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**TRIAL CHAMBER VII**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Raul Pangalangan

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

**IN THE CASE OF**  
***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO***  
***MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA***  
***WANDU AND NARCISSE ARIDO***

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**with**  
**Public Annex A**

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## I. INTRODUCTION

1. Over a period of more than one year — October 2012 and until November 2013 — Jean-Pierre **BEMBA** Gombo, Aimé **KILOLO** Musamba, and Jean-Jacques **MANGENDA** Kabongo, organised, planned, participated in, and/or executed a common criminal plan to secure **BEMBA**'s acquittal through the commission of offences against the administration of justice. These included giving false evidence, presenting false evidence, and corrupt influencing in respect of at least 14 of the 34 defence witnesses called in the Main Case. Fidèle **BABALA** Wandu assisted the commission of crimes falling within the scope of the Common Plan, and Narcisse **ARIDO** perpetrated a number of them directly.

2. Following their trial for these crimes, Trial Chamber VII's article 74 decision entered 127 convictions against **BEMBA**, **KILOLO**, **MANGENDA**, **BABALA**, and **ARIDO**, collectively. Their convictions for these crimes, which form part of an epidemic of witness interference that continues to profoundly affect the ICC, presents this Chamber with the Court's first opportunity to demonstrate its resolve and determination to end such pernicious undermining of its mandate, by punishing the Convicted Persons in accordance with the serious nature of their offences, their roles therein, the grave risk of damage done to the Court's credibility and the integrity of its proceedings, and in view of the vital need to deter the commission of such crimes now and in the future.

3. The only sentence capable of achieving these aims is one of imprisonment, which the conduct of each Convicted Person indisputably warrants. And while **BEMBA**, **KILOLO**, and **MANGENDA**, as the masterminds and co-managers of the Common Plan, are certainly deserving of a substantial prison sentence, **BABALA** and **ARIDO** are no less deserving of imprisonment. All of the Convicted Persons have committed criminal acts in this case forming part of a sustained campaign of witness corruption and interference, the scope of which is without precedent in any

international criminal court or tribunal. **BEMBA's**, **KILOLO's**, **MANGENDA's**, **BABALA's**, and **ARIDO's** offences against the administration of justice, as meticulously detailed in the Chamber's Judgment, have no comparison. And if any comparison is had, it only underscores the truly egregious nature of the Convicted Persons' conduct, and justifies the sentences recommended by the Prosecution.

4. In no other case have more witnesses been corruptly influenced, had their false testimony led, and their false evidence knowingly presented. In no other case, were the convicted persons so willing to abuse their status and professional standing to accomplish their criminal aims. In no other case were such sophisticated means employed to disguise the crimes – the use of code words, the abuse of privileged communications using a detailed understanding of the Court's regulations, payments through intermediaries, and dedicated efforts made to circumvent prohibitions on witness contact. In no other case did the convicted persons compound their crimes by trying to impede the investigation or prosecution of their efforts to obstruct justice. And in no other case did convicted persons, despite their knowledge of having been caught on audio recordings committing their offences, resort to such blatantly false and outrageous accusations to try to undermine the Court's Chambers, the Office of the Prosecutor, and the Court itself to discredit the case against them – a case now proven beyond reasonable doubt by overwhelming evidence.

5. As detailed below and found by the Chamber, the Convicted Persons resorted to all of these acts. Their crimes and their roles alone warrant imprisonment. Even more so, when considering the existence of several aggravating circumstances and the absence of any mitigating factors. In view of the totality of these considerations, and pursuant to articles 70(3) and 78(3) of the Statute, the Prosecution recommends that **BEMBA** and **KILOLO** be sentenced to joint sentences of eight (8) years imprisonment, **MANGENDA** to seven (7) years, **ARIDO** to five (5) years, and **BABALA** to three (3) years. All of the Convicted Persons should also be fined for

their crimes in light of the potential and actual damage caused to the Court by their offences. Finally, the Chamber should direct the Registry to remove **KILOLO** as counsel eligible to practice before this Court, and notify the professional bodies to which **KILOLO**, **MANGENDA**, and **BABALA** belong of the Chamber's Judgment and its forthcoming sentencing decision.

## II. APPLICABLE LAW

6. In determining the appropriate sentence for the multiple article 70 offences on which the Chamber entered convictions, the applicable principles are primarily contained in articles 70(3), 76, and 78 of the Statute, and rules 145, 146, and 166 of the Rules, which either apply directly to article 70 proceedings or apply *mutatis mutandis* pursuant to rule 163(1).

7. In particular, article 78(1) provides that in determining a sentence, the Chamber shall "take into account such factors as the gravity of the crime and the individual circumstances of the convicted person." Rule 145(1)(c) also requires consideration of, *inter alia*, "the extent of the damage caused, [...] the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person."<sup>1</sup>

8. In addition, rule 145(1)(b) requires consideration of the mitigating and aggravating circumstances listed in rule 145(2). Rule 145(2)(a) lists two exemplary mitigating circumstances, including "[t]he convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation

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<sup>1</sup> The Chamber may consider the factors set out in rule 145(1)(c) in its assessment of the article 78(1) factors or as mitigating and aggravating factors, so long as they are not double-counted. See [ICC-01/12-01/15-171](#), para. 69. See also [ICC-01/04-01/06-3122](#), paras. 61-66 (holding that "it is not necessary in the context of the present appeals to determine which of the possible approaches to the interaction between factors of [article 78(1)] and [rule 145(1)(c)] is correct.").

with the Court". Rule 145(2)(b) lists six aggravating circumstances, including "[o]ther circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned."

9. This submission details the nature and circumstance of the Convicted Persons' offences,<sup>2</sup> their individual roles therein,<sup>3</sup> the aggravating circumstances warranting a more severe punishment,<sup>4</sup> and why no mitigating circumstances apply in this case.<sup>5</sup> The recommended sentences, as set out below,<sup>6</sup> are based on a reasonable, objective, and fair assessment of the totality of these considerations.

### III. THE NATURE AND CIRCUMSTANCES OF THE OFFENCES

10. Key to the determination of an appropriate sentence is the gravity of the crimes, their nature, and the circumstances attendant to their commission. As noted, the circumstances of the Convicted Persons' offences are unprecedented in international criminal law. In no case before an international court or tribunal have crimes of this nature been carried out in such an insidious, rampant, and unapologetic manner.

11. Unlike the vast majority of contempt cases adjudicated before the *ad hoc* and hybrid tribunals, this case does not simply concern an individual incident, where, for instance, confidential information was disclosed,<sup>7</sup> or a witness refused to testify or answer questions.<sup>8</sup> Further, none of the Convicted Persons admitted guilt in this case, as was the situation in several contempt cases before other international courts.<sup>9</sup> The

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<sup>2</sup> See below, section III.

<sup>3</sup> See below, section IV.

<sup>4</sup> See below, section V.

<sup>5</sup> See below, section VI.

<sup>6</sup> See below, section VII.

<sup>7</sup> See e.g. *Hartmann* Contempt AJ, para. 3; *Haxhiu* Contempt AD, para. 2; *Jović* Contempt AJ, para. 8; *Margetić* Contempt TJ, para. 83; *Marijačić* Contempt AJ, para. 4; *Šešelj* First Contempt AJ, para. 5; *Šešelj* Second Contempt AJ, paras. 6, 8; *Al Jadeed* Contempt TJ, para. 1, Disposition; *Akhbar Beirut* Contempt TJ, para. 1, Disposition.

<sup>8</sup> See e.g. *Kabashi* Contempt SJ, para. 9; *Bulatović* Contempt AJ, paras. 5-7; *Tupajić* Contempt TJ, para. 30; *Pećanac* Contempt TJ, para. 38; *Jokić* Contempt AJ, paras. 3, 8; *Petković* Contempt TJ, para. 58.

<sup>9</sup> See e.g. *Rašić* Contempt SJ, para. 7; *Kabashi* Contempt SJ, para. 9; *Tabaković* Contempt SJ, para. 4; *Brima* Contempt SJ, para. 37; *Bangura* Contempt SJ, para. 1.



multiple offences against the administration of justice committed in this case involved a dedicated, disciplined, and concerted effort to undermine the entirety of the Main Case by illicitly coaching numerous witnesses and/or bribing them, and the consistent and the deliberate violation of Court orders and regulations.<sup>10</sup>

12. The gravity of the crimes is particularly evident when taking into consideration the following factors. *First*, the multiple offences involved were aimed at obtaining **BEMBA's** acquittal through illicit means.<sup>11</sup> They were designed to thwart this Court's ability to discharge its mandate and, with that, the delivery of justice to **BEMBA's** numerous victims. *Second*, the offences were extensive in scope, planning, preparation, and execution, revealing the Convicted Persons' deliberate and methodical efforts to undermine the Court and the Main Case.<sup>12</sup> *Finally*, the offences involved numerous Defence witnesses over an extensive period of time.<sup>13</sup> Each factor is addressed in turn below.

#### **A. THE OFFENCES WERE CALCULATED TO UNDERMINE THE TRIAL OF EXTREMELY SERIOUS CRIMES**

13. The Convicted Persons' offences go to the heart of the Court's ability to administer justice in the extremely serious cases that come before it. As noted by an ICTY Trial Chamber, "[t]he nature of the crimes under the jurisdiction of the Tribunal and the context in which they were committed necessitate substantial reliance upon oral evidence".<sup>14</sup> That notion is particularly true at this Court given the centrality of article 69(2) encompassing the principle of orality; that "[t]he testimony of a witness at trial shall be given in person". As a result, when witnesses are tampered with, bribed, or false evidence is solicited and/or elicited, "the interference

<sup>10</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 103-113, 678-803.

<sup>11</sup> See below, paras. 13-16.

<sup>12</sup> See below, paras. 17-22.

<sup>13</sup> See below, para. 23.

<sup>14</sup> *Beqaj* Contempt TJ, para. 60. See also *Pećanac* Contempt TJ, para. 41; *Tupajić* Contempt TJ, para. 33; *Haraqija* Contempt AJ, para. 75.

has far-reaching consequences”.<sup>15</sup> These include subverting the pursuit of the truth, wastage of the Court’s money and valuable resources used in investigating and prosecuting perpetrators of international crimes, and the denial of justice to thousands of victims who have no other recourse.

14. The Convicted Persons’ conduct also risked undermining public confidence in the Court’s ability to effectively enforce its decisions, ensure truthful testimony, and prevent unlawful interference – all vital to the success of its work.<sup>16</sup> As the Single Judge of Pre-Trial Chamber II noted, an offence against the administration of justice “may not only threaten or disrupt the overall fair and efficient functioning of [] justice in the specific case to which they refer, but also ultimately undermine the public trust in the administration of justice and the judiciary, most notably when they are committed by highly educated individuals.”<sup>17</sup> The Chamber acknowledged this when rendering its Judgment:

Although such offences are not the core crimes this Court was established to try, it has become apparent in the short time span of the Court’s existence that preventing offences against the administration of justice is of the utmost importance for the functioning of the International Criminal Court. Such offences have this significance because criminal interference with witnesses may impede the discovery of the truth in cases involving genocide, crimes against humanity and war crimes. They have this significance because they may impede justice to victims of the most atrocious crimes. And ultimately they may impede the Court’s ability to fulfil its mandate.<sup>18</sup>

For similar reasons, other international courts have consistently considered conduct like that for which the Chamber entered convictions to constitute serious offences, “ordinarily result[ing] in a considerable term of imprisonment.”<sup>19</sup>

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<sup>15</sup> *Rašić* Contempt SJ, para. 17.

<sup>16</sup> *See Šešelj* First Contempt TJ, para. 37.

<sup>17</sup> [ICC-01/05-01/13-258](#), para. 16.

<sup>18</sup> T-50-ENG, pp. 3-4, lns. 21-5; T-50-FRA, pp. 3-4, lns. 20-1.

<sup>19</sup> *Rašić* Contempt SJ, para. 17.

15. The Convicted Persons' conduct is particularly serious given the nature of the crimes of which **BEMBA** was convicted in the Main Case. As the Single Judge of Pre-Trial Chamber II recognised, "offences against the administration of justice are of the utmost gravity, even more so when proceedings relating to crimes as grave as those within the jurisdiction of the Court are at stake."<sup>20</sup> In this case, the very aim of the Common Plan was to ensure, through unlawful means, **BEMBA**'s acquittal of war crimes and crimes against humanity, including murder, rape, and pillaging, all of which Trial Chamber III considered were of the highest gravity.<sup>21</sup> The seriousness of those crimes reflects the gravity of the Convicted Persons' efforts to unlawfully undermine that trial, and to deny justice to its victims.

16. Finally, the offences involved the giving and presenting of false evidence, bribing and/or corruptly influencing witnesses, which profoundly interfered with the administration of justice.<sup>22</sup> In particular, it resulted in the admission of false testimonial evidence and the unnecessary expenditure of substantial Prosecution and Court resources.<sup>23</sup> Indeed, just in monetary terms alone, the potential costs to the Court had the Convicted Persons fully succeeded in achieving their ultimate aim, would have been well into the millions. According to the Registry, "[t]he general costs associated with the Main [C]ase", not inclusive of the amount of money spent on the related investigation, amounted to a total of €7,217,800.<sup>24</sup> The specific costs borne by the Court to accommodate just the 14 witnesses for which the Convicted Persons are directly responsible for corruptly influencing and/or leading the presentation or giving of their false evidence amounts to at least €280,100 – again not inclusive of the investigative costs relating to those witnesses.<sup>25</sup> These factors are inherent to the seriousness of the Convicted Persons' crimes and their gravity.

<sup>20</sup> [ICC-01/05-01/13-258](#), para. 16.

<sup>21</sup> See [ICC-01/05-01/08-3399](#), para. 93; [ICC-01/05-01/13-1989-Red](#), paras. 103, 682, 802.

<sup>22</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 104, 895-949.

<sup>23</sup> See generally [ICC-01/05-01/13-2041](#); [CAR-OTP-0094-2406](#).

<sup>24</sup> [ICC-01/05-01/13-2041](#), para. 21. See also [CAR-OTP-0094-2406](#), at 2407-2408.

<sup>25</sup> [ICC-01/05-01/13-2041](#), para. 23. See also [CAR-OTP-0094-2406](#), at 2410-2412.

## B. THE OFFENCES WERE EXTENSIVE IN SCOPE, PLANNING, AND PREPARATION

17. The offences were extensive in scope, planning, and preparation. The Common Plan spanned over a year, beginning “at the latest when the Main Case Defence arranged for the testimony of [D-0057]” – in October 2012 – and extending to the last Main Case Defence Witness D-0013 in November 2013.<sup>26</sup> During that period, the Convicted Persons are guilty for committing 127 different acts against the administration of justice.<sup>27</sup> That scope has no comparison in contempt cases before international courts and tribunals – which to date have dealt with fairly isolated acts concerning the obstruction of justice.<sup>28</sup>

18. The lengths to which the Convicted Persons tried to influence the witnesses were extensive. **BEMBA** ran the witness corruption network from inside his cell from the Detention Centre.<sup>29</sup> To conduct the massive operation, he used his lawyer (**KILOLO**), his case manager (**MANGENDA**), a high-profile and senior Congolese politician from his political party (**BABALA**), and a prospective expert witness from the military (**ARIDO**).<sup>30</sup>

19. In executing **BEMBA**’s complex scheme, the Convicted Persons adopted a series of sophisticated and elaborate measures to conceal their illicit activities:

- Knowing that the ICC Detention Centre does not actively monitor a detainee’s privileged line, **BEMBA**, **KILOLO**, **MANGENDA**, and **BABALA** used that line to implement the Common Plan.<sup>31</sup>

<sup>26</sup> [ICC-01/05-01/13-1989-Red](#), para. 103.

<sup>27</sup> See generally [ICC-01/05-01/13-1989-Red](#), pp. 455-457.

<sup>28</sup> See above, para. 11.

<sup>29</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 737, 787.

<sup>30</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 682, 878.

<sup>31</sup> [ICC-01/05-01/13-1989-Red](#), paras. 109, 701, 737-738.

- **KILOLO** and **BABALA** transferred money to witnesses using third parties and intermediaries to conceal any links between the payments and the Main Case Defence witnesses.<sup>32</sup>
- **KILOLO** and **MANGENDA** secretly distributed phones to witnesses that they did not declare to the Court, to stay in contact with them past the VWU cut-off period and in violation of the contact prohibition ordered by Trial Chamber III.<sup>33</sup>
- **BEMBA**, **KILOLO**, **MANGENDA**, and **BABALA** used acronyms and coded language when speaking on the telephone to signify elements of their corrupt scheme, including terms for the bribing and illicit coaching of witnesses.<sup>34</sup>
- **KILOLO** and **MANGENDA** did not take Co-Counsel Peter HAYNES on certain field missions so that he would not be a witness to the implementation of the illicit coaching.<sup>35</sup>
- **KILOLO** and **MANGENDA** agreed to destroy physical evidence of money transfers connected to bribing witnesses to minimise the traceability of the illicit transactions.<sup>36</sup>

20. The Convicted Persons', particularly the co-perpetrators, elaborate plan involved creating scripts, false narratives, and background stories all to more effectively manipulate Trial Chamber III. **KILOLO**, for example, "scripted, corrected, instructed and dictated the content" of witness testimonies, "irrespective of the witnesses' knowledge or personal experience and regardless of whether the testimonies were true or false."<sup>37</sup> **ARIDO** similarly directed D-0002, D-0003, D-0004,

<sup>32</sup> [ICC-01/05-01/13-1989-Red](#), paras. 109, 253, 280, 397, 746.

<sup>33</sup> [ICC-01/05-01/13-1989-Red](#), paras. 109, 134, 140, 367, 421, 747, 769, 833, 841, 867.

<sup>34</sup> [ICC-01/05-01/13-1989-Red](#), paras. 109, 751, 884, 891.

<sup>35</sup> [ICC-01/05-01/13-1989-Red](#), paras. 109, 764.

<sup>36</sup> [ICC-01/05-01/13-1989-Red](#), paras. 109, 768.

<sup>37</sup> [ICC-01/05-01/13-1989-Red](#), para. 897. See also T-50-ENG, pp. 5-6; T-50-FRA, pp. 5-6.

and D-0006 as to the contents of their respective testimonies, including to “present themselves as having a certain military background”<sup>38</sup> and subsequently “readjusted [their] scripted testimonies”.<sup>39</sup>

21. The witnesses were also corruptly influenced to give false evidence on matters which might reveal the Common Plan, such as their relationship with **ARIDO** and **KOKATÉ**,<sup>40</sup> the number of times the witnesses spoke with the Convicted Persons prior to their testimony,<sup>41</sup> and the gifts and payments they received.<sup>42</sup> Intermediaries were also paid *in lieu* of the witnesses themselves to disguise the true recipient of payments, and payments were sometimes made through third parties to make them difficult to trace back.<sup>43</sup>

22. Altogether, the elaborate and sophisticated nature of the Convicted Persons’ conduct underlines their deliberate efforts to thwart justice in **BEMBA**’s trial for war crimes and crimes against humanity before Trial Chamber III.

### C. THE OFFENCES INVOLVED NUMEROUS WITNESSES

23. One of the most distinguishing features of this case is the number of witnesses that were approached by the Convicted Persons with the view of corruptly influencing their evidence.<sup>44</sup> Of the 34 Defence witnesses called in **BEMBA**’s defence,<sup>45</sup> the testimonies of almost half – 14 – were unlawfully contaminated.<sup>46</sup> And the evidence proves that more than those 14 were corruptly influenced.<sup>47</sup> In this regard, the offences of which the Convicted Persons were convicted well-exceed the two incidents of witness interference which resulted in sentences of two years

<sup>38</sup> [ICC-01/05-01/13-1989-Red](#), para. 340.

<sup>39</sup> [ICC-01/05-01/13-1989-Red](#), para. 351.

<sup>40</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), paras. 363, 399, 412, 417, 435, 704.

<sup>41</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), para. 704.

<sup>42</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), para. 704.

<sup>43</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), paras. 109, 746.

<sup>44</sup> See *Senessie Contempt SJ*, para. 15.

<sup>45</sup> [ICC-01/05-01/08-3343](#), para. 17.

<sup>46</sup> [ICC-01/05-01/13-749](#), pp. 47-55.

<sup>47</sup> [ICC-01/05-01/13-1989-Red](#), para. 103 (Common Plan involved “at least, 14 defence witnesses”).

imprisonment for Santigie Borbor Kanu and Brima Bazzy Kamara at the SCSL.<sup>48</sup> Simply, the number of witnesses involved alone renders the gravity and seriousness of this case beyond comparison to any contempt case before other international courts or tribunals.

#### IV. THE CONVICTED PERSONS' ROLE IN THE OFFENCES

24. The Judgment extensively details the essential role of each Convicted Person in executing the crimes within the scope of the Common Plan. Within the Common Plan itself, **BEMBA** was its organiser and leader and bears the greatest responsibility.<sup>49</sup> **KILOLO** and **MANGENDA** co-managed and otherwise supervised its implementation.<sup>50</sup> And **BABALA** and **ARIDO** were responsible for certain crimes by transmitting payments and corruptly influencing witnesses, respectively.<sup>51</sup> In committing each criminal offence, the Convicted Persons acted intentionally and knowingly.

