. 58; *Prosecutor v. Rutaganda*, Judgement, Case No. ICTR-96-3-A, App.Ch., 26 May 2003, paras. 569- 70

⁵¹ [REDACTED]; AI, *Central African Republic: Five Months of War against Women*, November 2004, CAR-OTP-0004-0511 at 0513 and 0516 to 0517

⁵² AI, *Central African Republic: Five Months of War against Women*, November 2004, CAR-OTP-0004-0511 at 0513 and 0516 to 0517

⁵³ [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

45. Finally, there are reasonable basis to believe that BEMBA, as the leader of the MLC, an armed group, was well aware of the existence of an armed conflict. During the period in question, BEMBA exercised his command and control over the military wing either through the chain of command or bypassing the echelon and giving orders and instructions directly to the commanders on the field. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵⁷ BEMBA also visited his troops, on at least one occasion, at PK 12.⁵⁸ Further, BEMBA also publicly acknowledged his participation as the Commander in Chief of the MLC troops in the CAR conflict.

46. Therefore, the Prosecution has provided reasonable grounds to support the finding that the crimes committed by the MLC forces took place in the context of and were associated with a non-international armed conflict, as required by Article 8 of the Rome Statute.

IV. Widespread and systematic attack pursuant to Article 7 of the Rome Statute

47. The crimes alleged in this application arise specifically from the MLC's CAR intervention for the period of 26 October 2002 to 15 March 2003. The Prosecution asserts that these crimes occurred in the context of a widespread or

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ [REDACTED]

systematic attack against a civilian population within the meaning of Article 7(1) of the Rome Statute. The Prosecution must therefore prove that there was a course of conduct involving multiple commissions of acts referred to in Article 7(1) of the Rome Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack⁵⁹.

48. The MLC targeted the civilian population. This conclusion is supported by the United Nations Resident Coordinator (hereinafter referred to as "UNRC"). The UNRC in Bangui noted in March 2003 that "each recapture of a given city has been followed by a period ... estimated at around two weeks during which the liberating forces [i.e. MLC troops] were free to roam the recaptured cities and loot and harass the local population with impunity".⁶⁰ The UNRC stated that the looting by the MLC forces in Bangui, Bossembélé, Damara, Sibut and Bozoum, all followed this pattern.⁶¹ The UNRC identified "lorry loads of MLC fighters...transiting through Bangui to the border town of Zongo in the DRC, taking with them several tons of assorted items that appear to have been looted from the recaptured cities".⁶² On most occasions, rape and other crimes targeted the local civilian population immediately after clashes between MLC troops and Bozize's rebels.⁶³ As one example, the civilian population of PK 12 was victimized following military combat.⁶⁴

49. In addition to the requirement that a civilian population must be attacked, Article 7(1) of the Rome Statute requires that the attack be widespread or systematic.⁶⁵ The widespread nature of the attacks carried out by the MLC in the

⁵⁹ Article 7(2)(a) of the Rome Statute

⁶⁰ UNRC, *Humanitarian Update: Central African Republic*, 07 March 2003, CAR-OTP-0004-0645 at 0648

⁶¹ Ibid at 0649

⁶² Ibid at 0645 and 0648

⁶³ [REDACTED]

⁶⁴ Ibid at 0232 and 0235; [REDACTED]

⁶⁵ The Pre-Trial Chamber I in *Harun and Kushayb* stated that "widespread" refers to the "large scale nature of the attack and the number of targeted persons...". See *The Prosecutor v. Harun and Kushayb*, "Decision on the Prosecution Application under Article 58(7) of the Statute", ICC-02/05-01/07-01-Corr (public), 27 April 2007,

CAR has been well documented by the UNRC and NGOs. On 17 December 2002, the UNRC reported that "the MLC troops of rebel leader, Jean-Pierre BEMBA, have systematically targeted and continue to target the civilian population wherever they have been, namely Bangui, Bossembélé, and now Damara. They are now poised to lead the Government offensive on Sibut and other Eastern and Northern towns, and if their reputation so far is anything to go by, then the same systematic violations of human rights can be expected".⁶⁶ An Amnesty International (hereinafter referred to as "AI") report further states, that "the FACA and the MLC reportedly committed rapes and other forms of sexual violence as they advanced and, as they allegedly robbed the local population and others fleeing the fighting".⁶⁷

50. These crimes occurred partly as a deliberate tactic to punish and humiliate civilians that were perceived to be sympathetic to Bozize's rebel troops. For instance, AI reported that the rapes and lootings occurred as the MLC sought to punish rebel sympathizers.⁶⁸ Women were raped on the pretence 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.⁶⁹ Some relatives who attempted to prevent the attacks are reported to have been killed while others were threatened.⁷⁰ Many of the women and girls who were raped feared being shot by combatants.⁷¹

paragraph 62 (quoting *The Prosecutor v. Kordic & Cerkez*, Case NO. It-95-14/2-A, Appeal Judgment, 17 December 2004, paragraph 94)

⁶⁶ UNRC, *Central African Republic Weekly Humanitarian Update*, 17 December 2002, CAR-OTP-0004-0654 at 656. This document is attached as Annex 9

⁶⁷ AI, *The Central African Republic, Five months of War against Women*, 10 November 2004, CAR-OTP-0004-0511 at 0513

⁶⁸ *Ibid* at 0514

⁶⁹ [REDACTED]

⁷⁰ [REDACTED]

[REDACTED]; AI, *The Central African Republic, Five months of War against Women*, 10 November 2004, CAR-OTP-0004-0511 at 0516; [REDACTED]

⁷¹ [REDACTED]

51. [REDACTED]

[REDACTED], recalled that the reported estimate of the number of victims came to almost one thousand. [REDACTED] stated that a majority of the victims were raped, and that no one had been spared, including people in positions of authority. [REDACTED]

[REDACTED] there were at least two hundred and fifty cases of looting were reported to the Ministry of Social Affairs. These reports referred to victims from PK 12, *kilomètre* (hereinafter referred to as "KM")⁷² 5 and other neighbourhoods in Bangui.⁷³ These neighbourhoods were most affected because that is where the MLC were based.⁷⁴ The looted items were either sold on the spot or conveyed by pirogue to the DRC.⁷⁵ [REDACTED] complaints from female rape victims. Some of the women were pregnant subsequently to rapes, others were gang-raped. Rapes occurred in houses, farms, markets, or open places.

