

Report of the FIDH Legal Action Group (LAG)

FIDH and the situation in the Central African Republic before the International Criminal Court

The case of Jean-Pierre Bemba Gombo



"The other day, on Friday afternoon, the Chadians returned to Bangui and occupied all the neighbourhoods. They killed many people. I said "No!". I immediately called on my boy Bemba to send his men to give a hand to our soldiers. That is why they came. I know that there are things that happened. I said "Good! We'll put a commission in place to evaluate all that."

Ange-Félix Patassé. Speech to the Nation. 25 November 2002

Table of contents

I – The FIDH Legal Action Group.....	4
II – FIDH lifts the veil on the international crimes committed in the Central African Republic in 2002 and 2003	4
1. Context.....	4
2. Crimes Committed in 2002 and 2003	5
A/ Fact-finding work.....	5
B/ Violations of international humanitarian law committed by the combatants at the time of the Bangui attack by the rebels in October 2002	5
C/ International crimes committed by the loyalist troops between October 2002 and March 2003.....	6
D/ International crimes committed by the rebels between October 2002 and March 2003.....	9
3. Abandoned and stigmatised victims	10
III – FIDH demonstrates the lack of will and capacity of the Central African judicial system to try those responsible for the crimes committed in the CAR	11
1. A destroyed legal system	11
2. Lack of investigation and prosecution against Bozizé’s rebels	11
3. Investigation and prosecution against former President Patassé and his men: The Central African judiciary requests the intervention of the ICC	11
IV – FIDH pleads for the fight against impunity before the ICC.....	13
1. FIDH action with respect to the Central African authorities: the CAR refers the matter to the ICC	13
2. FIDH action with respect to the ICC : the ICC opens an investigation of the situation in the CAR	14
V – The Bemba case before the ICC	15
1. Who is Jean-Pierre Bemba Gombo?	15
2. Alleged crimes committed in CAR under his responsibility	17
3. The ICC arrest warrant	18
Conclusion.....	21

I – The Legal Action Group of FIDH

For many years the Legal Action Group of FIDH has been supporting victims of the most serious crimes to guarantee their right to access independent justice.

The Legal Action Group (LAG) of FIDH is a network of magistrates, jurists and lawyers, working pro bono for FIDH. The mandate of the LAG is :

- To afford direct legal assistance to victims of serious violations of human rights by accompanying them, counselling them, representing them and supporting them in all judicial actions against alleged perpetrators of crimes of which they are victims. The LAG takes great care to ensure that victims have the right and access to a just, independent and fair trial, that their rights are restored, and that they can benefit from reparations measures;
- To assemble the legal and factual elements necessary for the initiation of legal proceedings to punish the perpetrators of human rights violations;
- To initiate legal proceedings before domestic and international courts, with the aim of contributing to the reinforcement of national jurisdictions' actions regarding punishment of perpetrators of human rights violations.

The LAG has long distinguished itself by initiating proceedings before domestic courts under the principle of extraterritorial or universal jurisdiction (a principle provided for by certain international conventions and incorporated into domestic legislation, permitting a national tribunal to try foreign individuals who are the perpetrators of the most serious crimes committed in other countries against foreign victims), notably in the trials of the "disappeared of Brazzaville Beach", the Mauritanian torturer Ely Ould Dah, the Chadian dictator Hissène Habré, General Pinochet and 18 other leaders of the Chilean dictatorship, and the Rwandan perpetrators of genocide.

FIDH is thus a party to about twenty proceedings before national jurisdictions.

The LAG also represents victims before international criminal jurisdictions and in particular before the International Criminal Court (ICC). As such, FIDH has been the first organisation to file victims' applications to participate in ICC proceedings, on behalf of victims of international crimes committed in the Democratic Republic of Congo.

II – FIDH lifts the veil on the international crimes committed in the Central African Republic

In 2002 and 2003, massive and systematic human rights violations were committed against the civilian population of the Central African Republic by loyalist troops and by the rebels, with the quasi indifference of the international community. Present on the ground, FIDH tried hard to lift the veil on these offences in order to fight against their impunity.

1. Context

The Chief of Staff of the Central African Army (*Forces armées centrafricaines* - FACA), François Bozizé, was dismissed on 26 October 2001 by presidential decree. He was accused of having prepared a coup d'état at the same time as the attempted but unsuccessful coup d'état by former president Kolingba against the Ange-Félix Patassé in May 2001.

Bozizé refused to comply with the arrest warrant that was served on him on 3 November 2001. He put up an armed resistance for several days and then retreated to PK (*point kilométrique*) 11. Taking advantage of the mediation of General Lamine Cissé, then representative of the Secretary General at the United Nations Office in CAR (*Bureau des Nations unies en République Centrafricaine* - BONUS), the loyalist forces, supported by Libyan troops (on the basis of military cooperation) launched an offensive against Bozizé and his troops. Bozizé retreated with about a hundred of his men and set up camp in the city of Sarh, in the south of Chad.

On 25 October 2002, the rebel troops of Bozizé broke through and attacked the northern districts of Bangui. Several days of violent fighting ensued in the capital. With the Central African Army in desperation, President Patassé called upon a Libyan military contingent, the men of the Chadian Miskine, the troops of the Unit of Presidential Security run by Bombayaké, French secret agents led by Paul Barril, and several hundred "Congolese" mercenaries under the direction of Jean-Pierre Bemba.

This alliance finally pushed the rebels out of the capital on 30 October leading to a counter-offensive with a fluctuating front-line several hundred kilometres from the capital. Attacks and counter-attacks followed for several months.

At the beginning of March, the rebels of General Bozizé launched a victorious offensive and entered the capital on the 15th. Bozizé proclaimed himself president. Patassé and Miskine went into exile. Bemba's men crossed the Oubangi river in haste to return to the Democratic Republic of Congo.

2. Crimes committed in 2002 and 2003

A/ Fact-finding work

Since 2002, FIDH has organised four international fact-finding missions to CAR, in cooperation with its affiliated organisations, the Central African League of Human Rights (*Ligue Centrafricaine des droits de l'Homme* - LCDH) and the Organisation for the Compassion and Development of Families in Distress (*Organisation pour la compassion et le développement des familles en détresse* - OCODEFAD).

All missions sought in particular to lift the veil on the serious violations of human rights and of international humanitarian law perpetrated by the the group of combatants at the time of the 2002-2003 armed conflict pitting the loyalist troops of President Patassé against the rebels of General Bozizé.

Several lawyers, magistrates, NGOs' representatives affiliated with FIDH, members of the FIDH International Board and of the FIDH Secretariat participated in these investigations. To support the information contained in their mission reports¹, the mission delegates gathered testimonies of numerous victims, carried out in situ visits to the sites where the crimes had been committed, visited hospital services and detention centres, and met with representatives of humanitarian and human rights NGOs, victims organisations, UN agencies, journalists, and agents of the judicial, military and police systems. They

were also received by the Head of State, members of the government and opposition political parties as well as diplomats.

FIDH fact-finding work has permitted the veil to be lifted on the serious violations of human rights and international humanitarian law perpetrated by all combatants from October 2002 to March 2003. It has also made it possible to identify who is responsible for the acts, as is summarised below.

B/ Violations of international humanitarian law committed by the combatants at the time of the attack on Bangui by the rebels in October 2002

The rebels launched their offensive on the capital, Bangui, on 25 October 2002. During a brutal counter-offensive which started on 27 October, the loyalist troops, made up of about 1,500 men of the Central African Army (FACA), attempted to dislodge the attackers, about 600 combatants, from the northern districts of the capital. In order to do this, they had the threefold support of about 100 Libyan soldiers, about 500 of Miskine's mercenaries and about 1,000 of Jean-Pierre Bemba's Congolese mercenaries who came following President Patassé's call for reinforcements. The rebel positions came under intense shelling from the heavy artillery of the Libyans posted at the Presidential residence. Two Libyan planes flew over the city dropping bombs indiscriminately from a high altitude over the Gobongo, Boyrabe, Combattants and Cité Jean 23 districts, all situated to the north of the Friendship Hospital (*hôpital de l'amitié*).

Following a 24-hour cease-fire, the fighting started again on Wednesday 30 October 2002. The arrival of 500 more of Bemba's mercenaries, who had crossed the Oubangui River, and the artillery fire from the Libyans, finally forced the attackers to retreat. Miskine's men, the USP units led by Bombayaké and Bemba's Congolese men now held the northern districts of Bangui and General Bozizé's rebels had to retreat.

1. Cf FIDH fact-finding reports on CAR :

- FIDH Report No. 355: War Crimes in the Central African Republic, published on 24/02/03, <http://www.fidh.org/spip.php?article1092>

- FIDH No. 382: What Justice for Victims of War Crimes, published on 27/02/04, <http://www.fidh.org/spip.php?article697>

- FIDH Report No. 410: The Political Transition Closes Against a Backdrop of Impunity: How will the International Criminal Court respond?, published on 04/03/05, <http://www.fidh.org/spip.php?article2275>

- FIDH Report No. 457: Forgotten, Stigmatised: Double Suffering of Victims of International Crimes, published on 12/10/06, <http://www.fidh.org/spip.php?article3992>

In the midst of the fighting, it proved particularly difficult to take care of civilians and the Central African Red Cross was unable to obtain any safety corridor. The Bangui authorities were unable to precisely define the combat zone and claimed that there was no one in the opposing camp with whom to negotiate protection for the rescue services.

