

ANNEX 2

C

BANGUI COURT OF APPEALS

CENTRAL AFRICAN REPUBLIC

 Bangui *Tribunal*
de Grande Instance

Unity - Dignity - Labour

 First Office of the Investigating Judge

Register No. 007/03

[Seal: Bizon Chambers Document No. 21]

**ORDER FOR PARTIAL DISMISSAL OF CHARGES AND
 COMMITTAL FOR TRIAL BEFORE THE
 CRIMINAL COURT**

I, **Pamphile Oradimo**, Senior Investigating Judge of the Bangui *Tribunal de Grande Instance*;

Noting the proceedings instituted against:

1. **Martin Koumtamadji, alias Miskine Abdoulaye**, born on 3 March 1965 in Ndinaba (Moyen Chari), Chad, son of Madingar-Adoum and Monique Ndoulane, traditional healer, Chadian national; last place of residence Bangui, present whereabouts believed to be Lomé, Togo;
2. **Paul Baril** (at large);
3. **Jean-Pierre Bemba**, residing in Kinshasa (Democratic Republic of the Congo);
4. **Ange Félix Patassé**, born on 25 January 1937 in Paoua of Paul Ngakoutou and Véronique Ngoumba, married, agronomist/animal science technician, former President of the Central African Republic, present whereabouts believed to be Lomé, Togo;
5. **Martin Ziguele**, born on 12 February 1957 in Paoua, son of Jean Maïde and Thérèse Mingara, Senior Tax Inspector, claims to have no previous convictions, last place of residence Bangui, currently living in exile in France, married, father of six children, Grand Officer of the Central African Order of Merit, Central African national, on interim release;
6. **Pierre Angoa**, born on 15 November 1942 in Bangui, son of Bernard Zoumate (deceased) and Marie Ingakola (deceased), retired civil

administrator, former Minister of Defence, claims to have no previous convictions, married, father of eight children, resident of the *Cité des 36 Villas* in Bangui, on interim release;

7. **Gabriel Jean-Édouard Koyambonou**, born on 19 August 1950 in Bangui, son of Ferdinand Benime (deceased) and Jeanne Liatene (deceased), Senior Customs Inspector, former Prime Minister, claims to have no previous convictions, military service not served, married, father of six children, Grand Officer of the Central African Order of Merit, resident of Bangui, detained under a custody warrant on 12 November 2003;
8. **Ferdinand Bombayaké**, born on 26 August 1944 in Beboy 4 in Paoua, son of Paul Bobe (deceased) and Marie Konado (deceased), Airforce General, resident of the Benz-Vi neighbourhood in Bangui, claims to have no previous convictions, married, father of eight children, detained under a custody warrant on 12 November 2003;
9. **Lazare Dokoula**, born on 17 January 1959 in Bozoum (Ouham-Péndé), son of Matthieu Dokoula and Madeleine Detounda, finance specialist, former Deputy Finance Minister, Central African national, last place of residence Bangui, at large, present whereabouts believed to be France;
10. **Simon-Pierre Kouloumba**, born on 1 January 1949 in Alindao, son of Bernard Koroto (deceased) and Jeanne Yakouzou (deceased), petroleum engineer, former Adviser to the Presidency of the Republic, married, father of four children, claims to have no previous convictions, military service not served, Officer of the Central African Order of Merit, Central African national, detained under a warrant of committal on 22 October 2003;
11. **Michel-Paulin Bangué-Tandet**, born on 5 October 1941 in Bangui, son of Victoire Tandet and Louise Sabateme, Senior Treasury Inspector, Central African national, former minister, former Adviser to the Presidency of the Republic, present whereabouts believed to be Paris, France;
12. **Alain-Serge Liguéla-Mboutou**, born on 17 February 1968 in Birao, son of Pascal Mboutou and Catherine Ngobolo, architect, resident of the Foûh neighbourhood in Bangui, Central African national, on interim release;
13. **Bruno Jean-Chrysante Naïngangue-Tendo**, born on 20 October 1969 in Yaloké of Hubert Naïngangue and Louise Yassikanga, architect, resident of the Yassara 2 neighbourhood in Bangui, Central African national, on interim release;
14. **Abraham Pierre Mbokani**, born on 21 March 1956 in Ouango-Bangassou, son of Joseph Ngbo (deceased) and Lucienne Nzate

(deceased), notary, resident of Bangui, Central African national, on interim release;

15. **Louis Sanchez**, born on 26 April 1931 in Lorca, Spain, last place of residence Bangui, French national, at large; and

16. **Lionel Gan-Befio**, at large;

Charged with acts of premeditated murder, fatal wounding, arbitrary arrest, detention and false imprisonment, concealment of bodies, rape, pillaging, malicious wounding, destruction of property (nos. 1 and 2), undermining State security, collusion with a foreign power; complicity in acts of premeditated murder, fatal wounding, arbitrary detention and false imprisonment, rape, pillaging, destruction of property (3, 4, 5, 6, 7, 8, 16); misappropriation of public funds (9, 10, 11); complicity in the misappropriation of public funds (4, 12, 13), forgery and use of forged documents in relation to authentic public documents (14); complicity in forgery and use of forged documents (4, 15);

Offences proscribed and punishable under articles 38, 167, 168, 169, 174(4), 175, 184, 191(1), 197, 205, 209, 227, 228, 229, 271, 281 and 368 of the Criminal Code, 70, 73, 56, 59(4), 50-5, 99, 100, 101, 108*bis*, 108*ter* of the Criminal Code and Law No. 03.010 of 1 March 2003;

Noting my notification to proceed to the Public Prosecutor of the Bangui *Tribunal de Grande Instance* of 13 July 2004;

Noting the Public Prosecutor's submissions recommending partial dismissal of the charges and committal for trial of 17 August 2004;

Noting the provisions of **articles 91(a) and 95(a) of the Code of Criminal Procedure**;

Rule as follows.

AS TO THE FACTS

CRIME OF TREASON AND OTHER CRIMES

The preliminary investigation has established the facts set out hereinafter.

Between 1995 and 15 March 2003, following elections, Mr Ange Félix Patassé was sworn into office as President of the Republic and Head of State of the Central African Republic (CAR).

On 28 May 2001, a military coup d'état attempted to overthrow Mr Patassé's government.

In November 2001, there was a further uprising by a section of the Central African army, burgeoning into a rebellion that spread towards the northern part of the CAR.

Aware of his limitations, especially since the Central African army had been weakened as a result of his own actions, Mr Patassé created a number of armed militias, in particular one headed by Mr Miskine Abdoulaye, Mr Paul Baril, and Mr Victor Ndoubabe (his personal driver), and invited fighters of the Congolese rebel, Mr Jean-Pierre Bemba, onto Central African territory.

Mr Martin Koumta-Madji, alias Miskine Abdoulaye, is well known to the Central African Police, having been prosecuted on numerous occasions for charlatanism and witchcraft, fraud and counterfeiting of currency.

Mr Koumtamadji, who is of Chadian origin, is an opportunist who came to the Central African Republic and took advantage of the attempted coup d'état of 28 May 2001 to gain the ear of Ange Félix Patassé, Head of State. In short order, he became the President's close associate and then an officer in the Central African army, appointed to head a so-called anti-highway robbery brigade. This brigade, consisting of approximately 600 men recruited from among unemployed youths and retired soldiers from Chad and the CAR, was essentially based in Kabo. It would immediately distinguish itself by the acts of summary execution, arbitrary and false imprisonment, theft, destruction of property and malicious wounding which it perpetrated against the civilian population, mainly Peuhls and Muslim traders from the towns of Kabo, Batangafo, Bouca, Bossangoa, etcetera.

In addition, Mr Patassé invited other mercenaries of various nationalities into the CAR and placed them under the command of Paul Barril, a retired former French gendarme who claimed to be Mr Patassé's personal friend. He was rewarded with the post of National Director of the Campaign Against International Terrorism.

The Accused, Ange Félix Patassé, also set up a militia commanded by a family member, his official driver Victor Ndoubabe, and Mr Barril. This militia operated under the guise of a surveillance company called the SCPS (***Société Centrafricaine de Protection et de Surveillance*** [Central African Society for Protection and Surveillance]). It was supplied with automatic weapons, Kalashnikovs and heavy weapons and stationed in a building adjacent to Mr Patassé's residence.

During the events of 28 May 2001 and 25 October 2002, Mr Patassé invited onto Central African territory several thousand fighters of the MLC, a rebel

movement in the Democratic Republic of the Congo led by Mr Bemba and under the command of a certain Mustapha, a Congolese rebel officer. This rebel force, having arrived at Zongho on the banks of the river forming the border between the CAR and the former Zaïre, sought and obtained fuel supplies from Mr Patassé, who had designated Mr Lionel Befio-Gan, adviser to the Presidency of the Republic, for that purpose. Meanwhile, the General was given the task of organising the reception and installation of the Banyamulengué, who were then to be made available to General André Mazi at Camp Béal. The rebel force from the Democratic Republic of the Congo was deployed in various neighbourhoods and districts of Bangui and subsequently in many CAR towns. It travelled in vehicles, some of which had been requisitioned by the State Audit Office and the gendarmerie general command from among the vehicles of the government and State-owned companies on the instructions of the former Prime Minister, Martin Ziguele. Mr Ziguele entrusted the vehicles to General Ferdinand Bombayaké, who in turn was responsible for transferring them to the Minister for Defence for distribution to the various Banyamulengué units.