##### A. **BEMBA WAS THE ORGANISER AND LEADER OF THE COMMON PLAN**

25. **BEMBA** bears the most responsibility for the crimes as the Common Plan's leader and organiser:

- **BEMBA** exercised decision-making authority, such as issuing instructions to **KILOLO**, **MANGENDA**, and **BABALA** (including "on the expected contents and topics of the witnesses' testimonies"), giving directions concerning the witnesses to be called in his Defence, and authorising and approving actions taken by the other Convicted Persons.<sup>52</sup> For instance, as found by the Chamber, **BEMBA** "gave precise and comprehensive directives to [**KILOLO**], through

<sup>48</sup> *Bangura Contempt TJ*, Disposition; *Bangura Contempt SJ*, Disposition.

<sup>49</sup> See below, paras. 25-26.

<sup>50</sup> See below, paras. 27-39.

<sup>51</sup> See below, paras. 40-48.

<sup>52</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 106, 688, 729, 731, 786, 806, 808.

[MANGENDA], concerning the topics on which to brief and instruct [D-0054]”, going so far “as to dictate *how* [D-0054] was expected to behave when testifying”.<sup>53</sup>

- **BEMBA** indirectly and, where necessary, directly influenced the 14 Main Case Defence witnesses to give false testimony. **BEMBA** asked “either personally or through [KILOLO], the 14 Main Case Defence witnesses to give false testimony”.<sup>54</sup> For instance, **BEMBA** had “direct telephone conversations with [D-0019 and D-0055] from the ICC Detention Centre” during which he “urged them to cooperate and follow the instructions given by [KILOLO].”<sup>55</sup>
- **BEMBA** exercised control over the Common Plan and its participants. In addition to issuing directions and instructions to the other Convicted Persons, **KILOLO**, **MANGENDA**, and **BABALA** reported to **BEMBA** and consistently sought his authorisation and approval for their respective criminal conduct.<sup>56</sup> Indeed, “[**BABALA**] would not effect any payment without [**BEMBA**’s] authorisation.”<sup>57</sup> **BEMBA** would give “feedback on how to handle certain issues”, showing his “expectations that his directions will be implemented”, and “express[ing] satisfaction or dissatisfaction with the testimony of the coached witnesses and [**KILOLO**’s] illicit coaching activities”.<sup>58</sup> **BEMBA** was “at all times aware of the payments, including illicit payments, effected to witnesses or other persons and the purposes of those payments”.<sup>59</sup>
- **BEMBA** planned and organised the crimes.<sup>60</sup> For instance, **BEMBA** “was part of the decision-making process with regard to the calling of witnesses”,<sup>61</sup> “gave

<sup>53</sup> [ICC-01/05-01/13-1989-Red](#), para. 729. *See also*, para. 734.

<sup>54</sup> [ICC-01/05-01/13-1989-Red](#), para. 853.

<sup>55</sup> [ICC-01/05-01/13-1989-Red](#), para. 856.

<sup>56</sup> *See* [ICC-01/05-01/13-1989-Red](#), paras. 106, 727-729. *See also*, paras. 808, 812-813, 816, 819.

<sup>57</sup> [ICC-01/05-01/13-1989-Red](#), para. 816.

<sup>58</sup> [ICC-01/05-01/13-1989-Red](#), paras. 729, 732. *See also*, paras. 808, 816.

<sup>59</sup> [ICC-01/05-01/13-1989-Red](#), para. 813.

<sup>60</sup> *See e.g.* [ICC-01/05-01/13-1989-Red](#), paras. 806, 816.

<sup>61</sup> [ICC-01/05-01/13-1989-Red](#), para. 812. *See also*, para. 816.



directives as to what and how the witnesses should testify”,<sup>62</sup> and “was in control of the payment scheme as he was aware of and authorised the transfers that [BABALA], his financier, would effect”.<sup>63</sup> For instance, he “ensured, through [BABALA], that financial means were available to the co-perpetrators with which they executed their illicit activities.”<sup>64</sup>

- **BEMBA** was the ultimate beneficiary of the Common Plan.<sup>65</sup> The other Convicted Persons, **KILOLO**, **MANGENDA**, and **BABALA** in particular, consistently acted on his behalf and for his benefit. **KILOLO** made clear he was acting for **BEMBA**<sup>66</sup> and **KILOLO** and **MANGENDA** were constantly concerned with pleasing **BEMBA** and implementing his instructions to his satisfaction.<sup>67</sup> Both **KILOLO** and **MANGENDA** “agreed that the most important thing was that [BEMBA] was satisfied.”<sup>68</sup>

26. The serious nature of **BEMBA**’s culpability is finally reflected by virtue of the fact that he committed the crimes in a calculating and deliberate manner.<sup>69</sup> For instance, **BEMBA** constantly expressed his satisfaction with the illicit conduct of the other Convicted Persons.<sup>70</sup> He sought to disguise the crimes when discussing them with **KILOLO**, **MANGENDA**, and **BABALA** by using code.<sup>71</sup> And he directed the cover-up campaign when word of the Prosecution’s investigation was leaked.<sup>72</sup>

<sup>62</sup> See [ICC-01/05-01/13-1989-Red](#), para. 688. See also, para. 704.

<sup>63</sup> See [ICC-01/05-01/13-1989-Red](#), para. 703.

<sup>64</sup> [ICC-01/05-01/13-1989-Red](#), para. 816.

<sup>65</sup> [ICC-01/05-01/13-1989-Red](#), paras. 106, 805.

<sup>66</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 380(iii), 586. See also T-19-ENG, p. 34, lns. 4-9; T-19-FRA, p. 34, lns. 8-13; [CAR-OTP-0077-1389](#), at 1391, lns. 51-61, 68.

<sup>67</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 495, 724, 737, 806. See also [CAR-OTP-0079-0122](#), at 0126, lns. 108-109; [CAR-OTP-0079-0114](#), at 0118, lns. 103-105.

<sup>68</sup> [ICC-01/05-01/13-1989-Red](#), paras. 726 727, 806.

<sup>69</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 817-820.

<sup>70</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 106, 732.

<sup>71</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 819-820.

<sup>72</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 775-776, 815.

## B. KILOLO CO-MANAGED AND OTHERWISE SUPERVISED THE COMMON PLAN

27. **KILOLO** co-managed and otherwise supervised the Common Plan's execution on **BEMBA**'s behalf. He was the principal person in charge of implementing the Common Plan.<sup>73</sup> His actions, like those of **BEMBA**, were calculating.<sup>74</sup> And he was involved in every facet of the Common Plan's execution, from illicitly coaching witnesses before and during their testimony, to instructing their false evidence, to making unlawful payments and "gifts", to facilitating illicit contact between **BEMBA** and the witness.<sup>75</sup>

28. As the Chamber found, with respect to the illicit coaching of witnesses, **KILOLO** "implemented [**BEMBA**'s] instructions and prepared the witnesses accordingly".<sup>76</sup> For instance, "[d]uring in-person meetings or over the telephone, including during overnight adjournments and early in the morning before they took the stand, [**KILOLO**] illicitly coached witnesses upon key aspects bearing on the subject-matter of the charges in the Main Case".<sup>77</sup> In particular, "[h]e gave the witnesses precise instructions on what to say, scripted the replies, rehearsed the expected testimony and intervened correctively, if necessary."<sup>78</sup> **KILOLO** also issued instructions "bearing on the credibility of the Main Case Defence witnesses",<sup>79</sup> "ensured that the evidence of Main Case Defence witnesses [...] was manipulated and their testimonies aligned",<sup>80</sup> and "kept close contact with the witnesses shortly before and during their testimonies so as to ensure that they complied with his instructions."<sup>81</sup> Finally, **KILOLO** "took the decision about witnesses coming to testify

<sup>73</sup> See [ICC-01/05-01/13-1989-Red](#), para. 832.

<sup>74</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 835-836.

<sup>75</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 821-836, 858-863, 897-908.

<sup>76</sup> [ICC-01/05-01/13-1989-Red](#), para. 688. See also, paras. 704, 734.

<sup>77</sup> [ICC-01/05-01/13-1989-Red](#), para. 706.

<sup>78</sup> [ICC-01/05-01/13-1989-Red](#), para. 734.

<sup>79</sup> [ICC-01/05-01/13-1989-Red](#), para. 707.

<sup>80</sup> [ICC-01/05-01/13-1989-Red](#), para. 708.

<sup>81</sup> [ICC-01/05-01/13-1989-Red](#), para. 711.

based on whether they were willing to follow the specific narrative dictated by him.”<sup>82</sup>

29. With regards to the illicit payments, **KILOLO** “personally paid a number of defence witnesses shortly before or on the first day of their testimony with a view to securing the witnesses’ testimony in favour of [BEMBA].”<sup>83</sup> As the Chamber concluded, “[o]n [BEMBA’s] account, [KILLOLO] personally paid witnesses, provided them with goods, [...] or made non-monetary promises shortly before or on the first day of their testimonies, with a view to ensuring that they followed his instructions”.<sup>84</sup> With respect to D-0023 alone, **KILOLO** gave him “USD 100 as ‘taxi reimbursement’, an envelope containing CFAF 450,000, and a new laptop”.<sup>85</sup>

30. Finally, as **BEMBA**’s lead counsel, **KILOLO** called Defence witnesses “whom he had coached extensively and illicitly [...] and presented their evidence knowing that they would testify falsely”.<sup>86</sup>

31. **KILOLO** acted in deliberate violation of Trial Chamber III’s safeguards against witness interference. As found by the Chamber, when illicitly coaching witnesses, **KILOLO** “ignored the contact prohibition order imposed by Trial Chamber III after the handover to the VWU.”<sup>87</sup> In fact, **KILOLO** “distributed new cell phones to defence witnesses” secretly and unknown to the VWU “around the time the witnesses were entrusted to the care of the VWU”.<sup>88</sup>

32. **KILOLO** was persistent in the commission of his crimes, willing to even exploit his relationship with others. **KILOLO**, for example, manipulated his close relationship with P-0263 to have her transfer bribes in the form of wire transfers

<sup>82</sup> [ICC-01/05-01/13-1989-Red](#), para. 713.

<sup>83</sup> [ICC-01/05-01/13-1989-Red](#), para. 823.

<sup>84</sup> [ICC-01/05-01/13-1989-Red](#), para. 861.

<sup>85</sup> [ICC-01/05-01/13-1989-Red](#), para. 690.

<sup>86</sup> [ICC-01/05-01/13-1989-Red](#), para. 830.

<sup>87</sup> [ICC-01/05-01/13-1989-Red](#), para. 711.

<sup>88</sup> [ICC-01/05-01/13-1989-Red](#), para. 747.

through Express Union.<sup>89</sup> He also pressured D-0055, who rebuffed several unsuccessful attempts by **KILOLO**, to convince him to testify for **BEMBA** until his persistence finally paid off.<sup>90</sup>

33. Finally, while committing his crimes, **KILOLO** also encouraged the prospective witnesses' disregard for the Court. For instance, **KILOLO** used misogynistic language when illicitly coaching D-0015, instructing the witness that there was no reason to be concerned about one of the judges who "*fait comme si elle criait*" because she is just a woman: "*ce n'est qu'une femme [...] c'est une femme*".<sup>91</sup>

34. Like **BEMBA**, **KILOLO** acted with calculation and cunning in implementing the criminal objectives of the Common Plan.<sup>92</sup> The Chamber found that "[**KILOLO**] purposefully planned and conducted the illicit coaching" and "paid the witnesses, gave them material benefits and made non-monetary promises, while instructing them to lie about or conceal such payments and promises during their testimonies."<sup>93</sup> **KILOLO**, "a lawyer on notice of the Court's statutory and disciplinary regime and bound by, *inter alia*, the Court's Code of Professional Conduct for counsel – knew that the coaching activity and the payments to the witnesses were illegal and constituted offences against the administration of justice pursuant to Article 70 of the Statute."<sup>94</sup> Indeed, **KILOLO** openly acknowledged in an intercepted conversation that if his activities "including '*faire la couleur*' were discovered, he would be the first person targeted."<sup>95</sup> **KILOLO**'s conversation with **MANGENDA** on 29 August 2013 underscores his unscrupulousness. In that conversation, the two deride D-0029 for

<sup>89</sup> See [CAR-OTP-0083-1291-R03](#), at 1298.

<sup>90</sup> See [ICC-01/05-01/13-1989-Red](#), para. 120; [CAR-OTP-0074-0872-R03](#), at 0877-0878; [ICC-01/05-01/08-T-264-Red2-ENG](#), pp. 62-63, Ins. 22-5. See also *Senessie Contempt SJ*, para. 18.

<sup>91</sup> [CAR-OTP-0082-0866](#), at 0869, Ins. 35-43.

<sup>92</sup> [ICC-01/05-01/13-1989-Red](#), paras. 834-836.

<sup>93</sup> [ICC-01/05-01/13-1989-Red](#), para. 863.

<sup>94</sup> [ICC-01/05-01/13-1989-Red](#), para. 836.

<sup>95</sup> [ICC-01/05-01/13-1989-Red](#), para. 836.

failing to follow the instructions given to him, noting that Co-Counsel HAYNES should be “content” as “il y a un témoin qui dit la vérité”.<sup>96</sup>

### C. MANGENDA CO-MANAGED AND OTHERWISE SUPERVISED THE COMMON PLAN

35. MANGENDA co-managed and otherwise supervised the execution of the Common Plan with KILOLO. As the Chamber repeatedly found, MANGENDA’s “role was more than that of a mere case-manager” and “more than merely administrative”;<sup>97</sup> in executing the Common Plan MANGENDA acted on “equal footing with [KILOLO]”.<sup>98</sup>

36. The Chamber found that MANGENDA “was fully integrated into the planning of [KILOLO’s] illicit coaching activities.”<sup>99</sup> MANGENDA would make “proposals on how best to carry out the illicit witness preparation”<sup>100</sup> and was actively involved in “the strategic selection of witnesses”.<sup>101</sup> MANGENDA “exchanged views with [KILOLO] and advised him on which evidence to elicit from the witnesses”.<sup>102</sup> For instance, MANGENDA even “suggested to [KILOLO] details of the subject matters on which the witnesses should be illicitly coached, and discussed with [KILOLO] whether or not to call witnesses, who had been illicitly prepared.”<sup>103</sup> MANGENDA also accompanied KILOLO on field missions “knowing that [KILOLO] met with defence witnesses and illicitly coached them” and often provided KILOLO arguments to “actively [...] disperse any concerns” within the Main Case Defence team about their illicit activities.<sup>104</sup> Indeed, as found by the Chamber, “[b]eing a lawyer by profession and privy to the case record, he advised both [KILOLO] and [BEMBA] on legal and factual issues arising in the context of the Main Case, defence

<sup>96</sup> [CAR-OTP-0080-0245](#), at 0252, Ins. 182-190.

<sup>97</sup> [ICC-01/05-01/13-1989-Red](#), paras. 757, 846.

<sup>98</sup> [ICC-01/05-01/13-1989-Red](#), paras. 726, 757, 791, 837, 867, 915.

<sup>99</sup> [ICC-01/05-01/13-1989-Red](#), para. 839.

<sup>100</sup> [ICC-01/05-01/13-1989-Red](#), para. 717. *See also*, para. 734.

<sup>101</sup> [ICC-01/05-01/13-1989-Red](#), para. 844.

<sup>102</sup> [ICC-01/05-01/13-1989-Red](#), para. 839.

<sup>103</sup> [ICC-01/05-01/13-1989-Red](#), para. 844.

<sup>104</sup> [ICC-01/05-01/13-1989-Red](#), para. 840.

staffing issues, evidentiary matters, and defence strategies, including the calling and questioning of witnesses.”<sup>105</sup>

37. **MANGENDA** worked in tandem with **KILOLO** in illicitly coaching witnesses as his “assisting hand and confidant within the Main Case Defence team”.<sup>106</sup> **KILOLO** regularly kept **MANGENDA** updated on his activities with witnesses.<sup>107</sup> In turn, **MANGENDA** “reported to [**KILOLO**] on the testimony of witnesses”, and even “advised on the points on which witnesses performed badly or needed instruction”.<sup>108</sup> He also provided **KILOLO** “essential logistical support [...] for the purpose of the illicit coaching”.<sup>109</sup> For instance, he supplied **KILOLO** with tools necessary to carry out the illicit witness coaching, such as by distributing new telephones to witnesses<sup>110</sup> and supplying **KILOLO** with LRV questions “knowing that [**KILOLO**] would send the questions to the witnesses in order to prepare them beforehand.”<sup>111</sup>

38. **MANGENDA** was also the vital link between **BEMBA** and **KILOLO**. **MANGENDA** “was in continuous communication with [**BEMBA**]”.<sup>112</sup> **MANGENDA** conveyed messages from **BEMBA**, including instructions and directives, and “made [**KILOLO**] aware of what [**BEMBA**] wished to implement.”<sup>113</sup> He would even remind **KILOLO** “to use codes when briefing [**BEMBA**].”<sup>114</sup>

39. Like his fellow co-perpetrators, **MANGENDA**’s role in the offences is heightened by the fact that his actions were calculated and designed, fully cognisant “that the 14 witnesses presented by the Main Case Defence would provide false

<sup>105</sup> [ICC-01/05-01/13-1989-Red](#), para. 846.

<sup>106</sup> [ICC-01/05-01/13-1989-Red](#), para. 837. *See also*, para. 720.

<sup>107</sup> [ICC-01/05-01/13-1989-Red](#), para. 717.

<sup>108</sup> [ICC-01/05-01/13-1989-Red](#), para. 717. *See also*, para. 734.

<sup>109</sup> [ICC-01/05-01/13-1989-Red](#), para. 847.

<sup>110</sup> [ICC-01/05-01/13-1989-Red](#), para. 747.

<sup>111</sup> [ICC-01/05-01/13-1989-Red](#), para. 721.

<sup>112</sup> [ICC-01/05-01/13-1989-Red](#), para. 842.

<sup>113</sup> [ICC-01/05-01/13-1989-Red](#), para. 721. *See also*, paras. 688, 704, 842.

<sup>114</sup> [ICC-01/05-01/13-1989-Red](#), para. 842.

testimony”.<sup>115</sup> Indeed, **MANGENDA** “expressed his approval and relayed [**BEMBA**’s] approval of such false testimony” and “continued to collaborate in the illicit coaching activities [...] despite knowing the obvious result.”<sup>116</sup>

#### **D. BABALA PROVIDED THE CO-PERPETRATORS SUPPORT AND FACILITATED MONEY TRANSFERS**

40. **BABALA**’s principal role was as the treasurer for the members of the Common Plan. While not part of the Common Plan, the Chamber’s findings clearly show that **BABALA**’s role was all but minor.<sup>117</sup> **BABALA** was responsible for effectuating **BEMBA**’s payment scheme, whether to witnesses, the co-Convicted Persons, or other persons.<sup>118</sup>

41. The Chamber found that **BABALA** was “the financier, who provided the co-perpetrators support and facilitated money transfers.”<sup>119</sup> During their near daily conversations, **BABALA** would obtain **BEMBA**’s authorisation and distribute money, including in effecting certain crimes which were the objective of the Common Plan.<sup>120</sup> He even “advised [**BEMBA**] to give money to a defence witness in the Main Case”<sup>121</sup> and “actually underlined to [**BEMBA**] the importance of paying certain witnesses (in this case, [D-0057] and [D-0064]) in connection with their testimonies in court.”<sup>122</sup>

42. **BABALA** was a trusted and key confidant of **BEMBA** and, by extension, **KILOLO**. **BABALA** was one of the only individuals outside of his legal team with whom **BEMBA** spoke on a regular basis, going so far as to abuse the privileged line

<sup>115</sup> [ICC-01/05-01/13-1989-Red](#), para. 849.

<sup>116</sup> [ICC-01/05-01/13-1989-Red](#), para. 849.

<sup>117</sup> See [ICC-01/05-01/13-1989-Red](#), para. 112 (finding that while **BABALA** was not part of the Common Plan, he “made efforts to further [the] goal” of the co-perpetrators). See also paras. 682, 885.

<sup>118</sup> [ICC-01/05-01/13-1989-Red](#), paras. 112, 693, 703, 885.

<sup>119</sup> [ICC-01/05-01/13-1989-Red](#), para. 779.

<sup>120</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 112, 884, 893.

<sup>121</sup> [ICC-01/05-01/13-1989-Red](#), para. 112.