52. [REDACTED]

[REDACTED] was present during the MLC's presence at PK 12 at the end of 2002.⁷⁶ [REDACTED] was made aware of the widespread lootings and rapes by the local population.⁷⁷ [REDACTED] added that the abuses started from the second day BEMBA's soldiers arrived in the area.⁷⁸ The MLC troops started breaking into civilian homes and looting personal belongings.⁷⁹ The whole neighbourhood was panic-stricken and the looted goods

⁷² KM refers to a *quartier* of Bangui

⁷³ [REDACTED]

⁷⁴ Ibid at 0249, 0254-0256, 0259 and 0302

⁷⁵ [REDACTED]

⁷⁶ [REDACTED]

⁷⁷ Ibid at 0232

⁷⁸ Ibid at 0232

⁷⁹ Ibid at 0232

were taken by the soldiers to the MLC bases.⁸⁰ [REDACTED] also witnessed the attempted rape of his wife by MLC troops,⁸¹ and was notified of the rapes of two children under the age of twelve by MLC forces.⁸²

53. The MLC's attacks were also executed in a systematic manner. In *The Prosecutor v. Harun and Kushayb*⁸³, Pre-Trial Chamber I ruled that "systematic" refers to "the organised nature of the acts of violence and the improbability of their random occurrence". In this case as the MLC advanced, they victimized the local population, as explained above in paragraph 50, by raping, looting, and sometimes killing civilians. As described by victims, these acts were committed, in large part, in an organized fashion and as a deliberate tactic to punish and humiliate the civilian population for allegedly sympathising with the rebels.⁸⁴ This position was echoed by the CAR leadership. In February 2003, State Minister Gabriel Edouard Koyambonou, CAR Government spokesperson, declared to RFI that "*Ceux qui sont restés dans les zones occupées ce sont des complices des rebelles*". Men were also raped to demonstrate their powerlessness to protect their families.⁸⁵

54. [REDACTED] is an example of the MLC's sexual assaults on men committed with the deliberate intention to punish those perceived to be rebel sympathizers.⁸⁶ [REDACTED]
[REDACTED]
[REDACTED]

⁸⁰ [REDACTED]

⁸¹ Ibid at 0298 to 0299

⁸² Ibid at 0235

⁸³ *The Prosecutor v. Harun and Kushayb*, Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr (public), 27 April 2007, paragraph 62, (quoting *The Prosecutor v. Kordic & Cerkez*, Case No. IT-95-14/2-A, Appeal Judgment, 17 December 2004, paragraph 94)

⁸⁴ AI, *The Central African Republic, Five months of War against Women*, 10 November 2004, CAR-OTP-0004-0511 at 0514

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

⁸⁷ [REDACTED]

██████████⁸⁸ ██████████ and the MLC members told him that he was “exactly the kind of person we are looking for, because you protect the rebels”.⁸⁹ The MLC members directed him outside and told him to get down on the ground in front of his wives and his children.⁹⁰ He got down on the ground “like a horse” and was sodomized by three men, one after the other, for four hours.⁹¹ After the MLC members finished sodomizing him, the same MLC members raped his wife and his four daughters, the youngest of which was eleven, as he watched.⁹² After one of his wives and all four of his daughters were raped, the MLC looted his household items, work equipment, and vehicles.⁹³

55. ██████████ is an illustration of a rape being committed by the MLC troops as an alternative to being killed for allegedly supporting the rebels.⁹⁴ ██████████ specifically recalls how the MLC perpetrators stated that they were instructed by Patasse to kill males.⁹⁵ The MLC perpetrators stated that they were not going to kill her⁹⁶ but would be doing her a “favour” instead.⁹⁷ After being raped at gunpoint by three MLC perpetrators,⁹⁸ her house was looted with virtually everything of value being taken.⁹⁹

56. The rape of ██████████ is symbolic of the systematic nature in which the acts of rape and looting were

⁸⁸ Ibid at 0069 to 0071

⁸⁹ Ibid at 0069 and 0070

⁹⁰ Ibid at 0070

⁹¹ Ibid at 0073

⁹² Ibid at 0070;

⁹³ Ibid at 0095;

⁹⁴ ██████████

⁹⁵ ██████████

██████████

⁹⁶ ██████████

██████████

██████████

⁹⁷ Ibid at 0505

⁹⁸ Ibid at 0507, 0514, 0515, 0522, 0525 and 0526;

⁹⁹ ██████████

committed by BEMBA's MLC troops. On or around 1 March 2003,¹⁰⁰ members of the MLC troops arrived in the southern border town of Mongoumba, 189 km south of Bangui, as they retreated from Bangui to the DRC.¹⁰¹ The MLC forces were intercepted by members of the CAR army who prevented them from carrying looted items across the Ubangui River into the DRC.¹⁰² Approximately four or five days later, the MLC troops returned reinforced in greater numbers and retaliated against the civilian population.¹⁰³ As inhabitants fled in fear, the MLC advanced across the river, proceeded from house to house,¹⁰⁴ and systematically looted the town.¹⁰⁵ [REDACTED], who was in the course of flight, was stopped by three members of the MLC who forced her to return to her home.¹⁰⁶ She recalled how, failing to discover items of value in her home, these three members of the MLC raped her in turn.¹⁰⁷ [REDACTED] now lives with the HIV virus contracted after the gang rape.¹⁰⁸

57. The sodomy of [REDACTED] and the rape of [REDACTED], which were both followed by looting, illustrate how the MLC retaliated against the civilian population for allegedly sympathizing with the rebels. The correlation between lootings and rapes in a systematic manner by MLC forces is highlighted by the rape of [REDACTED].

58. In addition to the crimes of rape and looting, MLC forces committed indiscriminate and unlawful killings of civilians. FIDH recorded reports of civilian killings committed by the MLC troops following the October 2002 attempted coup in Bangui. These killings continued as MLC and CAR Government forces advanced northwards. Various reports reveal that the majority of reported killings took place

¹⁰⁰ [REDACTED]

¹⁰¹ Ibid at 0037 and 0038; UNRC, *Humanitarian Update: Central African Republic, 07 March 2003*, CAR-OTP-0004-0645 at 0646

¹⁰² [REDACTED];

UNRC, *Humanitarian Update: Central African Republic, 07 March 2003*, CAR-OTP-0004-0645 at 0646

¹⁰³ Ibid at 0646; [REDACTED]

¹⁰⁴ Ibid at 0031 and 0033

¹⁰⁵ Ibid at 0031 and 0033

¹⁰⁶ Ibid at 0031

¹⁰⁷ Ibid at 0031, 0032 and 0067 to 0077

¹⁰⁸ Ibid at 0086

in the context of the systematic rape and looting of the civilian population. Regarding incidents of rape, AI reported that “women who attempted to resist were sometimes reportedly beaten severely, stabbed or even killed”¹⁰⁹. [REDACTED] also confirmed the correlation between attempted rapes and killings. Additionally, some relatives who attempted to prevent rapes and lootings are recorded to have been killed while others were threatened.¹¹⁰

59. A similar fate awaited those who tried to prevent the MLC forces from looting. Illustrative of this is the killing of [REDACTED] nephew, [REDACTED] as he attempted to stop the MLC troops from looting his family’s livestock in Bossangoa.¹¹¹ [REDACTED] received reports of killings which were associated with the commission of looting and other crimes by MLC forces. [REDACTED] confirmed that when the MLC established control over a territory, they used that occasion to loot, rape and kill others who opposed them.

60. The reported incidents of murder and unlawful killing attributed to the MLC also included the specific targeting of male members of the civilian population. Both [REDACTED] and [REDACTED] reported statements by the MLC troops to the effect that they received orders from Patasse to kill all males.¹¹² The actual occurrence of such targeted killings has also been reported by the *Fédération Internationale des droits de l’Homme* (hereinafter referred to as “FIDH”).

61. Last, it is the Prosecution’s burden to establish a reasonable basis for concluding that BEMBA was aware that their conduct in the CAR was part of a

¹⁰⁹ AI, *Central African Republic: Five months of war against women*, November 2004, CAR-OT-0004-0511 at 0514, 0515.