The list of cases of bodily harm and offences against private property for which the Banyamulengué are responsible is not exhaustive; that the findings of an investigation undertaken by a non-governmental organisation (NGO) called the "Commission for Humanitarian Assistance to Girl and Women Victims of Rape and Violence" associated with the conflict of 25 October 2002, funded by UNICEF and UNDP with the participation of the Ministry of Social Affairs and Solidarity, were entered into the record of the case and showed several hundred violations of humanitarian law in the form of premeditated murder, murder, malicious wounding, rape, pillaging, etcetera. These multiple cases were attested to by numerous medical certificates as well as official crime reports by law enforcement officers; considering that the NGO specifically considered cases of rape alleged by women who came for consultation almost one month after the events; that the medical staff who examined the patients were unable to carry out probative clinical examinations due to the time which had elapsed since the rapes, but that they emphasised the high credibility of the accounts taken in one-on-one interviews.

The majority of these rapes were perpetrated on 29, 30, and 31 October and after 1 November; that they were committed at PK12 and PK22 on the Damara road, in the small village of Liton and in various neighbourhoods of Bangui; that the investigation revealed that the victims were mostly 15 years of age, the youngest being 12, and that the majority of them were infected with HIV as a result; that the *modus operandi* was often the same from one account to another: violent entry into the home, extortion of money by terror inflicted by random shooting, followed by gang rape.

It has been established that the various forces deployed erected roadblocks and made illegal arrests consubstantial with hostage-taking in that some of the victims were released on payment of a ransom; that the places where

those arrested were held consisted mainly of dilapidated buildings or houses abandoned by their occupants; that these actions constitute the offences of arbitrary arrest, detention and false imprisonment, which are proscribed and punishable under articles 205 *et seq.* of the Criminal Code since they were committed “[TRANSLATION] without an order from an established authority and outside the scope of cases where the arrest of an accused person is ordered”.

These numerous recorded offences were perpetrated both in Bangui and in the provinces, in particular in the towns of **Damara, Sibut, Bossembélé, Bozoum, Bossangoa, Kabo, Batangafo, Kaga-Bondoro, Bossemtélé** and others.

CRIME OF MISAPPROPRIATION OF PUBLIC AND OTHER FUNDS

Ange Felix Patassé's regime also distinguished itself by perpetrating numerous economic crimes, in which Mr Patassé was complicit.

AI- Misappropriation of Public Funds

- The gift of oil from Libya

From the end of 1999 and in 2000, the Central African Republic was struck by a severe fuel shortage due to an embargo on Central African petrol barges following clashes in the Democratic Republic of the Congo. Libya, a friend to the CAR, announced its intention to alleviate the crisis with a gift of fuel;

The first consignment of the gift, amounting to 50 000 tonnes, was made available to the CAR in 1999 and was effectively sold on by Mr Michel Bangué-Tandet, then Adviser to the Presidency of the Republic. However, the proceeds from the sale were neither used to repay the debt to Libya, nor paid into the Central African Public Treasury.

As for the second consignment, the remaining 5 000 tonnes, a Central African delegation composed of Mr Bangué-Tandet; Simon Kouloumba, Adviser to the Presidency of the Republic; the Minister of Foreign Affairs and Minister of State of Finance Marcel Metefara and Théodore Dabanga; Mr Simplicie Moholo, Chargé de Mission for the Presidency of the Republic; Ms Pierrette Malonga and certain members of the administration and security officers, led by the former President Ange-Félix Patassé, travelled to Tripoli from 12 until 16 June 2000;

That mission culminated in an agreement was reached and the 5 000 tonnes were immediately made available to the CAR;

Upon his return to the CAR on 16 June 2000, Mr Patassé, the Head of State, created by decree a Management Committee and appointed his Energy

Adviser, Mr Simon Kouloumba, as chairman; said committee was to be composed of one representative from each of the government ministries.

Only a tiny amount of the oil, that is 1 803 623 (one million, eight hundred and three thousand, six hundred and twenty-three) litres, was transferred from Douala to Bangui and Mr Kouloumba, along with Jean-Michel Bokosset, assumed responsibility for storing it at a warehouse belonging to PETROCA Kolongo. Mr Kouloumba never indicated exactly what had become of the remainder;

Having been made available to PETROCA Liquidation because of its technical facilities and trained staff, the 1 803 623 litres were then sold and the proceeds, estimated at 771 803 776 CFA francs, were deposited in accounts in the local banks opened for that purpose by Mr Kouloumba, Chairman of the Management Committee.

That quantity of petroleum products was managed solely by the Chairman of the Management Committee under direct instruction from the former President Ange-Félix Patassé, who considered that the gift had been made to him personally.

According to Mr Kouloumba, the proceeds from the sale were distributed as follows:

- 171 365 000 CFA francs paid to the Public Treasury to repay the debt to the BEAC (Bank of Central African States);
- 150 000 000 CFA francs as an advance to the Public Treasury;
- 68 633 181 CFA francs to PETROCA Liquidation for services rendered; and
- 4 545 431 CFA francs to purchase equipment for the presidential security team.

With the authorisation of Ange Félix Patassé, Mr Kouloumba then distributed checks for varying sums to certain persons, including those who had participated in the negotiations in Tripoli, among others, as follows:

- 1 500 000 CFA francs to Mr Jean-Edouard Koyambonou for his personal use and 5 000 000 [CFA francs] for the MLPC party;
- 1 000 000 CFA francs to Marcel Metefara then Minister of State of Foreign Affairs;
- 1 000 000 CFA francs to Mr Théodore Dabanga then Minister of State of Finance;
- 500 000 CFA francs to Mr Simplicie Moholo;
- 500 000 CFA francs to Ms Pierrette Malonga;
- 1 000 000 CFA francs to Brigadier General Ferdinand Bombayaké for the Presidential Security Unit; and
- 500 000 CFA francs to Mr Philippe Ouaradague, State Inspector;

Mr Kouloumba gifted himself the sum of 4 000 000 CFA francs and then directly paid himself 56 000 000 CFA francs representing the total amount of benefits accruing to him as former Managing Director of PETROCA on the basis of services provided by PETROCA Liquidation. Finally, he paid the sum of 5 000 000 CFA francs to the former President, Ange-Félix Patassé.

- Loan from Libya of 10 000 Euros, or 6 550 000 000 CFA francs, and fraudulent sale of State properties to Libyan company LAICO

On 14 December 2000, a loan agreement for the sum of 10 000 000 euros was signed between the CAR and a Libyan bank known as the Lybian Arab Foreign Bank, repayable over 25 years, with seven years' deferral at an interest rate of one percent.

The Central African State was represented by Mr Théodore Dabanga, Minister of State of Finance with responsibility for the Budget, and Mr Marcel Metefara, Minister of Foreign Affairs. As surety for the loan, the Central African State undertook, *inter alia*, to pay the loaned funds into a special account at the *Union des Banques Arabes et Françaises* in Paris; the lender was entitled to deduct repayments falling due and interest from that account.

A mortgage on four land titles (Buffle, Fernando, Pacific II and Hôtel du Centre) and an unassessed mining claim located in the Haute-Kotto Prefecture was also put up as surety.

In return, the Libyan party provided the Central African State with a loan of 3 491 510 917 CFA francs, to be transferred via the central bank in two tranches of 2 230 253 800 and 1 261 257 117 CFA francs respectively. The funds were used to pay salaries, pensions and grants. However, the balance, estimated at approximately 3 058 489 083 CFA francs, was purely and simply misappropriated.

Whilst this agreement was being implemented, a further agreement was signed on 29 June 2000 between the Central African State, represented by Mr Nalke-Dorogo, then Minister of Mines and Energy acting for the Minister of Finance, and a Libyan company by the name of Libyan African Investment Company (LAICO). The purpose of this agreement was to sell Pacific II, which belonged to the former BCAD (*Banque de Crédit Agricole et de Développement*) and the former PETROCA. It must be recalled that these buildings were already mortgaged to the Lybian Arab Foreign Bank.

Although the sale in question was illegal, the land titles of the former BCAD building and Pacific II were transferred to the buyer via the land conservation

services on the instructions of Lazare Dokoula; no destination was provided for the funds collected in payment.