<sup>122</sup> [ICC-01/05-01/13-1989-Red](#), para. 884.



to do so.<sup>123</sup> Indeed, **BABALA** was even made aware “of internal details of the Main Case, including the identity of witnesses”.<sup>124</sup> **BABALA**’s significant role is evident by the fact that he was the first person **KILOLO** spoke to after **BEMBA** in relation to measures to counter the article 70 investigation, and was fully included in discussions concerning possible measures to counter the Prosecution’s investigation.<sup>125</sup> Tellingly, as found by the Chamber, **BABALA** even “encouraged [**KILOLO**] to ensure ‘*le service après-vente*’, i.e. to pay witnesses after their testimonies before Trial Chamber III.”<sup>126</sup>

43. **BABALA** intended to achieve the criminal objectives of the Common Plan and acted in knowing appreciation of the unlawful nature of his conduct. As found by the Chamber, **BABALA** fully understood “that the payments were illegitimate and aimed at altering and contaminating the witnesses’ testimony.”<sup>127</sup> For instance, **BABALA** knew that in aiding the crimes, he “took risks as ‘*financier*’ through his involvement in witness payments”<sup>128</sup> and in fact “discussed with [**KILOLO**] the Article 70 warrant of arrest issued against Walter Osapiri Barasa for alleged witness interference in the case in the Kenya situation.”<sup>129</sup> Nonetheless, **BABALA** effectuated transfers of money in full knowledge of its unlawful objective, demonstrating his intent.

44. **BABALA** also acted deceptively. He used his driver to pay bribes or made payments to intermediaries of witnesses.<sup>130</sup> In conversations with **BEMBA** and **KILOLO**, he disguised his conduct through the use of coded language for monies to be paid (‘*kilos*’ or ‘*grands*’)<sup>131</sup> and attendant matters like “*service après-vente*” – a phrase

<sup>123</sup> [ICC-01/05-01/13-1989-Red](#), para. 884.

<sup>124</sup> [ICC-01/05-01/13-1989-Red](#), para. 885.

<sup>125</sup> [ICC-01/05-01/13-1989-Red](#), paras. 112, 779.

<sup>126</sup> [ICC-01/05-01/13-1989-Red](#), para. 112.

<sup>127</sup> [ICC-01/05-01/13-1989-Red](#), para. 893.

<sup>128</sup> [ICC-01/05-01/13-1989-Red](#), para. 892.

<sup>129</sup> [ICC-01/05-01/13-1989-Red](#), para. 891. See also [ICC-01/09-01/13-1-Red2](#).

<sup>130</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), paras. 115, 117-118, 242-243, 254, 268, 281, 700, 879, 936.

<sup>131</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), para. 884.



which **BABALA** used in his conversations with **KILOLO** to pay witnesses after their testimonies before Trial Chamber III.<sup>132</sup>

45. Altogether, the above shows that **BABALA** was far from a bystander or an unwitting accomplice. He was one of **BEMBA**'s closest and trusted confidants. He was the person **BEMBA** trusted to get in touch with **KILOLO** in particularly urgent situations.<sup>133</sup> And he was consulted when **BEMBA** realised that the Common Plan had been compromised, prescribing the means and manner by which to keep quiet the Defence witnesses suspected of cooperation with the Article 70 investigation.

#### E. **ARIDO** EXECUTED CRIMES WITHIN THE OBJECTIVES OF THE COMMON PLAN

46. While not a member of the Common Plan, **ARIDO** executed crimes in Cameroon which formed a part of the objectives of the Common Plan.<sup>134</sup> His role in that regard was essential and instrumental. **ARIDO** "assisted [**KILOLO**] in recruiting [D-0002, D-0003, D-0004 and D-0006] for the Main Case Defence."<sup>135</sup> Also present when **ARIDO** was meeting with and preparing these witnesses were other Main Case Defence witnesses "and prospective witnesses (who did not eventually testify)".<sup>136</sup>

47. **ARIDO** personally "briefed and instructed the witnesses as to the contents of their upcoming testimony".<sup>137</sup> In particular, **ARIDO** "intentionally instructed and briefed the four witnesses (or facilitated their briefing by others) to present themselves as military men to [**KILOLO**] and the Court even while believing that they did not have such a background."<sup>138</sup> In doing so, **ARIDO** took meticulous care to "construct[] and adjust[] the witnesses' testimonies according to a specific

<sup>132</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), paras. 410, 781, 888.

<sup>133</sup> See e.g. [CAR-OTP-0077-1336](#), at 1340, lns. 84-85.

<sup>134</sup> See [ICC-01/05-01/13-1989-Red](#), para. 112 (finding that while **ARIDO** was not part of the Common Plan, he "made efforts to further [the] goal" of the co-perpetrators). See also para. 682.

<sup>135</sup> [ICC-01/05-01/13-1989-Red](#), para. 872.

<sup>136</sup> [ICC-01/05-01/13-1989-Red](#), para. 331.

<sup>137</sup> [ICC-01/05-01/13-1989-Red](#), para. 872.

<sup>138</sup> [ICC-01/05-01/13-1989-Red](#), para. 944. See also paras. 129-132, 321, 334-338, 345-346, 351, 420, 669.

narrative favourable to [BEMBA], [...] knowing that the witnesses had only agreed to testify before the Court as a result of the promises he had made to them”.<sup>139</sup> In particular, he “assigned the witnesses their alleged military ranks and handed out military insignia”.<sup>140</sup> And even after their meeting with **KILOLO**, **ARIDO** again met with the witnesses “for a de-briefing, during which he further guided and instructed the witnesses.”<sup>141</sup>

48. The egregiousness of **ARIDO**’s conduct is heightened further by virtue of his exploitation and manipulation of at least four prospective witnesses to achieve his aims. **ARIDO** promised the four witnesses “money and relocation in Europe in exchange for their testimony in the Main Case.”<sup>142</sup> He exploited the precarious personal situations of these witnesses, selling them the illusion of a better future.<sup>143</sup> He “made them believe that this arrangement would lead to a better life for them.”<sup>144</sup> And he sold them on that lie by “specifically instruct[ing] them to write their conditions (both payment of money and relocation destination) on a piece of paper which he would personally convey to [KILOLO] as their ‘leader’ or ‘go-between’.”<sup>145</sup> As found by the Chamber, this was all done “as an inducement to procure the testimony of the witnesses in favour of [BEMBA].”<sup>146</sup> **ARIDO** “intended to manipulate the testimonial evidence, which he did.”<sup>147</sup>

## V. AGGRAVATING CIRCUMSTANCES WARRANT A SEVERE PUNISHMENT

49. Several aggravating circumstances warrant a more severe punishment for the Convicted Persons. *First*, **BEMBA** and **BABALA** abused their power and/or official

<sup>139</sup> [ICC-01/05-01/13-1989-Red](#), para. 944.

<sup>140</sup> [ICC-01/05-01/13-1989-Red](#), para. 669.

<sup>141</sup> [ICC-01/05-01/13-1989-Red](#), para. 669.

<sup>142</sup> [ICC-01/05-01/13-1989-Red](#), para. 944. *See also* paras. 125-128, 328, 341-343, 420.

<sup>143</sup> *See e.g.* [ICC-01/05-01/13-1989-Red](#), paras. 112, 126, 420. *See also* [CAR-OTP-0080-0021](#), at 0030-0031, Ins. 290–327; [CAR-OTP-0080-0043](#), at 0050, Ins. 250-256.

<sup>144</sup> [ICC-01/05-01/13-1989-Red](#), para. 672.

<sup>145</sup> [ICC-01/05-01/13-1989-Red](#), para. 672.

<sup>146</sup> [ICC-01/05-01/13-1989-Red](#), para. 944.

<sup>147</sup> [ICC-01/05-01/13-1989-Red](#), para. 944.

capacity.<sup>148</sup> *Second*, **KILOLO** and **MANGENDA** abused their positions of trust as members of **BEMBA's** Defence.<sup>149</sup> *Third*, **BEMBA** and **KILOLO** abused the privileges afforded to them due to their lawyer-client relationship.<sup>150</sup> *Fourth*, all of the Convicted Persons attempted to obstruct justice concerning *this* case.<sup>151</sup> *Finally*, **KILOLO** repeatedly violated the Code of Professional Conduct for counsel as **BEMBA's** lead counsel in the Main Case.<sup>152</sup>

50. All of these acts constitute aggravating circumstances under rule 145(2)(b), particularly sub-paragraph (vi) which gives the Chamber discretion to consider other non-enumerated circumstances as aggravating.<sup>153</sup> Even if not considered aggravating, they are nevertheless relevant factors for determining the Convicted Persons' sentences pursuant to rule 145(1)(b), requiring the Chamber to "[b]alance all the relevant factors", and rule 145(1)(c), requiring the Chamber to consider "the nature of the unlawful behaviour and the means employed to execute the crime."

#### **A. BEMBA AND BABALA ABUSED THEIR POWER AND/OR OFFICIAL CAPACITY**

51. **BEMBA's** and **BABALA's** abuse of authority and/or official capacity in executing and facilitating the crimes are aggravating circumstances warranting more severe punishment. Rule 145(2)(b)(ii) enumerates the abuse of power or official capacity as an aggravating factor, as recognised in cases before this Court<sup>154</sup> and in other international courts and tribunals.<sup>155</sup>

52. **BEMBA**, in committing the crimes through the Common Plan, and **BABALA**, by rendering assistance to its participants, abused their high positions and the

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<sup>148</sup> See below, paras. 51-54.

<sup>149</sup> See below, paras. 55-63.

<sup>150</sup> See below, paras. 64-71.

<sup>151</sup> See below, paras. 72-89.

<sup>152</sup> See below, paras. 91-95.

<sup>153</sup> See e.g. [ICC-01/05-01/13-2038](#), para. 11.

<sup>154</sup> See [ICC-01/04-01/06-3122](#), para. 8.

<sup>155</sup> See *Haraqija* Contempt TJ, para. 115; *Senessie* Contempt SJ, paras. 19-20.

authority that came with it. As the long-time and current President of the MLC,<sup>156</sup> **BEMBA** used his stature and relationships in the organisation to carry out the crimes. As the Chamber found, “[**KILOLO**] promised [D-0003] that [**BEMBA**], once released, would meet him individually in Kinshasa.”<sup>157</sup> D-0006 was also told that “after his testimony, that [**BEMBA**] had been pleased with his evidence and that he would meet the witness personally once released.”<sup>158</sup> Finally, “[p]rior to his testimony, [D-0055] spoke with [**BEMBA**] on the telephone and was promised that he would benefit from [**BEMBA**’s] good graces” if he testified favourably on his behalf.<sup>159</sup> Indeed, in response to D-0055’s “concerns about the consequences his testimony could have for him and his family” and “his fear of [**BEMBA**]”, given his authority and stature, D-0055 was assured that “[**BEMBA**] ‘*le traiterai bien*’”.<sup>160</sup>

53. **BEMBA** also exploited his MLC relationships to facilitate bribes to witnesses. For instance, **BEMBA** used **BABALA**, the *secrétaire général adjoint* for the MLC,<sup>161</sup> a DRC National Assembly parliamentarian,<sup>162</sup> and *vice-président du groupe parlementaire de l’opposition*,<sup>163</sup> to make payments to witnesses in their bribing.<sup>164</sup> As the Chamber found, “[**BABALA**], who was [**BEMBA**’s] financier, would seek authorisation from or inform [**BEMBA**] before making any payment to [**KILOLO**] or other persons. This included funds that [**BABALA**] or [**KILOLO**] illicitly transferred to the witnesses.”<sup>165</sup> With respect to D-0029, **BEMBA** also used Jacques LUNGUANA, **BEMBA**’s close

<sup>156</sup> See [ICC-01/05-01/13-1989-Red](#), para. 8. See also [CAR-OTP-0005-0198](#), at 0202; [ICC-01/05-01/13-599-Conf](#), para. 50.

<sup>157</sup> [ICC-01/05-01/13-1989-Red](#), para. 692.

<sup>158</sup> [ICC-01/05-01/13-1989-Red](#), para. 692.

<sup>159</sup> [ICC-01/05-01/13-1989-Red](#), para. 692.

<sup>160</sup> [ICC-01/05-01/13-1989-Red](#), para. 121.

<sup>161</sup> See [ICC-01/05-01/13-217](#), para. 30; [CAR-OTP-0072-0091](#), at 0092-0093; [CAR-OTP-0072-0102](#), at 0102.

<sup>162</sup> See [ICC-01/05-01/13-1989-Red](#), para. 11. See also T-1-ENG, p. 5, ln. 11; T-1-FRA, p. 4, ln. 24; [CAR-OTP-0072-0101](#), at 0101.

<sup>163</sup> See [ICC-01/05-01/13-217](#), para. 30.

<sup>164</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 693-703.

<sup>165</sup> [ICC-01/05-01/13-1989-Red](#), para. 693. See also, paras. 695-701, 703.

associate and the Parliament member in charge of MLC finances,<sup>166</sup> to facilitate payments to that witness during his testimony in the Main Case.<sup>167</sup>

54. **BABALA** equally abused his positions in the MLC and DRC government. **BABALA** used his authority over his driver to execute payments to witnesses on his behalf<sup>168</sup> and discussed with **BEMBA** how LUNGUANA should be in charge of MLC finances, including those used to make illicit payments to witnesses.<sup>169</sup> In fact, in his closing submissions, **BABALA** conceded that these funds were “*mobilisés au niveau du MLC, de la famille et des amis de M.BEMBA*”.<sup>170</sup>

## B. KILOLO AND MANGENDA ABUSED THEIR POSITION OF TRUST

55. **KILOLO** and **MANGENDA** abused their position of trust as members of **BEMBA**’s Main Case Defence team when committing the crimes, warranting a more severe punishment as an aggravating circumstance. As members of the **BEMBA** Main Case Defence, lead counsel and case manager, respectively, **KILOLO** and **MANGENDA** were in a position of trust *vis-à-vis* the Court, an abuse of which constitutes an aggravating circumstance under rule 145(2)(b)(vi). Similar considerations have also been accepted by the *ad hoc* tribunals. As noted by an ICTY Trial Chamber in the contempt case against Jelena Rašić, investigator and case manager for Milan Lukić’s defence:

Members of Defence teams are obligated to act conscientiously with full respect of the law and applicable rules, something which certainly also holds true for any professional involved in the proceedings before the Tribunal. As officers of justice, they must at all times be aware of their duties and must never allow

<sup>166</sup> See [CAR-OTP-0080-0939](#), at 0941, Ins. 25-26. See also [CAR-OTP-0082-0334](#), at 0334 (of EUR 18,000 for the Brazzaville mission, EUR 6,000 was covered by LUNGUANA).

<sup>167</sup> See [CAR-OTP-0074-0855](#), tab 28 Guy F M Bikoumou, row 2, columns U-AB. See also [CAR-OTP-0085-0707-R02](#), at 0757-0758, Ins. 1749-1772; [CAR-OTP-0088-0105](#), at 0114, Ins. 278-309.

<sup>168</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 690, 700, 879, 936.

<sup>169</sup> [CAR-OTP-0080-0939](#), at 0941, Ins. 25-26.

<sup>170</sup> [ICC-01/05-01/13-1901-Red](#), para. 215. See also [ICC-01/05-01/13-596-Conf-Corr2](#), para. 14.

themselves to affect others, such as prospective witnesses, in a criminal manner.<sup>171</sup>

56. An abuse of trust is an aggravating circumstance because it is “similar in nature” to rule 145(2)(b)(ii) – “[a]buse of power or official capacity”. In particular, the trust and professional responsibility owed by members of the Defence to abide by the Statute, Rules and Regulations of the Court is similar in nature to responsibilities owed by individuals in positions of power and authority to refrain from abusing the special rights and privileges they hold by virtue of their status. Authority and official position vest in an individual the right to control the behaviour of others within legally determined parameters. The concept of abuse describes the process of using that authority wrongly or improperly, such as towards the commission of the offence. That abuse aggravates a sentence because it is a perversion of those special rights and powers afforded to individuals in whom society has invested such responsibility.

57. A position of trust equally vests in officers of the Court, including members of the Defence, the full authority of their position as provided under the Statute, Rules, and Regulations.<sup>172</sup> It permits the Defence to advise their clients, appear before the Court, gain access to and collect evidence, obtain access to confidential material relevant to their clients, request and obtain protection for witnesses, obtain legal aid and administrative and logistical support, and altogether assume the burden and responsibility of representing individuals accused of the gravest offences.

58. It also creates authoritative standing which witnesses trust and rely upon. For instance, during the course of this trial, several witnesses attested to complying with **KILOLO**’s instructions and coaching because he was a lawyer and, in their opinion, knew best.<sup>173</sup> As noted by D-0055, in explaining why he lied in the Main Case about the money he had received and his contacts with the Defence prior to his testimony:

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<sup>171</sup> *Rašić Contempt SJ*, para. 18.

<sup>172</sup> *See generally* rule 22(3).

<sup>173</sup> *See e.g.* T-29-ENG, p. 8, lns. 7-20, p. 28, lns. 8-10; T-29-FRA, p. 8, lns. 3-19, p. 29, lns. 24-27.

“I simply followed the advice of a professional man of justice, Mr. Kilolo.”<sup>174</sup> Similarly, D-0054 testified that “if [KILOLO] called me, I couldn’t turn down his call. So I listened to him and that’s it. He’s a lawyer. He could talk.”<sup>175</sup> An abuse of that position of trust thus equally involves the process of using that position to commit a wrongful or improper act, in this case the commission of the article 70 offences.

59. In this case, **KILOLO** – as **BEMBA**’s lead counsel, lawyer by profession, and member of the Brussels and Lubumbashi Bars since June 2001<sup>176</sup> – and **MANGENDA** – as **BEMBA**’s case manager, lawyer by profession, and member of the Kinshasa/Matete bar since December 2004<sup>177</sup> – were in a position of trust at all times during the commission of their crimes. In that capacity, **KILOLO** and **MANGENDA** were officers of justice with the rights, responsibilities, and powers provided to them by the Statute, Rules, and the Court’s Regulations.

60. The Chamber’s findings make clear that **KILOLO** and **MANGENDA** were well aware of these obligations as officers of the Court when committing their crimes. The Chamber found that **KILOLO** “knew the legal implications of his actions” as he was able to make “the link between the *Barasa* Case and his own actions in relation to the Main Case.”<sup>178</sup> Indeed, “[**KILOLO**] – a lawyer on notice of the Court’s statutory and disciplinary regime and bound by, *inter alia*, the Court’s Code of Professional Conduct for counsel – knew that the coaching activity and payments to the witnesses were illegal and constituted offences against the administration of justice pursuant to Article 70 of the Statute.”<sup>179</sup> For instance, in the aftermath of being informed by **MANGENDA** that they were being investigated for witness bribery, **KILOLO**

<sup>174</sup> T-35-ENG, pp. 19-20, lns. 9-8; T-35-FRA, pp. 19-20, lns. 27-23 (referring to [CAR-OTP-0089-1156](#), at 1161, lns. 132-137).

<sup>175</sup> T-28-ENG, pp. 32-33, lns. 19-11; T-28-FRA, pp. 35-36, lns. 5-1. See also [ICC-01/05-01/13-1989-Red](#), para. 645.

<sup>176</sup> See [ICC-01/05-01/13-1989-Red](#), para. 9. See also [CAR-OTP-0085-0204](#); [CAR-OTP-0094-2341](#).

<sup>177</sup> See [ICC-01/05-01/13-1989-Red](#), para. 10. See also [CAR-OTP-0074-0717](#), at 0756, lns. 1355-1359; [CAR-OTP-0094-2314](#); [CAR-OTP-0072-0114](#); [ICC-01/05-01/13-594-Corr-Red](#), para. 3.

<sup>178</sup> [ICC-01/05-01/13-1989-Red](#), para. 780.

<sup>179</sup> [ICC-01/05-01/13-1989-Red](#), para. 836. In his statement to the Belgian authorities in the presence of OTP staff, **KILOLO** also conceded that he was well aware of ICC procedures. See [CAR-OTP-0079-0002](#), at 0005.

“informed [BEMBA] of the Article 70 investigation and the potential consequences”.<sup>180</sup>

61. The Chamber reached the same conclusion regarding MANGENDA. MANGENDA was “a lawyer on notice of, *inter alia*, the Court’s statutory and disciplinary regime”.<sup>181</sup> While “officially working under the title of ‘case manager’ [...] [MANGENDA’s] involvement went far beyond that of a mere case manager.”<sup>182</sup> As noted by the Chamber, “[MANGENDA] is a lawyer by profession and was *de facto* on equal footing with [KILOLO].”<sup>183</sup> Indeed, “[b]eing a lawyer by profession and privy to the case record, [MANGENDA] advised both [KILOLO] and [BEMBA] on legal and factual issues arising in the context of the Main Case, defence staffing issues, evidentiary matters, and defence strategies, including the calling and questioning of witnesses.”<sup>184</sup> For example, MANGENDA “explained to [BEMBA] the implications of the Article 70 investigation for the Main Case” and in fact “advised him on the steps to be taken.”<sup>185</sup>

62. KILOLO and MANGENDA were also aware of their obligations and their position of trust as lawyers given their memberships in the Brussels and Lubumbashi, and Kinshasa/Matete bars, respectively. Almost all of KILOLO’s “character” witnesses, *bâtonniers* in their respective jurisdiction, confirmed in questionnaires to the Prosecution that KILOLO’s underlying conduct would have constituted offences or violated the codes of professional responsibility in their own jurisdiction.<sup>186</sup> That fact is also confirmed in the Brussels and DRC deontological codes.<sup>187</sup>

<sup>180</sup> [ICC-01/05-01/13-1989-Red](#), para. 773.