¹¹⁰ AI, *Central African Republic: Five months of war against women*, November 2004, CAR-OT-0004-0511 at 0514

¹¹¹ [REDACTED]

¹¹² [REDACTED]

widespread or systematic attack upon a civilian population. The Prosecution respectfully submits that the burden has been met. Clearly, BEMBA was aware that the MLC was participating in the conflict against Bozize's troops as their participation in the conflict was the primary reason that they were present in the CAR.¹¹³ BEMBA knew that the conflict was sustained from October 2002 to March 2003.¹¹⁴ Further, BEMBA was identified as being physically present in the CAR, intermittently, during November and December 2002.¹¹⁵ During those time periods, he was made aware of the rapes, lootings and killings, committed by the MLC while in the CAR.¹¹⁶ Further, BEMBA's knowledge of the crimes is supported by his behaviour after the crimes occurred. [REDACTED]

[REDACTED], identifies BEMBA as collecting automobiles that were the direct proceeds of the looting.¹¹⁷ [REDACTED] that BEMBA kept those automobiles and then directed their distribution to certain MLC members.¹¹⁸ Clearly, BEMBA's behaviour is consistent with and supports the Prosecution's assertion that BEMBA was aware of the MLC's criminal activities.

62. For the reasons stated above, the Prosecution concludes that it has presented reasonable grounds to support the finding that the MLC committed the crimes of rape and looting in the CAR as part of a widespread and systematic attack directed against a civilian population, as required pursuant to Article 7 of the Rome Statute. Moreover, the factual and contextual elements described above reveal that the attacks against civilians consisted of a course of conduct involving multiple commissions of acts referred to in Article 7(1) of the Statute pursuant to or in

¹¹³ [REDACTED]

¹¹⁴ [REDACTED]

¹¹⁵ [REDACTED]

¹¹⁶ [REDACTED]

¹¹⁷ [REDACTED]

¹¹⁸ Ibid at 0056

furtherance of an organizational policy of the MLC to actively promote or encourage the commission of such attacks.

V. Mode of liability pursuant to Article 25(3)(a) of the Rome Statute

1. The elements of co-perpetration

63. BEMBA is charged with individual criminal responsibility for ten counts constituting crimes against humanity and war crimes. All counts allege that BEMBA committed these crimes jointly with another pursuant to Article 25(3)(a) of the Rome Statute. Article 25(3)(a) of the Rome Statute states:

“3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible.”

64. The Pre-Trial Chamber in *Lubanga* stated: “The concept of co-perpetration based on joint control over the crime is rooted in the division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, although none of the participants have overall control over the offence because they all depend on one another for its commission, they all share control because each of them could frustrate the commission of the crime by not carrying out his or her task”¹¹⁹.

¹¹⁹ *The Prosecutor v. Lubanga*, “Decision on the confirmation of charges”, ICC-01/04-01/06-803-tEN (Public Redacted Version), 29 January 2007, paragraph 342, citing *The Prosecutor v. Milomir Stakic*, Case No. IT-97-24-T, Trial Judgment, 31 July 2003, paragraph 440

65. For the purpose of this application, the Prosecution relies on the elements of co-perpetration as articulated by the Pre-Trial Chamber in *Lubanga* which are as follows:

a. Objective elements

- (i) Existence of an agreement or common plan between two or more persons and;
- (ii) Coordinated essential contribution by each co-perpetrator resulting in the realization of the objective elements of the crime¹²⁰.

b. Subjective elements

- (i) The suspect must fulfill the subjective elements of the crime charged;
- (ii) The suspect and the other co-perpetrators must all be mutually aware and mutually accept that implementing their common plan may result in the realization of the objective elements of the crime and;
- (iii) The suspect must be aware of the factual circumstances enabling him or her to exercise joint control over the crime¹²¹.

66. The remainder of this section of the application for warrant of arrest applies the elements of co-perpetration to the facts of the instant case, and demonstrates how BEMBA was a co-perpetrator pursuant to Article 25(3)(a) of the Rome Statute.

2. BEMBA's common plan or agreement with Patasse

¹²⁰ Ibid paras. 343-347

¹²¹ Ibid paras. 349-367

Government.¹²⁵ [REDACTED]

[REDACTED] elaborated that “BEMBA could not lose this rear base without compromising the chances of surviving in the Congo”. [REDACTED] confirmed that BEMBA needed an ally like Patasse to support him and that for Patasse the presence of MLC troops in the CAR was essential.¹²⁶ [REDACTED] explained that BEMBA received goods – cars, fuel, money and manufactured goods – from Patasse, and in turn, secured their mutual borders as well as provided Patasse with MLC forces.¹²⁷ This mutual understanding for BEMBA to provide MLC troops to Patasse transpired once before after Patasse’s first request to BEMBA in 2001 to help him rebuff an attempted coup attributed to Kolingba. [REDACTED] confirmed that the relationship between BEMBA and Patasse started a long time ago, when Patasse went to congratulate BEMBA following the MLC’s take-over of Gbadolite, DRC.

71. This common plan shared by BEMBA and Patasse is evidenced by the mandate that the MLC troops were given, to ensure that Patasse would remain in power. At the inception of the conflict BEMBA explained to [REDACTED] that Patasse was in trouble and that it was necessary to rescue him.¹²⁸ BEMBA also explained to [REDACTED] the strategic rationale behind his decision to intervene stating “The Government of Kinshasa wants to help the enemies of Patasse. As we are fighting the Government of Kinshasa, if they get to Bangui, we would have problems”.¹²⁹ As a result, the troops were not provided with any other mandates but instead, in [REDACTED]’s words, given “carte blanche”.¹³⁰ [REDACTED] articulated that “carte blanche” meant that the MLC troops had no clear mandate other than to save the President.¹³¹

¹²⁵ [REDACTED]

¹²⁶ [REDACTED]

¹²⁷ Ibid at 0071 and 0072

¹²⁸ [REDACTED]

¹²⁹ [REDACTED]

¹³⁰ [REDACTED]

¹³¹ Ibid at 0551

72. The common plan is also evidenced by Patasse's public statements. In a speech to the CAR population on 25 November 2002, then President Patasse responded to public complaints about the behavior of MLC combatants saying: "I immediately called on my son BEMBA to send his men to help our soldiers. That is why they came. I know that things have happened. I said, "Good-a commission will be set up to assess all that". Patasse also alluded to his relationship with BEMBA in an interview with RFI on 12 November 2002, in which he stated that at PK 12, BEMBA's men were in harmony with the population and that he and BEMBA have mutual admiration for each other adding that *"il m'appelle père, je l'appelle mon fils"*.¹³²

73. This agreement between BEMBA and Patasse is evidenced by the actions of the MLC and USP troops on the field. [REDACTED] stated that MLC troops which arrived in the CAR were deployed in coordination with the USP, which were first in line when the MLC did not know the battlefield. The coordination was done by Patasse, who gave orders. [REDACTED]

[REDACTED]

[REDACTED].¹³³

74. BEMBA and Patasse were aware and accepted that crimes against the civilian population would be a normal outcome of the common plan and its implementation. The implementation of the plan between BEMBA and Patasse included killings, rapes and looting committed against the civilian population. When BEMBA and Patasse agreed that the MLC would assist Patasse, it was foreseeable that rapes and lootings would occur based upon the MLC's strategies, most notably in CAR in 2001 and Mambasa. This is supported by the statements of victims who reported what the Banyamulengue attackers told them. Both [REDACTED] and [REDACTED] reported that their attackers told them that Patasse had given the troops

¹³² [REDACTED]

¹³³ [REDACTED]

orders to kill. MLC soldiers told ██████ that they received an order from Patasse to kill any boy over the age of ten. ██████ stated that the population's perceived sympathy towards the rebels was the reason why the MLC received the order to go from house to house. The inclusion of the crimes in the plan and the high likelihood of the crimes strengthened as the conflict continued. This is supported by the wide reporting of the MLC's crimes in the media. The fact that the plan and its implementation included crimes and the possibility to foresee them are undeniable when the crimes were reported to BEMBA in November 2002.