- Creation of fictitious companies

With no regard for his status as President of the Republic, Ange Félix Patassé created, by presidential decree, numerous companies for diamond buying and cutting, forest exploitation and selling petroleum products. Some of these undertakings were purely fictitious, while others had registered offices but operated outside of the Investment Code and the laws governing commercial operations. Their articles of incorporation were virtually non-existent, the board members were mostly fictitious and the share capital never paid up. These companies were not licensed under the register of companies and liens and were exempted from paying for documents and taxes. Such was also the case for companies such as Trans-Oil, which sold petroleum products; CADOC (Centrafrican Coltan and Derives Company), which mined coltan (columbite-tantalite), an ore that is used in high technology, particularly in the manufacture of cellular phones and in specialised research; CATADIAM (*Centrafricaine de Taillerie de Diamants*), a public limited company whose activities centred on purchasing rough diamonds, cutting and selling them; Timber-Mbaere, a forest exploitation company; CENTRAFONDOR (*Centrafricaine de Fonderie d'Or*) and OMAC.

- Renovation of Ngaragba Central Prison

In also seeking the committal for trial of Martin Ziguele, Alain-Serge Liguella-Mboutou and Jean Chrysante Nainangue-Tendo before the Criminal Court for the misappropriation of public funds, in the sum of 194 487 416 CFA francs (for Martin Ziguele), and embezzlement to the detriment of the Central African State, in the sum of 67 000 000 CFA francs (for the two others), the Public Prosecutor submits that on 28 May 2002, Mr Ziguele caused the Director-General of the Treasury to issue a transfer order for the sum of 194 487 416 CFA francs in favour of Kodro SARL to said company's bank accounts at the BPMC [*Banque Populaire du Massif Central*].

In fact, that sum was appropriated by Mr Ziguele, the real owner of Kodro SARL.

As regards Mr Liguella-Mboutou and Mr Nainangue-Tendo, on 1 March 2002 a business contract with Kodro SARL was signed jointly by the Minister of Finance and the Minister of Justice for the renovation of Ngaragba Prison. The first phase of work, which cost 39 322 320 CFA francs, was carried out and the completed buildings were delivered to the government via the Ministry of Justice. However, the second phase, which cost 248 487 416 CFA francs, was only partially completed even though the Public Treasury transferred 67 000 000 CFA francs into the accounts of Kodro SARL as an advance for commencement the work; the Public Prosecutor seeking the

committal for trial of the aforesaid Alain-Serge Liguella-Mboutou and Jean-Chrysante Nainangue-Tendo before the Criminal Court for embezzlement on the grounds that they misappropriated the funds collected for the second phase of the contract, namely 67 000 000 CFA francs.

- Forgery and use of forged documents and complicity in forgery and use of forged documents

The Accused, Ange Félix Patassé, is also charged with having created, by decree, several companies specialising in purchasing and cutting diamonds, forest exploitation and selling petroleum products. Some of these companies operated in violation of the laws in force, others were fictitious given that they had no articles of incorporation, capital or shareholders. The companies were headed by members of Mr Patassé's family and his immediate staff and the stock was likewise fictitious. Such was the case for CATADIAM, CENTRAFONDOR and CADOC; the Public Prosecutor is seeking that the charges of forgery and use of forged documents be upheld against Mr Patassé and his notary, Mr Abraham-Pierre Mbokani, who drafted articles of incorporation and other documents for the aforementioned companies, and Louis Sanchez, charged with having provided information on the basis of which the company articles of incorporation were drafted.

UNDERMINING INTERNAL AND EXTERNAL STATE SECURITY, COLLUSION WITH FOREIGN POWERS, PREMEDITATED MURDER, FATAL WOUNDING, RAPE AND PILLAGING, DESTRUCTION OF MOVABLE OR IMMOVABLE PROPERTY, ARBITRARY DETENTION AND FALSE IMPRISONMENT, MALICIOUS WOUNDING, CONCEALMENT OF BODIES, AND COMPLICITY IN SAID CRIMES

In its initial request for an investigation to be opened, the Public Prosecutor charges Ange-Félix Patassé and his co-accused with, *inter alia*, undermining internal and external State security.

In the final submissions of the Public Prosecutor, the initial crimes charged are re-characterised as the crime of treason; that, accordingly, instead of the crime of undermining internal and external State security, Mr Patassé will be charged with the crime of treason, in addition to the other above-mentioned offences.

A - Criminal responsibility of Ange Félix Patassé and Jean Pierre Bemba

Ange Félix Patassé is charged with the crimes of treason, collusion with foreign powers, complicity in premeditated murder, fatal wounding, rape, pillaging, destruction of movable and immovable property, arbitrary detention and false imprisonment, malicious wounding, concealment of bodies, misappropriation of public funds, forgery and use of forged documents.

Since Ange Félix Patassé is still at large and Jean Pierre Bemba is Vice-President of the Democratic Republic of the Congo, it was not possible to examine them, and furthermore they did not file any brief in defence before the court.

The preliminary investigation has established the following facts:

Mr Ange Félix Patassé, President of the Central African Republic from 1993 until 15 March 2003, experienced multiple military and political crises during his term of office, including several mutinies by the CAR Army, an attempted coup d'état on 28 May 2001 and an insurgency by part of the army on 2 November of that same year. In order to deal with these multiple crises, the Accused, Mr Patassé, the then President of the CAR, created a number of armed militias, including those led by Mr Martin Koumtamadji, alias Miskine Abdoulaye, based mainly in Kabo in the north of the country; the militia led by the mercenary Paul Barril, which was based in Bouar; and the SCPS, whose members were better armed than the FACA (Central African Armed Forces) and which was stationed in a building adjacent to Mr Patassé's residence.

The various militias, which were better equipped with weapons and other logistical resources and were spread over three quarters of the territory of the CAR, committed the most appalling acts of violence against the civilian population and its property.

Under the orders of the aforesaid Martin Koumtamadji, alias Miskine Abdoulaye, the troops which were based in the north of the CAR carried out summary executions among the region's population, which was of Muslim origin, pillaging its property and committing acts of torture and arbitrary false imprisonment and arrest. Miskine Abdoulaye's men committed similar acts of violence in the northern neighbourhoods of Bangui and the surrounding area, to which Mr Patassé, the constitutional guarantor of the physical integrity of all citizens residing in the CAR and of their property, reacted with total indifference.

Similar acts of violence were also committed by Paul Barril's men, who were based in Bouar, and by members of the SCPS commanded by Mr Victor Ndoubabe, Mr Patassé's official driver, in Bangui and in certain provincial towns.

Following the events of 25 October 2002, Mr Patassé invited onto the territory of the CAR around 1 000 rebel soldiers from the Movement for the Liberation of Congo [*Mouvement de libération du Congo*] (MLC), led by Mr Jean Pierre Bemba.

On the instructions of the Accused, Mr Patassé, once the Congolese rebels arrived in Bangui, they were given the same uniforms to wear as the CAR

Army and were quartered with the Support Regiment; Mr Patassé, who had lost confidence in the CAR armed forces, disarmed and gathered them together at Camp Béal, where they were the first victims of the acts of violence perpetrated by the Congolese rebels, who lost no time in taking their jewellery and other belongings and publicly humiliating them; an officer of the CAR army, Mr Zakatao, died in those circumstances.

A coordination unit comprised of FACA officers from the Presidential Security Unit (USP), the gendarmerie, the police and a representative of the rebel Jean Pierre Bemba's men was set up with a view to preventing the acts of violence being committed by the Banyamulengué on civilians and to coordinate military operations in the field. It was headed by the Deputy Chief of Staff of the CAR armed forces, General André Mazi. However, this unit soon proved to be ineffectual because the Banyamulengué, fired with zeal, only obeyed the orders of Mr Bemba and Mr Patassé, and because Mr Patassé came to suspect General Mazi, and thus withdrew his trust.

In response to the complaints of the victims of the aforementioned acts of violence, Mr Patassé said the following: "[TRANSLATION] **You wanted war; you must know that it has consequences and we all must bear them**".

Throughout the country, these various acts of violence cost the lives of hundreds of civilians and resulted in the loss of their movable and immovable property.

It has been established that the intervention of the Banyamulengué and the creation of the militias led by Chadian national Martin Koumtamadi and Victor Ndoubabe were the solely doing of Mr Patassé, Supreme Commander of the armed forces at the time of these events.

Colonel Wadane, the Deputy Director General of the USP at the time of the events, Lieutenant Colonel Lengbe, the former Chief of Staff of the Army, and General Xavier Yangongo, former Minister of State of Defence were all examined as witnesses and testified that Mr Patassé was well aware of the acts of violence committed by the soldiers of Jean Pierre Bemba, Miskine Abdoulaye and others against the civilian population, but did not see fit to put an end to them because his objective was to use those militias to protect his regime; accordingly, it follows that he is guilty of complicity in the various crimes committed by his militias pursuant to article 38(2) and 38(3) of the Criminal Code of the Central African Republic.