<sup>181</sup> [ICC-01/05-01/13-1989-Red](#), para. 850.

<sup>182</sup> [ICC-01/05-01/13-1989-Red](#), para. 837.

<sup>183</sup> [ICC-01/05-01/13-1989-Red](#), para. 837.

<sup>184</sup> [ICC-01/05-01/13-1989-Red](#), para. 846.

<sup>185</sup> [ICC-01/05-01/13-1989-Red](#), paras. 787-788.

<sup>186</sup> See [CAR-OTP-0093-0449](#), at 0451-0453; [CAR-OTP-0094-0003](#), at 0005-0007.

<sup>187</sup> The Belgian Code of Deontology limits contact between a lawyer and witnesses and, where such contacts are necessary, the lawyer is required to respect the essential principles of the legal profession and refrain from influencing witnesses’ testimonies. See [CAR-OTP-0094-1898](#), at 1952. Lawyers in the DRC are also required to



63. Despite their professional duties as lawyers and the attendant rights and obligations, **KILOLO** and **MANGENDA** abused their position of trust by taking various steps to unlawfully influence the testimony of prospective Defence witnesses, by illicitly coaching witnesses, soliciting bribes, transmitting information contained in confidential Court documents to witnesses (such as the LRV's questions), as well as eliciting false evidence in Court, and taking steps to obstruct the Prosecution's investigation into their criminal conduct.<sup>188</sup> All of these acts involved the misuse of power, authority, and a breach of the responsibilities provided to **KILOLO** and **MANGENDA** as officers of the Court. Those abuses aggravate their respective sentences.

#### **C. BEMBA AND KILOLO EXPLOITED THE LAWYER-CLIENT PRIVILEGE AND OTHER PRIVILEGES AFFORDED BY THE COURT**

64. **BEMBA's** and **KILOLO's** abuse of the privileges afforded to them by their lawyer-client relationship and by the Court constitutes a factor aggravating their respective sentences. This abuse is an aggravating circumstance under rule 145(2)(b)(vi) as it is similar in nature to the "[a]buse of power or official capacity" provided under rule 145(2)(b)(ii).

65. The lawyer-client privilege is a powerful protection to ensure the *lawful* representation of an accused. It is not a cloak by which to disguise unlawful acts. By virtue of its power, the right to lawyer-client confidentiality carries with it the obligation that it be used lawfully and responsibly. As noted by an ICTY Appeals Chamber:

Courts and tribunals necessarily rely very substantially upon the honesty and propriety of counsel in the conduct of litigation. Counsel are permitted

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observe the duties imposed on them by the law and to refrain from engaging in conduct that may compromise their independence or morality. See [CAR-OTP-0094-1827](#), at 1851; [CAR-OTP-0094-2473](#), at 2480.

<sup>188</sup> See *above*, paras. 27-39 and *below*, paras. 74-80.

important privileges by the law which are justified only upon the basis that they can be trusted not to abuse them.<sup>189</sup>

Any abuse of that right in the commission of a crime is thus akin to one's abuse of authority or official capacity in similar circumstances.

66. The same principle applies to other privileges extended by the Court. For instance, the Court attempts to facilitate the lawyer-client relationship by affording accused and convicted persons certain privileges like unfettered use of a specially designated privilege line at the ICC's Detention Centre.<sup>190</sup> As determined by the Presidency of this Court "the relevant purposes of such immunities are the good administration of justice, the proper functioning of the Court and the independent performance of counsel's functions."<sup>191</sup>

67. In this case, both **KILOLO** and **BEMBA** abused the lawyer-client relationship and the attendant privileges to commit the crimes. In particular, as noted by the Chamber, "[**BEMBA**], who was in detention at the time relevant to the charges, directed the commission of the offences from the ICC Detention Centre" in principal part by abusing access to a privileged phone line.<sup>192</sup> As the Judgment details, "[p]ursuant to Regulation 174(1) of the Regulations of the Registry, the ICC Detention Centre passively monitors all detained persons' telephone calls, other than those, *inter alia*, with counsel, their assistants entitled to legal privilege, or diplomatic and consular representatives."<sup>193</sup> The point of this privilege is self-evident – to permit the unrestrained and free exchange of communication between counsel and his or her client. **KILOLO** and **BEMBA**, however, abused that privilege in various ways and in full knowledge of these regulations.<sup>194</sup>

<sup>189</sup> *Vujin Contempt TJ*, para. 166.

<sup>190</sup> See regulation 174(1) of the Regulations of the Registry. See also [ICC-01/05-01/13-1989-Red](#), para. 736.

<sup>191</sup> [ICC-01/05-68](#), para. 13.

<sup>192</sup> [ICC-01/05-01/13-1989-Red](#), para. 737.

<sup>193</sup> [ICC-01/05-01/13-1989-Red](#), para. 736.

<sup>194</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 737-741, 814, 836. See also *above*, para. 60.

68. *First*, **BEMBA** and **KILOLO** misused the privileged line to facilitate phone calls between **BEMBA** and Defence witnesses they sought to corruptly influence. As the Chamber found, the “call data records reveal that, while [**BEMBA**] was on the telephone with [**KILOLO**], the latter would facilitate contact with third parties, including defence witnesses [...] allowing [**BEMBA**] to communicate directly without being monitored by the Registry.”<sup>195</sup> For instance, **BEMBA** had direct telephone conversations using the privileged phone line with D-0019 and D-0055, during which “he urged them to cooperate and follow the instructions given by [**KILOLO**]”.<sup>196</sup> These acts also deliberately violated the applicable Contacts Protocol<sup>197</sup> and Trial Chamber III’s explicit prohibition on witness preparation.<sup>198</sup>

69. *Second*, **BEMBA** abused the privileged line to camouflage his calls with other Convicted Persons without being recorded. For instance, as determined by the Chamber, “[**BEMBA**] circumvented the ICC Detention Centre’s monitoring system with regard to his telephone calls with [**BABALA**] by falsely listing [**BABALA**’s] telephone number as a privileged line with [**KILOLO**]”.<sup>199</sup>

70. *Finally*, **BEMBA** and **KILOLO** exploited the privileged line to issue and receive instructions to further the Common Plan. As noted by the Chamber, **BEMBA** “intentionally circumvented the Registry’s monitoring system, thus allowing him (and his co-perpetrators) to communicate improperly for the purpose of implementing the common plan to corruptly influence witnesses.”<sup>200</sup>

71. Altogether, these acts clearly abused the privilege afforded to **BEMBA** and **KILOLO** to communicate in confidence. That abuse constitutes a circumstance aggravating both of their sentences.

<sup>195</sup> [ICC-01/05-01/13-1989-Red](#), para. 740. *See also*, paras. 769, 814.

<sup>196</sup> [ICC-01/05-01/13-1989-Red](#), para. 856. *See also*, paras. 740-741, 814.

<sup>197</sup> *See* [ICC-01/05-01/08-972-Anx](#), paras. 27-31.

<sup>198</sup> *See* [ICC-01/05-01/08-1016](#), para. 34.

<sup>199</sup> [ICC-01/05-01/13-1989-Red](#), para. 701. *See also*, paras. 738, 884.

<sup>200</sup> [ICC-01/05-01/13-1989-Red](#), para. 814.

#### D. THE CONVICTED PERSONS ATTEMPTED TO OBSTRUCT JUSTICE IN THIS CASE

72. The Convicted Persons' attempts to obstruct the investigation and/or prosecution of the charges in this case are aggravating factors warranting more severe punishment.<sup>201</sup> The Chamber has already concluded that such conduct can qualify as an aggravating circumstance under rule 145(2)(b)(vi).<sup>202</sup>

73. The Judgment expressly found that **BEMBA, KILOLO, and MANGENDA** tried to obstruct the Prosecution's investigation of the article 70 allegations by at least interfering with the collection of evidence.<sup>203</sup> It also found that their "*financier*" **BABALA**, assisted in **BEMBA's, KILOLO's, and MANGENDA's** efforts.<sup>204</sup> With respect to **ARIDO**, P-0256's testimony will show that **ARIDO** tried to corruptly influence the witness by seeking his false testimony and the introduction of forged and fraudulent documents.<sup>205</sup> **ARIDO** also attempted to obstruct the investigation of this case by presenting false information to the French authorities during the course of being interviewed by them.<sup>206</sup> While the Statute contemplates his right to remain silent, it does not excuse his active and deliberate attempts to mislead a Court-sanctioned investigation of crimes within its jurisdiction. Each of these acts would constitute an article 70 offence or similarly obstructive conduct, justifying their consideration as an aggravating circumstance in this case.

#### 1. *BEMBA, KILOLO, and MANGENDA took measures to obstruct justice in this case*

74. The Chamber's findings establish that **BEMBA, KILOLO, and MANGENDA** attempted to interfere with the Prosecution's investigation of the conduct ultimately

<sup>201</sup> An action interfering with the administration of justice in one case before an arrest warrant is issued in that case (for example during the investigation phase) can still be considered as an aggravating factor.

<sup>202</sup> [ICC-01/05-01/13-2038](#), para. 11. See also [ICC-01/05-01/08-3399](#), fn. 249; *Delalić* AJ, para. 790; *Popović* AJ, para. 2046.

<sup>203</sup> See below, paras. 74-80.

<sup>204</sup> See below, paras. 81-84.

<sup>205</sup> See below, paras. 85-86.

<sup>206</sup> See below, para. 87.

resulting in their convictions.<sup>207</sup> As the Chamber found, on learning about the investigation into their crimes, **BEMBA**, **KILOLO**, and **MANGENDA**, “discussed and were persuaded to take a series of measures to prevent and frustrate the Prosecution’s Article 70 investigation.”<sup>208</sup> In particular, they agreed to contact “the Cameroonian witnesses they suspected of having spoken to the Prosecution, and convince them to terminate their cooperation with the Prosecution.”<sup>209</sup> In this regard, “[t]hey also agreed to pay witnesses or to offer them non-monetary assistance.”<sup>210</sup>

75. These findings demonstrate that all three knowingly and deliberately tried to obstruct justice in this case. As found by this Chamber, “the co-perpetrators did not waste time concocting countermeasures to prevent or frustrate an Article 70 investigation.”<sup>211</sup> **MANGENDA** immediately informed **KILOLO** “on a ‘top secret’ basis [...] that he had been informed by a source whose wife worked at the Court that they were being investigated in connection with allegations of witness bribery.”<sup>212</sup> **KILOLO** then immediately contacted **BEMBA** informing him “of the Article 70 investigation and the potential consequences”.<sup>213</sup> In particular, “that they would ‘lose’ all the work that had been done so far and that [**BEMBA**] could face another five-year prison sentence distinct from any sentence pronounced in the Main Case.”<sup>214</sup>

76. As the Chamber determined, at this early juncture **BEMBA**, **KILOLO**, and **MANGENDA** “were conscious of the serious nature of the allegations against them” and “aware of the potential consequences of these allegations for the case they had illicitly built, and [**BEMBA**’s] verdict in the Main Case.”<sup>215</sup> All three were “also aware

<sup>207</sup> See generally [ICC-01/05-01/13-1989-Red](#), paras. 770-801.

<sup>208</sup> [ICC-01/05-01/13-1989-Red](#), para. 801.

<sup>209</sup> [ICC-01/05-01/13-1989-Red](#), para. 801.

<sup>210</sup> [ICC-01/05-01/13-1989-Red](#), para. 801.

<sup>211</sup> [ICC-01/05-01/13-1989-Red](#), para. 774.

<sup>212</sup> [ICC-01/05-01/13-1989-Red](#), para. 772.

<sup>213</sup> [ICC-01/05-01/13-1989-Red](#), para. 773.

<sup>214</sup> [ICC-01/05-01/13-1989-Red](#), para. 775.

<sup>215</sup> [ICC-01/05-01/13-1989-Red](#), para. 776.

that they could be prosecuted for offences against the administration of justice.”<sup>216</sup> As found by the Chamber, the three co-perpetrators “determin[ed] to distort the truth by brushing off everything as a lie.”<sup>217</sup> Indeed, in his conversations with **BABALA**, **KILOLO** demonstrated “that he knew the legal implications of his actions” by making “the link between the *Barasa* Case and his own actions in relation to the Main Case”<sup>218</sup> and presenting “the *Barasa* Case as ‘une histoire similaire’, likening that situation to their own”.<sup>219</sup> **MANGENDA**, similarly “explained to [**BEMBA**] the implications of the Article 70 investigation for the Main Case”, “underscor[ing] that the results of the Prosecution’s Article 70 investigation would negatively impact the reliability of all Main Case Defence witnesses.”<sup>220</sup>

77. Despite being fully aware of the criminal consequences that their conduct in the Main Case could have, all three then subsequently engaged in *the same* conduct to interfere with justice in *this case*. The Chamber emphasised, “it is clear from [the] evidence that [**BEMBA**] gave concrete instructions and coordinated the actions of his co-perpetrators from within the ICC Detention Centre.”<sup>221</sup> In particular, “[**BEMBA**] directed [**KILOLO**] to call each of the defence witnesses the same night [...] to ascertain whether any of them had leaked information.”<sup>222</sup> **BEMBA** directed **KILOLO** to intentionally target witnesses and “convince them to side with the Main Case Defence.”<sup>223</sup> As the Chamber concluded, “[**BEMBA**] explicitly endorsed the tactic of discouraging defence witnesses from talking to the Prosecution in the context of the Article 70 investigation.”<sup>224</sup>

78. **KILOLO** and **MANGENDA** executed this plan. **KILOLO** “communicated with several co-accused in relation to measures to counter the Article 70 investigation”,

<sup>216</sup> [ICC-01/05-01/13-1989-Red](#), para. 776.

<sup>217</sup> [ICC-01/05-01/13-1989-Red](#), para. 784.

<sup>218</sup> [ICC-01/05-01/13-1989-Red](#), para. 780.

<sup>219</sup> [ICC-01/05-01/13-1989-Red](#), para. 784.

<sup>220</sup> [ICC-01/05-01/13-1989-Red](#), paras. 788-789.

<sup>221</sup> [ICC-01/05-01/13-1989-Red](#), para. 787.

<sup>222</sup> [ICC-01/05-01/13-1989-Red](#), para. 776.

<sup>223</sup> [ICC-01/05-01/13-1989-Red](#), para. 794.

<sup>224</sup> [ICC-01/05-01/13-1989-Red](#), para. 796.

including **BABALA**, the “financier, who provided the co-perpetrators support and facilitated money transfers.”<sup>225</sup> **KILOLO** and **BABALA** agreed that the witnesses “had been neglected” and “that it was necessary to ensure ‘*le service après-vente*’”<sup>226</sup> – a code for paying witnesses “hush” money.<sup>227</sup> As concluded by the Chamber, “[**KILOLO**] was determined to interfere with and frustrate the Article 70 investigation.”<sup>228</sup> **KILOLO** also “implement[ed] [**BEMBA**’s] instruction to contact the Main Case defence witnesses and [kept] him updated.”<sup>229</sup> Altogether, the Chamber found that “[t]he evidence clearly demonstrated that [**KILOLO**] intervened and attempted to discourage the witnesses from collaborating with the Prosecution” including through “the prospect of [their] potential arrest.”<sup>230</sup>

79. **MANGENDA** “was part of the planning and assisted in the implementation of [**BEMBA**’s] instruction.”<sup>231</sup> He “advised [**BEMBA**] to act swiftly and to incentivise the witnesses to change their minds”.<sup>232</sup> He also informed **KILOLO** of his conversations with **BEMBA** about the cover-up operation and “conveyed [**BEMBA**’s] concrete instructions” to **KILOLO**, including to: (1) have a third person approach the Cameroonian witnesses “to persuade them to collaborate with the Main Case Defence”; and (2) “make the witnesses sign a document stating that whatever they had said to the Prosecution was untrue.”<sup>233</sup> In these regards, **MANGENDA**’s role was hardly insignificant. Indeed, as noted by the Chamber, “[**MANGENDA**] not only liaised between [**BEMBA**] and [**KILOLO**] but also discussed, on an equal footing, the measures to be taken to address the situation.”<sup>234</sup>

<sup>225</sup> [ICC-01/05-01/13-1989-Red](#), para. 779.

<sup>226</sup> [ICC-01/05-01/13-1989-Red](#), para. 781.

<sup>227</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 112, 410, 799, 887.

<sup>228</sup> [ICC-01/05-01/13-1989-Red](#), para. 780.

<sup>229</sup> [ICC-01/05-01/13-1989-Red](#), para. 786.

<sup>230</sup> [ICC-01/05-01/13-1989-Red](#), para. 793.

<sup>231</sup> [ICC-01/05-01/13-1989-Red](#), para. 787.

<sup>232</sup> [ICC-01/05-01/13-1989-Red](#), para. 790.

<sup>233</sup> [ICC-01/05-01/13-1989-Red](#), para. 787.

<sup>234</sup> [ICC-01/05-01/13-1989-Red](#), para. 791.



80. In addition to the above, **KILOLO** and **MANGENDA** also conspired to frame the Prosecution. In particular, they agreed to approach 22 Prosecution witnesses to offer them bribes,<sup>235</sup> have some Prosecution witnesses sign false statements claiming to have been paid by the Prosecution and coach them as such,<sup>236</sup> and then use those statements to substantiate an “abuse of process” claim against the Prosecution and claim professional misconduct against the Prosecutor herself and the Senior Trial Attorney on the Main Case.<sup>237</sup> Altogether, their efforts were aimed at sabotaging this case by, again, falsifying or influencing evidence and witness testimonies.

*2. BABALA assisted in the co-perpetrator's attempts to obstruct justice in this case*

81. The Chamber's findings also demonstrate that **BABALA** assisted **BEMBA**, **KILOLO**, and **MANGENDA** to obstruct the Prosecution's investigation of this case. As found by the Chamber, upon being directed by **BEMBA** to take measures to impede the Prosecution's article 70 investigation, **KILOLO** subsequently “communicated with several co-accused in relation to measures to counter the Article 70 investigation”, including **BABALA** – “the financier, who provided the co-perpetrators support and facilitated money transfers”.<sup>238</sup> **BABALA** knew that the purpose of his assistance was to interfere with the Prosecution's investigation. **KILOLO** informed him as such, telling him that he “had identified the witness who had talked to the Prosecution.”<sup>239</sup> In that conversation, **KILOLO** “also mentioned the Article 70 proceedings instituted against Walter Osapiri Barasa.”<sup>240</sup>

82. **BABALA** was hardly a passive participant in helping the co-perpetrators cover-up the crimes. Upon being informed by **KILOLO** of the investigation and its

<sup>235</sup> See [CAR-OTP-0080-1419](#) (audio): [CAR-OTP-0082-1140](#), at 1143, lns. 41-47 (transcript).

<sup>236</sup> See [CAR-OTP-0080-1419](#) (audio): [CAR-OTP-0082-1140](#), at 1144, lns. 90-98 (transcript).

<sup>237</sup> See [CAR-OTP-0080-1419](#) (audio): [CAR-OTP-0082-1140](#), at 1145-1147, lns. 130-187 (transcript).

<sup>238</sup> [ICC-01/05-01/13-1989-Red](#), para. 779.

<sup>239</sup> [ICC-01/05-01/13-1989-Red](#), para. 780.

<sup>240</sup> [ICC-01/05-01/13-1989-Red](#), para. 780.



potential implications, **BABALA** “discussed possible remedial measures and was fully included in [the co-perpetrators’] discussions.”<sup>241</sup> **BABALA** asked **KILOLO** “whether the situation was manageable”.<sup>242</sup> **BABALA** also “declar[ed] that it was necessary to ensure ‘*le service après-vente*’”.<sup>243</sup> In doing so, **BABALA** “impl[ied] that [**KILOLO**] should initiate further contacts with and payments to witnesses who had already testified in order to guarantee their loyalty”.<sup>244</sup>

83. **BABALA** repeated this course of action with **KILOLO** in a subsequent conversation. As noted by the Chamber, **BABALA** and **KILOLO** “discussed the need to continue to provide services, in particular payments (*‘après-vente’*), to witnesses who had testified for the Main Case Defence.”<sup>245</sup> Indeed, **BABALA** “encouraged [**KILOLO**] to make the necessary payments, which were seemingly small, even without [**BEMBA**’s] authorisation.”<sup>246</sup> The Chamber concluded that the circumstances surrounding these interactions “clearly show that [**BABALA**] was aware of the purpose of the payments in October 2013 to [**KILOLO**]”, and in particular, that he was “fully aware of the legal implications of his suggestion to render ‘*après-vente*’ services”.<sup>247</sup>

84. **BABALA**’s decision to assist the co-perpetrators in interfering with the Prosecution’s investigation of the article 70 offences was directly linked to disguising and protecting his own criminal conduct *vis-à-vis* D-0057 and D-0064. He would have been well aware that the continuation of the article 70 investigation would inevitably lead to the discovery of his own criminally culpable conduct, which was directly linked to the crimes perpetrated under the Common Plan. The Chamber, thus recognised that, while **BABALA**’s “*service après-vente*” statement “was made after the transfer of money for [D-0057] and [D-0064] had been effected or facilitated by

<sup>241</sup> [ICC-01/05-01/13-1989-Red](#), para. 112.