75. In determining the existence of an agreement or a common plan between two or more persons, the Pre-Trial Chamber I in *Lubanga* first considered whether a suspect had *de jure* authority to enter into the common plan. The evidence clearly reflects that BEMBA had *de jure* authority from the inception of the MLC, as BEMBA himself was the mastermind of the MLC. Since the MLC's creation, BEMBA has been the only President of the MLC.¹³⁴ According to Article 30 of the MLC Constitution, all members of the MLC have chosen BEMBA as the President of the MLC, and also as the Commander in Chief ("*Commandant en Chef*") of the ALC, the military wing of the MLC.¹³⁵ Of significance is the fact that the Constitution does not provide for his removal or the election of a new Commander in Chief.

76. Article 12 of the MLC Constitution provides the main description of the scope of the President's functions and powers.¹³⁶ During the period in question, as the head of the political wing of the movement, BEMBA was ultimately responsible for determining the general policy of the MLC. Article 12 specifically defines the scope of his duties as including: (i) signing and ratifying agreements with external partners; (ii) presiding over meetings of the General Secretariat and; (iii) defining the

¹³⁴ Article 30, 1999 MLC Constitution, CAR-OTP-0005-0198 at 0202

¹³⁵ Ibid at 0202

¹³⁶ Article 12, 1999 MLC Constitution, CAR-OTP-0005-0198 at 0199

political agenda of the Movement.¹³⁷ Concurrently, in his position of Commander in Chief of the ALC, BEMBA was also responsible for ensuring the security of the liberated territories. In his position as Commander in Chief of the ALC, BEMBA's military tasks include: (i) presiding over security meetings; (ii) approving and signing defense agreements with external partners; (iii) convening and presiding over meetings of the staff body of the ALC; and (iv) defining the general policy and objectives of military operations.¹³⁸

77. In addition to the MLC Constitution, BEMBA acknowledged that he is the Commander in Chief of the MLC. In mid-October 2002, just prior to the CAR mission, BEMBA was quoted during a radio broadcast, as admitting that: (i) his troops were disciplined; (ii) the troops identified themselves to him as "the Chief" and; (iii) as Commander in Chief, he received reports and was directly involved in the decisions made by his "*Etat-Major*".

78. BEMBA's *de jure* authority is evidenced by his execution of the announcement regarding the withdrawal of MLC troops in Bangui. [REDACTED] stated that on 14 or 15 January 2003, BEMBA signed an announcement that the MLC troops would leave Bangui on 15 or 16 March 2003.¹³⁹ After discussion, Patasse and BEMBA agreed to the withdrawal of the MLC forces from the CAR as of 15 February 2003. Clearly, BEMBA had *de jure* authority pursuant to the MLC Constitution, by his own admission [REDACTED].

79. Applying the rationale articulated by the Pre-Trial Chamber I in *Lubanga*, the next inquiry is whether BEMBA exhibited *de facto* control over the MLC. As described herein, BEMBA alone retained the sole power to (i) appoint/remove MLC members, (ii) power to discipline/punish subordinates, (iii) hold himself out as the

¹³⁷ Ibid at 0199

¹³⁸ Ibid at 0199

¹³⁹ [REDACTED]

Commander in Chief of the MLC to international actors and other political groups, and (iv) control the logistics, financing and military operations of the MLC.

80. BEMBA retained sole control to appoint MLC members since the MLC's inception,¹⁴⁰ not only pursuant to the MLC Constitution, but through his actions.¹⁴¹

[REDACTED] BEMBA as the person [REDACTED]
[REDACTED]
[REDACTED] by virtue of a Presidential Decree signed by BEMBA in [REDACTED]. Further, BEMBA appointed nine members of the "Conseil Politico-Militaire" according to a Presidential Decree signed by him on 11 November 2002. [REDACTED]¹⁴³ and [REDACTED]¹⁴⁴ explained that BEMBA had the sole authority to make appointments in the military wing of the MLC.

81. The MLC's history also reflects BEMBA as a leader who consistently held the power to remove MLC members. [REDACTED]
[REDACTED] were removed from the MLC by BEMBA during a cabinet shuffle. [REDACTED] explained that BEMBA [REDACTED]
[REDACTED] [REDACTED] was expelled from the MLC by BEMBA "who wanted his [my] head" as part of BEMBA's political strategy.¹⁴⁵

82. As Commander in Chief of the MLC, BEMBA controlled the power to discipline and punish MLC members. According to [REDACTED]¹⁴⁶ and [REDACTED],¹⁴⁷ BEMBA did not tolerate internal dissent and punished MLC members who opposed his military decisions. The punishment BEMBA imposed included instant

¹⁴⁰ Article 12, 1999 MLC Constitution, CAR-OTP-0005-0198 at 0199

¹⁴¹ [REDACTED]

¹⁴² [REDACTED]

¹⁴³ [REDACTED]

¹⁴⁴ [REDACTED]

¹⁴⁵ [REDACTED]

¹⁴⁶ Ibid at 0549

¹⁴⁷ [REDACTED]

punishment in solitary confinement.¹⁴⁸ [REDACTED] that for "*les cadres et les agents du MLC, il [BEMBA] t'envoie en prison et il te sort quand il veut*".¹⁴⁹ An example of BEMBA exercising his ability to punish is the immediate imprisonment of [REDACTED] following a disagreement that he had with BEMBA over [REDACTED].¹⁵⁰ [REDACTED] further stated that BEMBA exerted his control to discipline and punish by directly interfering with military and civilian proceedings by contacting judges to instruct them on the guilt or innocence of the accused.¹⁵¹

83. BEMBA's power to discipline and punish was not limited to controlling who would be punished, but also controlling what abuses warranted punishment. An example of BEMBA's control is exhibited in his decisions related to the "Gbadolite trials" after the Mambasa attacks. In this location similar crimes of rape and looting against the civilian population were allegedly committed by the MLC troops. With respect to the Mambasa incident, the media reported that BEMBA only took action against one commander for a military infraction, that being insubordination, despite the fact that rapes and lootings were reported to him.

84. BEMBA's power to control which abuses would be punished is also supported by his own public admissions. On 27 December 2002, the Agence France Presse (hereinafter referred to as "AFP") publicly reported interviewing BEMBA. During that interview, BEMBA stated that eight MLC men had been "*arrêtés à Bangui et jugés pour vols. Ils sont passibles de 12 mois de prison. Cette sanction intervient à la suite d'une enquête sur des pillages à Bangui*".

¹⁴⁸ [REDACTED]

¹⁴⁹ [REDACTED]

¹⁵⁰ [REDACTED]

¹⁵¹ [REDACTED]

85. BEMBA has also consistently held himself out as the MLC President to Heads of State since the inception of the MLC. The first example of BEMBA's representation occurred when BEMBA created the MLC. During the creation of the MLC, President Museveni's close advisors in Uganda provided him with logistical support to launch his political and military venture.¹⁵² After the creation of MLC, BEMBA met with President Museveni, President Qaddafi and other Heads of State, in the absence of other MLC officials.¹⁵³ During the period in question, BEMBA was – in his role as the Commander of the MLC – in Bangui meeting with foreign representatives. At the end of December 2002, [REDACTED]

[REDACTED]
[REDACTED].