The fact that Mr Patassé maintained such close relations with Mr Jean Pierre Bemba that he caused Mr Jean Pierre Bemba's men to intervene in the internal hostilities in the CAR, even though they were rebels against the government in Kinshasa; that there was no defence agreement between the CAR and the MLC; that, having arrived in the CAR, the Congolese rebel's fighters were installed there and waged all-out war on the inhabitants of the

CAR, including the elderly, deliberately making no distinction between them and their opponents, falls within the scope of article 50(2) of the Criminal Code, which provides:

[TRANSLATION] **The following shall be found guilty of treason and punished by death:**

Any Central African national maintaining relations with a foreign power with a view to securing its services for the purpose of undertaking hostilities against the Central African State or who shall provide it with the means therefor, either by facilitating the entry of foreign forces onto the territory of the Central African Republic or by undermining the loyalty of the army, navy or air force, or by any other means;

In light of the foregoing, there are grounds to commit Ange Félix Patassé for trial before the Criminal Court for complicity in premeditated murder, fatal wounding, malicious wounding, arbitrary arrest and false imprisonment, rape, theft, receiving stolen property, and treason.

It has been established that Mr Bemba, who at the material time was the leader of the rebel group called the MLC and a resident of Gbadolite, and who is charged in the present proceedings with complicity in the crimes of premeditated murder, rape, theft and others committed by his fighters in the CAR, has been appointed Vice-President of the Democratic Republic of the Congo; accordingly, he enjoys diplomatic immunity and consequently cannot be prosecuted on these charges.

B - Criminal responsibility of Martin Koumtamadji, alias Miskine Abdoulaye, and Paul Barril

Considering that the aforesaid Martin Koumtamadji, alias Miskine, and Paul Barril are charged with having committed the following crimes and offences in the CAR between 2001 and 2003: premeditated murder, fatal wounding, concealment of bodies, arbitrary arrest and false imprisonment, rape, torture, theft, and destruction of the property of others.

These individuals, being still at large, could not be examined in relation to the offences with which they are charged and did not file any brief in their defence before the court.

It has been established in light of evidence in the record that, during the events of 2002-2003, the aforementioned persons were guilty of the numerous cases of summary execution and other offences set forth above; it is estimated that several hundred people fell victim to the acts of violence committed by Mr Koumtamadji, Mr Barril and their men; Mr Koumtamadji and Mr Barril took advantage of clashes with their opponents on the ground to pillage, destroy movable and immovable property, steal the property of others,

rape females ranging from minors to the elderly, arbitrarily arrest and falsely imprison persons not involved in the fighting and secretly bury the corpses of persons executed summarily in circumstances where such persons had neither the intention nor the means to fight them. A case in point was Mr Gaston Yengali, a 66-year-old retired senior sergeant who was abducted in Bossembélé and transferred to Damara, where he was arbitrarily imprisoned for several days, after which he was executed and buried in a location that was kept secret until the fall of the government.

Furthermore, numerous mass graves of the victims of Mr Koumtamadji and Mr Barril have been identified, both in Bangui and in provincial towns.

It has been established that the various forces deployed in the neighbourhoods of Bangui and several provincial towns erected roadblocks and made illegal arrests consubstantial with hostage-taking in that some of the victims were released upon payment of a ransom; that the places in which those arrested were held consisted mainly of dilapidated buildings or houses abandoned by their occupants; that these acts constitute the offences of arbitrary arrest and false imprisonment, which are proscribed and punishable under articles 205 *et seq.* of the Criminal Code, since they were committed “[TRANSLATION] without an order from an established authority and outside the scope of situations where the law provides for the detention of an accused person”; these numerous recorded offences were perpetrated both in Bangui and in the provinces, in particular in the towns of Damara, Sibut, Bossembélé, Bozoum, Bossangoa, Kabo, Batangafo, Kaga-Bandoro, Bossempélé and others.

The aforementioned acts fall within the scope of articles 167, 168, 169, 174(4), 175, 184, 191(1), 197, 205, 209, 227, 228, 229, 271 and 281 of the Criminal Code, which proscribe and provide punishment for the offences with which the accused are charged; those charges against them must be upheld and they must be committed for trial before the Criminal Court in accordance with the law.

C - Criminal responsibility of Pierre Angoa, Lazare Dokoula and Gabriel Jean-Édouard Koyambonou

The accused Martin Ziguele, Pierre Angoa, Gabriel Jean-Édouard Koyambonou, Ferdinand Bombayaké and Lazare Dokoula are charged with complicity in premeditated murder, fatal wounding, malicious wounding, rape, pillaging, theft, destruction of property, concealment of bodies and property, arbitrary arrest and false imprisonment.

The aforesaid Mr Ziguele, Mr Dokoula and Mr Gan-Befio, being still at large, could not be examined in relation to these offences either during the preliminary investigation or before the Investigating Judge and did not file any brief in their defence before the court.

Nonetheless, that it was possible to examine Mr Koyambonou, Mr Angoa and General Bombayaké, who have formally denied the acts with which they have been charged.

In its final submissions in respect of Mr Koyambonou, Mr Angoa and Mr Dokoula, the Public Prosecutor submitted that, in light of the evidence in the record, no charges are pending against them on account of the acts of which they stand accused; the Prosecutor requested that the proceedings against them be terminated on the ground that the offences have not been proven.

On those same grounds, I hereby find that they should not be prosecuted and accordingly order that the proceedings against them be terminated.

D - Criminal responsibility of Ferdinand Bombayaké

The Accused, Ferdinand Bombayaké, who at the time of the events was Director General of the USP (Presidential Security Unit), is also being prosecuted for complicity in premeditated murder, theft, murder, rape, malicious wounding, concealment of bodies, arbitrary arrest and false imprisonment.

He is charged with having, on the orders of Mr Patassé, then President of the Republic, managed the Banyamulengué who came to Bangui in 2002-2003 to fight on the side of the loyalists; it is alleged that the funds allocated for the feeding and upkeep of the Congolese rebel fighters were first received by the Accused, who then released them to the leader of the Banyamulengué, Mr Moustapha; and that Mr Bombayaké provided Mr Bemba's men with weaponry and uniforms intended for the Central African army.

The USP, whom the Accused commanded on the battlefield, was deployed immediately behind the Congolese rebel fighters, who were the vanguard; as a general, Ferdinand Bombayaké could not have been unaware that the Banyamulengué who preceded his men were committing extremely serious acts of violence against the civilian population.

Even though his physical participation in the commission of those crimes is unestablished, General Bombayaké still participated intellectually by issuing instructions to Mr Bemba's troops since he maintained close relations with the aforesaid Moustapha; in the submission of the Public Prosecutor, the vehicles used by the Banyamulengué to travel around in order to pillage goods from civilians and to commit many other offences were supplied by General Bombayaké. The Public Prosecutor submits that these acts constitute

complicity in the offences committed by Mr Bemba's men and Miskine Abdoulaye's men.

When examined, General Bombayaké stated that the intervention of Mr Bemba's fighters on the territory of the CAR followed negotiations held in Tripoli, Libya and Gbadolité between Ali Triki, a Libyan Minister, Madani Abassi, Secretary General of CEN-SAD (Community of Sahel-Saharan States), the Commander-in-Chief of the Libyan troops in the CAR, and Jean-Pierre Bemba. He further stated that it was only after the conclusion of these negotiations that they came to Bangui to report to Mr Patassé and that on their arrival in Bangui, the Congolese soldiers were not wearing military uniforms. Mr Patassé, President of the Republic and Supreme Commander of the Armed Forces, therefore ordered General Bombayaké to supply General André Mazi with uniforms intended for the Central African army for the rebel fighters to wear.

Whenever the President of the Republic so wished, the Accused, in his capacity as Director General of Presidential Security, organised meetings between himself and Mr Moustapha; the vehicles he is charged with providing to the Banyamulengué were requisitioned on the Prime Minister's instructions from the car pool of the General Administration and Public Corporations by the State Audit Office and the Directorate General of the Gendarmerie; on the instructions of the Head of Government, he ordered said vehicles to be handed over to the Banyamulengué in order to facilitate their travel in the field; and those are the roles he played in the Banyamulengué's involvement in the hostilities of 2002-2003 in the CAR.

In his supplemental brief of 5 September 2003, the Public Prosecutor requested that the Accused, Ferdinand Bombayaké, be committed for trial before the Criminal Court for the acts of which he stands accused.

Article 38 of the Criminal Code provides that:

[TRANSLATION] the following shall be punished as aiders and abettors in actions characterised as crimes or other offences:

- 1. Any person who, by means of gifts, promises, threats, abuse of authority or of power, culpable manipulation or artifice, caused the action or gave instructions for it to be committed;**
- 2. Any person who procured weapons, instruments or any other means which served the purposes of the act in the knowledge that such were to be used for that act;**
- 3. Any person who knowingly aided or abetted the perpetrator or perpetrators of the act with respect to the actions which prepared, facilitated or completed it, without prejudice to the penalties specifically provided for in the present Criminal Code for persons conspiring to**

commit or inciting the undermining of external or internal State security, even where the crime that was the subject of the conspiracy or incitement was not committed.