According to information collected by FIDH from hospital services and humanitarian NGOs, the fighting caused several deaths and injured more than one hundred persons amongst the civilian population.

Testimony

A, a 23-year-old student, was at home with his family in the Miskine district on the morning of 28 October. At 11 am, when he was leaving his house and about to close the door, he felt a stab of pain in his right leg. Lying in his hospital bed, he pulled from a rucksack the remains of the shell, about 30 cm long by 10 cm in diameter with sharp edges, which he found lying by his mangled foot and which he carefully preserved. He lost his foot. He explained: *"I think the shell had been fired from the presidential sector but I don't know who fired it. On 28 October they tried to evacuate me to the Friendship [Hospital], but we were prevented by the aerial bombardments. It wasn't until 3 pm that I was taken by rickshaw to this hospital where they amputated my foot. Because of complications, I am still here and they've had to amputate again just above my knee. I'm told that the shell was fired by Libyans but I don't have any proof."*

It is difficult to attribute responsibility for these criminal acts to one or other of the warring parties. Whilst the damage caused by the often indiscriminate aerial bombardments can be blamed directly on the loyalist troops, who alone had this type of military arsenal, all of the warring parties share responsibility for the serious breaches of international humanitarian law committed in Bangui and its suburbs during the attempted coup in October 2002.

C / International crimes committed by loyalist troops between October 2002 and March 2003

Grave violations of human rights and of international humanitarian law falling under the definition of crimes included in the ICC Statute were committed by the loyalist

troops against the civilian population: murder, torture, rape, and looting. These crimes were committed on a large scale and in a systematic manner, in particular during the counter-offensive led against Bozizé's men after the attack on Bangui at the end of October-beginning of November 2002. Other crimes were also committed behind the front-line at the time of the fighting between the rebels and the loyalist forces (between November 2002 and March 2003) and at the time of the retreat of the loyalist forces fleeing the victorious offensive of Bozizé's troops in March 2003. According to the testimony of victims and witnesses of the events, these crimes are mainly attributable to the mercenaries of Jean-Pierre Bemba and to Abdoulaye Miskine's men.

Testimony

Y, 15 years old, resident of PK 12. Friday 1 November 2002. *"Armed men in military uniform came. I was asleep in the bedroom with my sister. With one kick they broke down the door. They asked us for money, jewellery, gold. My sister said we had no money. They did not understand. Then they asked where my father and my uncle, who has been paralysed for 17 years, were sleeping. We went to their bedroom with X, Y and Z, my cousins. One of the men dragged my sister into the shower. She began to scream. We rushed to her but the man pointed his gun at us while he was with my sister. He ordered us to return to the lounge, which we did out of fear. That was when a young man, big and fat, came towards me. He dragged me against the fridge. He tried to remove my sarong. I struggled and then he tore my pants and threw me on the floor. He removed his trousers and entered me. He hurt me really badly. I saw a lot of blood on my sarong. I still have pain in my lower abdomen. He spoke Lingala and very bad French. The humanitarian aid workers came to see me. They took a blood sample and gave me medicine. I'm frightened when I see men. I'm frightened they'll come back. And I'm frightened of being ill."*



Photo of looting – Taken by FIDH mission delegates in November 2002

Testimony

X, "On 27 October, in the late morning, I returned home after work. Suddenly, three armed men wearing jeans and denim jackets arrived on foot and entered the house. They immediately aimed their guns at me and demanded the keys of a vehicle used by the collective. They told me they did not want to scare the people but they needed this vehicle to carry out their mission. I am certain they were Bozizé's men. As the driver of the car had gone off with the key, they took an axe and managed to get the vehicle started after breaking the window. Later, I heard heavy artillery fire and I saw the villagers fleeing. I asked my wife and my children to go and hide in the fields. They are still there today as the situation is still uncertain.

On 31 October 2002, I saw a military type lorry arrive and stop on the Collège St Charles road. There were 16 Fullahs on this lorry and a soldier commanded them to alight. I should add that there were a lot of armed soldiers. Miskine, whom I definitely recognised, was in charge of these soldiers and told them loudly in Fullah to set off back to their homes. I should explain that I was at least 50 metres from this lorry at a coffee shop by the roadside. I should also add that the Fullahs were naked from the waist up, wore shoes and were not shackled. That was when the soldiers shot them several

times in the back. The men collapsed. The soldiers climbed back into the lorry which did a U-turn. I think it was about midday and I immediately went towards the bodies. Fifteen men were dead. I saw where the bullets had penetrated the necks, heads and ribcages of the bodies. The sixteenth man had survived his wounds, but could not speak. He appeared to be wounded in the shoulder. He was heaved onto a rickshaw and taken to the cattle market. I was later told he died. This event caused a number of other people to come – Arabs, Fullahs and even an Imam. I remember that this Imam said a prayer in memory of the dead and sprinkled them with water. As for me, I wanted the bodies to be buried as soon as possible in accordance with Muslim tradition. The relatives of the dead men disagreed saying that we should wait until the Chadian ambassador had come to see what had happened. I protested but agreed with their wishes and that was why their bodies were left in the open for 48 hours. That was when I went to see the Imam to tell him that dogs had begun devouring the bodies despite me telling the young people not to let the dogs near them, and the situation was becoming untenable. The following day, a trench was dug between two trees. The Imam was present at the burial along with about 30 people. I don't know the names of the dead, but from their appearance they looked like shepherds or cattle traders."



Mass Grave – Photo taken by FIDH mission delegates in November 2002

Testimony

W, a minor (aged 13 at the time this happened) :

"It was 25 December 2002. My mother and I were refugees at PK 22 at our relatives' house when we heard that the Banyamulengues were coming. Our relatives gave us money so we could take refuge in Bangui while they went to hide in the hills. We left in the direction of the PK 22 market. That's where we met the Banyamulengues who asked my mother for money. She had none. They wanted to undress her but she said she was ill. I tried to intervene to help her. One of the Banyamulengues, a youth, took out his bayonet and wounded me in the heel. After wounding me he said he did not want to lie down with my mother, but it was me who would be the victim. Then two of them took me and raped me. They stripped me naked. While this was happening to me, others took my mother and led her away. They must have done the same to her. Later, a Red Cross vehicle came to collect my mother and me and took us to Bangui to our home. We did not know these people. But the simple fact that they were speaking Lingala and not Sango or French, led us to believe they were Banyamulengues. My mother died on 11 February 2003 from AIDS."

Testimony

X, a minor (aged 13 at the time this happened) : "The Zairis, that is the 'Banyamulengues', who came from Bossembele (which is 60 kilometres from my town), arrived in Boali town centre at 5 am on 15 March 2003. Armed men came in a lorry and led away the street vendors, including me. They also led away the crowd of people who were in the street. We had to follow them on foot with all our goods. There were six of us, children. We walked for four kilometres, then found the lorry that was full of other things. Another lorry full of Banyamulengues arrived and took our goods. It was 8 in the morning. That is when the armed men who led us away started beating us and hitting us with their rifle butts. Their leader, in particular, hit us with an axe with which he wounded me, where I have just shown you on my arms, legs, head, skull and the arches of my eyebrows. He cut me with his axe. Six of them then raped us, the youngest three in our group. Each of us was raped by two men. Along with me was another victim of these rapes, a madman. About midday, the liberators (the rebels led by Bozizé) arrived and the Banyamulengues fled. But the liberators killed eight of them as far as I could see. They also blew up the lorry, the remains of which can still be seen today. After they left, I was very tired. I had lost a lot of blood. I lay down by the roadside.

I know that it was the Banyamulengues who attacked us, because they would often stop and buy things from us. The leader spoke to us in French (...). They spoke amongst themselves in Lingala. I don't understand this language but I recognise it."

Some of these collected testimonies also make direct mention of Jean-Pierre Bemba.

Testimony

Z, "What was done to me happened, to be exact, in the morning of Thursday 31 October 2002 at PK 22... in my house.... a rocket penetrated the bedroom wall... it first cut the hands of my husband... then it took off his head...

[Then] five men in military uniforms who spoke only Lingala, came and asked us for money. As I understood a little, I gave them some... They began beating me and pulled off my clothes, ripping my pants... I was raped in front of my children. They raped me in front of my children.

[Later] One of them took me to their base camp, 500 metres from the house. In the base camp there were many armed soldiers. They had requisitioned a house to set up their base. They were all speaking Lingala or bad French but not Sango, our native language in Central Africa...

[From there] we had to walk 22 km in the rain. During this walk, armed men forced us to walk barefoot on pieces of broken bottles which they had deliberately broken. Sometimes they made us lie on these shards of glass and in the rain. My baby began to have convulsions from malaria. We were also forced to sing songs in honour of Jean-Pierre Bemba."