<sup>242</sup> [ICC-01/05-01/13-1989-Red](#), para. 780.

<sup>243</sup> [ICC-01/05-01/13-1989-Red](#), para. 781.

<sup>244</sup> [ICC-01/05-01/13-1989-Red](#), para. 410.

<sup>245</sup> [ICC-01/05-01/13-1989-Red](#), para. 799. *See also*, para. 888.

<sup>246</sup> [ICC-01/05-01/13-1989-Red](#), para. 799. *See also*, para. 887.

<sup>247</sup> [ICC-01/05-01/13-1989-Red](#), paras. 890-891.

[BABALA], the Chamber nevertheless sees in his remark further support for its finding that [BABALA] agreed to ensure that any prior illicit payment to [D-0057] and [D-0064] is not detected.”<sup>248</sup>

### ***3. ARIDO attempted to unlawfully influence P-0256’s evidence and presented false evidence***

85. **ARIDO** similarly intended to obstruct justice in this case in multiple ways. *First*, as P-0256’s evidence will show, **ARIDO** attempted to corruptly influence P-0256, a prospective Defence witness, using regular payments to the witness funnelled through an intermediary.<sup>249</sup>

86. *Second*, through P-0256, **ARIDO** also produced and presented forged and falsified documents in this case. Members of **ARIDO**’s Defence team had P-0256 fabricate documents which they later formally submitted as evidence, or disclosed to be relied on in **ARIDO**’s case-in-chief. Those documents were designed to undermine D-0002’s and D-0003’s testimony that they had lied in the Main Case, *inter alia*, about being soldiers at **ARIDO**’s direction and per his instructions – a key basis of his criminal responsibility in this case.<sup>250</sup> In particular, the **ARIDO** Defence formally submitted into evidence in this case [CAR-D24-0002-0003](#),<sup>251</sup> a document P-0256 will testify having forged. P-0256’s evidence will demonstrate how he added his own name as well as P-0260’s into an existing document. The existing document,<sup>252</sup> which was obtained from P-0256, is different from the version disclosed by the **ARIDO** Defence, as it does not include P-0256’s and P-0260’s names.<sup>253</sup> Similarly, the **ARIDO** Defence disclosed a statement allegedly sourced and signed by KOKATÉ,

<sup>248</sup> [ICC-01/05-01/13-1989-Red](#), para. 887.

<sup>249</sup> [ICC-01/05-01/13-1983-Conf](#), para. 5.

<sup>250</sup> [ICC-01/05-01/13-1983-Conf](#), para. 5.

<sup>251</sup> See [ICC-01/05-01/13-1923](#); [ICC-01/05-01/13-1935](#).

<sup>252</sup> See [CAR-OTP-0094-1884](#).

<sup>253</sup> Although [CAR-OTP-0094-1884](#) and [CAR-D24-0002-0003](#) have similar features, namely the title, date, location, the order in which names are listed, P-0256 and P-0260’s names are missing from [CAR-OTP-0094-1884](#). P-0256 also provided the Prosecution with the forged copy of the said document which is similar to the **ARIDO** Defence’s version. See [CAR-OTP-0094-1885](#).

attesting that P-0256 was his bodyguard.<sup>254</sup> P-0256's testimony will demonstrate that the witness forged this document by replicating KOKATÉ's signature<sup>255</sup> taken from KOKATÉ's passport.<sup>256</sup>

87. Finally, **ARIDO** attempted to obstruct the investigation of this case by presenting false information to the French authorities during the course of his interviews with them. For instance, **ARIDO** lied about the number of payments he received from **KILOLO**, or on his behalf,<sup>257</sup> to minimise the scope and nature of their relationship. He lied about not knowing some of the Cameroonian witnesses,<sup>258</sup> despite overwhelming contrary evidence, including the testimony of [REDACTED] at trial.<sup>259</sup> He also lied about the purpose of the money spent on those witnesses,<sup>260</sup> again despite the evidence proving otherwise.<sup>261</sup>

#### *4. Consideration of the Convicted Persons' attempts to obstruct justice is not "double counting"*

88. Altogether, the Chamber's findings and the evidence support only one conclusion – the Convicted Persons took several steps in attempting to curtail, undermine, and interfere with the investigation and prosecution of this case. The Chamber's consideration of such conduct as an aggravating circumstance is fully justifiable and warranted. Absent such a determination, there would be no deterrent for convicted persons to do everything possible to obstruct an on-going investigation by whatever means at their disposal, thus frustrating and ultimately defeating the ends of justice.

<sup>254</sup> See [CAR-D24-0003-0054](#). The document was disclosed by the **ARIDO** Defence on 3 December 2015 as material **ARIDO** intended to rely on in his case-in-chief.

<sup>255</sup> See [CAR-OTP-0094-1882-R01](#), at 1882.

<sup>256</sup> See [CAR-OTP-0094-1888](#). This copy of KOKATÉ's passport was also provided by P-0256. See [CAR-D24-0003-0054](#), at 0055.

<sup>257</sup> [CAR-OTP-0074-1065-R02](#), at 1067; [CAR-OTP-0078-0117](#), at 0119.

<sup>258</sup> [CAR-OTP-0078-0117](#), at 0122.

<sup>259</sup> See T-46-ENG, pp. 21-22, lns. 20-21; T-46-FRA, pp. 23-24, lns. 8-9.

<sup>260</sup> [CAR-OTP-0074-1065-R02](#), at 1068, 1070.

<sup>261</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 125-128, 328, 341-343, 420, 944.

89. The principle of “double-counting” does not bar the Chamber’s consideration of the Convicted Persons’ obstructive conduct as an aggravating circumstance. That principle precludes a chamber from taking into account the same factor in assessing both the gravity of the crime and as an aggravating circumstance.<sup>262</sup> It also precludes a chamber from considering as an aggravating factor “a legal element of the crimes or mode of liability” of the underlying offences.<sup>263</sup>

90. In this case, the Convicted Persons’ obstructive conduct was never a part of the Prosecution’s submissions concerning the gravity of the offences of which they were convicted, nor is it an element of those crimes. In particular, the cover-up operation by **BEMBA, KILOLO, MANGENDA**, and **BABALA** was never charged, nor considered, as a separate article 70 offence. Rather, the Chamber makes clear, that its consideration of their attempts to cover-up their earlier crimes by interfering with the Prosecution’s investigation of this case was purely evidentiary, “demonstrate[ing] the existence of the common plan and the involvement of [**BEMBA, KILOLO**, and **MANGENDA**] therein.”<sup>264</sup> Thus, such conduct as regards the investigation and prosecution of *this* case does not raise any issue of “double-counting.”

#### E. KILOLO REPEATEDLY VIOLATED THE CODE OF CONDUCT

91. **KILOLO** repeatedly violated the Code of Professional Conduct for counsel while committing his crimes. That violation constitutes an aggravating circumstance under rule 145(2)(b)(vi) given that many provisions under the Code of Conduct are similar in nature to rule 145(2)(b)(ii), the “[a]buse of power or official capacity”. In particular, article 24 of the Code of Conduct imposes upon Counsel the professional duty to “not bring the Court into disrepute” and “not deceive or knowingly mislead the Court” and ensure that “[h]e or she [...] take all steps necessary to correct an

<sup>262</sup> See [ICC-01/04-01/06-2901](#), para. 35.

<sup>263</sup> See [ICC-01/05-01/08-3399](#), para. 14.

<sup>264</sup> [ICC-01/05-01/13-1989-Red](#), para. 800.

erroneous statement made by him or her or by assistants or staff as soon as possible after becoming aware that the statement was erroneous”.

92. The duty emanates from the special duties and responsibilities of lawyers, as officers of the Court, to avoid conduct that undermines the integrity of the adjudicative and truth-finding process the Statutory structure of the Court was designed to implement. While a lawyer has obligations to present the client’s case with persuasive force and with maintaining the client’s confidences, that obligation is qualified by the lawyer’s duty to the Court not to allow it to be misled by statements of law or fact or evidence that the lawyer knows to be false. That obligation equally stems from the special obligation every lawyer has to protect the Court against criminal or fraudulent conduct that undermines the integrity of the adjudicative process.

93. In committing the underlying offences, **KILOLO** violated this fundamental tenet. The Chamber’s findings clearly show that **KILOLO** instructed witnesses to testify falsely about certain subjects, including the scope and nature of their prior contacts with the *Bemba* Defence, the payments and “gifts” they were provided, and their association with persons involved in executing the Common Plan, such as KOKATÉ.<sup>265</sup> **KILOLO** also presented witnesses to testify falsely before Trial Chamber III, knowing that the testimony was false and contradicted by the witness’ prior assertions to him and then **BEMBA** Main Case Defence legal assistant Kate GIBSON during their meetings or in other conversations.<sup>266</sup>

94. **KILOLO** himself made deliberate misrepresentations to Trial Chamber III. For example, despite being in contact with D-0054 at least 34 times for a total of five hours and 31 minutes between 5 September and 21 October 2013,<sup>267</sup> **KILOLO** told Trial Chamber III that the *Bemba* Defence had not been in contact with D-0054 prior

<sup>265</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 435, 823-836, 859.

<sup>266</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 706, 830.

<sup>267</sup> [CAR-OTP-0090-0630](#), at 0710-0714, rows 8-52.

to the Chamber's present authorisation: *"Mais puisque, maintenant, vous nous informez que l'autorisation, après un an, vient d'être donnée, nous allons bien entendu prendre les dispositions nécessaires pour prendre contact avec lui [D-0054], puisque cette fois-ci, au moins, il va accepter de nous prendre au téléphone."*<sup>268</sup> Similarly, when Trial Chamber III suspected that the *Bemba* Defence had rehearsed answers with Defence witnesses, **KILOLO** not only denied the allegations, but indignantly criticised the Court for questioning "the professionalism of the Defence".<sup>269</sup>

95. At no point during the Main Case did **KILOLO** ever take remedial measures to rectify the false representations he made or those made by Defence witnesses. In particular, there is no indication that **KILOLO** remonstrated with **BEMBA** confidentially, advised **BEMBA** of his duty of candour to the Court, or sought **BEMBA**'s cooperation to withdraw or correct false statements or evidence by witnesses. At no point did **KILOLO** seek to remedy the false evidence or information by disclosing to the Court these issues. And, at no point did **KILOLO** seek to withdraw his representation of **BEMBA** knowing that it involved the commission of unlawful acts to the Court and breaches of his professional responsibilities. Rather, **KILOLO** cooperated in deceiving the Court, thereby trying to subvert the truth-finding process which the Court's Statutory system was designed to implement. These acts fundamentally violated the Code of Conduct, constituting an aggravating circumstance for his sentence.

## VI. NO MITIGATING CIRCUMSTANCES APPLY

96. None of the mitigating circumstances identified in rule 145(1)(c) and (2)(a) lessen the gravity and seriousness of the Convicted Persons' crime and conduct therein.<sup>270</sup> In particular, none of the Convicted Persons have accepted responsibility

<sup>268</sup> [ICC-01/05-01/08-T-346-CONF-Red-FRA](#), 21 October 2013, p. 25, lns. 8-11; [ICC-01/05-01/08-T-346-CONF-Red-ENG](#), 21 October 2013, p. 25, lns. 13-17.

<sup>269</sup> [ICC-01/05-01/08-T-263-CONF-ENG](#) ET, 26 October 2012, pp. 32-34, lns. 23-13; [ICC-01/05-01/08-T-263-CONF-FRA](#) ET, 26 October 2012, pp. 34-35, lns. 4-25.

<sup>270</sup> *See also above*, fn. 1.

for their crimes,<sup>271</sup> rendered assistance to the Court,<sup>272</sup> or expressed remorse for their conduct.<sup>273</sup> Further, neither their behaviour during detention or while on provisional release<sup>274</sup> nor their family and personal circumstances<sup>275</sup> are so exceptional as to mitigate sentence.

#### **A. THE CONVICTED PERSONS HAVE NOT ACCEPTED RESPONSIBILITY FOR THEIR CRIMES**

97. The Convicted Persons have not accepted responsibility for their crimes. A convicted person's acceptance of responsibility can only serve as a mitigating factor if given early, fully, genuinely, and motivated by a "real desire to take responsibility for the acts he committed and showing honest repentance".<sup>276</sup> Such acceptance is particularly useful as it "contribute[s] to the rapid resolution of [the] case, thus saving the Court's time and resources and relieving witnesses and victims of what can be a stressful burden of giving evidence in Court."<sup>277</sup>

98. While the then Accused had an absolute right to put the Prosecution to its burden of proof at trial, their denial of the essential factual elements of guilt precludes any assertion of their acceptance of responsibility, admission of guilt, or cooperation in mitigation of their sentences. Despite having numerous opportunities to do so – before and during trial – no Convicted Person in this case has admitted to or accepted responsibility for their crimes, as highlighted by the following:

- None voluntarily terminated their criminal conduct and/or withdrew from the Common Plan, even when receiving leaked information about the Prosecution's investigation against them.

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<sup>271</sup> See below, paras. 97-103.

<sup>272</sup> See below, paras. 104-105.

<sup>273</sup> See below, paras. 106-107.

<sup>274</sup> See below, paras. 108-111.

<sup>275</sup> See below, paras. 112-122.

<sup>276</sup> See [ICC-01/12-01/15-171](#), para. 100.

<sup>277</sup> [ICC-01/12-01/15-171](#), para. 100.



- None voluntarily surrendered to the authorities after or during the course of committing the offences.
- None voluntary assisted in the investigation of the crimes.
- None has voluntarily offered to pay restitution in respect of their crimes.

99. To the contrary, rather than accepting responsibility, the Convicted Persons have falsely denied, or frivolously contested, relevant conduct and facts that the evidence at trial overwhelmingly established and which the Chamber determined to be true. For instance, during trial, the Convicted Persons contested even the most basic facts proposed for agreement by the Prosecution, such as that: **BEMBA** was on trial in the Main Case for crimes against humanity and war crimes; **BEMBA** was formerly the Vice-President of the DRC and founder and President of the MLC; **BEMBA** has a sister named Caroline BEMBA Wale; **KILOLO** was a member of the **BEMBA** Defence team in the Main Case and a member of the Brussels bar; and **BABALA** is a DRC national and used to be **BEMBA**'s chief of staff.<sup>278</sup>

100. The Convicted Persons' conduct "went far beyond challenging and seeking to rebut the evidence against them", a fact which definitively counters any suggestion that the Convicted Persons' accept responsibility for their crimes.<sup>279</sup> They chose to make frivolous allegations and arguments to distort the facts of this case and impede the determination of the truth.<sup>280</sup> Such conduct has also been considered in sentencing before other international tribunals. In *Bangura*, for example, in sentencing two accused for contempt a SCSL Trial Chamber accounted for the baseless and "outrageous allegations" made by both accused persons: the first who, despite the absence of any evidence, alleged that the Independent Counsel had

<sup>278</sup> See generally [ICC-01/05-01/13-1072-Corr-Red](#); [ICC-01/05-01/13-1072-Conf-AnxA](#).

<sup>279</sup> See *Bangura* Contempt SJ, paras. 67-68.

<sup>280</sup> See below, paras. 100-103. See also above, section V.D.



tampered with evidence to incriminate him and the second who, again despite any evidence, claimed that the “ulterior motive” of the allegations against him was “revenge on the part of the OTP.”<sup>281</sup> The SCSL Trial Chamber concluded that such persistent and frivolous allegations went “far beyond” the accused’s right to challenge and rebut the evidence against them and that their allegations “[were] an exacerbating aspect of their trials.”<sup>282</sup>

101. In this case, the Convicted Persons, in public filings and in comments to the press, attempted to vilify the Prosecution,<sup>283</sup> the Single Judge of Pre-Trial Chamber II,<sup>284</sup> the Independent Counsel,<sup>285</sup> and the Court generally.<sup>286</sup> Many of their assertions were intended to exploit political sentiments about the Court. For example, despite the absence of any evidence whatsoever:

- **KILOLO** accused the Single Judge of Pre-Trial Chamber II of denying him provisional release “simply on the basis of his skin colour”<sup>287</sup> – a serious allegation which the Appeals Chamber found to be “evidently unfounded”.<sup>288</sup>
- **MANGENDA** charged the Prosecution with “manufactur[ing]” and “conjur[ing] up a ‘Congolese’ conspiracy” around **BEMBA** to “save” the Main Case “in her purely politically motivated prosecutions of Mr Jean-Pierre Bemba Gombo”<sup>289</sup> – an allegation the Appeals Chamber found “[was] not supported by any evidence” and “speculative”.<sup>290</sup>

<sup>281</sup> *Bangura Contempt SJ*, paras. 67-68.

<sup>282</sup> *Bangura Contempt SJ*, paras. 67-69.

<sup>283</sup> See e.g. [ICC-01/05-01/13-233-Conf-tENG](#), paras. 31, 33.

<sup>284</sup> See e.g. [ICC-01/05-01/13-290](#), para. 13; [ICC-01/05-01/13-372](#), para. 40.

<sup>285</sup> See e.g. [ICC-01/05-01/13-353-Red](#), paras. 1, 9; [ICC-01/05-01/13-317-Conf](#), para. 7.

<sup>286</sup> See e.g. [CAR-OTP-0084-0403-R01](#) (audio): [CAR-OTP-0086-0057](#), at 0060, lns. 41-45, at 0062, lns. 140-144 (English translation).

<sup>287</sup> [ICC-01/05-01/13-290](#), para. 13.

<sup>288</sup> [ICC-01/05-01/13-558](#), para. 61.

<sup>289</sup> [ICC-01/05-01/13-250-tENG](#), para. 14.

<sup>290</sup> [ICC-01/05-01/13-648-Conf-Red2](#), para. 68.

- **ARIDO** accused the Prosecution of “tr[ying] [to] blackmail” his wife “while demonizing Mr. Arido”<sup>291</sup> – a charge this Chamber concluded had “no [supporting] evidence”.<sup>292</sup>
- **BEMBA** continued to accuse the Independent Counsel with being biased and “acting as a substitute for the ICC Prosecution”<sup>293</sup> – even though similar allegations had been rejected outright by Pre-Trial Chamber II.<sup>294</sup>
- **BABALA** mocked “organs of the ICC” for “indulg[ing] in exaggerated and superfluous activities”, accused the Prosecution of engaging in “dubious procedural practises”, and suggested that the Court as a whole abused him on the basis of his race and nationality<sup>295</sup> – even though the evidence overwhelmingly showed that **BABALA** was guilty for his crimes as found by this Chamber.<sup>296</sup>

102. The Convicted Persons, **KILOLO** in particular, made similar accusations in comments to the public. For instance, in a 25 November 2014 press interview, shortly after his release from the ICC Detention Centre, **KILOLO** alleged that the principal purpose of his arrest was to undermine the **BEMBA** Main Case Defence: “*voulait décapiter la défense de ... du Sénateur Jean-Pierre BEMBA.*”<sup>297</sup> A few days later, in a 29 November 2014 speech to Gbagbo supporters, **KILOLO** again openly and publicly accused the Court of engaging in “politico-judicial proceedings”, calling it an “African court of repression”.<sup>298</sup> Finally, in a press release distributed publicly,

<sup>291</sup> [ICC-01/05-01/13-1904-Conf-Corr](#), para. 402.

<sup>292</sup> [ICC-01/05-01/13-1943-Conf](#), para. 19.

<sup>293</sup> [ICC-01/05-01/13-1799-Red](#), para. 64.

<sup>294</sup> See generally [ICC-01/05-01/13-362-Red](#).

<sup>295</sup> T-49-ENG, p. 60, lns. 21-22, p. 61, lns. 6-9, pp. 62-63, lns. 25-21; T-49-FRA, p. 54, lns. 25-26, p. 55, lns. 7-10, pp. 56-57, lns. 22-14.

<sup>296</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 873-893, 934-942.

<sup>297</sup> [CAR-OTP-0084-0152](#) (audio): [CAR-OTP-0085-0554](#), at 0555, lns. 23-25, at 0559, lns. 165-169, 186-188, at 0569, lns. 646-649 (transcript); [CAR-OTP-0085-0571](#), at 0573, lns. 25-27, at 0576, lns. 159-162, at 0577, lns. 178-180, at 0587, lns. 605-608 (English translation).

<sup>298</sup> [CAR-OTP-0084-0403-R01](#) (audio): [CAR-OTP-0086-0057](#), at 0060, lns. 41-45, at 0062, lns. 140-144 (English translation).