The issue here is to decide, in light of the statement of the acts allegedly committed by General Bombayaké in 2002-2003, whether or not he could be found to have been complicit in the acts of violence (premeditated murder, rape, theft, murder, etcetera.) perpetrated by Jean Pierre Bemba's men and members of Miskine Abdoulaye's militia; for purposes of clarification, the acts ascribed to the Accused must be analysed in the context of the elements that constitute complicity.

- Provision of weapons, instruments or other means (see article 38(2) of the Criminal Code)

It has been established that the weapons and ammunition used by Jean Pierre Bemba's mercenaries in combat were supplied to them by Libya.

Ange Félix Patassé provided the men of the mercenaries Paul Barril and Miskine Abdoulaye with weapons and other logistical resources.

The sums of money paid to the Banyamulengué as a global food allowance (PGA) were initially received by the army quartermaster, who was charged with transferring them to the aforesaid Moustapha; it was only later that President Patassé, having learnt that such sums were not being paid in full to the rightful recipients, decided that they should thenceforth be collected by the now deceased Administrator of the USP on behalf of Mr Moustapha.

At no time was it stated that it was General Bombayaké who acted as an intermediary between Mr Patassé and Moustapha for the payment of the food allowances to the Congolese rebels (**see the record of the confrontation between General André Mazi and General Bombayaké dated 24 May 2004, ref. D46**).

It has been established that the FACA uniforms in stock at the warehouses had been given to General Mazi by General Bombayaké for the Banyamulengué's use on the very first day of their arrival in the CAR.

The uniforms were provided as soon as the Banyamulengué arrived, that is, before the aforementioned offences were committed; moreover, the uniforms were handed over by General Bombayaké to General Mazi, the FACA Deputy Chief of Staff, and not directly to the Banyamulengué, on instruction from the Accused, Ange Félix Patassé; General Bombayaké was only obeying the legitimate authority, the Head of State and Supreme Commander of the Armed Forces.

- Aiding or abetting

During the preliminary investigation, several hundred victims of the excesses of the Banyamulengué and the mercenaries of Miskine Abdoulaye and Jean-Pierre Bemba were interviewed and not one of them accused members of the USP or General Bombayaké of participating in the commission of those offences.

General Bombayaké never boarded a military aircraft in order to bomb the inhabitants of the northern neighbourhoods of Bangui.

It has been established that the Accused was trained as an aircraft mechanic and not as a pilot.

The bombings complained about were carried out by Libyan forces which had come to Bangui under the aegis of CEN-SAD.

All of the witnesses and victims interviewed unanimously ascribed the acts of violence to the Congolese rebels, Miskine Abdoulaye's mercenaries and members of the SCPS and of Paul Barril's force.

The preliminary investigation did not reveal how, when and why General Bombayaké allegedly aided or abetted the Banyamulengué, Miskine Abdoulaye or Paul Barril in the massacre of civilians, including elderly people and children, in raping females, some of whom were below the age of puberty, and in pillaging goods from peaceable citizens, who were systematically evacuated to Zongho.

- Instructions (article 38(1))

In order to establish General Bombayaké's guilt for complicity in the acts of violence of all kinds committed by the Congolese MLC rebels against the civilian population of the CAR, the Public Prosecutor maintained that he issued instructions to that effect to the rebel troops.

However, it has been established that Martin Koumtamadji, alias Miskine Abdoulaye, Paul Barril, Ferdinand Bombayaké and Mustapha were, at the time of the events, all under the direct authority of President Patassé and they reported to and received orders solely from him; and that there is no evidence whatsoever that Bombayaké had any authority over Moustapha, J.P. Bemba's representative in Bangui.

Of all the witnesses and victims examined, not one gave evidence of having witnessed any such instructions being given by Bombayaké to any commander, that is, one of the aforementioned persons. Whilst it has been established that he maintained a collaborative relationship with Mustapha, it

has not been proven that that relationship consisted in planning the crimes and other offences committed against civilians. It is undisputed that, besides Bombayaké, certain high-ranking political and military figures of the time also maintained collaborative relationships with Mustapha or J.P. Bemba: **see witness statement of General Xavier-Sylvestre Yangongo of 18 February 2004, ref. D39, and of Lieutenant Colonel Thierry Lengbe of 10 March 2004, ref. D43.**

It is established that the Accused, General Bombayaké, last visited Gbadolité in the 1970s, in the company of the late President Jean Bédel Bokassa.

In light of all of the foregoing, it is clearly evident that the offences of which General Bombayaké stands accused have in no way been proven. The proceedings against him should be terminated and he should be immediately released, if he is not detained in regard to any other matter.

Criminal responsibility of Martin Ziguele

In the Public Prosecutor's supplemental brief of 25 June 2003, Martin Ziguele was further charged, in addition to the previous charges against him, with undermining internal State security and complicity in premeditated murder, murder, malicious wounding, rape, theft, etcetera, suffered at the hands of the Banyamulengué in 2002-2003 by civilians who were not involved in the hostilities.

In his final submissions, the Public Prosecutor sought the Accused's committal for trial exclusively on the charge of complicity in the various crimes and other offences set out above, grounding his pleading as follows:

[TRANSLATION] **Considering that it has been established that Martin Ziguele, then Prime Minister, although not directly active in the fighting, caused several vehicles to be requisitioned which were made available to the Banyamulengué soldiers for their operations in the field; that in supplying those vehicles he was aware of their intended use, insofar as they were also used to transport property acquired through pillaging, theft, etcetera. [...]**

Mr Sylvain-Venance Gomongo filed a defence brief in which he challenged legality of the second indictment of his client Mr Ziguele for complicity in blood crimes committed by the Banyamulengué. He further contends that, since the Accused had no authority over the Banyamulengué, he cannot be found to have been complicit in the acts committed by them and he requests that the charges against his client be dismissed.

It should be recalled that, at the time of the events in question, Mr Ziguele was Prime Minister, Head of Government of the CAR; that he was under the direct

authority of the President of the Republic, who was the author of the military intervention by the Banyamulengué in the CAR.

It has been further established that the Banyamulengué rebels entered the CAR in an attempt to help Mr Patassé to save his government, which was under serious threat from the rebellion at the time; that Mr Ziguele, like any other Prime Minister in his place, had no choice but to provide them with means of transport.

Under article 38(3) of the Criminal Code, anyone alleged to be an accomplice must have acted knowingly.

In this regard, the Public Prosecutor even acknowledged that the requisitioned vehicles were made available to the Banyamulengué for combat operations in the field: see **p. 24, para. 3 of the final submissions**.

There is no doubt that Mr Ziguele assigned the vehicles in question to the MLC troops in order to facilitate their travel to the front and not to transport pillaged and stolen property.

At no point during the preliminary investigations was any evidence found of Mr Ziguele's criminal intent.

If the Banyamulengué, having arrived in the *locus in quo*, decided to use those vehicles for purposes other than those for which they had been provided, Mr Ziguele cannot be held responsible, particularly since he had no authority over them.

In light of the foregoing, it must be found that the offences of which Mr Ziguele stands accused have not been proven; the court dismisses the charges against him.

F - Criminal responsibility of Lionel Gan-Befio

It is established that Lionel Befio-Gan was not named either in the application to initiate proceedings or in subsequent additional submissions; nor was he charged during the preliminary investigation;

In his final submissions, the Public Prosecutor requested that he be both charged and committed for trial before the Criminal Court for complicity in the crimes and other offences committed by the Banyamulengué against the citizens of the Central African Republic and for misappropriation of public funds.

Such a request cannot not be granted lawfully without violating the rights of the defence.

MISAPPROPRIATION OF PUBLIC FUNDS, EMBEZZLEMENT, FORGERY AND USE OF FORGED DOCUMENTS

A - Misappropriation of Public Funds

1) - Criminal responsibility of Ange Félix Patassé, Michel Bangué-Tandet and Simon Kouloumba

In 1999, Libya offered the Central African Republic a gift of 55 000 tonnes of oil.

The first consignment of the gift, namely 50 000 tonnes, was made available to the CAR in 1999 and was effectively sold by Mr Michel Bangué-Tandet, then Adviser at the Presidency of the Republic. However, the proceeds from the sale were not used to pay the debt to Libya, nor paid into the Central African Public Treasury. Mr Bangué-Tandet must be declared the perpetrator of said misappropriation, with Mr Patassé as his accomplice.

In June 2000, Mr Patassé, the former Head of the Central African State, led a delegation to Tripoli in Libya composed of the Minister of Foreign Affairs, Marcel Metafara, and the Minister of State of Finance, Théodore Dabanga; Simon Kouloumba, Energy Adviser at the Presidency of the Republic; Simplicie Moholo, the assigned Chargé de Mission, his private secretary Pierrette Malonga and other State officials.