Testimony

W, "It happened when Bozizé's rebel troops were retreating from the Banyamulengues to PK 22. On 7 November 2002, the Banyamulengues occupied the zone of Begoua at PK 12 where I live. Up until the night-time, they didn't do anything to the civilian population. It wasn't until the next day, on 8 November, that they began looting any items of value from people and from their homes. I intervened to tell them to stop. That's when all the problems began. When I did that, four Banyamulengues came upon me saying it was people like me who were inciting the population against President Patassé. They told me I deserved to die. They were in military uniform but without military boots. They were armed with Kalashnikovs. One of them ordered

me to lie on the ground, in front of my wife and children, and he raped me there. He stripped me naked. When he had finished the three others raped my four sons and my wife, in front of me. I tried to fight back, but faced with their guns there was nothing I could do. My brother-in-law tried to fight them, but ended up being beaten.

When the four had finished, they left us and went away. But they came back with other Banyamulengues who completely looted my house. (...) I knew they were Banyamulengues as they only spoke Lingala. It was Bemba who commanded them. There was one day too when Bemba landed in a small plane in the courtyard of the Begoua health centre. This was on 17 November 2002 when there was fighting at PK 22."

D / International crimes committed by the rebels between October 2002 and March 2003

The rebels, who became known as "the liberators", were comprised of an army of several hundred men. This was made up of mainly Central African soldiers who had deserted the regular army with General Bozizé or former President Kolingba.

The rebels of General Bozizé also committed serious human rights and international humanitarian law violations, either during their armed offensives or behind the front-lines, at their base camps.

The United Nations Development Programme (UNDP), in its "Urgent Appeal" published in 2003, states the human rights violations committed by Bozizé's men: "There is no doubt that General Bozizé's fighters were involved in looting people's property in many of the towns and in the destruction of certain basic infrastructure essential to their well-being. In fact, the looting and destruction of the administrative, economic and civic order were widespread. So, it was difficult to find birth certificates as the registry offices had been destroyed. Shops, places of public entertainment (bars, cafés) had been ransacked and looted. Private homes had been burgled and repeatedly vandalised and individuals' property removed."

Some rebels were also guilty of sexual crimes: rapes, forced pregnancies and sexual slavery, as victims told FIDH mission delegates.

Testimony

M, "I witnessed all that happened to my children, in particular with regard to X and Y. There were several "husbands" for my daughters. These are the men who forced them to have sexual intercourse. That lasted from October 2002 until 15 March 2003. These men included Central Africans and Chadians. (...) They forced a lot of women to sleep with them. (...) They were Bozizé's rebels and they left for Bangui on 15 March 2003 to take over power. The consequences for my girls' health and education were many. My children now lead disastrous lives. Our attackers looted everything. I sleep on a mat on the floor. All I do is work in the fields. I have to do that all by hand as my ploughs were destroyed."

3. Abandoned and stigmatised victims

The numerous civilian victims of armed conflicts are forgotten in the CAR.

There is no exhaustive list of the victims of crimes committed between October 2002 and March 2003, or those committed since September 2005 (the date on which the fighting between Bozizé's army and the rebel troops resumed, causing further violent acts against the civilian population). This is mainly a consequence of the indifference shown by the Central African authorities towards the victims, the insecurity that still lurks in certain regions of the country and victims' great fear of providing evidence. There are a few incomplete lists of victims drawn

up by some district leaders, representatives of the International Red Cross, hospitals, religious missions and the humanitarian organisations then present in the CAR.

There is no longer a national support programme providing medical and psychological assistance to victims, despite the extent of the trauma suffered, the fact that health care is unaffordable and the fact that the welfare system is on its last legs. The National Dialogue (*Dialogue national*) of 2004 recommended compensation for victims of the conflicts but this was never paid.

Aware of the inaction by the Central African authorities, the UNDP put in place a one year programme for "Humanitarian assistance for women and girl victims of rape and violence arising out of the armed conflicts on 25 October 2002". But this programme finished earlier than expected, abandoning the victims yet again. The hundreds of cases put forth at the end of this project were never followed up because the domestic courts decided to give them up in favour of the ICC. (see below).

Despite the importance of this programme for victims, it has not continued. Now support for victims, including those of the further conflicts since 2005, is left to one association, the Organisation for the Compassion and Development of Families in Distress (OCODEFAD). The courage of its members is equal to the indifference showed to them. What is worse, the complete lack of consideration for the victims has intensified their stigmatisation by Central African society, a real "double suffering".



©FIDH

Organisation for the Compassion and Development of Families in Distress (OCODEFAD), October 2007.

III – FIDH demonstrates the lack of will and capacity of the Central African judicial system to try those responsible for the crimes committed in the CAR

Having investigated the crimes committed in CAR between 2002 and 2003, FIDH searched to find out if the Central African judicial system had the capacity and the will to bring justice to the victims, in conformance with legislation and the Central African constitution as well as regional and international human rights instruments ratified by CAR.

1. A destroyed judicial system

In the course of different investigations carried out in CAR, FIDH mission delegates were able to ascertain the state of decay of the Central African judicial system, due, in particular, to the many years of conflict endured by the country : lack of infrastructure, limited access to justice for victims, corruption, lack of independence of judicial actors, conditions of detention contrary to international norms, etc. FIDH noted these persistent problems in numerous reports, which it transmitted to the ICC (see below).

In November 2003, FIDH noted that the majority of tribunals of first instance were not operational. This is particularly true in the north of the country because judges appointed to this region still do not return there due to the lack of security.

Financial resources allocated to the judiciary are clearly insufficient – destroyed premises, inadequate salaries – and the independence of magistrates is subject to doubt. The magistrates met by the November 2003 mission complained of low salaries (from 189.000 FCFA to 660.000 FCFA) and of the constant lack-of-resources problem of the judiciary, which is considered to be "unproductive" by the public finances. Like all the other agents of the state, they had not been paid since September 2003.

On 25 July 2006, the UN Human Rights Committee responsible for ensuring that States Parties observe the

provisions of the International Covenant on Civil and Political Rights voiced its concern over the justice situation in CAR. In its concluding observations, it confirmed that the independence of the judiciary was not respected in practice and set out, in this connection, the following recommendations: "*The State Party should endeavour to suppress corrupt practices in the judiciary. It should also recruit and train a sufficient number of judges in order to ensure adequate administration of justice throughout the country and to combat crime and impunity. Sufficient budgetary resources should be allocated for the administration of justice.*"

2. Lack of investigation and prosecution of Bozizé's rebels

On 5 August 2003, the deposed former president, Ange-Félix Patassé, then in exile in Togo, brought a complaint before Central African tribunals against "François Bozizé, his putschist regime, his fellow perpetrators, and/or accomplices in the *coup d'état* of 15 March 2003".

On 20 September 2003, the Prosecutor advised the former president of the Central African Republic that his complaint had been registered, then "*classified without follow-up by the Prosecution due to immunity*" of the new Head of State.

In a statement of 5 September 2003, Prosper N'Douba, spokesman for the former President, stated that complaints by parties claiming damages concerning crimes committed by Bozizé's troops in Sido, Kabo and Batangafo between 25 October 2002 and 15 March 2003, had been in the hands of the Prosecutor of the Republic since March 2003. But none of these led to a judicial investigation.

Furthermore, the investigation file leading to the order of 16 September 2004 (see below) contained some incriminating evidence against Bozizé's men. Despite this evidence, no prosecution was initiated by the Prosecutor against the armed putschists.

3. Investigation and prosecutions against former president Patassé and his men: The Central African judiciary requests the intervention of the ICC

A Commission of Judicial Inquiry was established in **May 2003** to shed light on the crimes committed by the former dignitaries of the regime.

The introductory (22 August 2003) and supplementary (5 September 2003) submissions of the Prosecutor requested the Senior Investigative Judge to open an investigation against Patassé, Jean-Pierre Bemba, Paul Barril, Abdoulaye Miskine, and others (co-perpetrators or accomplices) for:

- Attack on the internal and external security of the State
- Collusion with foreign powers
- Complicity in assassinations, mortal woundings, arrests and arbitrary detentions, robberies, rapes, looting, destruction of assets, deliberately wounding and injuring, misappropriation of property and buildings belonging to the State
- Crimes committed with premeditation and accompanied by torture and physical abuse
- Arrests and arbitrary detentions
- Rapes, accompanied by torture

The investigation lasted over a year, from August 2003 until 16 September 2004, when a decision was taken to partially discharge the accused and refer them to the Criminal Court.

Numerous obstacles and loopholes marred the whole investigation: most of the accused were not on Central African territory; the investigation was almost wholly confined to crimes committed in Bangui and its suburbs; no use was made of medical-legal methods; there was no examination of the locus; no reconstruction [of the crime]; almost total lack of counter-arguments; no collection of evidence. In fact, most of the methods of proof to support an investigation were not used.

In his **order for discharge and partial referral for trial on 16 September 2004**, the Investigating Judge referred the following persons to the Criminal Court: Ange Félix Patassé; Abdoulaye Miskine; Paul Barril; Victor Ndoubabe; Michel Bangué-Tandet; Lazar Dokoula; Simon Pierre Koloumba. At the same time, he discharged: Jean-Pierre Bemba; Pierre Angoa; Gabriel Jean Edouard Koyambonou; Ferdinand Bombayake; Martin Zigué; and others.