**KILOLO** issued statements claiming that the Prosecution singled out only lawyers “*de race noire*” on **BEMBA**’s Main Case Defence team, claiming that his incarceration was unjust, and falsely accused the Prosecution of threatening Defence witnesses in the Main Case.<sup>299</sup>

103. These serious accusations were consistently advanced throughout the course of trial, without evidence, basis, or merit, despite their very serious nature. This belies any suggestion that the Convicted Persons genuinely accept responsibility for their criminal conduct.

#### **B. THE CONVICTED PERSONS HAVE RENDERED NO ASSISTANCE TO THE COURT**

104. None of the Convicted Persons have rendered assistance to the Court in its investigation of the crimes or the pursuit of truth, or in the investigation or prosecution of other individuals.<sup>300</sup> To the contrary, as detailed above, upon learning about the Prosecution’s investigation into their crimes, **BEMBA**, **KILOLO**, **MANGENDA**, and **BABALA** engaged in a concerted effort to conceal their crimes or thwart the investigation thereof, including by trying to pay off witnesses using “hush” money.<sup>301</sup> **KILOLO** and **MANGENDA** even tried to falsely frame the Prosecution for the very crimes they themselves committed.<sup>302</sup> **ARIDO** similarly tried to subvert justice by attempting to ensure P-0256’s prospective false testimony in this case by paying him off through an intermediary and by using P-0256 to knowingly present false documents in this case.<sup>303</sup> Altogether, these acts refute any suggestion that the Convicted Persons rendered assistance to the Court, as well as any

<sup>299</sup> See [CAR-OTP-0094-2362](#); [CAR-OTP-0094-2433](#). The press release was issued at **KILOLO**’s direction as indicated by his Defence counsel at the time: [CAR-OTP-0094-2359](#).

<sup>300</sup> See rule 145(2)(a)(ii).

<sup>301</sup> See above, paras. 74-84.

<sup>302</sup> See above, para. 80.

<sup>303</sup> See above, paras. 85-86.

speculative assertion the Convicted Persons may make that they could have or would have provided such assistance if notified about the investigation earlier.<sup>304</sup>

105. While **KILOLO**, **MANGENDA**, and **ARIDO** were ultimately interviewed by the Prosecution and expressed a willingness to cooperate, those interviews should not mitigate their sentences. During those interviews, none of them were straightforward about the crimes and their participation therein. **ARIDO**, as detailed above, lied about salient issues which would have implicated him in the crimes.<sup>305</sup> **MANGENDA** falsely denied the crimes and his involvement altogether<sup>306</sup> – which is especially underscored by the Chamber’s finding of **MANGENDA** essential role in the offences.<sup>307</sup> Finally, **KILOLO** equally provided no substantive information to further the investigation or prosecution of the offence.<sup>308</sup> Altogether, the Convicted Persons’ interviews were provided in an attempt to hinder the Prosecution’s investigation by providing false information or feigning cooperation. None of which should warrant mitigation.

### C. THE CONVICTED PERSONS HAVE SHOWN NO REMORSE FOR THEIR CONDUCT

106. To date, no Convicted Person has expressed genuine remorse for his acts. A convicted person’s expression of remorse or empathy for their conduct can serve as a mitigating factor, so long as it is genuine and sincere.<sup>309</sup> Throughout pre-trial and trial proceedings, and even following their convictions, none of the Convicted Persons has expressed a sincere appreciation for the damage or risk to the Main Case and the Court that their conduct had. None has recognised or apologised for the crimes they committed. None has ever indicated a willingness to accept punishment for their

<sup>304</sup> See e.g. [ICC-01/05-01/08-3399](#), para. 70 (“Without any concrete indications, the Chamber cannot be expected to speculate in the abstract as to what Mr Bemba might have done, might have been willing to do, or might do in future based solely on his assertions and those of the Defence.”).

<sup>305</sup> See above, para. 87.

<sup>306</sup> See e.g. [CAR-OTP-0074-0717](#), at 0762, Ins. 1555-1559, at 0769-0770, Ins. 1816-1823, at 0789, Ins. 2523-2527.

<sup>307</sup> See e.g. [ICC-01/05-01/13-1989-Red](#), para. 911.

<sup>308</sup> See e.g. [CAR-OTP-0079-0002](#), at 0004 (original); [CAR-OTP-0072-0491](#), at 0494 (French translation).

<sup>309</sup> See e.g. [ICC-01/12-01/15-171](#), paras. 103-105.

conduct or call on others to refrain from similar acts. Instead, their behaviour has mocked the Court and its processes, and further risked damaging its standing and credibility — adding insult to injury.<sup>310</sup>

107. To the extent the Convicted Persons may now accept remorse for their conduct, the fact that it occurs at this stage, only after a trial has proceeded, a judgment of conviction has been rendered, and a serious sentence is imminent, renders such admission meaningless, or of very limited value at best.<sup>311</sup>

#### **D. THE CONVICTED PERSONS' BEHAVIOUR DURING DETENTION AND PROVISIONAL RELEASE HAS NOT BEEN EXCEPTIONAL**

108. The Convicted Persons' behaviour during detention and while on provisional release does not mitigate their sentence. As noted by Trial Chamber III, and confirmed by other international courts, an accused's good behaviour while in detention or on provisional release, in court, and towards court staff or guards is something legitimately expected of any detainee and accused.<sup>312</sup> Accordingly, such behaviour does not constitute a mitigating circumstance unless "exceptional".<sup>313</sup>

109. There is nothing exceptional about the Convicted Persons' behaviour while in detention or on provisional release. As already noted by Trial Chamber III, **BEMBA's** behaviour and cooperation has not been "exceptional" so as to constitute a mitigating circumstance.<sup>314</sup> That determination took into account the Registry report recently reclassified by the **BEMBA** Defence,<sup>315</sup> and nothing has occurred between that time and now to warrant a different conclusion by this Chamber. Further, **BEMBA's** conviction in this case – particularly the fact that he ran his crimes out of the ICC

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<sup>310</sup> See *above*, paras. 99-103.

<sup>311</sup> See *e.g.* *Senessie* Contempt SJ, para. 22; *Bangura* Contempt SJ, para. 67.

<sup>312</sup> See [ICC-01/05-01/08-3399](#), para. 81; *Češić* SJ, para. 86; *Haraqija* Contempt TJ, para. 109.

<sup>313</sup> See [ICC-01/05-01/08-3399](#), para. 81; [ICC-01/04-01/07-3484-tENG-Corr](#), paras. 127-128.

<sup>314</sup> See [ICC-01/05-01/08-3399](#), para. 81.

<sup>315</sup> See [ICC-01/05-01/08-3375-Conf-AnxIII](#).

Detention Centre including through abusing the Registry's privileged line<sup>316</sup> – demonstrates that his behaviour during his incarceration in that case was not exceptional, but criminal.

110. With regard to the remaining Convicted Persons, their good behaviour and cooperation with the Court do not exceed the expectations of any detainee or accused. None has been so "irreproachable"<sup>317</sup> such as to set them apart or warrant mitigation in their sentence and none of the documents disclosed by the Defence support such inference.<sup>318</sup>

111. For example, the Registry's letter on **ARIDO**'s behaviour while on provisional release simply indicates that "[a]s far as the Registry is aware" **ARIDO** "observed the relevant conditions" of his provisional release and "cooperated very well with the Registry ahead of any court sessions he was required to attend."<sup>319</sup> In effect, it shows that **ARIDO**, at most, simply complied with what was expected of him as a condition of his provisional release and tempered by the Registry's observation that "it is not in a position to comment on [**ARIDO**'s] adherence to all the conditions imposed."<sup>320</sup> It fails to show any "exceptional" behaviour, even if the Chamber were to discount the fact that while on provisional release **ARIDO** attempted to tamper and interfere with *this trial*, a clear violation of the conditions of his provisional release.<sup>321</sup>

#### **E. THE CONVICTED PERSONS' FAMILY AND PERSONAL CIRCUMSTANCES ARE NOT EXCEPTIONAL**

112. The Convicted Persons' family and personal circumstances do not warrant mitigation in their sentences. A convicted person's family and personal circumstance

<sup>316</sup> See above, paras. 25-26, 64-71.

<sup>317</sup> See [ICC-01/12-01/15-171](#), para. 97.

<sup>318</sup> Contra [CAR-D24-0006-0092](#).

<sup>319</sup> [CAR-D24-0006-0093](#), at 0094.

<sup>320</sup> [CAR-D24-0006-0093](#), at 0094.

<sup>321</sup> See above, paras. 85-86.

may only be mitigating if their well-being and family are “exceptional[ly]”<sup>322</sup> affected by a prospective term of imprisonment or penalty. The impact measured may include the existence of dependents, loss of income for the family if the convicted person is detained, or other collateral effects. However, these are common to almost any convicted person and, by definition, are not exceptional.

113. Here, there is nothing exceptional about any Convicted Person’s personal circumstances. As previously determined by Trial Chamber III, “[**BEMBA**’s] family circumstances [...] are common to many convicted persons and are not exceptional. They therefore do not constitute a mitigating circumstance in this case.”<sup>323</sup> Nothing has changed for **BEMBA** since that determination to warrant a different determination by this Chamber.

114. Similarly, **KILOLO**, **MANGENDA**, **BABALA**, and **ARIDO**, have family circumstances, including dependants, common to all convicted persons.<sup>324</sup> In contrast, in *Katanga*, Trial Chamber II accorded “very limited weight” to the fact that Katanga committed the crimes at a young age and is now the father of six children given that the combination of these facts made it more “likely to make rehabilitation and reintegration easier.”<sup>325</sup> Those circumstances are inapposite here. At the time of their crimes, the Convicted Persons were mature adults and seasoned and trained professionals. And, their family circumstances are not “exceptional”.

115. Importantly, **BEMBA**, **KILOLO**, **BABALA**, and **MANGENDA**, who were highly educated and savvy, the latter three possessing legal backgrounds, were well aware of the potential consequences to themselves and their families in relation to the crimes they committed. Indeed, **KILOLO**, **BABALA**, **BEMBA**, and **MANGENDA**, were acutely aware that they faced a potential term of imprisonment

<sup>322</sup> [ICC-01/05-01/08-3399](#), para. 78, fn. 243; [ICC-01/04-01/07-3484-tENG-Corr](#), para. 88; *Ntabakuze* AJ, para. 284; *Nahimana* AJ, para. 1108; *Babić* SAJ, paras. 50-51. See also *Margetić* Contempt TJ, para. 89.

<sup>323</sup> [ICC-01/05-01/08-3399](#), para. 78.

<sup>324</sup> See [CAR-D21-0018-0004](#); [CAR-D21-0018-0065](#); [CAR-D23-0010-0010](#); [CAR-D24-0006-0001](#).

<sup>325</sup> [ICC-01/04-01/07-3484-tENG-Corr](#), paras. 88, 144.

for the violation of article 70 in committing the crimes.<sup>326</sup> They even discussed the Kenya article 70 case in evaluating the potential consequences of their criminal conduct.<sup>327</sup> Nonetheless **BEMBA**, **KILOLO**, and **MANGENDA** continued to participate in the crimes with those consequences in mind. To the extent the punishment for the Convicted Persons' crimes may negatively affect their families, and their own livelihood, that is clearly the result of their choice, and not a factor mitigating sentence.

116. None of the arguments reflected in the documents disclosed by the Convicted Persons concerning sentencing demonstrate otherwise. *First*, **MANGENDA's** immigration issues are not a mitigating factor. **MANGENDA's** immigration problems<sup>328</sup> were an entirely foreseeable consequence of his criminal conduct and he should not now be permitted to benefit from a circumstance he knowingly created. **MANGENDA's** documents show that prior to the commission of his crimes, his wife and two children had already immigrated and settled in their host State – in December 2010.<sup>329</sup> **MANGENDA** subsequently sought to immigrate to reunite with his family. As a lawyer<sup>330</sup> and an intelligent individual, which the sophistication of his criminal acts and efforts to disguise them demonstrate,<sup>331</sup> he would have surmised, if not known, that a criminal conviction before this Court could have serious repercussions for his pending immigration matters. By nevertheless engaging in the crimes, **MANGENDA** assumed that risk which cannot now also serve to mitigate his sentence.

117. Indeed, if anything, the decisions by the immigration courts disclosed by **MANGENDA** highlight the seriousness of his offences and their gravity. Both

<sup>326</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 111, 775, 780, 784, 820, 836, 850, 891.

<sup>327</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 111, 780, 784, 820, 836, 850, 891.

<sup>328</sup> See [CAR-D23-0010-0001](#); [CAR-D23-0010-0003](#); [CAR-D23-0010-0008](#); [CAR-D23-0010-0027](#); [CAR-D23-0010-0028](#); [CAR-D23-0010-0029](#).

<sup>329</sup> See [CAR-D23-0010-0019](#), at 0020.

<sup>330</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 10, 837, 846.

<sup>331</sup> See *above*, paras. 17-22, 35-39.



appellate chambers of the immigration courts which have denied his applications affirmed that **MANGENDA**'s prosecution for interfering with witnesses was "a very serious criminal offence" which justified "exclu[sion] [...] for the public good."<sup>332</sup>

118. *Second*, many of **KILOLO**'s character witnesses have little to no knowledge of his actual character or this case. For instance, CAR-D21-0004 acknowledged that he had limited contacts with **KILOLO**,<sup>333</sup> claiming to only know **KILOLO** as one of the numerous lawyers registered in the Brussels bar.<sup>334</sup> CAR-D21-P-0005 confirmed lacking knowledge of this case and **KILOLO**'s charges, mitigating any weight to be afforded to his opinion.<sup>335</sup> CAR-D21-0010 insisted that his knowledge of **KILOLO**'s family is superficial, stressing that he rarely saw or spoke to **KILOLO** as they are "*voisins [...] ni plus ni moins*".<sup>336</sup> Altogether, none of **KILOLO**'s character witnesses describe family or personal circumstances so exceptional as to warrant mitigation in his sentence.

119. *Third*, **MANGENDA**'s purported medical condition<sup>337</sup> is not a health problem warranting mitigation. Clearly treatment for his condition is available at the ICC Detention Centre and there is no suggestion that it would be unavailable wherever else **MANGENDA** were to serve his sentence. In fact, a letter disclosed by **MANGENDA** demonstrates that medication for his condition<sup>338</sup> is readily available at the ICC Detention Centre.<sup>339</sup>

120. *Fourth*, none of **BABALA**'s letters or media articles<sup>340</sup> show that his personal circumstances are "exceptional" so as to mitigate his sentence. To the contrary,

<sup>332</sup> [CAR-D23-0010-0001](#), at 0002, para. 5. *See also* [CAR-D23-0010-0003](#), at 0006, para. 11; [CAR-D23-0010-0008](#), at 0008.

<sup>333</sup> [CAR-D21-0016-0001](#), at 0001.

<sup>334</sup> [CAR-OTP-0094-0003](#), at 0008.

<sup>335</sup> *See* [CAR-OTP-0093-0469](#), at 0470.

<sup>336</sup> [CAR-D21-0018-0065](#), at 0068, lns. 63-69, 83-85, at 0069, lns. 114-115.

<sup>337</sup> *See* [CAR-D23-0010-0035](#).

<sup>338</sup> *See* [CAR-D23-0010-0030](#); [CAR-D23-0010-0031](#); [CAR-D23-0010-0032](#).

<sup>339</sup> *See* [CAR-D23-0010-0035](#).

<sup>340</sup> *See* [CAR-D22-0006-0001](#); [CAR-D22-0006-0002](#); [CAR-D22-0006-0007](#); [CAR-D22-0006-0013](#); [CAR-D22-0006-0016](#); [CAR-D22-0006-0018](#); [CAR-D22-0006-0022](#); [CAR-D22-0006-0024](#); [CAR-D22-0006-0026](#); [CAR-D22-0006-0176](#); [CAR-D22-0006-0179](#); [CAR-D22-0006-0222](#); [CAR-D22-0006-0225](#).

**BABALA**'s stature as an influential DRC politician and parliamentarian<sup>341</sup> further demonstrates that, in committing the crimes, he abused his authority and position.<sup>342</sup> If anything, it also indicates that as an intelligent individual and jurist, he would have been fully aware of the nature and scope of his criminal conduct – all matters *favouring* the imposition of a serious sentence of imprisonment.

121. *Fifth*, the absence of a criminal or disciplinary history does not mitigate **KILOLO**'s, **MANGENDA**'s, or **BABALA**'s respective sentence.<sup>343</sup> While the existence of a prior conviction can aggravate a sentence, the absence of one is not listed as a mitigating circumstance nor should it *ipso facto* result in such. That is particularly so, where **KILOLO**, **MANGENDA**, and **BABALA** sought to obstruct justice in *this case* after being informed of the article 70 investigation against them and knowing the full legal ramifications of their conduct.<sup>344</sup>

122. *Finally*, at this point any argument requesting the mitigation of **BEMBA**'s sentence on the potential effects of current or further imprisonment is entirely inappropriate as it is speculative and potentially prejudicial to the Prosecution and the Chamber. As noted in a statement by **BEMBA**'s purported expert,<sup>345</sup> **BEMBA** expressly withdrew his consent to release a report containing findings relating to his health and psychological state and the underlying clinical rationale.<sup>346</sup> As emphasised by **BEMBA**'s expert, the portions of his report which **BEMBA** objected to disclosing “were fundamental to [his] assessment, and their removal would in [his] view compromise the clinical basis and reasoning that underpins [his] core findings.”<sup>347</sup> In addition, the expert's subsequent observations in the disclosed statement pertaining

<sup>341</sup> See [CAR-D22-0006-0002](#), at 0003.

<sup>342</sup> See *above*, para. 54.

<sup>343</sup> *Contra* [CAR-D22-0006-0005](#); [CAR-D23-0010-0001](#); [CAR-D21-0016-0001](#), at 0003; [CAR-D21-0016-0005](#), at 0006; [CAR-D21-0016-0007](#), at 0008; [CAR-D22-0006-0004](#).

<sup>344</sup> See *above*, paras. 74-84.

<sup>345</sup> **BEMBA**'s expert confirms in his statement that he prepared a psychological and psychosocial report, which was not disclosed due to **BEMBA**'s withdrawal of consent. It would be inappropriate and misleading to characterise the statement disclosed by the expert confirming these facts as a “report” itself, given that it expressly does not draw any conclusions on **BEMBA**'s psychological condition or detail its clinical rationale. See [CAR-D20-0007-0271](#), at 0281.

<sup>346</sup> [CAR-D20-0007-0271](#), at 0281-0282.

<sup>347</sup> [CAR-D20-0007-0271](#), at 0282-0283.

to **BEMBA**'s state of mind are derived entirely from information relayed to the expert from "[**BEMBA**'s] solicitor", and not based on the expert's direct evaluation of **BEMBA**.<sup>348</sup> As a result, the expert definitively concluded that "[he is] not in a position to evaluate from a clinical perspective [**BEMBA**'s] response to his solicitor as [he] was unable to further assess his continuing reactions to his report."<sup>349</sup> In light of these issues and the absence of any expert evidence to meaningfully interpret the relevance of peer review articles disclosed by the **BEMBA** Defence to **BEMBA**'s state of mind,<sup>350</sup> all arguments regarding this issue should be disregarded.

## VII. THE RECOMMENDED SENTENCES

123. In accordance with articles 70(3) and 78(3), the Convicted Persons should each be sentenced to a term of imprisonment recommended by the Prosecution below, and a fine to be determined by the Chamber. International courts and tribunals have consistently held that interference with the administration of justice merits punishment which serves a retributive purpose but also which deters others who may otherwise be inclined to commit such crimes.<sup>351</sup> Only a sentence of imprisonment and a monetary sanction will achieve that result in this case.

124. In addition to the imposition of a term of imprisonment and a fine, the Chamber should further direct the Registry to: (1) remove **KILOLO** from its list of assigned Defence Counsel; and (2) notify the Brussels, Lubumbashi, and Kinshasa/Matete bars, to which the **KILOLO** and **MANGENDA** are admitted as practicing lawyers, and the DRC government, in which **BABALA** is a member of parliament, so that those bodies and/or institutions can ascertain whether the

<sup>348</sup> [CAR-D20-0007-0271](#), at 0282-0283.

<sup>349</sup> [CAR-D20-0007-0271](#), at 0283.

<sup>350</sup> See [CAR-D20-0007-0023](#); [CAR-D20-0007-0001](#); [CAR-D20-0007-0017](#); [CAR-D20-0007-0271](#), at 0284-0287.

<sup>351</sup> See e.g. *Akhbar Beirut* Contempt SJ, para. 15; *Vujin* Contempt TJ, para. 168; *Šešelj* First Contempt TJ, paras. 37-38; *Marijačić* Contempt TJ, para. 46; *Tupajić* Contempt TJ, para. 31; *Bangura* Contempt SJ, para. 62.

conduct underlying their convictions warrants further penalty or sanctions in accordance with their laws and rules of professional responsibility.