Upon his return from the official visit, Mr Patassé took measures for said gift to be properly managed. Thus, on 16 June 2000, by Decrees 0137 and 0138, he created a management committee and directed several ministries to send representatives to serve as members of the committee. Furthermore, he appointed his Energy Adviser Mr Kouloumba as president of the management committee. Unfortunately, for no stated reason, none of the ministries identified was able to send a representative and Mr Kouloumba remained the sole member of the management committee. Mr Kouloumba reported on his management solely to Mr Patassé and only an infinitesimal amount of the proceeds from the sale of the oil was paid into the Public Treasury. On the advice of his Counsel, Mr Kouloumba challenges the charges against him, contending that he managed the 5 000 tonnes of fuel in accordance with the instructions of Mr Patassé who, if funds were indeed misappropriated, should bear the responsibility therefor.

The denials of the Accused, Mr Kouloumba, are weak and far-fetched and therefore there are grounds to convict him of the misappropriation of sums to the value of the 5 000 tonnes of fuel, with Mr Patassé as his accomplice.

2) - Criminal responsibility of Ange Félix Patassé and Lazare Dokoula

On 14 December 2000, a loan agreement for the sum of 10 000 000 euros was signed between the CAR and a Libyan bank known as the Libyan Arab Foreign Bank, repayable over 25 years with seven years' deferral at an interest rate of one percent.

A mortgage on four pieces of real estate (Buffle, Fernando, Pacific II and Hôtel du Centre) and an unassessed mining claim located in the Haute-Kotto Prefecture was given to the lender as a surety of payment.

In return, the Libyan party authorised the transfer of the first payment of the loan in the sum of 3 491 510 917 CFA francs via BEAC. These funds were used to pay salaries, pensions and scholarships. The balance, however, estimated at approximately 3 058 489 083 CFA francs, was purely and simply misappropriated.

Whilst this agreement was still in force, a further agreement was signed on 29 June 2000 between the Central African State, represented by Mr Nalke-Dorogo, then Minister of Mines and Energy acting for the Minister of Finance, and a Libyan company by the name of the Libyan African Investment Company (LAICO). The purpose of this agreement was to sell Pacific II, the former BCAD and the former Petroca. It must be recalled that these buildings were already mortgaged to the Libyan Arab Foreign Bank.

Although the sale in question was illegal, the land titles of the former BCAD building and Pacific II were transferred to the buyer via the land conservation services on the instructions of Lazare Dokoula. To date, only Mr Dokoula and his accomplice Mr Patassé know the final destination of the **2 412 640 000 CFA francs** from the sale of the Fernando, former BCAD and Pacific II buildings, which were the property of the Central African State.

There are grounds to commit them for trial before the Criminal Court in accordance with the law.

3) - Responsibility of Lazare Dokoula

The record of the case shows that on 15 March 2003, upon instruction via telephone from Mr Patassé who was on mission in Niamey, Niger, a sum of 15 000 000 CFA francs was withdrawn from the Public Treasury and paid to Lazare Dokoula, who was to transfer it to Lionel Gan-Befio for a purported "security" mission.

These facts are confirmed by the former Principal Cashier of the Public Treasury, Mr Houlbara, and the former Prime Minister Mr Ziguele, who entered a defence brief into the record of proceedings.

Taking advantage of the confusion arising from the events of 15 March 2003, Mr Dokoula fled Bangui without explaining how said funds were used. It has not been possible to question Mr Gan-Befio, who is at large, on the issue of whether or not the funds were transferred to him by Mr Dokoula, the former Minister of State of Finance.

It has been proven that, on 15 March 2003, the State services were not functioning normally; that the arrival troops loyal to General Bozize was considered to be imminent, as was the overthrow of the regime, indicated by the fact that Mr Bemba's rebel soldiers were retreating in waves. In these circumstances, having been warned of Mr Patassé's downfall, Mr Dokoula must have seized the funds. As the custodian of said funds and having failed to account for or present them, he is guilty of misappropriation of public funds.

Such act is proscribed and punishable under article 1 *et seq.* of the Law of 1 March 2003 punishing embezzlement of public funds, corruption, misappropriation and other similar offences.

Since it has not been proven that said funds were transferred in whole or in part to Mr Gan-Befio, the charges against him cannot be upheld and must be dismissed for lack of evidence.

4) - Criminal responsibility of Martin Ziguele

The Public Prosecutor sought the committal Martin Ziguele for trial before the Criminal Court for the misappropriation of public funds on the ground that, in 2002, in any event at a time within the statutory limitation period, the Accused is believed to have misappropriated the sum of 194 487 416 CFA francs to the detriment of the Central African State, the owner thereof.

When the accused was examined on the issue, he categorically denied the charges against him, contending that as far back as 1997-1998, the government had entered into discussions with partners for the renovation of the Ngaragba Central Prison, which had been damaged by the successive mutinies because it did not offer adequate facilities for receiving the detainees and prisoners who had been crammed into cells at the police stations and gendarmerie brigades. Successive governments having searched in vain for funding to renovate the prison, on his appointment to the head of government, Mr Ziguele found himself faced with this difficult task, for which two quotations had been advanced.

The first quotation, in the amount of 900 000 000 CFA francs, was from an English firm called Five Anchor.

The second quotation of 548 000 000 [CFA francs] was from a company called Dameca. Given that these two quotations were very high in view of the

budget allocated to this task, but also on account of the appalling conditions of the detainees and prisoners which required an urgent solution, Mr Ziguele therefore instructed his Legal Adviser, Judge Maurice Dibert-Dollet and his Principal Private Secretary to identify a company under the management of CAR architects-engineers who could work under government supervision with young CAR craftsmen.

Following a visit to the Ngaragba prison, it was decided by mutual agreement (between the Prime Minister's Office and the Ministry of Justice) that the work should be divided into two phases.

The first phase would urgently renovate some of the central prison's premises in order to receive detainees and prisoners from the overcrowded cells of the judicial police.

The second phase would therefore consist of renovating the remaining structures.

Thus, after consulting several companies, the contract was awarded to Kodro SARL. According to the Accused, Kodro SARL's technical offer was more satisfactory. An over-the-counter contract was subsequently signed between the Ministry of Finance and Kodro SARL.

The first phase of work was completed and the official opening of the renovated premises took place on 20 June 2002 during a ceremony to which members of government and accredited CAR diplomats were invited.

The cost of the second phase was then agreed in the amount of 248 487 416 CFA francs under the same terms and conditions as the first and the work effectively began on 15 April 2002.

According to Counsel for the Accused Mr Ziguele, in light of the difficulties the State treasury was experiencing, 67 000 000 CFA francs were actually paid to Kodro SARL, which continued the work until it was interrupted by the events of 25 October 2002.

When examined during the preliminary investigation, the CEO of BPMC, Mr Wilson, confirmed that the transfer order for 194 487 416 CFA francs from the Director General of the Public Treasury to Kodro SARL could only be honoured in the amount of 40 000 000 CFA francs in view of the level of the Public Treasury's current account in BPMC's books. Moreover, Mr Pierre Sedo, the Principal Treasury Inspector, then first proxy and co-signatory of said transfer order as well as representing the Director General of the Treasury, confirmed that Kodro SARL received only 40 000 000 CFA francs from the BPMC, in addition to 27 000 000 [CFA francs] paid by the Public Treasury in May 2002, that is a total of 67 000 000 [CFA francs], as partial

payment for the second phase of the renovations to the Ngaragba Central Prison. A letter dated 19 May 2003 was even entered into the record of the proceedings by which the CEO of BPMC informed Kodro SARL's managers that it was only possible partially to implement transfer order No. 350 dated 20 June 2002 issued by the Public Treasury for their company in the amount of 40 000 000 CFA francs.

This being so, it is formally established that no payment of 194 487 416 CFA francs was made to Kodro SARL, nor was that sum misappropriated by the Accused, Martin Ziguele.

Considering that the charge of misappropriation of public funds against Mr Ziguele has not been established, the charges against him must be dismissed.

B - Forgery and making use of forged documents

1) - Criminal responsibility of Ange Félix Patassé

During his term of office, showing scant regard for article 22 of the Constitution of 14 January 1996 which provides that "[TRANSLATION] the functions of the President of the Republic are incompatible with the exercise of any other political function, with any elective mandate, or with any other profit-making or professional activity", Ange Félix Patassé created by presidential decree numerous business corporations, in which he held shares, which had corporate charters for purchasing and cutting diamonds, forest exploitation and selling petroleum products.

Such was also the case for companies such as Trans-Oil, which sold petroleum products, Cacodec (Centrafrican Coltan and Derives Company) which mined coltan (columbite-tantalite), an ore used in technological equipment, in particular in specialised research or in the manufacture of cellular phones; Catadiam (Centrafricaine de Taillerie de Diamants), a public limited company whose activities centred on purchasing rough diamonds, cutting and selling them; Timber-Mbaere, a forest exploitation company; Centrafondor (Centrafricaine de Fonderie d'Or) and OMAC.

In the case of Cacodec, the preliminary investigation established that it was created by Mr Patassé alone, who gave instructions to his notary, Abraham-Pierre Mbokani, to draft its articles of incorporation and perform the various formalities concerning its operations. Although the corporate charters were properly registered with the Taxation service, the seed capital recorded in said statutes was never paid in. The seed capital is therefore fictitious. Moreover, since its creation, Cacodec has never been operational even though State resources, namely coltan, which were included in the corporate charters, were being exploited.