The order deals with the responsibility of Jean-Pierre Bemba for crimes committed by his subordinates the

"Banyamulengués", during the first attempted coup d'etat of General Bozizé. *"From 28 May 2001 to 25 October 2002, Ange-Félix Patassé brought onto Central African territory several thousand soldiers of the MLC, the rebel movement of Democratic Congo led by Jean-Pierre Bemba, under the command of a certain Congolese rebel officer Moustapha". This "very zealous", rebel troop "only obeyed orders from Bemba and Patassé". The acts of violence committed by these troops "have cost the lives of hundreds of civilians throughout the land and have led to the loss of the goods and property of these people". However, the order submitted: "Given that it has been established that Jean-Pierre Bemba (...) prosecuted in these proceedings for aiding and abetting crimes of murder, rape, theft and others perpetrated by his fighters in the Central African republic, has been appointed Vice President of the Democratic Republic of Congo, in this respect he is protected by diplomatic immunity; as a result there are no grounds to prosecute him on these charges".*

The Bangui Prosecutor's Office lodged an appeal against the order for partial discharge and referral on 17 September 2004 and in his address to the Chambre d'accusation on 24 November 2004, the Prosecutor General of Bangui asked that "the offences that affected the human person otherwise known as blood crimes, shall be judged by the International Criminal Court and the embezzlement of public funds by the Criminal Court of the Central African Republic". Referring specifically to Articles 8 and 14 of the Statute of the ICC, he considered that the evidence in the case showed "serious attacks on the life and physical dignity of the human person, crimes which should be referred to the ICC".

In its decision of 16 December 2004, the Bangui Chambre d'accusation, followed the Prosecution by ordering *"the separation of the proceedings concerning blood crimes, rape, killings, destruction of real and moveable property, looting ... following the events of 2002 of which Ange-Félix Patassé, Jean-Pierre Bemba and his men, Paul Barril, Marin Koumtamadji (alias Abdoulaye Miskine) and his men, Lionel GanBefio, Victor Ndoubabe and his men and and others are accused"* and by deciding that these offences *"are a matter for the International Criminal Court"*.

The Prosecutor's Office for the Bangui Appeals Court drew up an appeal on points of law on 20 December 2004.

In its decision of 11 April 2006, the CAR Cour de Cassation rejected in part the appeal on points of law by the Prosecution against the decision of the Chambre d'accusation of the Bangui Appeals Court of 16 December 2004, but did confirm that only the ICC could try the serious crimes committed in the Central African Republic since 1 July 2002 by Ange-Felix Patassé, the "Banyamulengues" of Jean-Pierre Bemba, Abdoulaye Miskine, Paul Barril and others.

In its reasoning, the Cour de Cassation confirmed firstly the vacuousness of the investigation: "*Seeking the perpetrators of crimes and bringing them before criminal justice to answer for their deeds is a duty from which no State can shy away. And it is established that this must be done through reliable proceedings. Given that in the proceedings against Ange-Félix Patassé and others, the Senior Judge has properly charged the parties concerned for the acts of which they are accused, has issued arrest warrants against them, but all that remains certain is that they have neither been heard nor been subject to a proper manhunt". The Cour de Cassation then confirmed the inability of the Central African judiciary to conduct effective investigations and prosecutions: "the inability of the Central African justice system to carry out effective investigations and prosecutions is clear (...) The fact that persons who are outside national territory have nevertheless been referred to the Criminal Court of CAR by the senior judge is an illustration of this weakness and establishes their impunity."*

Faced with these conclusions, the Cour de Cassation agreed to the need to appeal for international judicial cooperation: "*Recourse to international cooperation is the only means to prevent impunity in this case. Given that CAR has ratified the Rome Treaty, the ICC offers the possibility of finding and punishing the perpetrators of the most serious crimes which affect the international community as a whole, in the place of States which are incapable of carrying out effective investigations or prosecutions. What is wrong is that the Senior Judge did not deem it helpful to use this possibility*".

The Cour de Cassation upheld the decision of the Chambre d'accusation of the Appeals Court and found the appeal on points of law unfounded.

FIDH also demonstrated the lack of action by other states with jurisdiction to try the accused present on their territory, for crimes committed in the CAR.

IV – FIDH pleads for the fight against impunity before the ICC

Recognising from the beginning of the proceedings initiated by the Central African judiciary, that the system had neither the will nor the capacity to try all the perpetrators of the international crimes committed in CAR in 2002 and 2003, FIDH petitioned the ICC to respond to victims' need for justice².

1. FIDH action with respect to the Central African authorities : CAR refers the case to the ICC

CAR ratified the ICC Statute in October 2001, thus giving the International Criminal Court jurisdiction to investigate war crimes, crimes against humanity or acts of genocide committed on its territory or by Central African nationals since 1 July 2002.

It should be remembered that the ICC Prosecutor can be referred a situation by the Security Council of the United Nations (as was the case for the situation in Darfur) or by a State Party to the Statute (as was the case for the situations in Uganda and the DRC), or may initiate an investigation on his own initiative.

In the absence of a response by the Prosecutor of the ICC to FIDH and LCDH calls for him to initiate an investigation into the situation in CAR (see below), our organisations then applied to the Central African authorities to refer the situation to the ICC. Several meetings were organised to this end with the Head of State, Bozizé, members of government and other Central African officials.

On 22 December 2004, the Central African government sent a letter to the ICC Prosecutor "*referring to him the situation of crimes falling within the jurisdiction of the Court committed anywhere on the territory of the Central African Republic since 1 July 2002, the date of entry into force of the Rome Statute.*"

On 7 January 2005, the ICC Prosecutor made the state referral public.

2. Cf. All FIDH press releases on CAR and the ICC on FIDH website <<http://www.fidh.org>>

The situation was, therefore, referred officially to the International Criminal Court by the Central African State on the basis of Article 14.1 of the Statute.

2. FIDH action with respect to the ICC: the ICC opens an investigation of the situation in the CAR

In February 2003, FIDH formally sent to the ICC (the Prosecutor had not yet been appointed) its report on "*War Crimes in the Central African Republic*", which contained numerous testimonies and evidence concerning crimes falling within ICC jurisdiction perpetrated during the armed conflict between the loyalists and General Bozizé from October 2002 until March 2003.

This communication was sent in accordance with Article 15.1 of the Rome Statute which allows the Prosecutor to initiate an investigation on his own initiative "on the basis of information on crimes within the jurisdiction of the Court."

As the Prosecutor did not respond to this within eight months of taking up his post, FIDH addressed him again in February 2004, by sending a second report entitled "*What Justice for the Victims of War Crimes?*" This report focused on the criminal responsibility of both the former loyalist forces and the former rebels, for crimes falling within ICC jurisdiction during the various military offensives by General Bozizé until his successful coup d'état (25 October 2002 to 15 March 2003). The report also explained the state of domestic judicial proceedings against some of the alleged criminals, to show that the Central African State had neither the capacity nor the will to prosecute all the crimes committed during this period.

The Office of the Prosecutor only acknowledged receipt of the reports on 22 June 2004, saying that its departments were looking into the possibility of initiating an investigation into the situation in CAR.

In December 2004, the Central African government referred the situation to the Prosecutor of the ICC (see above).

Following the referral to the ICC by the Central African State, on 19 January 2005 the ICC President assigned the CAR situation to Pre-Trial Chamber III.

In June 2005, the Prosecutor received "detailed information" on the situation in CAR provided from the

Central African government.

In November 2005, a team from the Office of the Prosecutor carried out a mission to the CAR to gather "*pieces of important additional information about the referral of the situation by the Central African Republic.*"

Upon receiving a referral, the Office of the Prosecutor must make a "preliminary" analysis in order to consider the possibility of opening an investigation. According to Article 53 of ICC Statute, the Prosecutor, after having evaluated the information brought to his attention, "initiates an investigation" if the following conditions are met:

- a) One or more crime/s within the jurisdiction of the Court has/have been or is/are being committed;
- b) The case is or would be admissible under the admissibility criteria concerning the gravity of the crime and the principle of complementarity;
- c) Taking into account the gravity of the crime and the interests of the victims, there are no substantial reasons to believe that an investigation would not serve the interests of justice.

To encourage the Prosecutor to open an investigation into the CAR situation, FIDH provided information to the ICC on these various points, by transmitting new information and by meeting with the Office of the Prosecutor.

FIDH strongly denounced the delay taken by the Office of the Prosecutor in the preliminary analysis of the situation in CAR. This analysis was excessively lengthy in comparison to the time that passed between the referral and the decision to open an investigation into the situations in Uganda, the Democratic Republic of Congo and Darfur. In its numerous communiqués, FIDH insisted on the duty of the Office of the Prosecutor to respond as quickly as possible to the demand for justice of the Central African victims, many of whom were to die, having contracted the HIV virus during the events of 2002-2003.