86. In addition, BEMBA identified himself as a player in the international arena. [REDACTED] expressed that the first MLC intervention in Bangui in 2001, made BEMBA feel recognized in the international arena. BEMBA admitted to [REDACTED] that "I'm someone who matters in a setting which isn't only the Congo any more".¹⁵⁴ Therefore, throughout the existence of MLC, BEMBA has represented that he is the Commander in Chief of the MLC, nationally and internationally.

87. In addition to BEMBA's *de jure* authority, in practice, BEMBA ran the MLC like his own business. [REDACTED] both stated that BEMBA had complete control over military matters.¹⁵⁵ According to [REDACTED], BEMBA (i) appointed brigade and battalion commanders¹⁵⁶; (ii) decided on the military operations and who to deploy¹⁵⁷; and (iii) gave the commanders orders to open fire and attack.¹⁵⁸ The ALC *Etat Major* merely coordinated military activities following BEMBA's decisions.

¹⁵² [REDACTED]

¹⁵³ Ibid at 0514

¹⁵⁴ [REDACTED]

¹⁵⁵ Ibid at 0554; [REDACTED]

¹⁵⁶ [REDACTED]

¹⁵⁷ Ibid at 0369

88. BEMBA did not consult the *Etat Major* regarding combat decisions; he merely informed his Chief of Staff afterwards, when he deemed it was necessary to inform the *Etat Major*.¹⁵⁹ [REDACTED] confirmed that the Political-Military Council of the MLC existed merely as a consultative body and though they sometimes met, they already knew what BEMBA had decided.¹⁶⁰ This organ was created to give the impression that decisions within the MLC were made through a collective process.¹⁶¹

89. [REDACTED] and [REDACTED] explained that BEMBA made assessments on all decisions related to logistics.¹⁶² [REDACTED] added that BEMBA had a long range radio in his home with which he could have conversations with field commanders who were even 500 km away.¹⁶³ [REDACTED] articulated that BEMBA, arriving in Gbadolite, bought satellite phones and provided them to MLC commanders.¹⁶⁴ In that way, BEMBA had the ability to use his own radio in his own living room to communicate directly with his commanders and troops.¹⁶⁵ [REDACTED] stated that the radio operators who broadcasted BEMBA's orders noted BEMBA's instructions to his men in communication logbooks.¹⁶⁶ These logbooks were kept at BEMBA's home.¹⁶⁷

90. [REDACTED] stated that BEMBA controlled all the finances of the MLC and everything depended upon him. These funds were managed by BEMBA and were derived from certain quarries or certain trading posts of precious substances.¹⁶⁸ While MLC territories generated income through taxes, these resources were insufficient to

¹⁵⁸ Ibid at 0369

¹⁵⁹ Ibid at 0370

¹⁶⁰ Ibid at 0387

¹⁶¹ [REDACTED]

¹⁶² [REDACTED]

¹⁶³ [REDACTED]

¹⁶⁴ [REDACTED]

¹⁶⁵ [REDACTED]

¹⁶⁶ Ibid at 0513

¹⁶⁷ Ibid at 0513

¹⁶⁸ [REDACTED]

support military operations and the majority of funds were provided by BEMBA.¹⁶⁹ BEMBA was also responsible for the funds for military logistics.¹⁷⁰

91. BEMBA kept the MLC accounts virtually by himself on a day to day basis, and ordered large amounts of ammunition when needed.¹⁷¹ BEMBA was the only person who authorized the allocation of funds.¹⁷² Thus, for the military needs, [REDACTED] to BEMBA who in turn would make the decision on which item to purchase and authorize the allocation of funds.¹⁷³ However, despite BEMBA's interest in funding, MLC troops were not paid; they were fed and provided with medical treatment but were sensitized to fight as volunteers.¹⁷⁴

92. According to [REDACTED], BEMBA was in direct control of MLC's military operations.¹⁷⁵ BEMBA's absolute control is evidenced by BEMBA bypassing military rank when he wanted to speak to officers on the field.¹⁷⁶ [REDACTED] described how BEMBA could [REDACTED] or directly contact field commanders.¹⁷⁷ This was confirmed by [REDACTED] who indicated that the MLC was structured but did not operate like a conventional army.¹⁷⁸ BEMBA as Commander in Chief was in direct communication with field commanders,¹⁷⁹ and only informed the *Etat Major* after a decision had been taken.¹⁸⁰

¹⁶⁹ [REDACTED]
¹⁷⁰ [REDACTED]
¹⁷¹ [REDACTED]
¹⁷² [REDACTED]
¹⁷³ [REDACTED]
¹⁷⁴ Ibid at 0365-0366
¹⁷⁵ [REDACTED]
¹⁷⁶ [REDACTED]
¹⁷⁷ [REDACTED]
¹⁷⁸ [REDACTED]
¹⁷⁹ Ibid at 0375
¹⁸⁰ Ibid at 0370; [REDACTED]

93. A concrete example of BEMBA's control over the MLC military operations is his plan and its subsequent execution regarding the withdrawal of his troops from the CAR. [REDACTED] the MLC troops were kept in Bangui by BEMBA despite the fact that MLC political members were against it.¹⁸¹ Prior to their withdrawal, BEMBA publicly announced a few weeks prior to the withdrawal that MLC troops were to pull out of Bangui. [REDACTED] explained that on 14 or 15 January 2003 BEMBA signed an announcement that the MLC troops would leave Bangui on 15 or 16 March 2003.¹⁸² BEMBA then waited until the very last days to withdraw which caused a rushed withdrawal that required a large amount of logistics.¹⁸³ [REDACTED] articulated that from a military perspective BEMBA wanted to wait until the DRC peace agreement was signed before removing his troops from the CAR.¹⁸⁴

94. BEMBA also made public statements suggesting that he gave the order to withdraw. This clearly reflects that BEMBA was ultimately in command of the MLC troops in the CAR meaning that he sent his men to Bangui and he called them back when he wanted. As BEMBA explained to the newsmagazine *Jeune Afrique*: "*Jusqu'à la fin février, j'avais 1500 hommes sur place. Et ils n'ont jamais été défaits. Ils ont même donné une raclée aux Tchadiens à la mi-février. Mais, en mars, pour me conformer à la nouvelle Constitution de mon pays, qui confie la gestion de toutes les forces congolaises à un Conseil supérieur de la défense, j'ai rappelé mes hommes. Le 14 mars, ils n'étaient plus que 250 sur le territoire centrafricain*".

95. Another factor that evidences BEMBA's *de facto* control over the MLC is the consistent flow of information that he received from the field. [REDACTED] articulated

¹⁸¹ [REDACTED]

¹⁸² [REDACTED]

¹⁸³ Ibid at 0534

¹⁸⁴ [REDACTED]

that BEMBA was a very informed man.¹⁸⁵ BEMBA's daily receipt of the accounts and communication logbooks are an example of the consistent flow of reports that BEMBA received from the field.¹⁸⁶ [REDACTED] saw BEMBA receive the account and communication logbooks and initial them in front of him.¹⁸⁷ [REDACTED] stated that the military and civilian intelligence services of the MLC reported to BEMBA on a daily basis. On one occasion when [REDACTED] [REDACTED] [REDACTED],¹⁸⁸ [REDACTED] added that "*BEMBA suit à la loupe toutes les situations. Il était attaché à tous les détails*".¹⁸⁹ [REDACTED] elaborated that BEMBA received feedback every morning from the field commanders.¹⁹⁰ [REDACTED] explained that BEMBA gave them orders directly such as "*je ne veux pas que l'ennemi soit là, attaques aujourd'hui*", "*... oui, je veux que tu attaques*", "*il faut que tu attaques*".¹⁹¹ Another example demonstrating the depth of information that BEMBA possessed is his detailed knowledge of troop movements and military operations.¹⁹² For instance, when interviewed by RFI on 14 February 2003, BEMBA corrected the interviewer on the number of MLC troops returning to Bangui, stating that there were only 50 and not 200 troops as the interviewer suggested.