In the case of Catadium, although it was created by Decree 97.071 of 23 April 1997, the formalities to secure its legal existence were never completed. Notably no capital accumulated in its bank account which, moreover, is fictitious. The company does not appear in the Register of Companies. Although it is a company whose business is purchasing, cutting and selling diamonds, it never fulfilled its legal obligation to inform the mining services of all purchases, production and stock of diamonds and to send annual statements of accounts and reports on technical activities to the Ministry of Mines. Furthermore, it has been established that the minutes of meetings and general assemblies produced as of the company's creation in 1997 until its sequestration are purely fictitious, given that the shareholders never existed and were also fictitious. Notwithstanding these irregularities, the company operated according to its charter and it therefore follows that the State's mineral resources were fraudulently exploited.

Considering that article 101 of the Criminal Code provides the following in respect of the forgery of authentic public documents or of invoices or bank correspondence:

[TRANSLATION] by the forgery or alteration of handwriting or signatures; or by the fabrication of agreements, provisions, obligations or discharges, or by the retrospective insertion thereof in such documents, or by the addition or alteration of clauses, statements or facts which those documents were intended to contain or establish;

It has been established that, in principle, forgery of documents is the material alteration of the truth in a written document having the potential to cause prejudice to others, which is committed with criminal intent.

It is material that such alteration of the truth has been severely prejudicial to the Central African State, in this case, by the fraudulent exploitation of national resources.

Such acts are proscribed and punishable by articles 38, 100 and 101 of the Criminal Code.

Accordingly, Ange Félix Patassé must be committed for trial before the Criminal Court.

2) - Criminal responsibility of Abraham-Pierre M'bokani and Louis Sanchez

By an additional submission dated 23 August 2004, the Public Prosecutor of the Bangui *Tribunal de Grande Instance* requested that Abraham-Pierre M'bokani and Louis Sanchez be respectively charged with forgery of authentic public documents and with complicity in the forgery of authentic public documents.

Mr Mbokani stands charged of having, in Bangui, at a time falling within the statutory limitation period, forged authentic documents by drafting the charters and minutes of the general assemblies of business corporations such as Centrafondor, Catadium, Timber-Mbaere and others, which were created by Mr Patassé, then President of the Republic.

For his part, Louis Sanchez stands charged of having, at the same time and place, knowingly aiding or abetting such acts by providing instructions for the completion of the legal documents for Timber-Mbaere;

Louis Sanchez is at large and thus could not be examined and did not file any brief in defence before the court in relation to the charges against him;

In contrast, Abraham Mbokani was examined in the presence of his Counsel, Mr Kongbéto-Gbogoro and Mr Nganatouwa Goungaye Wanfiyo. He denies the charges against him and contends that the companies Catadium and Centrafonder were created by Mr Doraz. During his examination, he entered into the record of proceedings the statutes and minutes of the general assemblies of said companies which were in fact drafted by Mr Doraz.

The Accused, Mr Mbokani, maintains that the statutes of Timber-Mbaere were indeed drafted by his office, at the request of a company known as Near and Far Service Inc., the registered office of which is in Holland. Near and Far Service Inc. is represented in the CAR by Louis Sanchez.

Timber-Mbaere, which was approved by decree of the President of the Republic, was never even operational, given that it was created when the fall of the previous government was imminent.

The preliminary investigation has not established that the information regarding Timber-Mbaere, in particular the information concerning its parent company based in Holland, is false.

It is for the State institutions responsible for registering and licensing the so-called Timber-Mbaere to require proof before such formalities that the company's capital has been raised and lodged in a local bank. The lack of such proof is not consubstantial with the forgery of authentic documents by Mr Mbokani, particularly since it has not been demonstrated that he created a false certificate for the purposes of misleading the services responsible for registering and licensing Timber-Mbaere. Accordingly, the charges of forgery and using forged documents against Mr Mbokani have not been proven.

The preliminary investigation has not established that Near and Far Service Inc. is a fictitious company or that it had no connection with Timber-Mbaere at the time of the latter's establishment. Furthermore, it merely instructed the notary Abraham Mbokani to draft the articles of incorporation for Timer-

Mbaere. The charges against Louis Sanchez cannot be upheld without violating the provisions of articles 38, 100 and 101 of the Criminal Code and must be dismissed.

C - EMBEZZLEMENT

1) - Criminal responsibility of Alain-Serge Liguela-Mboutou and Jean-Chrysante Nainangue-Tendo

In 2002, the Central African State, represented by the Ministry of Finance, signed a contract with Kodro SARL for the renovation of the Ngaragba Central Prison in the amount of 288 290 911 CFA francs. The work was to be completed in two phases. The first phase, at a cost of 39 322 320 CFA francs, was completed and the buildings presented to the government. The second phase, in the amount of 248 487 416 CFA francs, for which Kodro SARL received a partial payment of 67 000 000 CFA francs, could not be completed, wherefor the directors of Kodro SARL are charged with embezzlement.

Article 244 of the Criminal Code defines this offence in the following terms:

[TRANSLATION] **Any person who misappropriates or squanders to the detriment of the owners, possessors or holders of effects, funds, goods, folding money, receipts or any other document containing or serving as an obligation or receipt provided solely as a rental, deposit, money order, collateral, loan or for salaried or non-salaried work on the condition that such was to be returned or accounted for or to be put to an agreed use or application shall be sentenced to one to five years' imprisonment and a fine of 100 002 to 4 000 000 CFA francs;**

If the provisions of the legal text cited above are properly construed, it is apparent that the type of contract signed between the Ministry of Finance and Kodro SARL, which is a business contract, does not appear among the documents listed exhaustively in article 244 of the Criminal Code. Accordingly, absent other grounds, it must be found that the charges against the Accused Alain-Serge Liguela-Mboutou and **Jean-Chrysante Nainangue-Tendo** do not constitute embezzlement; and that, consequently, the charges against them must be dismissed.

PARTICULARS

Ange Félix Patassé, born on 25 January 1937 in Paoua, son of Paul Ngakoutou and Ngoumba, married, father of several children, Central African national, former Prime Minister of the Central African Republic, former Head of State, democratically elected in August 1993, subsequently re-elected in 1999, overthrown by the military coup d'état of 15 March 2003.

Martin Koumtamadji, alias Miskine Abdoulaye, born on 3 August 1965 in Ndinaba (Moyen Chari), Chad, son of Madigar-Doum and Dominique Ndoullane, Chadian national. Having previously forged bank notes and been charged and convicted by the *Tribunal Correctionnel* of Nola, he became a traditional healer and clairvoyant, and was introduced to Ange Félix Patassé by Victor Ndoubabe, nicknamed “Vicky”, Mr Patassé’s former official driver. As a result of the failed coup d’état of 28 May 2001, he became a warrior and was later appointed by presidential decree to command a militia responsible for combating highway robbery, his remit being the northern region of the CAR, including the towns of Kabo, Batangafo and the surrounding areas. He recruited and trained this militia himself.

Jean-Pierre Bemba, former Congolese rebel leader of the Movement for the Liberation of Congo (MLC), now Vice-President of the Republic of Congo in Kinshasa, no police or gendarmerie record in the CAR.

Paul Barril, no police or gendarmerie record, French national, retired captain of the gendarmerie, recruited by Ange-Félix Patassé and then appointed National Director of the Campaign Against International Terrorism. Commanding other mercenaries of various nationalities, he fought alongside the forces loyal to Mr Patassé during and after the events of 25 October 2003 and before 15 March 2003.

Ferdinand Bombayaké, born on 26 August 1944 in Beboy 4, Paoua Sous-Préfecture, son of Paul Bobe and Marie Konando (deceased), soldier and Air Force General, aircraft mechanic, married, father of eight children, resident of Benz-Vi neighbourhood in Bangui, Central African national; no record of previous convictions.

Simon Pierre Kouloumba, born on 1 January 1949 in Alindao, son of Bernard Foroto (deceased) and Jeanne Yakouzou, widower, father of four children, Central African national, petroleum engineer, former Chief Executive of Petroca, former Energy Adviser to the former President, Ange Félix Patassé, no previous convictions, military service not served.

Michel Bangue-Tandet, born on 5 October 1941 in Bangui, son of Victoire Tandet and Louise Sabata, Central African national, Chief Treasury Inspector, former Minister, former Paymaster General, former Adviser to the Presidency of the Republic;

Martin Ziguele, born on 12 February 1957 in Paoua, Senior Tax Inspector, resident of Bangui, currently living in exile in France, son of Jean Maïde and Thérèse Mingara, married, father of six children, claims to have no previous convictions, military service completed, regimental number 1030, Central African national.

Alain-Serge Liguela-Mboutou, born on 17 February 1968 in Birao, architect, resident of Fohu neighbourhood in Bangui, son of Pascal Mboutou and Catherine Ngobolo, Central African national, claims to have no previous convictions.