CAR was also concerned about this delay. On 27 September 2006, the Central African government requested:

- the Prosecutor to provide explanations of his intention or lack thereof to open an investigation, considering that he had exhausted the reasonable time to make this decision

- the Court to take measures to preserve evidence
- the Court to take measures to protect the victims

On 30 November 2006, Pre-Trial Chamber III accepted the CAR's claims and requested the Prosecutor to provide a report on the state of analysis of the situation in CAR by 15 December 2006 at latest.

On 15 December 2006, the Prosecutor released his report emphasising:

- the beginning of the process of analysis, from the reception of FIDH communications, before the actual referral by the Central African state;
- the difficulties linked to this analysis (domestic proceedings undertaken that needed to be duly evaluated; important information having a material impact on the evaluation of the gravity of the situation made available to the Prosecutor in a progressive manner; deterioration of the security situation in the northern regions of CAR) and the importance of a thorough consideration;
- his obligation to notify the State in the case of a decision not to open an investigation, which was not yet the case
- the state of advancement of the preliminary analysis, informing the Court that he will make a decision "as quickly as possible"

Finally, on 22 May 2007, the Prosecutor announced the opening of an investigation in CAR. The Prosecutor indicated that the investigation would concentrate on the most serious crimes committed in 2002-2003, when the situation had reached a peak of violence. The Prosecutor revealed in particular the numerous allegations of rape and other acts of sexual violence perpetrated against hundreds of victims. At the same time, the Office of the Prosecutor declared that it would continue to attentively follow the allegations of crimes committed since the end of 2005.

FIDH and its member organisations welcomed the opening of the investigation (expressing nonetheless their regret for the delay taken and for the limitation of the investigation to certain crimes and to a certain period).

Since that date, FIDH has remained in contact with the ICC Office of the Prosecutor in order to make sure that the main

perpetrators of the most serious crimes committed in CAR since 1 July 2002, will be brought to justice.

V – The Bemba case before the ICC

One year after the opening of its investigation into the crimes committed in the Central African Republic in 2002 and 2003, the International Criminal Court issued an arrest warrant for Jean-Pierre Bemba Gombo. In its numerous mission reports, FIDH had condemned (among others) the criminal acts perpetrated by the henchmen of the President of the Mouvement de Libération du Congo and thus clarified his responsibility as a superior in the hierarchy.

1. Who is Jean-Pierre Bemba Gombo?



Jean-Pierre Bemba Gombo was born on 4 November 1962 in Bokada in the province of Equateur (Democratic Republic of Congo - DRC). He did his secondary studies at the *Collège Boboto* in Kinshasa and his higher education studies in Brussels, Belgium. In the 1990s, he worked in the telecommunication, aviation and audiovisual fields, founding various firms.

In 1997, Bemba exiled himself for some time during the taking of power by the *Alliance des Forces démocratiques pour la Libération du Congo* led by Laurent-Désiré Kabila.

In 1998, he created the *Mouvement de Libération du Congo* (MLC), based in Gbadolite (Equateur), and its armed branch, the Armée de Libération du Congo (ALC) with the support of Ugandan troops.

On two occasions, in 2001 and 2002, the MLC attempted to extend its influence in the region of Ituri.

Then, on 16 January 2001, a new rebel alliance, the *Front de Libération du Congo* (FLC), was formed after weeks of talks in Kampala (Uganda). This alliance combined Bemba's MLC, Wamba and Nyamwisi's RCD-ML and Lumbala's RCD-National. Bemba directed the group while Nyamwisi was named Vice President.

In June 2001, fighting broke out between Bemba's troops and those of Nyamwisi in Beni. The FLC began to disintegrate, and Nyamwisi and Bemba ended their alliance in August. Nyamwisi's faction took the name of the *Rassemblement congolais pour la démocratie-Kisangani/Mouvement de Libération* RCD-K/ML and Wamba continued to claim to be the legitimate leader of the original RCD-ML. Since the schism, the two former allies Bemba and Nyamwisi fought together with other rebel factions to establish their respective zones of influence in the north-east of the DRC³.

In January 2002, Bemba and Lumbala obtained territorial gains against the RCD-K/ML and took Isiro, Watsa and Bafwasende.

During the Sun City negotiations, in March 2002, the forces of the MLC took Isiro and installed Roger Lumbala's RCD-N (MONUC cited human rights violations, noting the display of mutilated bodies, in particular male sexual organs). In August 2002, attempts made by the RCD-ML to retake Isiro ended in defeat.

In October 2002, the MLC troops launched an offensive against Mambasa. The operation was called "*Effacer le tableau*" and its objective was to take control of the entire zone in the hands of the RCD-ML (in particular, the Beni airport and the Beni-Butembo commercial zone). As the RCD-ML envisioned establishing an alliance with the DRC government, the control of the Beni airport constituted a

menace from the point of view of the MLC, insofar as it would permit the Congolese armed forces to send troops to the east and to open a second front against the MLC.

When the forces of the MLC/RCD-N took Mambasa on 12 October, violence in Congo reached an unprecedented level. Human rights violations committed in Mambasa affected all the inhabitants of the city, whether rich or poor⁴. In the course of the first two weeks of October, the taking of Mambasa was characterised by widespread rapes, as well as systematic looting, destruction of health services infrastructure and forced labour. At the end of October, when the troops of the RCD-ML counter-attacked, the first murders were committed, with the primary victims coming from Nande. The bodies were mutilated and left in public places to terrorise the population. This strategy continued until the RCD-ML retook Mambasa, at the end of October⁵.

At the same time, in October 2002, Bemba responded to the request of the Central African President Patassé to send mercenary troops to support the loyalist forces against General Bozizé's rebels.

At the end of November, the MLC troops retook Mambassa and continued their offensive towards Beni in December. In December 2002, the MLC/RCD-N formed an alliance with the *Union des Patriotes Congolais* (UPC) of Thomas Lubanga, who had been fighting the RCD-ML in the zone of Bunia since August 2002. In the course of his advance on the road between Mambasa and Beni, until 45 kilometers from Beni, in conjunction with the UPC, the MLC/RCD-N took Komanda and advanced to Erengeti, 50 kilometers to the north of Beni. Serious human rights violations were noted at the time of this offensive: "The number of rapes – mainly young girls or women aged 12 to 25 – reached an alarming level. Systematic looting and rape continued. In addition, the *Pygmies* suffered systematic violence and were forced to flee the forest. The murders – committed on the road to Komanda by UPC actors and on the road to Mangina by MLC/RCD-N actors – and the cases of cannibalism were numerous"⁶.

On 17 December 2002, at an inter-Congolese dialogue that took place in Pretoria, a global peace agreement was signed.

3. Cf MONUC Special Report on the Events in Ituri (January 2002 – December 2003), p. 60

4. Cf. MONUC Special Investigation Team's Report on the events in Mambassa (31 December 2002 – 10 January 2003), p.5

5. Id.

6. Id.

On 31 December 2002, the MLC, the RCD-N and the RCD-ML signed a ceasefire agreement under the auspices of MONUC at Gbadolite.

Since the preliminary conclusions of the MONUC investigation into the Mambassa events were made public, the MLC authorities decided to open a trial against 27 suspects of the MLC forces. The trial took place from 18 to 25 of February 2003. The United Nations High Commissioner for Human Rights clearly stated that the trials were illegal and illegitimate.

As part of the peace process resulting from the Pretoria Agreement, Jean Pierre Bemba was appointed Vice President of the transitional government on 30 June 2003.

As a presidential candidate in October 2006, he arrived at the first round in second place behind Joseph Kabila with more than 20% of votes cast. He scored highly in his home region of Equateur, but also in Kinshasa, mainly in the working-class neighbourhoods and in Bas-Congo.

In the course of the second round, he arrived ahead in Kinshasa, Equateur, Bas-Congo, Bandundu and in the two Kasai. Nevertheless, on the national level, he only got 42% of vote. He submitted several appeals to the Supreme Court but did not win his case.

On 19 January 2007, Bemba was elected Senator.

Confrontations broke out in March 2007 between Bemba's forces and Kabila's Army. Bemba's forces had not obeyed the ultimatum - expiring 15 March - for their incorporation into the regular Army. Bemba called for a ceasefire and took refuge at the South African embassy. With the continuation of fighting on 23 March, an arrest warrant was filed for Jean-Pierre Bemba, accusing him of high treason. These confrontations caused more than 200 deaths in Kinshasa.

On 11 April 2007, Bemba left DRC for Portugal. He stated that he was going to Portugal to get an old wound in his leg treated.

Bemba was arrested in Belgium on 24 May 2008, under the arrest warrant issued by the International Criminal Court.

2. Alleged crimes committed in CAR under his responsibility

Upon return from an FIDH investigation in November 2002, the mission delegates reported the following facts:

Following the attempted *coup d'état* by Bozizé, President Patassé - wary of the regular troops of the Central African Army -, made an agreement with Jean-Pierre Bemba providing for his military assistance by means of Congolese troops (commonly called "Banyamulengues" by the Central Africans) in return for financial compensation.

The Congolese mercenaries entered the country on 28 October by crossing the Oubangui River. The most serious acts are attributed to them. They were identified by the population by their shoes (trainers or plastic boots) and language (Lingala) as well as the fact that they were dressed in fatigues and armed with Kalachnikovs.