#### **A. EACH CONVICTED PERSON SHOULD BE IMPRISONED FOR THEIR CRIMES**

##### **1. *A Sentence of imprisonment is appropriate in this case***

125. The gravity of the crimes, the Convicted Persons' roles in their commission, and the existence of several aggravating factors, all warrant a serious term of imprisonment as an appropriate measure of punishment in this case. As an ICTY Trial Chamber observed in the context of a similar offence (the bribing of witnesses and procurement of false statements), the crime is such that it "would [...] ordinarily result in a *considerable* term of imprisonment."<sup>352</sup>

126. In addition to the retributive and rehabilitative justifications for punishment, the Chamber should also take account of the further justification of deterrence in determining the appropriate sentences to impose. The Court's interest in deterring similar conduct in the future is not only central to its survival, but manifestly justifies a severe sentence of imprisonment. The Convicted Persons' crimes strike at the integrity of the Court's process for administering justice and its ability to discharge its statutory mandate. This Court deals exclusively with crimes of *the* most serious nature. And significantly, it is a Court of last resort in cases involving the most serious crimes of concern to the international community; cases that deal with accused in positions of power in their countries. Where the Court's process is undermined, justice cannot be achieved.

127. This Court can only meet its onerous mandate if those who appear before it respect its authority and act in accordance with the law. The Court, however, is vulnerable. Given the nature of its cases — compounded by the distance of witnesses

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<sup>352</sup> *Rašić* Contempt SJ, para. 17 (emphasis added). See also *Tabaković* Contempt SJ, para. 12.

and evidence from the seat of the Court, together with the Court's dependency on international cooperation and assistance —, it is, unlike any domestic court, particularly exposed.

128. This means that accused, their representatives, their associates, and even their supporters have ample opportunity to interfere with justice. They can, like the Convicted Persons did here, use Registry funded missions to manipulate the nature and scope of prospective witnesses' testimonies. They can doctor evidence and present it in Court. They can bribe witnesses to testify in particular ways on particular issues. They can prevent witnesses from testifying or alter their evidence. Each of these acts, individually or cumulatively, has the potential to deny fundamental justice to victims and the international community, as has already occurred in the Kenya cases<sup>353</sup> and the *Ngudjolo* case.<sup>354</sup>

129. Given these potential "benefits", it is unsurprising that "almost all cases in the confirmation of charges and trial phases have been or are confronted with incidents of obstruction of justice – in particular witness tampering."<sup>355</sup> The Open Society Justice Initiative's comprehensive survey on witness interference before the Court confirms:

Out of the nine ICC cases involving charges of crimes against humanity and/or war crimes that have reached the trial stage—which address crimes in the Democratic Republic of Congo (DRC), the Central African Republic (CAR), Kenya, Côte d'Ivoire, and Uganda—our research has found allegations of interference in at least eight: *Lubanga*, *Katanga & Ngudjolo*, *Bemba*, *Muthaura & Kenyatta*, *Ruto & Sang*, *Gbagbo & Blé Goudé*, *Ntaganda*, and *Ongwen*. The crimes charged in these cases affected hundreds of thousands of victims. The only case in which we found no public reference to witness interference allegations was *Al-Mahdi*, a unique case in which the accused, charged with destruction of cultural property in Mali, issued a guilty plea and underwent a subsequent speedy trial.<sup>356</sup>

<sup>353</sup> See e.g. [ICC-01/09-01/11-2027-Red-Corr](#), paras. 147-148, Reasons of Judge Eboe-Osuji, paras. 2, 7, 139, 141, 193, 464; [ICC-01/09-02/11-687](#), para. 11; [ICC-01/09-02/11-796-AnxA-Red](#), paras. 89-95.

<sup>354</sup> See e.g. [ICC-01/04-02/12-39-Red4](#), paras. 140-226; [ICC-01/04-02/12-271-Corr](#), paras. 278, 281-283.

<sup>355</sup> [OTP 2016-2018 Strategic Plan](#), 8 July 2015, para. 27.

<sup>356</sup> [CAR-OTP-0094-2547](#), at 2548-2549.

130. Article 70 of the Statute provides the only real means by which the Court can address and put an end to such deleterious conduct. And, only an effective punishment for such crimes can deter future attempts to interfere with witnesses, like those which caused the collapse of the *Muthaura*,<sup>357</sup> *Kenyatta*,<sup>358</sup> and *Ruto and Sang*<sup>359</sup> cases, or the ones of which the Convicted Persons have been convicted.

131. However, punishment can deter conduct only if it is certain, immediate, and exacts a severe penalty in contrast to any potential gain achieved by committing the crime. The opposite is also true — an inconsequential penalty does nothing to prevent future criminal conduct. Accused, like **BEMBA**, who face lengthy prison sentences if convicted, would have no reason to refrain from attempting to undermine their trials through any means possible. An inconsequential punishment for the convictions pronounced in this case would put proceedings now, or to come, before the Court at risk of future article 70 offences. As a result, it can ill-afford. Anything but imprisonment for each Convicted Person — whose crimes, again, are unprecedented in comparison to cases before other international courts<sup>360</sup> — would not only fail to deter similar future crimes, but rather, encourage them. And in doing so, endanger the Court's ability to achieve its mandate.<sup>361</sup>

## 2. *Each Convicted Person should be sentenced according to articles 70(3) and 78(3)*

132. The Convicted Persons should each receive the following “joint sentence” when taking into account the nature and extent of their multiple crimes (42 counts for **BEMBA**, 42 counts for **KILOLO**, 37 counts for **MANGENDA**, four counts for

<sup>357</sup> See [ICC-01/09-02/11-687](#), para. 11.

<sup>358</sup> See [ICC-01/09-02/11-796-AnxA-Red](#), paras. 89-95.

<sup>359</sup> See [ICC-01/09-01/11-2027-Red-Corr](#), paras. 147-148, Reasons of Judge Eboe-Osuji, paras. 2, 7, 139, 141, 193, 464.

<sup>360</sup> See *above*, paras. 4, 11.

<sup>361</sup> See *Pećanac Contempt TJ*, para. 41.

**ARIDO**, and two counts for **BABALA**),<sup>362</sup> and the aggravating circumstances identified above: **BEMBA** to eight (8) years imprisonment; **KILOLO** to eight (8) years imprisonment; **MANGENDA** to seven (7) years imprisonment; **ARIDO** to five (5) years imprisonment; and **BABALA** to three (3) years imprisonment.

133. As elaborated below,<sup>363</sup> the sentencing framework regarding persons convicted of more than one crime within the Court’s jurisdiction is set out exclusively in article 78(3), which applies *mutatis mutandis* to article 70 proceedings by virtue of rule 163(1).<sup>364</sup> No other provision of the Statute applies in cases of *multiple convictions*, whether in relation to article 5 crimes or article 70 offences.

134. Article 78(3) establishes a two-step process in determining a sentence in the context of convictions for multiple crimes. *First*, the Chamber must “pronounce a sentence for *each* crime” of which the individual has been convicted. As concerns article 70 offences, the Chamber must pronounce a sentence for each discrete conviction within the prescribed range set out at article 70(3) (*i.e.*, not exceeding five (5) years imprisonment and/or a fine). Such individual or discrete sentence must, according to rule 145(1)(a) (referenced by article 78(1)), reflect the culpability of the convicted person for that *specific* crime, including its gravity and the individual circumstances relevant to that crime. In this case, the distinct crimes comprise the counts per witness incident.

135. *Second*, on pronouncing an individual sentence for each crime, article 78(3) requires that the Chamber issue a “joint sentence specifying the total period of imprisonment”. That joint sentence may never be lower than the highest individual sentence and no higher than 30 years – the maximum sentence applicable to *multiple*

<sup>362</sup> For the relevant counts charged: see [ICC-01/05-01/13-749](#), pp. 47-55 (*referring to* [ICC-01/05-01/13-526-Conf-AnxB1](#), pp. 55-81). See also [ICC-01/05-01/13-1110-Red](#), para. 266 (breaking down the counts by offence).

<sup>363</sup> See below, paras. 141-147.

<sup>364</sup> The Single Judge of Pre-Trial Chamber II repeatedly noted that “it remains yet to be decided how the statutory limit may apply in case multiple offences are found to have been committed”, accepting that article 70 is not explicit about this matter. See [ICC-01/05-01/13-259](#), para. 31; [ICC-01/05-01/13-611](#), para. 10. Notably, a subsequent decision setting the maximum period of imprisonment to five years was overturned by the Appeals Chamber, which did not rule on this matter. See [ICC-01/05-01/13-969](#), para. 46.

*convictions* under the Statute. The joint sentence need not be the sum of the sentences pronounced for each discrete conviction. Rather, within the appropriate exercise of the Chamber's discretion, such joint sentence must reflect the number and distinct qualities of the convictions on which each of the individual sentences were pronounced and, as required by rule 145(1)(a), the entirety of the convicted person's culpability.

*a. Separate sentences should be issued for each witness incident*

136. The Chamber should impose a separate sentence for each witness incident of which the Convicted Persons were found guilty, as opposed to a single "global" sentence. As noted above, article 78(3) requires a trial chamber to pronounce sentence on "*each* crime" of which an individual is convicted, reflecting their culpability for that specific crime, including its gravity and the individual circumstances relevant to it.<sup>365</sup>

137. That every ICC trial chamber in a multi-count case (*Lubanga, Katanga, and Bemba*) has pronounced a separate sentence for each crime confirms the proper application of article 78(3) in such circumstances.<sup>366</sup> A separate sentence per each crime also ensures greater transparency in the Chamber's reasoning on sentencing. In turn, this better safeguards the Parties' right to a fully motivated and substantiated sentencing decision.

138. In this case, each count constitutes a separate "crime", warranting a separate sentence before determining any "joint sentence." Each count reflects a distinct offence in relation to a specific witness. For instance, counts 1, 2, and 3, concern separate offences under article 70 involving D-0015 whereas counts 4, 5, and 6 relate to separate article 70 offences involving D-0054.<sup>367</sup> This fact is apparent through all

<sup>365</sup> See Statute, art. 78(1); rule 145(1)(a).

<sup>366</sup> See [ICC-01/04-01/06-2901](#), para. 98; [ICC-01/05-01/08-3399](#), para. 94; [ICC-01/04-01/07-3484-tENG-Corr](#), para. 146.

<sup>367</sup> See [ICC-01/05-01/13-526-Conf-AnxB1](#), p. 56.



major filings and decisions underpinning the Convicted Persons' convictions. The DCC,<sup>368</sup> Confirmation Decision,<sup>369</sup> Pre-Trial Brief,<sup>370</sup> Prosecution's Closing Brief<sup>371</sup> and Judgment,<sup>372</sup> identified each charged count as a separate crime, broken down by the related witness incident. For instance, the Confirmation Decision confirmed each Convicted Person's responsibility by each offence as related to each witness,<sup>373</sup> as included in the counts in the DCC.<sup>374</sup> Similarly, the Judgment assessed the Convicted Persons' criminal responsibility with respect to each person's conduct *vis-à-vis* each individual witness who was corruptly influenced, or for which false testimony was presented or given, thereby breaking the crimes down by charge *and* witness incident (identical to the DCC and Confirmation Decision)<sup>375</sup> Specifically, the Judgment was specifically identified to which specific witness the Convicted Persons' criminal responsibility related and for which article 70 offence.<sup>376</sup>

139. While each count constitutes a separate crime, because many largely involve the same conduct in relation to the same witness, as recognised by this Chamber,<sup>377</sup> the more appropriate method by which to assess the Convicted Persons' culpability for the multiple offences which comprise their convictions is by issuing a discrete sentence per witness incident (14 incidents for **BEMBA**, **KILOLO**, and **MANGENDA**, four for **ARIDO**, and two for **BABALA**).<sup>378</sup> Each witness incident comprises its own set of facts and circumstances warranting a separate sentence. While those facts and circumstances often follow the same pattern – a demonstration

<sup>368</sup> See [ICC-01/05-01/13-526-Conf-AnxB1](#), pp. 55-81. See also [ICC-01/05-01/13-597-Conf-AnxB](#), paras. 99-234.

<sup>369</sup> See [ICC-01/05-01/13-749](#), pp. 47-55.

<sup>370</sup> See [ICC-01/05-01/13-1110-Red](#), paras. 64-219.

<sup>371</sup> See [ICC-01/05-01/13-1905-Conf](#), paras. 88-282.

<sup>372</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 114-184, 228-667.

<sup>373</sup> See [ICC-01/05-01/13-749](#), pp. 47-55.

<sup>374</sup> See [ICC-01/05-01/13-526-Conf-AnxB1](#), pp. 55-81.

<sup>375</sup> See [ICC-01/05-01/13-1989-Red](#), paras. 114-184, 228-667.

<sup>376</sup> See [ICC-01/05-01/13-1989-Red](#), pp. 455-457.

<sup>377</sup> See [ICC-01/05-01/13-1989-Red](#), para. 956.

<sup>378</sup> See [ICC-01/05-01/13-1989-Red](#), pp. 455-457.

of the larger Common Plan to which they are related<sup>379</sup> – they comprise different and distinct underlying facts.

140. For instance, **BEMBA**'s, **KILOLO**'s, and **MANGENDA**'s conduct in relation to D-0055 comprises wholly separate and distinct facts and circumstances than those in relation to D-0013. With respect to D-0055, the Judgment finds that **KILOLO** actively reproached the reluctant witness to testify that a document co-authored by the witness "had been written to bolster his co-author's refugee claim" as opposed to its underlying merits which were adverse to **BEMBA**'s interests in the Main Case.<sup>380</sup> **BEMBA** and **KILOLO** co-opted the witness' testimony by assuring him that **BEMBA** 'le traiterai bien' and by facilitating a conversation between D-0055 and **BEMBA** "by way of a multi-party call using the privileged line of the ICC Detention Centre."<sup>381</sup> In contrast, D-0013, rather willingly, permitted **KILOLO** to direct him "on the content of his testimony, including the instruction to untruthfully restrict the number of contacts with the Main Case Defence."<sup>382</sup> Altogether, the situation with D-0013, as compared to D-0054, involved a different person, a different date, a different time and place, and a different subject matter. For these reasons, the conduct on which the convictions rest in this case are discrete for each witness and on that basis, warrant separate sentences.

*b. A joint sentence for each Convicted Person should be issued*

141. As noted, the relevant provisions for multiple article 70 convictions is article 78(3) read in conjunction with article 70(3) of the Statute.<sup>383</sup> Article 78(3) is *lex specialis* as it relates to circumstances where an individual is convicted of multiple crimes. It is the *only* provision of the Statute which identifies the method for calculating

<sup>379</sup> See [ICC-01/05-01/13-1989-Red](#), para. 682.

<sup>380</sup> [ICC-01/05-01/13-1989-Red](#), para. 121.

<sup>381</sup> [ICC-01/05-01/13-1989-Red](#), paras. 121, 123. See also paras. 298, 305.

<sup>382</sup> [ICC-01/05-01/13-1989-Red](#), para. 183. See also para. 666.

<sup>383</sup> See VCLT, art. 31(1) ("[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.").

sentences when there are multiple convictions, and the only one which specifies a limit regarding sentences arising from *multiple convictions*.

142. Article 78(3) also clearly governs multiple article 70 convictions by virtue of rule 163(1), which applies the Statute and the Rules *mutatis mutandis* to, *inter alia*, the Court's "punishment of offences defined in article 70", unless otherwise provided for in rule 162(2) and (3), rule 162, or rules 164 to 169 – none of which exclude the application of article 78. In relevant part, rule 166(2) expressly excludes the application of article 77, which sets out the applicable penalties for article 5 offences. To the extent the Statute's framers also intended to omit the application of article 78(3) from article 70 punishments, it would have been a simple matter of including a similar provision somewhere in rules 162 to 169 or even in article 70 itself. For the same reasons, the Single Judge of this Chamber has already concluded that "indeed, Article 78 of [the] Statute is applicable for proceedings under Article 70."<sup>384</sup>

143. This interpretation is also consistent with the drafting history of the Statute and Rules.<sup>385</sup> In drafting the rules applicable to article 70 offences "the method developed by the experts [...] was to work on the assumption that all provisions of the Statute were also applicable to the offences under article 70, unless excluded or modified in the Rules."<sup>386</sup> Indeed, "[i]n Siracusa, the experts thought of excluding completely the application of Parts 7 (Penalties) [...] but then reached the conclusion that this would not be appropriate. Consequently, with some modifications and exceptions, these Parts could also be applicable for the purpose of article 70."<sup>387</sup> Nothing in article 70's legislative history<sup>388</sup> suggests that the Statute's framers intended article 70(3)'s five-

<sup>384</sup> [ICC-01/05-01/13-2026](#), para. 16.

<sup>385</sup> See VCLT, art. 32 ("[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusions, in order to confirm the meaning resulting from the application of article 31").

<sup>386</sup> Hakan Friman, "Offences and Misconduct Against the Court", in *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Roy S. Lee ed., 2001), p. 608.

<sup>387</sup> *Id.*, at p. 609.

<sup>388</sup> See [Working Paper Submitted by Australia and the Netherlands](#), U.N. Doc. A/AC.249/L.2, 26 July 1996, p. 26; [Proposal Submitted by the United States of America: Offences against the Integrity of the Court](#), U.N. Doc. A/AC.249/WP.41, 23 August 1996; [Report on the Informal Group on Procedural Questions, Fair Trial and](#)

year maximum term of imprisonment to apply to circumstances where a person is responsible for the commission of *multiple* article 70 crimes, or that article 78(3) was intended only to apply to article 5 convictions.

144. The fact that the sentence for multiple article 70 offences is governed by article 78(3) confirms that article 70(3)'s use of the term "conviction" is intended to only apply to a singular crime. It thus contemplates the application of the five-year limit as relates to a singular conviction, not multiple ones, as is the case here.

145. Two additional arguments support this interpretation of the Statute and Rules, in particular the application of article 78(3) when assessing the sentence for multiple article 70 convictions. *First*, nothing in article 70(3) tempers or alters the application of article 78(3) and, specifically, its cap of 30 years for *multiple* crimes. In particular, article 70(3) omits any equivalent reference to circumstances "[w]hen a person has been convicted of more than one crime".

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[Rights of the Accused](#), U.N. Doc. A/AC.249/CRP.14, 27 August 1996, pp. 103-106; [Report of the Preparatory Committee on the Establishment of an International Criminal Court](#), Vol. II, U.N. Doc. A/51/22, 1996, pp. 210-213; [Abbreviated Compilation of Proposals on Procedural Matters](#), 4 August 1997, pp. 44-46; [Proposals by the Israeli Delegation for Amendments of the Draft Statute of the International Law Commission on the Subjects of Procedure and Evidence](#), Non-Paper/WG.4/No. 1, 5 August 1997, pp. 3-4; [Japanese Proposal on Evidence](#), Non-Paper/WG.4/No. 13, 12 August 1997; [Report of the Working Group on Procedural Matters: Evidence](#), U.N. Doc. A/AC.249/1997/WG.4/CRP.11/Add.2, 11 December 1997, p. 3; [Decisions Taken by the Preparatory Committee at its Session Held from 1 to 12 December 1997](#), U.N. Doc. A/AC.249/1997/L.9/Rev.1, 18 December 1997, pp. 31-32; [Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, the Netherlands](#), U.N. Doc. A/AC.249/1998/L.13, 4 February 1998, p. 119; [Preliminary Draft Consolidated Text: Article 64 \[44bis\]](#), U.N. Doc. A/AC.249/1998/WG.4/CRP.3, 25 March 1998; [Text of the Draft Statute for the International Criminal Court](#), U.N. Doc. A/AC.249/1998/CRP.12, 1 April 1998, pp. 13-14; [Working Paper on Article 70, Offences against the Integrity of the Court and Article 70 bis, Sanctions for Misconduct before the Court](#), Doc. No. UD/A/CONF-183/WGPM/IP, 16 June 1998; [Working Paper on Article 70](#), U.N. Doc. A/CONF.183/C.1/WGPM/L.68, 9 July 1998; [Working Paper on Article 70](#), U.N. Doc. A/CONF.183/C.1/WGPM/L.68/Rev.1, 10 July 1998; [Working Paper on Article 70](#), U.N. Doc. A/CONF.183/C.1/WGPM/L.68/Rev.2, 11 July 1998; [Draft Statute of the International Criminal Court](#), U.N. Doc. A/CONF.183/C.1/L.76/Add.6, 16 July 1998, pp. 8-9; [Discussion Paper Proposed by the Coordinator](#), Doc. No. PCNICC/1999/WGRPE/RT.5, 1 July 1999, pp. 8-10; [Proposal by Italy Concerning Article 70 of the Rome Statute](#), Doc. No. PCNICC/1999/WGRPE/DP.17, 26 July 1999; [Working Group on Rules of Procedure and Evidence](#), Doc. No. UD/PCNICC/1999/WGRPE/IP, 6 August 1999, p. 17; [Rules of Procedure and Evidence Related to Part 6 of the Statute](#), Doc. No. PCNICC/1999/WGRPE/RT.5/Rev.1, 11 August 1999, pp. 10-12; [Proposals by Colombia Concerning the Rules of Procedure and Evidence Relating to Part 6 of the Statute](#), Doc. No. PCNICC/2000/WGRPE(6)/DP.1, 1 March 2000, p. 7; [Discussion Paper Proposed by the Coordinator Regarding Rules of Procedure and Evidence Relating to Part 6 of the Rome Statute, Concerning the Trial](#), Doc. No. PCNICC/2000/WGRPE(6)/RT.10, 23 June 2000, pp. 1-4; [Report of the Working Group](#), Doc. No. PCNICC/2000/WGRPE/L.10, 27 June 2000.