Jean Chrysante Bruno Naïnangue-Tendo, born on 20 October 1969 in Yaloké, architect, resident of Yassara II neighbourhood, son of Hubert Naïnangue and Louise Yassikanga, Central African national, states no previous convictions.

Gabriel Jean-Édouard Koyambounou, born on 19 August 1950 in Bangui, [son] of Ferdinand-Maurice Benime (deceased) and Jeanne Liatene (deceased), Senior Customs Inspector, Central African national, former State Auditor-General, former Prime Minister of the Central African Republic, married, father of six children, military service not served, claims to have no previous convictions.

Abraham-Pierre Mbokani, born on 21 March 1956 in Ouango-Bangassou, son of Joseph Ngbo (deceased) and Lucienne Nzate (deceased), Central African national, resident of Bangui, notary.

Louis Sanchez, born on 26 April 1931 in Lorca, Spain, French national, resident of Bangui, Central African Republic, recorded in police files as a personal friend of Ange Félix Patassé.

Lionel Gan-Befio, former Adviser to the Presidency, French national and retired former French soldier.

DISMISSAL OF CHARGES

It is apparent from the preliminary investigation that there is insufficient incriminating evidence against **Jean-Pierre Bemba, Pierre Angoa, Gabriel Jean-Édouard Koyambounou, Ferdinand Bombayaké, Martin Ziguele, and Lionel Befio-Gan** to show:

That in Bangui at a time within the statutory limitation period they colluded with the rebel troops of Congolese national Jean Pierre Bemba [and] mercenaries Martin Koumtamadjji and Paul Barril by providing them with intelligence on troop numbers and activities at CAR military bases and their communications frequencies and by inviting them to intervene militarily on national territory;

That in Bangui, in any event at a time within the statutory limitation period, they knowingly aided or abetted Mr Koumtamadjji, Mr Baril and others in respect of acts which prepared or facilitated the completion of the crimes of premeditated murder, fatal wounding, rape, arbitrary arrest and false

imprisonment, pillaging, concealment, destruction of property and theft of personal property;

That in Bangui, in 2002, in any event at a time within the statutory limitation period, they misappropriated, to the detriment of the Central African State, the owner thereof, an estimated sum of 194 487 416 CFA francs (Martin Ziguele) and 15 000 000 CFA francs (Lionel Befio-Gan);

Such acts are proscribed and punishable under articles 50, 51, 38, 167, 168, 169, 174(4), 175, 184, 191(1), 197, 205, 209, 227, 228, 229, 271, 281 and 368 of the Criminal Code, 70, 73, 56, 59(4), 50(5), 99, 100, 101, 108 *bis* and 108 *ter* of the Criminal Code and Law No. 03.010 of 1 March 2003;

All of these persons are hereby exonerated and those persons detained under a custody warrant shall be released, provided that they are not detained on other grounds.

There is insufficient incriminating evidence against **Alain-Serge Liguela-Boutou** and **Bruno Chrysanthé Naïnangue-Tendo** to show that in Bangui, in 2002, in any event at a time within the statutory limitation period, they misappropriated or squandered, to the detriment of the Central African State, an estimated sum of 67 000 000 CFA francs which had been provided to them only as custodians or for paid employment and on the condition that they would repay or account for it.

Such acts are proscribed and punishable under article 244 of the Criminal Code.

The charges against these persons are dismissed.

There is insufficient evidence to show that in Bangui, in any event at a time within the statutory limitation period, **Abraham-Pierre Mbokani** knowingly prepared forged documents used to create and operate various business corporations in which **Ange Félix Patassé** was a shareholder.

Such acts are proscribed and punishable by articles 106 and 107 of the Criminal Code.

The charges against him are dismissed.

There is insufficient evidence to show that, in the same circumstances, **Louis Sanchez** aided or abetted Abraham-Pierre Mbokani in respect of acts which prepared, facilitated or completed the offence committed by the latter of forgery and using forged documents.

Such acts are proscribed and punishable under articles 38, 106 and 107 of the Criminal Code.

The charges against him are dismissed.

COMMITTAL FOR TRIAL

It is apparent from the preliminary investigation that there is sufficient incriminating evidence against:

- **Martin Koumtamadji, alias Miskine Abdoulaye;**
- **Paul Barril;**
- **The Banyamulengué; and**
- **Victor Ndoubabe.**

The evidence shows that, in Bangui as well as in several provincial towns of the CAR, in any event at a time within the statutory limitation period, they wilfully caused the death of several persons, the crimes having been premeditated and accompanied by torture and brutality;

At the times and places aforementioned, they:

- maliciously wounded several persons, without intending to kill them, but in fact causing their deaths;
- arrested, detained and falsely imprisoned several persons without an order from an established authority and in violation of the law;
- knowingly concealed all or part of the bodies of certain victims of premeditated and unpremeditated murders;
- pillaged and destroyed all of their victims' money or goods and all of their personal and other movable property;
- such pillaging and destruction was committed in a group or by prior agreement;
- misappropriated items of personal property or cash belonging to their victims.

Such acts are proscribed and punishable under articles 167, 168, 169, 174(4), 175, 184, 191(1), 205, 209, 227, 228, 229 and 271 of the Criminal Code;

That **Ange Félix Patassé**, in any event in Bangui at a time within the statutory limitation period, colluded with the rebel troops of Congolese national Jean Pierre Bemba, and mercenaries of Martin Koumamadji and Paul Barril, by providing them with intelligence on troop numbers and activities at CAR military bases and their communications frequencies and by inviting them to intervene militarily on national territory.

In Bangui at a time, in any event within the statutory limitation period, he knowingly aided or abetted the aforesaid Martin Koumtamadji, Paul Baril, the Banyamulengué, members of the SCPS commanded by Victor Ndoubabe and others in respect of acts which prepared or facilitated the completion of the crimes of premeditated murder, fatal wounding, rape, arbitrary arrest and false imprisonment, pillaging, concealment, destruction of property and theft of property.

He knowingly aided or abetted Simon Kouloumba, Michel Banguet-Tandet and Lazare Dokoula in respect of acts which prepared, facilitated or completed the misappropriation of public funds in the following amounts:

- **27 000 000 000 CFA francs**, being proceeds from the sale of petroleum products, a gift from Libya to the CAR;
- **3 058 489 083 CFA francs**, being the balance of a bank loan from a Libyan bank to the CAR; and
- **2 412 640 000 CFA francs**, being proceeds from the sale of the Fernando, former BCAD and Pacific II buildings, which were the property of the CAR;

In Bangui, in any event at a time within the statutory limitation period, he caused minutes to be prepared purporting to record general meetings of the shareholders of Catadiam and Centrafondor which never took place.

He used the articles of incorporation of a company called Coltan, which was never constituted, for the fraudulent exploitation of coltan, a CAR mineral resource.

Such acts are proscribed and punishable under articles 38, 50, 51, 167, 168, 169, 174(4), 175, 184, 191(1), 205, 209, 227, 228, 229, 271 and 106, 107, 108, 108 *bis*, 108 *ter* of the Criminal Code;

**Simon-Pierre Kouloumba and
Michel-Paulin Bangue-Tandet**

In Bangui, in any event at a time within the statutory limitation period, they misappropriated, to the detriment of the Central African State, the owner thereof, a sum provisionally estimated at 27 000 000 000 CFA francs, resulting from the sale of 55 000 tonnes of petroleum products, a gift from Libya to the CAR.

Such acts are proscribed and punishable under articles 108, 108 *bis* and 108 *ter* of the Criminal Code;

Lazare Dokoula

Less than ten years ago in Bangui he misappropriated or squandered, to the detriment of the Central African State, the owner thereof, the sums of 3 058 489 083; 2 422 640 000 and 15 000 000 CFA francs, of which he was the custodian in his capacity as Minister of State of Finance and the Budget;

Such acts are proscribed and punishable under articles 108, 108 *bis* and 108 *ter* of the Criminal Code and articles 1 *et seq.* of the Law of 1 March 2003 on the misappropriation of public funds, corruption and similar offences.

These persons are committed for trial before the Criminal Court in accordance with the law;

FOR THESE REASONS

- Dismiss the charges against **Jean-Pierre Bemba, Pierre Angoa, Gabriel Jean-Édouard Koyambounou, Ferdinand Bombayaké, Martin Ziguele, Lionel Befio-Gan, Abraham-Pierre Mbokani, Alain-Serge Liguella-Mboutou, Jean-Chrysante Nainangue-Tendo and Louis Sanchez.**
- Commit **Ange Félix Patassé, Martin Koumtamadji, alias Miskine Abdoulaye, Paul Barril, Victor Ndoubabe, Michel Bangue-Tandet, Lazare Dokoula and Simon-Pierre Kouloumba** for trial before the Criminal Court in accordance with the law;

Done at my chambers, on 16 September 2004

Senior Investigating Judge

[signed] [stamped]

Pamphile Oradimo