These troops first made a statement in the capital through acts of humiliation aimed at those in power and their families (the Minister of Education and his wife, the son of the Minister of Defence, etc.) but also at the regular forces of the Central African Army, FACA. Some (for instance certain victims) affirm that these humiliations were perpetrated at the request of President Patassé, who had suspected the FACA of treason since the *coup d'état* of May 2001.

Moreover, taking advantage of the confusion in the capital following the attempted *coup d'état* (October 2002), the control of territory retaken from the rebels, and finally their definitive retreat (March 2003), the Banyamulengues, organised in small groups, killed a number of civilians and systematically carried out looting and extortion, sowing terror in their wake, with gunshots and threats. Furthermore, Jean-Pierre Bemba's men committed, rapes of women, men, children and the elderly, in a systematic manner and on a large scale.

FIDH was able to gather an important number of testimonies of rape victims. According to the victims' stories, it came out that rape was committed in an indiscriminate manner against all civilians and always in public. Rape and sexual violence were used like a true weapon of war, with the goal of humiliating, terrifying, and punishing the Central African civilian population accused of complicity with the rebellion. The *modus operandi* of these crimes is almost always the same from one story to

another: brutal entry into the home, extortion of money, with terror being inflicted by sporadic shots or aiming weapons, then collective rapes. Some accounts also speak of rapes by manual penetration of the vagina, under the pretext of looking for money.

The testimonies and the information gathered by FIDH point to Jean-Pierre Bemba's individual criminal responsibility for serious violations of human rights and international humanitarian law, namely execution of members of the civilian population, acts of torture and mistreatment, rapes and other acts of sexual violence, and the conscription or enlistment of children under the age of 15 in armed forces or groups or the use of children to participate actively in hostilities, all of which can be qualified as war crimes and crimes against humanity in accordance with ICC.

According to international criminal law, Jean-Pierre Bemba is criminally liable at least for having ordered, solicited, encouraged or even facilitated the commission of crimes against the Central African population, as well as for his role as immediate superior. As head of the MLC, Jean-Pierre Bemba exercised control over his men, the Banyamulengues. Moreover, he was aware of the crimes committed by his subordinates. Present on Central African territory on several occasions, in particular at the sites of violence, he was able to realise himself or at the least to hear the testimonies of the serious crimes perpetrated by the Banyamulengues against the civilian population.

These violations were of public notoriety in Bangui. Almost all of the officials knew about them, among them the Head of State, Patassé. Bemba himself declared on RFI that he knew of the existence of such crimes and that he was ready to punish those who committed them. The few judgments of Gbadolite initiated by Jean-Pierre Bemba in his military stronghold cannot be seriously considered as satisfying responses, taking into account the gravity of the crimes and the conditions under which these trials were held. The organisation of such trials confirms that Jean-Pierre Bemba was perfectly informed of the perpetration of serious acts, likely of being attributed to him and leading to his punishment. Not having either prevented or effectively punished the commission of the most serious crimes committed by his subordinates - the Congolese mercenaries, Jean-Pierre Bemba is, in the eyes of international criminal law, to be held responsible for their criminal acts in his capacity as superior.

3.The ICC arrest warrant

On 9 May 2008, the Prosecutor submitted to Pre-Trial Chamber III an application for a warrant of arrest against Mr. Jean-Pierre Bemba Gombo.

On 21 May, the Court accepted the request for proceedings under seal and requested the Prosecutor to submit additional information.

On 23 May 2008, the Prosecutor communicated information to the Chamber regarding the possibility that Jean-Pierre Bemba might flee, since he had left Portugal and arrived in Belgium, with the goal of fleeing towards an unknown destination.

On the same day, the Court issued an arrest warrant, which was made public the following day, once Bemba had been arrested. In the arrest warrant, the Chamber considers that in light of evidence and information supplied by the Prosecutor, the case concerning Mr. Jean-Pierre Bemba comes within the jurisdiction of the Court and is admissible.

Arrest Warrant

The Chamber is of the opinion that there are reasonable grounds to believe that a protracted armed conflict took place in the CAR at least from 25 October 2002 to 15 March 2003 and that this conflict can be described as a conflict of a non-international character or, alternatively, as a conflict of an international character.

The Chamber considers that there are reasonable grounds to believe that in the context of this armed conflict, MLC forces composed mainly of Banyamulengue and led by Mr. Jean-Pierre Bemba, responding to the call of Mr. Ange Félix Patassé to support part of the national army of the Central African Republic, committed, from 25 October 2002 to 15 March 2003: (i) rape, in, but not limited to, places known as Point Kilomètre 12 ("PK 12"), Point Kilomètre 22 ("PK 22"), Damara and Mongoumba; (ii) torture, in but not limited to, PK 12 and PK 22; (iii) outrages upon human dignity, in particular humiliating and degrading treatment, including in, but not limited to, Bangui, PK 12 and Mongoumba, (iv) murder, in, but not limited to, PK 12, PK 22, Bossangoa and Damara, (v) pillaging, in, but not limited to, Bossangoa, Mongoumba, PK 12, Bossembélé and Damara.

Accordingly, the Chamber considers that there are reasonable grounds to believe that throughout the period of the presence of the MLC combatants in the CAR, war crimes falling within the jurisdiction of the Court under articles 8(2)(c)(i), 8(2)(c)(ii), 8(2)(e)(v), 8(2)(e)(vi) of the Statute, as described in the Decision on the Prosecutor's Application, were committed.

The Chamber is further of the opinion that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003, the MLC combatants attacked the civilian population and committed criminal acts constituting murder, torture and rape and that these crimes were committed on a systematic or widespread scale.

Accordingly, the Chamber considers that there are reasonable grounds to believe that between 25 October 2002 and 15 March 2003, the MLC combatants committed crimes against humanity falling within the jurisdiction of the Court under articles 7(1)(a), 7(1)(f) and 7(1)(g), as described in the Decision on the Prosecutor's Application.

The Chamber considers that there are reasonable grounds to believe that Mr. Jean-Pierre Bemba was the President and Commander-in-Chief of the MLC and that he was vested with de jure and de facto authority by members of the movement to take all political and military decisions.

The Chamber is of the opinion that there are reasonable grounds to believe that there was an agreement between Mr. Jean-Pierre Bemba and Mr. Ange-Félix Patassé and that this agreement was based on a reciprocal commitment whereby Mr. Ange-Félix Patassé would receive military assistance from Mr. Jean-Pierre Bemba in order to maintain himself in power and for Mr. Jean-Pierre Bemba would, inter alia, receive strategic and logistical support from Mr. Ange-Félix Patassé and be able to avoid the formation of an alliance between the CAR and the incumbent Government in Kinshasa.

The Chamber also considers that there are reasonable grounds to believe that, in his capacity as Commander-in-Chief of the MLC, Mr. Jean-Pierre Bemba made an essential contribution to the military operation in the CAR in accordance with the above-mentioned agreement, in particular by deciding to send MLC combatants to the CAR and maintaining them there.

The Chamber considers that there are reasonable grounds to believe that Mr. Jean-Pierre Bemba knew that the despatch of his troops would, in the normal course of events, lead to the commission of crimes and that he accepted this risk through his decision to send MLC combatants to the CAR and to maintain them there despite the commission of criminal acts of which he had been informed.

The Chamber considers that there are reasonable grounds to believe that when Mr. Jean-Pierre Bemba implemented his decision to withdraw the MLC troops, that withdrawal marked the end of the criminal acts perpetrated against civilians in the CAR by MLC troops and the collapse of the regime which they had come to defend.

For the foregoing reasons, the Chamber considers that there are reasonable grounds to believe that Mr. Jean-Pierre Bemba

is criminally responsible, jointly with another person or through other persons under article 25(3)(a) of the Statute, for :

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

Lastly, the Chamber considers that there are reasonable grounds to believe that the arrest of Mr. Jean-Pierre Bemba appears necessary at this stage in order to ensure, within the meaning of article 58(1)(b)(i) and (ii) of the Statute, that he appears before the Court and does not obstruct the investigation or court proceedings⁷.

On 24 May 2008, around 22h00, Jean Pierre Bemba was arrested in a suburb of Brussels.

On 28 May 2008, the Belgian court decided to keep him in provisional detention.

On 29 May 2008, Bemba appealed this decision.

On 5 June 2008, the Brussels *Chambre des mises en accusation* rejected the appeal as well as the request for provisional release submitted by Bemba's lawyers.

On 10 June 2008, the judges of Pre-Trial Chamber III addressed a request to the Kingdom of Belgium for the arrest and transfer to the Court of Jean-Pierre Bemba. The Belgian authorities were notified of this request by the Registrar of the Court, Ms. Silvana Arbia.

The Chamber also felt it necessary to issue an arrest warrant to replace the one that had been issued on 23 May 2008. The arrest warrant covers the same events that took place in the Central African Republic during the same period and adds to the crimes already contained in the arrest warrant of 23 May 2008, two supplementary charges of murder, under the double qualification of crimes against humanity and war crimes.

On 1 July 2008, the Belgian *Cour de cassation* rejected the requests of Bemba's lawyers, concerning, in particular, the alleged irregularity of the Belgian proceedings. This opened the path to Bemba's transfer to The Hague.