96. BEMBA was also well informed regarding the conditions that necessitated the withdrawal of the troops from Bangui.¹⁹³ During that time period there were certain people close to BEMBA who pressured him to withdraw the MLC from Bangui and followed the withdrawal of the troops on an hourly basis.¹⁹⁴ According to [REDACTED], these individuals would have told BEMBA the truth about what was happening in Bangui.

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194 Ibid at 0544 to 0545

97. Clearly, there are reasonable grounds to believe that BEMBA had *de jure* and *de facto* authority over the MLC troops during October 2002 to March 2003.

3. BEMBA's coordinated essential contribution resulting in the realization of the objective elements of the Crimes

98. The second objective requirement of co-perpetration based on joint control over the crime is the coordinated essential contribution made by each co-perpetrator resulting in the realization of the objective elements of the crime.¹⁹⁵ In the *Lubanga* Decision on the Confirmation of Charges, Pre-Trial Chamber I stated that when the objective elements of an offense are carried out by a plurality of persons acting within the framework of a common plan, only those to whom essential tasks have been assigned – and who, consequently, have the power to frustrate the commission of the crime by not performing their tasks – can be said to have joint control over the crime.¹⁹⁶

99. BEMBA and Patasse were essential contributors towards the MLC's presence in the CAR between October 2002 and March 2003. BEMBA's contribution included: (i) entering into the agreement to provide MLC troops; (ii) providing trained troops and weapons; (iii) providing Thuraya phones to commanders and methods for communicating; (iv) visiting the CAR to monitor operations; and (v) adopting a coordinating role by maintaining direct and ongoing contacts with other participants.

¹⁹⁵ *The Prosecutor v. Lubanga*, Decision on the confirmation of charges, ICC-01/04-01/06-803-tEN (Public Redacted Version), 29 January 2007, at p. 117, para. 346

¹⁹⁶ *Ibid* para. 347

100. A significant contribution by BEMBA was his initial agreement that he entered into with Patasse to initiate the MLC's mobilization to the CAR. For BEMBA, the CAR territory was economically strategic as Bangui was an outlet for Congo's natural resources and militarily strategic as it was the rear-base for the MLC's territory.¹⁹⁷ For Patasse, BEMBA was important to ensure a security zone to the south of CAR.¹⁹⁸

101. BEMBA's act of providing the MLC troops to support Patasse and committing crimes against the civilian population is the most significant contribution BEMBA made towards the common plan. Without BEMBA's contribution of the MLC military troops, the crimes described would not have been committed. Significantly Patasse lost power immediately after MLC's departure. Thus BEMBA's troops were essential because without the MLC Patasse did not have the means to control the territory where the crimes occurred. In fact, once BEMBA withdrew the majority of his troops in March 2003, Patasse's regime immediately toppled. [REDACTED] also stated that when BEMBA announced that the MLC would withdraw, Bozize thought that he could then re-enter Bangui and take over but BEMBA waited until the very last minute.¹⁹⁹

102. The common plan shared by BEMBA and Patasse is evidenced by the mandate that the MLC troops were given, that is to save Patasse. At the inception of the conflict BEMBA explained to [REDACTED] that Patasse was in trouble and that "we" had to rescue him.²⁰⁰ BEMBA contributed to the common plan to keep Patasse in

¹⁹⁷ [REDACTED]

¹⁹⁸ [REDACTED]

¹⁹⁹ [REDACTED]

²⁰⁰ [REDACTED]

power by providing him with trained and armed MLC troops.²⁰¹ [REDACTED] explained that all of the 20,000 members of the MLC received military training.²⁰² The military training included training on their code of conduct which specifically prohibited acts covered by the Geneva Conventions.²⁰³ [REDACTED] confirmed that the MLC had a Military Code of Good Conduct which addressed disciplinary issues and specifically sanctioned certain acts such as rape.²⁰⁴

103. BEMBA's troops were also armed when they arrived in the CAR.²⁰⁵

[REDACTED]
[REDACTED] during part of the period in question, explained that MLC troops arrived with their Kalashnikovs. [REDACTED]
[REDACTED]

[REDACTED] confirmed that BEMBA's troops in the CAR had AK-47s, which are commonly referred to as Kalashnikovs.²⁰⁶ [REDACTED]
[REDACTED]

[REDACTED]²⁰⁷

104. BEMBA also contributed to the common plan controlling his troops on the ground by establishing a method of communication, and then providing Thurayas telephones (satellite phones) to commanders on the field.²⁰⁸ [REDACTED] referring to communications between Mustapha and BEMBA, stated that the MLC had military radios and Thurayas to communicate with commanders on the ground.

²⁰¹ [REDACTED]
[REDACTED]

²⁰² [REDACTED]
[REDACTED]
[REDACTED]

²⁰³ [REDACTED]
[REDACTED]

²⁰⁴ [REDACTED]

²⁰⁵ Ibid at 0410

²⁰⁶ [REDACTED]
[REDACTED]

²⁰⁷ [REDACTED]

²⁰⁸ [REDACTED]
[REDACTED]

Members of the FACA who saw MLC troops on the ground confirmed that the MLC used military radios, Thurayas and telephones. [REDACTED] acknowledged that unlike other field commanders, only those in Bangui received Thurayas from BEMBA.²⁰⁹

105. In addition to telephonic communication, BEMBA contributed to the common plan by physically visiting the troops while they were in the CAR.²¹⁰ According to [REDACTED], BEMBA was the type of Commander in Chief who regularly visited commanders and troops in the field in order to boost morale.²¹¹ [REDACTED] learned, after the fact, that on at least one occasion, BEMBA made a similar trip to Bangui during the MLC 2002-2003 operation in CAR.²¹² FIDH also reported that BEMBA visited the CAR several times during and after the attempted coup of 25 October 2002, including visiting the field.

106. [REDACTED] confirmed that he saw BEMBA on 2 or 3 November 2002 in Bangui. During that visit, BEMBA was there to meet his troops and because he had learned of the troops exactions. Another witness, interviewed by FIDH saw BEMBA land in a small plane in the courtyard of the Begoa health center on 17 November 2002 when there was fighting at PK 22.

107. Victims also saw BEMBA on the field. [REDACTED]
[REDACTED] saw BEMBA at PK 12, Begoa, in December 2002.²¹³ [REDACTED] described BEMBA arriving at Begoa School after lootings occurred.²¹⁴ While at PK 12, BEMBA met with MLC members as well as civilian members of the population.²¹⁵ [REDACTED] stated that BEMBA stayed at PK 12 for approximately thirty

²⁰⁹ [REDACTED]

²¹⁰ [REDACTED]

²¹¹ [REDACTED]

²¹² Ibid at 0417

²¹³ [REDACTED]

²¹⁴ [REDACTED]

²¹⁵ [REDACTED]

minutes speaking to his men and [REDACTED].²¹⁶

While there, the troops gathered in front of him all standing at attention.²¹⁷

108. BEMBA also kept consistent contact with his troops and maintained consistent contact with Patasse and other participants.²¹⁸ [REDACTED]

109. ██████ explained that telephonic contacts between Mustapha and BEMBA occurred twice a day, in the morning and in the evening during the Bangui operation.²²² ██████ also stated that BEMBA received “*cahiers de transmissions*” that contained operator notes that identified deaths and victims.²²³

110. Therefore, based on the facts set forth above, there are reasonable grounds to believe that BEMBA made numerous essential contributions to support the common plan.

111. In order for the Prosecution to prove the requirement of a “coordinated essential contribution” which is an element for co-perpetration, it is necessary to briefly examine Patasse’s essential contribution to the common plan, to maintain

²¹⁶ Ibid at 0064

²¹⁷ Ibid at 0066 to 0067

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²²⁰ Ibid at 0473 to 0474

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223 Ibid at 0513

power. Patasse's essential contributions included (i) requesting the MLC's presence in the CAR;²²⁴ (ii) providing the MLC with base camps; (iii) providing the MLC troops with new uniforms;²²⁵ (iv) providing transportation;²²⁶ (v) financing the troops; (vi) giving additional orders to the troops; and (vii) providing additional troops (USP) as support to the MLC. During the MLC's presence in the CAR, the troops were situated at Camp Béal and PK 12 [REDACTED]

[REDACTED]. Patasse also provided MLC troops with green uniforms, and provided them with vehicles including pick-ups that were distributed to the MLC via the Ministry of Defense.²²⁷ The MLC troops were fed by Patasse through the CAR Public Treasury fund. [REDACTED] explained that the CAR Public Treasury disbursed funds once a week for the food of the MLC troops and every Friday for those who were on the field.

112. [REDACTED] confirmed that the MLC troops were deployed in coordination with the USP, which were in the first line when the MLC did not know the battlefield. The coordination was done by Patasse, who gave orders. Victims confirmed that Patasse gave orders as they stated that their attackers told them that Patasse had given the troops orders to kill. [REDACTED] related that the soldiers who sodomized him told him that Patasse had given them orders to kill any male older than two for sympathizing with the rebels.²²⁸ MLC soldiers also told [REDACTED] that they received an order from Patasse to kill any boy over the age of ten. [REDACTED] stated that the population's perceived sympathy towards the rebels was the reason why the MLC received the order to go from house to house.²²⁹

²²⁴ Ibid at 0525

²²⁵ [REDACTED]

²²⁶ Ibid at 0071

²²⁷ [REDACTED]

²²⁸ [REDACTED]

²²⁹ [REDACTED]

113. Based on the evidence, Patasse made a number of significant contributions to the common plan to retain his power as President. Patasse's significant contributions coupled with BEMBA's significant contributions were essential to maintaining their common plan to keep Patasse in power.

4. BEMBA acted with the appropriate *mens rea*

114. The elements of co-perpetration also require that BEMBA acted with the requisite *mens rea*. As stated by the Pre-Trial Chamber I in *Lubanga*, moreover, the suspect and the other co-perpetrators must all be mutually aware and mutually accept that implementing their common plan may result in the realization of the objective elements of the crime and; the suspect must be aware of the factual circumstances enabling him or her to exercise joint control over the crime.²³⁰ In terms of the awareness of the suspect of the factual circumstances enabling him to exercise joint control over the crime, as stated by the Pre-Trial Chamber 1 in *Lubanga*, the suspect must be aware (i) that his role is essential to the implementation of the common plan, and hence in the commission of the crimes and, (ii) that he can – by reason of the essential nature of his tasks – frustrate the implementation of the common plan, and hence the commission of the crime, by refusing to perform the task assigned to him²³¹.

115. In the instant case, BEMBA and Patasse knew or were mutually aware that killings, rapes and/or lootings would occur during the implementation of the plan to save Patasse with the assistance of MLC forces, and mutually accepted such an outcome, based on the (i) mandate to save the President and imposing no further restrictions on the troops; and (ii) the MLC military strategy that includes attack

²³⁰ *The Prosecutor v. Lubanga*, Decision on the confirmation of charges, ICC-01/04-01/06-803-tEN (Public Redacted Version), 29 January 2007 at p. 124, para. 367

²³¹ *Ibid*, para. 367

against the civilian population, as shown most notably in Mambasa and in the 2001 CAR operation.

116. The troops were deployed to the CAR to save the President [Patasse] and BEMBA placed no other limits on them.²³² [REDACTED], during the 2002-2003 CAR operation, the troops were given "carte blanche". Without further boundaries imposed on them, the MLC troops executed their ordinary strategy within the instruction to defend Patasse.

117. BEMBA knew that the MLC troops had looted, raped and killed civilians on no less than two other military operations. As stated above, the MLC troops had committed similar crimes both in the CAR in 2001, and in Mambasa directly before the 2002 CAR occupation. AI reported that the rapes in October 2002 to March 2003 were reminiscent of similar violence against women committed in the CAR by the MLC in late May to June 2001.²³³ With respect to the looting, [REDACTED]
[REDACTED] explained that the 2001 Bangui operation was an opportunity to steal and loot. [REDACTED] stated that BEMBA was informed that the MLC committed rapes and lootings in the 2001 Bangui operation. [REDACTED] explained that when the 2001 exactions were reported to BEMBA, BEMBA did not take any measure to stop the exactions.

118. Then again, in October 2002, just before the MLC's intervention into Bangui, MLC forces were raping and looting the civilian population while attacking the town of Mambasa. [REDACTED] explained that BEMBA established a tribunal for abuses committed in Mambasa.²³⁴ [REDACTED] stated that the MLC Military

²³² [REDACTED]

²³³ AI, *Central African Republic: Five months of war against women*, CAR-OTP-0004-0511 at 0525

²³⁴ [REDACTED]

Tribunal in Gbadolite held trials of MLC members.²³⁵ Sources reported that BEMBA was accused of conducting a parody of a trial in order to diminish his responsibility. Significantly, [REDACTED] states that BEMBA established a military tribunal for the crimes committed by the MLC in Mambasa and the CAR solely as a strategy for BEMBA to “wash his hands” of the wrongdoings.²³⁶ Therefore, the Prosecution submits that this tribunal was part of a cover up.

119. The 2002-2003 Bangui operation was therefore at least the third time that MLC troops perpetrated abuses against the civilian population. In 2002-2003, BEMBA did impose punishment on selected soldiers. However, BEMBA’s imposition of punishment in 2002-2003 was grossly inadequate in light of the number of rapes and lootings that the MLC committed against the CAR population. At best, BEMBA punished only eight perpetrators for thefts, when approximately 1,000 reported rapes and lootings occurred. [REDACTED] stated that to his knowledge there were no arrests for incidents of rape in the CAR.²³⁷

120. Viewed in context, the MLC had a punitive system that was available to BEMBA to punish MLC troops criminal acts committed against the civilian population. The availability of MLC’s punishment system is evidenced by several decrees regarding discipline that were signed by BEMBA in 2000. Further, punishment was implemented for some acts such as fleeing in front of the enemies, negligence of their function, financial mismanagement, thefts, torture, embezzlement and misuse of power. BEMBA simply chose not to implement punishment when the crimes involved the civilian population.