On 3 July 2008, Jean-Pierre Bemba was transferred to the ICC detention centre, in The Hague. His first appearance before Pre-Trial Chamber III will take place on 4 July 2008.

7. Arrest warrant as amended on 10 June 2008.

Conclusion

The opening of an ICC investigation into crimes committed in CAR in 2002 and 2003 and the beginning of prosecutions is the result of the long, difficult and courageous work of Central African victims, supported by FIDH and its member organisations, LCDH and OCODEFAD. The result would not have been obtained without the sacrifice and will of these victims who did not cease to claim their right to justice despite their precarious physical and psychological situation and the numerous threats and intimidation that they have been and continue to be subject to.

It is important to emphasise that the Central African victims initially trusted in their judicial system. They thus lodged complaints before domestic tribunals. But these tribunals had neither the will nor the capacity to investigate the criminal facts and prosecute the perpetrators. Impunity was unbearable for the victims. They had not only suffered in their flesh the vicissitudes of the history of their country but they also had to face lack of understanding, neglect, and even stigmatisation within their own family and within the Central African society. Victims thus clung to justice, as justice symbolised a recognition. "I'm coming alive again," said one of them on the radio, when interviewed about the arrest of Jean-Pierre Bemba.

The International Criminal Court was created precisely to address these cases of impunity for serious international crimes that shock the international community as a whole. This court has indeed been designed to fill the gap when national justice failed and to fulfil victims' right to justice. This is why FIDH and its member organisations fought, for many years, so that this court would take an interest in the situation in the Central African Republic.

The ICC issued an arrest warrant for Jean-Pierre Bemba for crimes against humanity and war crimes, on the basis of information received by the Prosecutor and information gathered by members of his office and his own investigators. During its various missions on the ground, FIDH has also collected numerous testimonies of victims of crimes committed by the men of the *Armée de Libération du Congo*, who had been easily recognised by their language and clothes. The head of these mercenaries was Jean-Pierre Bemba. He had been paid by President Ange-Félix Patassé and he communicated with his troops and

informed himself about the development of the hostilities. He knew that serious crimes were being committed by his men and did nothing to stop them. In producing this arrest warrant, the ICC has complied with its statute which provides for prosecution of individuals regardless of their official capacity, including for the most serious crimes committed by their subordinates. This decision is remarkable considering Jean-Pierre Bemba's high positions as former Vice President of the DRC and candidate in the 2006 presidential elections, as well as his influence in the region.

The arrest warrant also marks an important precedent in that it includes sexual crimes as the main counts. Such crimes had not been prosecuted in some ICC cases concerning the DRC. Faced with the massive and systematic use of sexual crimes as a true weapon of war during armed conflict, it was crucial that international justice send a strong message that such serious acts must from now on be punished.

It is not surprising that considering Jean-Pierre Bemba's prominence, some people – particularly those close to him (the same people who had been critical of the Prosecutor's so-far cautious approach) – described his arrest as being "political". This is wrong. This arrest, founded on evidence collected by an independent court, should be understood as a first step in the fight against impunity in a country ravaged by years of conflict. This arrest should be followed by other arrest warrants for other perpetrators of serious crimes committed in CAR in 2002-2003, whether they were on the side of the loyalists or rebels. Furthermore, Jean-Pierre Bemba enjoys the presumption of innocence and will benefit, as he should, from the guarantees of a fair trial.

It is this justice - neutral, impartial, conscious of victims' and accused's rights - that Central African victims hope for. FIDH, and its member organisations, LCDH and OCODEFAD, will continue to work alongside them.