²³⁵ [REDACTED]

²³⁶ [REDACTED]

²³⁷ [REDACTED]

121. Given the facts set forth above, the Prosecution has provided reasonable grounds to believe that BEMBA knew that his role as Commander in Chief of the MLC was essential to the implementation of the common plan, and hence in the commission of the crime. BEMBA could have frustrated the common plan in numerous ways, including, but not limited to: (i) failing to provide the troops, (ii) failing to provide training and weapons; (iii) failing to provide Thurayas phones; and (iv) failing to coordinate the MLC's strategy with other organizations; (v) preventing his troops to commit crimes against the civilian population.

E. Necessity of the arrest warrant of Jean-Pierre BEMBA pursuant to Article 58(1)(b) and Article 58(2)(e) of the Rome Statute

122. The issuance of an arrest warrant for BEMBA is warranted based on grounds that it is necessary to ensure (i) BEMBA's appearance at trial and, (ii) prevent BEMBA from obstructing or endangering the investigation unless he is arrested. A summons is insufficient to secure BEMBA's appearance given the facts and circumstances surrounding this case. The basis for the Prosecution's request for an arrest warrant, and the reasons why issuance of a summons is insufficient for securing BEMBA's presence are addressed below.

123. First, there are reasonable grounds to believe that BEMBA will not appear for trial unless he has been arrested and is in custody. On 22 May 2007, the Prosecution's investigation was publicly announced. Thereafter, BEMBA has made public statements regarding the ICC investigation²³⁸ and publicly denied any involvement in the crimes committed in the CAR between 26 October 2002 and 15 March 2003. Taking into consideration BEMBA's past and current political position, his international contacts and his financial as well as professional background,

²³⁸ Al Jazeera, *Interview with Jean-Pierre BEMBA*, 3 August 2007, CAR-OTP-0008-0435 is attached as Annex 14

BEMBA has the necessary network and the financial means to flee and avoid notification of the arrest warrant. The Prosecution's concerns are supported [REDACTED]

[REDACTED] BEMBA has the means to disguise his identity in order to evade his apprehension.

124. Second, given BEMBA's ability and resources, it is reasonable to conclude that he may obstruct and endanger the investigation and court proceedings. [REDACTED]

125. Third, BEMBA's history reflects that he has intimidated people before and is likely to repeat his behaviour towards the witnesses in the instant case. As Commander in Chief BEMBA demonstrated how he used his power to maintain control. BEMBA did not tolerate disagreements and the consequences could be severe. For instance, in 2000 he dismissed two Cabinet members of the MLC, in 2001 he arrested officers who were opposed to him,²³⁹ and in 2005 [REDACTED]

[REDACTED].²⁴⁰ Based on BEMBA's history of intimidation and negative reaction to dissent, it is reasonable to conclude that BEMBA may physically harm witnesses and/or victims that he has the financial and logistical resources to do so. In addition in BEMBA's capacity as the President of the MLC he has the MLC network and former ALC soldiers at his disposal to attack or terrorize the victims or witnesses.

²³⁹ [REDACTED]

²⁴⁰ [REDACTED]

126. Pursuant to Article 89 (1) of the Rome Statute, the information available to the Prosecution indicates that BEMBA is currently on the territory of Portugal. To this end, the Prosecution requests that the transmission by the Registry of any request for arrest and surrender to the competent Portuguese authorities be done in consultation and coordination with the Prosecution.

127. The Prosecution also wishes to note to the Chamber that arrest procedures can be expedited in Portugal pursuant to an Interpol Red Notice. Since the Prosecution has concluded an agreement with Interpol which allows for the publication and circulation of Red Notices of persons sought by the ICC and for preventing such persons from escaping prosecution, the Prosecution requests that it be authorized to transmit the relevant information to Interpol and the National Central Bureau of Portugal, in consultation and coordination with the Registry.

128. In addition, the Prosecution suggests that the Chamber may wish to consider authorising the Registry, in consultation with the Prosecution, to prepare and transmit to any State any request for provisional arrest which may be necessary for the arrest and surrender of the person concerned to the Court pursuant to Article 92 of the Rome Statute, and in consultation and coordination with the Prosecution.

■ [REDACTED]
[REDACTED]

129. In accordance with Article 57 of the Rome Statute, the Pre-Trial Chamber may seek the cooperation of States pursuant to Article 93(1)(k) of the Rome Statute to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of the victims.

130. According to the information available, BEMBA is believed by the Prosecution to have control over assets which may be linked to the commission of the crimes and which potentially could be used to satisfy any future reparation order. In addition he has the means to place his property and assets beyond the Court's reach within a relatively short period of time.

131. In this regard, the Prosecution respectfully requests the Chamber - in the event it decides to issue a warrant of arrest - to consider the simultaneous transmission of requests to the competent authorities of [REDACTED] [REDACTED] for the taking of protective measures to secure the enforcement of future reparations awards for the ultimate benefit of victims.

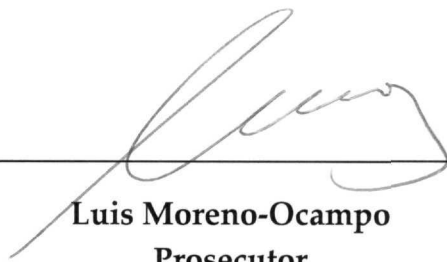
G. Conclusion

For the above explained reasons, the Prosecution respectfully requests that the Pre-Trial Chamber:

1. Find that there are reasonable grounds to believe that BEMBA committed crimes within the jurisdiction of the Court and that his arrest is necessary.
2. Issue a warrant of arrest of BEMBA.
3. Direct the Registry, in consultation and coordination with the Prosecution, to prepare and transmit, on a confidential basis, a request

for arrest and surrender of BEMBA to the competent authorities [REDACTED], and prepare and transmit, on a confidential basis, to any State any request for provisional arrest which may be necessary for the surrender of the person concerned to the Court pursuant to Article 92 of the Rome Statute.

4. Authorize the Prosecution to transmit information relevant to the arrest warrant to Interpol and the National Central Bureau [REDACTED], in consultation and coordination with the Registry.
5. Directs the Registry, in consultation and coordination with the Prosecution, to prepare and transmit, on a confidential basis, pursuant to Article 93(1)(k) of the Rome Statute, requests for assistance to the competent authorities of [REDACTED] to take the necessary measures for the freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, in particular for the ultimate benefit of victims.



Luis Moreno-Ocampo
Prosecutor

Dated this 9th day of May 2008,
At The Hague, The Netherlands

Under Seal

Arrest Warrant Application – Annexes

1. Photographs of Jean-Pierre BEMBA
2. Statement of [REDACTED]
3. Statement of [REDACTED]
4. Statement of [REDACTED]
5. Statement of [REDACTED]
6. Amnesty International, *Central African Republic: Five months of war against Women*, November 2004
7. Three maps of Bangui
8. Map of the Central African Republic
9. United Nations Resident Coordinator (UNRC), Weekly Humanitarian Update: Central African Republic:
 - 10 November 2002
 - 17 December 2002
 - 07 March 2003
10. Statement of [REDACTED]
11. Statement of [REDACTED]
12. The MLC Constitution
13. Statement of [REDACTED]
14. Al Jazeera, *Interview with Jean-Pierre BEMBA*, 03 August 2007