FIDH represents 155 Human Rights organisations

155 organisations

ALBANIA - ALBANIAN HUMAN RIGHTS GROUP
ALGERIE - LIGUE ALGERIENNE DE DEFENSE DES DROITS DE L'HOMME
ALGERIE - LIGUE ALGERIENNE DES DROITS DE L'HOMME
ALLEMAGNE - INTERNATIONALE LIGA FÜR MENSCHENRECHTE
ARGENTINA - CENTRO DE ESTUDIOS LEGALES Y SOCIALES
ARGENTINA - COMITE DE ACCION JURIDICA
ARGENTINA - LIGA ARGENTINA POR LOS DERECHOS DEL HOMBRE
ARMENIA - CIVIL SOCIETY INSTITUTE
AUTRICHE - ÖSTERREICHISCHE LIGA FÜR MENSCHENRECHTE
AZERBAIJAN - HUMAN RIGHTS CENTER OF AZERBAIJAN
BAHRAIN - BAHRAIN CENTER FOR HUMAN RIGHTS
BAHRAIN - BAHRAIN HUMAN RIGHTS SOCIETY
BANGLADESH - ODHIKAR
BELARUS - HUMAN RIGHTS CENTER VIASNA
BELGIQUE - LIGUE DES DROITS DE L'HOMME
BELGIQUE - LIGA VOOR MENSCHENRECHTEN
BENIN - LIGUE POUR LA DEFENSE DES DROITS DE L'HOMME
BHUTAN - PEOPLE'S FORUM FOR HUMAN RIGHTS IN BHUTAN
BOLIVIA - ASAMBLEA PERMANENTE DE LOS DERECHOS HUMANOS DE BOLIVIA
BOTSWANA - THE BOTSWANA CENTRE FOR HUMAN RIGHTS - DITSHWANELO
BRASIL - CENTRO DE JUSTICA GLOBAL
BRASIL - MOVIMENTO NACIONAL DE DIREITOS HUMANOS
BURKINA - MOVEMENT BURKINABE DES DROITS DE L'HOMME & DES PEUPLES
BURUNDI - LIGUE BURUNDAISE DES DROITS DE L'HOMME
CAMBODGE - LIGUE CAMBODGIENNE DE DEFENSE DES DROITS DE L'HOMME
CAMBODIA - CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION
CAMEROUN - LIGUE CAMEROUNAISE DES DROITS DE L'HOMME
CAMEROUN - MAISON DES DROITS DE L'HOMME
CANADA - LIGUE DES DROITS ET DES LIBERTES DU QUEBEC
CHILE - CORPORACION DE PROMOCION Y DEFENSA DE LOS DERECHOS DEL PUEBLO
CHINA - HUMAN RIGHTS IN CHINA
COLOMBIA - ORGANIZACION FEMININA POPULAR
COLOMBIA - COMITE PERMANENTE POR LA DEFENSA DE LOS DERECHOS HUMANOS
COLOMBIA - CORPORACION COLECTIVO DE ABOGADOS
COLOMBIA - INSTITUTO LATINO AMERICANO DE SERVICIOS LEGALES ALTERNATIVOS
CONGO - OBSERVATOIRE CONGOLAIS DES DROITS DE L'HOMME
COSTA RICA - ASOCIACION SERVICIOS DE PROMOCION LABORAL
COTE D'IVOIRE - MOVEMENT IVOIRIEN DES DROITS DE L'HOMME
COTE D'IVOIRE - LIGUE IVOIRIENNE DES DROITS DE L'HOMME
CROATIE - CIVIC COMMITTEE FOR HUMAN RIGHTS
CUBA - COMISION CUBANA DE DERECHOS HUMANOS Y RECONCILIACION NACIONAL
DJIBOUTI - LIGUE DJIBOUTIENNE DES DROITS HUMAINS
ECUADOR - CENTRO DE DERECHOS ECONOMICOS Y SOCIALES
ECUADOR - COMISION ECUMENICA DE DERECHOS HUMANOS
ECUADOR - FUNDACION REGIONAL DE ASESORIA EN DERECHOS HUMANOS
EGYPT - EGYPTIAN ORGANIZATION FOR HUMAN RIGHTS
EGYPT - HUMAN RIGHTS ASSOCIATION FOR THE ASSISTANCE OF PRISONNERS
EL SALVADOR - COMISION DE DERECHOS HUMANOS DE EL SALVADOR
ESPAÑA - ASOCIACION PRO DERECHOS HUMANOS
ESPAÑA - FEDERACION DE ASOCIACIONES DE DEFENSA Y DE PROMOCION DE LOS DERECHOS HUMANOS
ETHIOPIAN - ETHIOPIAN HUMAN RIGHTS COUNCIL
EUROPE - ASSOCIATION EUROPEENNE POUR LA DEFENSE DES DROITS DE L'HOMME
FINLANDE - FINNISH LEAGUE FOR HUMAN RIGHTS
FRANCE - LIGUE DES DROITS DE L'HOMME ET DU CITOYEN
GEORGIE - HUMAN RIGHTS CENTER
GRECE - LIGUE HELLENIQUE DES DROITS DE L'HOMME
GUATEMALA - CENTRO PARA LA ACCION LEGAL EN DERECHOS HUMANOS
GUATEMALA - COMISION DE DERECHOS HUMANOS DE GUATEMALA
GUINEE - ORGANISATION GUINEENNE POUR LA DEFENSE DES DROITS DE L'HOMME
GUINEE-BISSAU - LIGA GUINEENSE DOS DIREITOS DO HOMEM
HAITI - COMITÉ DES AVOCATS POUR LE RESPECT DES LIBERTÉS INDIVIDUELLES
HAITI - CENTRE OECUMÉNIQUE DES DROITS DE L'HOMME
HAITI - RÉSEAU NATIONAL DE DÉFENSE DES DROITS HUMAINS
INDIA - COMMONWEALTH HUMAN RIGHTS INITIATIVE
IRAN - DEFENDERS OF HUMAN RIGHTS CENTER
IRAN - LIGUE IRANIENNE DE DEFENSE DES DROITS DE L'HOMME
IRAQ - IRAQI NETWORK FOR HUMAN RIGHTS CULTURE AND DEVELOPMENT
IRLANDE - COMMITTEE ON THE ADMINISTRATION OF JUSTICE
IRLANDE - IRISH COUNCIL FOR CIVIL LIBERTIES
ISRAEL - ADALAH
ISRAEL - ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL
ISRAEL - BTSELEM
ISRAEL - PUBLIC COMMITTEE AGAINST TORTURE IN ISRAEL
ITALIA - LIGA ITALIANA DEI DIRITTI DELL'UOMO
ITALIA - UNIONE FORENSE PER LA TUTELA DEI DIRITTI DELL'UOMO
JORDAN - AMMAN CENTER FOR HUMAN RIGHTS STUDIES
JORDAN - JORDAN SOCIETY FOR HUMAN RIGHTS
KENYA - KENYA HUMAN RIGHTS COMMISSION
KIRGHIZISTAN - KYRGYZ COMMITTEE FOR HUMAN RIGHTS
KOSOVO - CONSEIL POUR LA DEFENSE DES DROITS DE L'HOMME ET DES LIBERTES
LAOS - MOVEMENT LAOTIEN POUR LES DROITS DE L'HOMME
LEBANON - PALESTINIAN HUMAN RIGHTS ORGANIZATION
LEBANON - FOUNDATION FOR HUMAN AND HUMANITARIAN RIGHTS IN LEBANON
LETTONIE - LATVIAN HUMAN RIGHTS COMMITTEE
LIBAN - ASSOCIATION LIBANAISE DES DROITS DE L'HOMME
LIBERIA - LIBERIA WATCH FOR HUMAN RIGHTS
LIBYA - LIBYAN LEAGUE FOR HUMAN RIGHTS
LITHUANIAN - LITHUANIAN HUMAN RIGHTS LEAGUE
MALAYSIA - SUARAM
MALI - ASSOCIATION MALIENNE DES DROITS DE L'HOMME
MALTA - MALTA ASSOCIATION OF HUMAN RIGHTS
MAROC - ASSOCIATION MAROCAINE DES DROITS HUMAINS
MAROC - ORGANISATION MAROCAINE DES DROITS HUMAINS
MAURITANIE - ASSOCIATION MAURITANIEENNE DES DROITS DE L'HOMME
MEXICO - COMISION MEXICANA DE DEFENSA Y PROMOCION DE LOS DERECHOS HUMANOS
MEXICO - LIGA MEXICANA POR LA DEFENSA DE LOS DERECHOS HUMANOS
MOLDOVA - LEAGUE FOR THE DEFENCE OF HUMAN RIGHTS IN MOLDOVA
MOZAMBIQUE - LIGA MOCANBICANA DOS DIREITOS HUMANOS
NETHERLAND - LIGA VOOR DE RECHTEN VAN DE MENS
NICARAGUA - CENTRO NICARAGUENSE DE DERECHOS HUMANOS
NIGER - ASSOCIATION NIGERIEENNE DES DROITS DE L'HOMME
NIGERIA - CIVIL LIBERTIES ORGANISATION
NOUVELLE CALEDONIE - LIGUE DES DROITS DE L'HOMME DE NOUVELLE CALEDONIE
OCCUPIED PALESTINIAN TERRITORIES - RAMALLAH CENTRE FOR HUMAN RIGHTS STUDIES
OCCUPIED PALESTINIAN TERRITORIES - AL HAQ
OCCUPIED PALESTINIAN TERRITORIES - PALESTINIAN CENTRE FOR HUMAN RIGHTS
PAKISTAN - HUMAN RIGHTS COMMISSION OF PAKISTAN
PANAMA - CENTRO DE CAPACITACION SOCIAL
PERU - ASOCIACION PRO DERECHOS HUMANOS
PERU - CENTRO DE ASESORIA LABORAL
PHILIPPINE - PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES
POLYNESIE - LIGUE POLYNESIENNE DES DROITS HUMAINS
PORTUGAL - CIVITAS
RDC - ASSOCIATION AFRICAINE DES DROITS DE L'HOMME
RDC - GROUPE LOTUS
RDC - LIGUE DES ELECTEURS
RÉPUBLIQUE CENTRAFRICAINE - LIGUE CENTRAFRICAINE DES DROITS DE L'HOMME
RÉPUBLIQUE CENTRAFRICAINE - ORGANISATION POUR LA COMPASSION ET LE DÉVELOPPEMENT DES FAMILLES EN DÉTRESSE
RÉPUBLIQUE DOMINICAINE - COMISION NACIONAL DE LOS DERECHOS HUMANOS
RÉPUBLIQUE TCHÈQUE - HUMAN RIGHTS LEAGUE
ROUMANIE - LIGUE POUR LA DEFENSE DES DROITS DE L'HOMME
RUSSIA - CITIZENS WATCH
RUSSIA - MOSCOW RESEARCH CENTER FOR HUMAN RIGHTS
RWANDA - ASSOCIATION POUR LA DEFENSE DES DROITS DES PERSONNES ET LIBERTES PUBLIQUES
RWANDA - COLLECTIF DES LIGES POUR LA DEFENSE DES DROITS DE L'HOMME
RWANDA - LIGUE RWANDAISE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME
SENEGAL - RENCONTRE AFRICAINE POUR LA DÉFENSE DES DROITS DE L'HOMME
SENEGAL - ORGANISATION NATIONALE DES DROITS DE L'HOMME
SERBIE - CENTER FOR PEACE AND DEMOCRACY DEVELOPMENT
SUDAN - SUDAN HUMAN RIGHTS ORGANISATION
SUDAN - SUDAN ORGANISATION AGAINST TORTURE
SUISSE - LIGUE SUISSE DES DROITS DE L'HOMME
SYRIA - DAMASCUS CENTER FOR HUMAN RIGHTS STUDIES
SYRIE - COMITE POUR LA DEFENSE DES DROITS DE L'HOMME EN SYRIE
TAWAN - TAWAN ALLIANCE FOR HUMAN RIGHTS
TANZANIA - THE LEGAL & HUMAN RIGHTS CENTRE
TCHAD - ASSOCIATION TCHADIENNE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME (ATPDH)
TCHAD - LIGUE TCHADIENNE DES DROITS DE L'HOMME
THAILAND - UNION FOR CIVIL LIBERTY
TOGO - LIGUE TOGOLAISE DES DROITS DE L'HOMME
TUNISIE - ASSOCIATION TUNISIENNE DES FEMMES DÉMOCRATES
TUNISIE - CONSEIL NATIONAL POUR LES LIBERTES EN TUNISIE
TUNISIE - LIGUE TUNISIENNE DES DROITS DE L'HOMME
TURKEY - HUMAN RIGHTS FOUNDATION OF TURKEY
TURKEY - INSAN HAKLARI DERNEGI / ANKARA
TURKEY - INSAN HAKLARI DERNEGI / DIYARBAKIR
UGANDA - FOUNDATION FOR HUMAN RIGHTS INITIATIVE
UNITED KINGDOM - LIBERTY
USA - CENTER FOR CONSTITUTIONAL RIGHTS
UZBEKISTAN - HUMAN RIGHT SOCIETY OF UZBEKISTAN
UZBEKISTAN - LEGAL AID SOCIETY
VIETNAM - COMMITTEE ON HUMAN RIGHTS & QUE ME : ACTION FOR DEMOCRACY IN VIETNAM
YEMEN - HUMAN RIGHTS INFORMATION AND TRAINING CENTER
YEMEN - SISTERS' ARABIC FORUM FOR HUMAN RIGHTS
ZIMBABWE - HUMAN RIGHTS ASSOCIATION

The International Federation for Human Rights (FIDH) is an international non-governmental organisation dedicated to the world-wide defence of human rights as defined by the Universal Declaration of Human Rights of 1948. Founded in 1922, the FIDH has 155 national affiliates in all regions. To date, the FIDH has undertaken more than a thousand international fact-finding, judicial, mediation or training missions in over one hundred countries.

FIDH

17, passage de la Main d'Or - 75011 Paris - France
CCP Paris : 76 76 Z
Tél. : (33-1) 43 55 25 18 / Fax : (33-1) 43 55 18 80
E-mail : fidh@fidh.org
<http://www.fidh.org>

Director of the publication : Souhayr Belhassen.
Editor : Antoine Bernard.
Authors : Karine Bonneau, Mariana Pena et Marceau Sivieude
Assistant of publication : Céline Ballereau-Tetu.
Photos ©FIDH
Imprimerie de la FIDH - Dépôt légal Septembre 2008 - N°502a
Fichier informatique conforme à la loi du 6 janvier 1978
(Déclaration N° 330 675)