146. *Second*, any reading excluding the application of article 78(3) would undercut the purpose of the provision, as there would be absolutely nothing to inhibit a would-be perpetrator from engaging in multiple and separate offences, and no meaningful distinction drawn between such an offender and one who commits a single offence.<sup>389</sup> An individual who might have otherwise engaged in a singular act against the administration of justice would be incentivised to maximise the number of offences they commit were the Statute to be read as placing a five-year cap on the possible sentencing for multiple crimes. One can easily foresee circumstances where a would-be perpetrator might injure or otherwise kill multiple Prosecution witnesses to impede the collection of evidence knowing that no matter how many are injured or killed he or she would be subject only to a five-year sentence. It is a basic tenet of statutory construction that its provisions be construed to avoid a manifestly absurd result, a result contrary to its purpose — here, to ensure that the Convicted Persons’ sentences reflect the full culpability for their multiple crimes, and not effectively to ensure impunity for the fact that the Convicted Persons engaged in multiple offences, not just one.

147. Given the above, the relevant cap for multiple article 70 offences, as here, is provided for in article 78(3). The cap articulated in that provision when a person is convicted of multiple crimes is clear: “the Court shall pronounce [...] a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment”. While this imports a potentially high exposure for convictions of multiple article 70 offences as it does for article 5 crimes, the Statute expressly vests chambers with the discretion to determine the appropriate sentence to impose in view of the totality of the circumstances, and which reflects the convicted person’s culpability. This is not to say that this case warrants a sentence of 30 years, but that a

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<sup>389</sup> A purposive interpretation of articles 70(3) and 78(3) also supports this position. *See* VCLT, art. 31(1) (“[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of *its object and purpose*.”) (emphasis added).

chamber is not bound to sentence an individual who has been convicted of multiple article 70 offences to no more than the maximum sentence permitted for a single article 70 offence. Rather, the Chamber retains the discretion to sentence an offender appropriately and commensurately with their full culpability, such as when numerous article 70 convictions are based on a broad or sustained course of conduct, or where the convictions involve dangerous or violent conduct or serious consequences,<sup>390</sup> even if only a few.

148. In this case, the overall criminality of the Convicted Persons' conduct warrants the sentences recommended by the Prosecution. The egregiousness and gravity of their conduct has no comparison in international criminal proceedings, a fact which makes comparison with contempt cases before the ICTY, ICTR, STL, or SCSL facile. To the extent a comparison can be drawn, it justifies the sentence recommended by the Prosecution. For instance:

- In *Rašić*, an ICTY Trial Chamber sentenced the former case-manager and investigator for Milan Lukić to a sentence of 12 months imprisonment.<sup>391</sup> In that case, Rašić “was relatively young at the time of the crimes” and “inexperienced in the role of investigator”, had voluntarily surrendered to Serbian officials upon being charged, pled guilty to the five counts of witness interference and bribery, and expressed genuine remorse for her crimes.<sup>392</sup> All of these factors – none of which are present here – seriously mitigated her sentence but still warranted a sentence of imprisonment of a year.
- In *Bangura et al.*, a SCSL Trial Chamber sentenced two defendants, Santigie Borbor Kanu and Brima Bazzy Kamara, to two years imprisonment for each of their two acts of contempt, despite the fact that their crimes only concerned a

<sup>390</sup> For instance, interference with a witness can involve conducting rising to the level of murder of the witness, their family members, or to others which the would-be perpetrator considers would impact the witness' evidence.

<sup>391</sup> Eight of the twelve months were suspended due to “the particularly difficult circumstances that would be engendered by Jelena Rašić being the only female detainee in the UNDU and the quasi-solitary confinement regime that would follow” – factors which clearly do not apply here. *Rašić Contempt SJ*, para. 31.

<sup>392</sup> See *Rašić Contempt SJ*, paras. 19-22, 27, 31.

single witness, TF1-334.<sup>393</sup> The third defendant, Samuel Kargbo, was sentenced to an 18 month suspended sentence, only because he had pled guilty, accepted his wrong-doing, and had cooperated with the Court in investigating and prosecuting the crimes.<sup>394</sup> And the fourth defendant, Hassan Papa Bangura, received 18 months imprisonment for each of the two counts of which he was convicted, but only because the Court thought he should be entitled to “some credit for suffering caused through a breach of that convicted person’s human rights” – namely that he was held for a period of four years without trial or warrant.<sup>395</sup>

- In *Senessie*, a SCSL Trial Chamber sentenced the defendant to two years imprisonment for each of his nine counts of witness interference but only because “he [...] acknowledged his offences and [has] shown sincere remorse”.<sup>396</sup>

149. Tellingly, in *Rašić*, *Bangura et al.*, and *Senessie*, the convicted persons received sentences of imprisonment, often of several years, despite pleading guilty, cooperating with the Court, accepting responsibility and expressing remorse, or in light of the relatively discrete and contained nature of their crimes. None of those circumstances exist here. **BEMBA, KILOLO, MANGENDA, BABALA, and ARIDO**, have not pled guilty;<sup>397</sup> have not cooperated with the Court;<sup>398</sup> and have never expressed a word of remorse.<sup>399</sup> To the contrary, their crimes and contributions span across time and numerous witnesses;<sup>400</sup> they have sought to undermine the investigation and prosecution of this case;<sup>401</sup> attacked the Prosecution for bringing

<sup>393</sup> See generally *Bangura* Contempt SJ, paras. 79-88. See also *Bangura* Contempt TJ, paras. 1-4, Disposition.

<sup>394</sup> See *Bangura* Contempt SJ, para. 92.

<sup>395</sup> See *Bangura* Contempt SJ, paras. 75, 91.

<sup>396</sup> See *Senessie* Contempt SJ, paras. 15-22.

<sup>397</sup> See above, paras. 97-103.

<sup>398</sup> See above, paras. 104-105.

<sup>399</sup> See above, paras. 106-107.

<sup>400</sup> See above, paras. 13-48.

<sup>401</sup> See above, paras. 72-87.

it;<sup>402</sup> publicly assailed the integrity of the Court and its processes;<sup>403</sup> and gone as far as to accuse the Single Judge of professional misconduct.<sup>404</sup>

150. To highlight the particular egregiousness and gravity of the crimes in this case, it is worth noting that when Senessie was sentenced to two years imprisonment in July 2012, the SCSL Chamber emphasised that “one of the most distinguishing features of [that] case were the number of former witnesses who were approached by Senessie with a view to having them recant their evidence”, concluding that it “[had] not been referred to any precedent involving this number of victims who were offered bribes and/or interfered with in order to persuade them to recant testimony.”<sup>405</sup> This case is that precedent. In *Senessie*, the defendant was responsible for bribing four witnesses and four counts of witness interference.<sup>406</sup> **BEMBA’s**, **KILOLO’s**, and **MANGENDA’s** crimes are over four times that amount; **ARIDO’s** are on par; and **BABALA** just below.<sup>407</sup> And none, unlike Senessie, has accepted responsibility for their acts and expressed remorse.<sup>408</sup> Rather all, unlike Senessie, are responsible for further acts to obstruct justice *in this case*;<sup>409</sup> a feature of the case unlike any other of potential comparison in international tribunals and courts.

### *3. Alternatively, the Convicted Persons should receive significant sentences under article 70(3)*

151. If the Chamber determines five (5) years is the maximum sentence afforded under the Statute for article 70 offences, irrespective of the number of offences committed, **BEMBA**, **KILOLO**, **MANGENDA**, and **ARIDO** should be sentenced to five (5) years imprisonment, and **BABALA** to three (3) years. Even assuming a five-

<sup>402</sup> See above, paras. 99-103. See also [ICC-01/05-01/13-233-Red](#); [ICC-01/05-01/13-648-Red3](#).

<sup>403</sup> See above, paras. 99-103.

<sup>404</sup> See above, paras. 99-103. See also T-49-ENG, p. 60, Ins. 16-20; T-49-FRA, p. 54, Ins. 20-24.

<sup>405</sup> *Senessie* Contempt SJ, paras. 15, 18.

<sup>406</sup> *Senessie* Contempt SJ, para. 1.

<sup>407</sup> See above, para. 132.

<sup>408</sup> See above, paras. 97-103, 106-107.

<sup>409</sup> See above, paras. 72-87.



year cap, the conduct of each Convicted Person should not be seen in relative contrast with one another when determining whether to sentence him to five years. For instance, a *génocidaire* is likely to warrant life imprisonment irrespective of the number of people killed given the inherent seriousness of the crime.<sup>410</sup> Once a certain objective threshold of criminality and culpability is passed, all individuals crossing that threshold are entitled to the maximum possible sentence.

152. In this case, for all the reasons addressed above, **BEMBA**, **KILOLO**, and **MANGENDA** passed that objective threshold for article 70 offences, deserving a sentence of imprisonment in excess of five (5) years. Thus, the Chamber should impose sentences of not less than five (5) years. Their sentences should not negate or mitigate the five (5) years imprisonment **ARIDO** deserves as a result of his offences, nor the three (3) years **BABALA** deserves.

#### 4. *BEMBA's sentence should be served consecutively to his Main Case sentence*

153. **BEMBA's** sentence for his article 70 convictions should be served consecutively to the sentence imposed by Trial Chamber III for his convictions of war crimes and crimes against humanity. While the Court's legal framework is silent on the sentencing relationship between separate convictions under articles 5 and 70, two principal arguments support sentencing **BEMBA** to consecutive terms.

154. *First*, **BEMBA's** article 70 convictions arise from conduct independent of and separate from that of which he was convicted in the Main Case. **BEMBA's** 18-year sentence in the Main Case appropriately and strictly address his culpability for murder and rape as war crimes and crimes against humanity and pillaging as a war crime.<sup>411</sup> It does not at all consider his culpability for the conduct of which he now

<sup>410</sup> See e.g. *Gacumbitsi* AJ, para. 206; *Seromba* AJ, para. 239; *Muhimana* AJ, para. 234; *Tolimir* TJ, para. 1242; *Musema* TJ, pp. 278-279; *Kayishema* SJ, para. 27; *Renzaho* TJ, para. 826; *Karera* TJ, para. 584-585; *Ndindabahizi* TJ, para. 511; *Hategekimana* TJ, para. 748; *Kamuhanda* TJ, para. 770; *Karemera* TJ, para. 1762-1763; *Nzabonimana* TJ, para. 1822; *Kambanda* TJ, verdict; *Niyitegeka* TJ, para. 502.

<sup>411</sup> [ICC-01/05-01/08-3399](#), paras. 94-95.

stands convicted in this case, as Trial Chamber III explicitly considered this to be “inappropriate” in determining **BEMBA**’s sentence in the Main Case.<sup>412</sup>

155. The elements of the offences of which **BEMBA** was convicted in this case are wholly distinct from that attendant to his article 5 convictions. And, although the Statute permits the joinder of articles 5 and 70 charges,<sup>413</sup> this is a question of judicial economy, and not predicated on the similarity of the conduct at issue. In any case, the underlying facts and circumstances on which the convictions are based in this case and the Main Case are completely different — in terms of the charged periods, **BEMBA**’s conduct, his stature, the victims, the co-perpetrators, and obviously the crimes themselves.<sup>414</sup>

156. *Second*, fairness and justice dictate the imposition of consecutive sentences. Concurrent sentences not only fail to account for the seriousness and gravity of **BEMBA**’s conduct, but would undermine any deterrent effect a sentence of imprisonment would otherwise achieve. They would assure future accused who would attempt such crimes that there is no downside to committing article 70 offences, should they be convicted in the principal case. As the Chamber has recognised, “preventing offences against the administration of justice is of the utmost importance for the functioning of the International Criminal Court.”<sup>415</sup> It is thus imperative that the Chamber ensure that the punishment for such crimes will safeguard that critical objective by achieving meaningful deterrence.

157. Other international courts in similar circumstances have taken the same approach. For instance, an ICTY Trial Chamber sentenced Dragan Jokić, who was convicted of contempt, to a prison term consecutive to the nine-year sentence he received upon conviction for aiding and abetting murder in a separate trial.<sup>416</sup> In

<sup>412</sup> [ICC-01/05-01/08-3399](#), para. 80. *See also*, [ICC-01/05-01/08-3399](#), fn. 249.

<sup>413</sup> *See* rule 162(2)(c).

<sup>414</sup> *Compare* [ICC-01/05-01/13-1989-Red](#), paras. 13, 103 *with* [ICC-01/05-01/08-3343](#), paras. 2-3, 621-648, 693-741.

<sup>415</sup> T-50-ENG, p. 3, lns. 23-25; T-50-FRA, p. 3, lns. 22-24.

<sup>416</sup> *See* *Jokić* Contempt AJ, para. 8; *Jović* Contempt TJ, para. 42.

*Bangura et al.*, a SCSL Trial Chamber sentenced Santigue Borbor Kanu and Brima Bazzy Kamara, who were convicted of contempt, to prison terms consecutive to their respective 50-year and 45-year sentences for crimes against humanity and war crimes.<sup>417</sup> Given that **BEMBA** stands convicted of 42 counts of offences against the administration of justice — as opposed to the singular counts of contempt which concerned the *Jokić* and *Kanu* and *Kamara* cases — the imposition of sentences in this case consecutive to his sentence in the Main Case is even more amply justified.

## **B. THE CONVICTED PERSONS SHOULD BE FINED FOR THEIR CRIMINAL CONDUCT**

158. In addition to being sentenced to imprisonment in accordance with the Prosecution's recommendation, a fine commensurate with their crimes should be levied on each Convicted Person. Article 70(3) permits the Chamber to issue a fine in addition to a sentence of imprisonment. Rule 145(1)(c), which is incorporated into rule 146's methodology for calculating fines under sub-section (1), directs the Chamber to consider "the extent of the damage caused" by the crimes committed. Rule 146(2) also requires the Chamber to "take into consideration the damage [...] caused as well as the proportionate gains derived from the crime by the perpetrator."

159. Altogether, these provisions permit the Chamber to consider the potential and real costs to the Court caused by the Convicted Persons' conduct. This is consistent with the jurisprudence of the *ad hoc* tribunals which require, when evaluating the gravity of an offence, the potential consequences of the crime, or, as noted by a Trial Chamber of the ICTY, the "real risk caused by the Accused[']s [conduct]."<sup>418</sup> That risk is separate and apart from the actual harm caused by the conduct. It evaluates the potential effects of the Convicted Person's conduct had they been successful in their criminal venture. In that regard, it requires an evaluation of the costs associated with litigation in the Main Case – which was the object of the Common Plan.

<sup>417</sup> See *Bangura* Contempt SJ, pp. 32-33. See also *Brima* AJ, paras. 22-25.

<sup>418</sup> *Hartmann* Contempt TJ, para. 80. See also *Marijačić* Contempt TJ, para. 50; *Senessie* Contempt SJ, para. 17.

160. In this case, the Convicted Persons' criminal conduct threatened the entirety of the Main Case. As detailed above, witness interference, whether unchecked or undetected, has unravelled and tainted entire trials; it has wasted valuable resources allocated to those proceedings; and it has denied victims justice and potential reparations.<sup>419</sup> **BEMBA's** conviction in the Main Case, despite the conduct in this case, does not mitigate the potentially serious consequences to the Court risked by the Convicted Person's conduct. The fine should, thus, reflect that risk and the Convicted Persons should be responsible for the total financial cost of the Main Case.<sup>420</sup>

161. Alternatively, the Convicted Persons should be responsible for the Court's expenditure relating to the testimony of the 14 charged witnesses, as directly reflecting the pecuniary damage actually caused by their acts. The Court suffered serious financial damage in relation to each of those witnesses. Each of the witnesses testified in the Main Case. However, in view of the Convicted Persons' conduct, none of the witnesses were capable of contributing to the trial process, the establishment of the truth, and delivering justice to the victims of the crimes committed.

162. The **BEMBA** Defence's renunciation of its reliance on these 14 witnesses in its Closing Submissions<sup>421</sup> underscores the wastage of valuable Court resources and time attendant to their appearance and testimony. In relation to these witnesses, the Court paid for, *inter alia*, their transportation to the place of testimony; accommodations; incidental and attendance allowances; video-links with the Court; Rule 74 counsel; and the costs relating to transport and accommodate Registry staff to the field to assess the witnesses' security and to carry out the familiarisation process, as well as to staff the courtroom during their ostensible "testimony".<sup>422</sup> The Convicted Persons forced the Court to pay these costs, despite knowing that the

<sup>419</sup> See above, paras. 13-16, 125-131.

<sup>420</sup> See [ICC-01/05-01/13-2041](#), para. 21. See also [CAR-OTP-0094-2406](#), at 2407-2408.

<sup>421</sup> See [ICC-01/05-01/08-3121-Red](#), para. 14; [ICC-01/05-01/08-3343](#), para. 262.

<sup>422</sup> See [ICC-01/05-01/13-2041](#), para. 23. See also [CAR-OTP-0094-2406](#), at 2410-2412.

witnesses' testimony was untruthful and corruptly influenced. Each should be fined for the amount spent by the Court in relation to witnesses comprising the charged incidents of which they were found guilty.

163. At this point, the Prosecution is unable to recommend a precise figure in respect of a monetary sanction, given that the Registry's reports on the solvency of the Convicted Persons has a large amount of information yet to be confirmed<sup>423</sup> and given that rule 146(2) limits all fines to "75 percent of the value of the convicted person's identifiable assets, liquid and realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants". Accordingly, the Prosecution reserves the right to make further submissions on this matter during the oral sentencing hearing.

### C. KILOLO SHOULD BE REMOVED FROM THE ICC'S LIST OF DEFENCE COUNSEL

164. The Registry should be directed to remove **KILOLO** from its list of assigned Defence Counsel. An individual responsible for corruptly influencing witnesses is not fit to represent individuals before this Court and does not satisfy the high standards expected of persons on the Registry's List of Assigned Defence Counsel. As noted by an Appeals Chamber of the ICTY "when convicted of contempt [...] counsel can expect to be either suspended or struck off the list of assigned counsel kept by the Registrar".<sup>424</sup>

165. While article 70 of the Statute does not provide for striking counsel from the list of eligible counsel as a punishment, the Chamber can direct the Registry to consider such action. The ICTY Appeals Chamber has endorsed similar action in contempt

<sup>423</sup> See [ICC-01/05-01/13-2081](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxI-A](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxI-B](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxII-A](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxII-B](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxIII-A](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxIII-B](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxIV-A](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxIV-B](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxV-A](#); [ICC-01/05-01/13-2081-Conf-Exp-AnxV-B](#).

<sup>424</sup> *Vujin* Contempt AJ, p. 5.

cases, despite the fact that its Statute and Rules of Procedure and Evidence are similarly silent about the matter.<sup>425</sup>

166. The Registry's authority to take such action is clear in the Rules. Under rule 21(2), the Registry has the responsibility to "maintain a list of counsel who meet the criteria set forth in rule 22 and the Regulations." A necessary element of that authority is power to remove persons from that list who fail to meet those criteria, including compliance with rule 22. Any other interpretation would result in absurdity, as it would allow individuals to qualify for the list but commit disqualifying acts without consequence or recourse.

167. The basis on which individuals can be removed from the list is also provided for in the Rules. In part, rule 22(3) mandates that all lawyers on the list comply with the Statute, the Rules, the Regulations, and the Code of Professional Conduct for counsel in performing their duties. A corollary of that principle is that individuals, like **KILOLO**, who violate the Statute through the commission of an article 70 offence or who contravene the Code of Conduct, such as by breaching article 24's prohibition against deceiving or knowingly misleading the Court, are no longer qualified to practice before it.

#### **D. THE PROFESSIONAL BODIES TO WHICH THE CONVICTED PERSONS BELONG SHOULD BE NOTIFIED OF THEIR CONVICTIONS**

168. Apart from **BEMBA**, all of the Convicted Persons have legal backgrounds and/or are members of professional legal bodies. **KILOLO** is a practicing lawyer and member of the Brussels and Lubumbashi Bars since June 2001<sup>426</sup>; **MANGENDA** is also a lawyer by profession, and member of the Kinshasa/Matete bar since December 2004<sup>427</sup>; and **BABALA** and **ARIDO** have law degrees.<sup>428</sup> As part of their professional

<sup>425</sup> See *Vujin* Contempt AJ, p. 5. See also *Vujin* Contempt TJ, para. 172.

<sup>426</sup> See [ICC-01/05-01/13-1989-Red](#), para. 9. See also [CAR-OTP-0085-0204](#); [CAR-OTP-0094-2341](#).

<sup>427</sup> See [ICC-01/05-01/13-1989-Red](#), para. 10. See also [CAR-OTP-0074-0717](#), at 0756, Ins. 1355-1359; [CAR-OTP-0094-2314](#); [CAR-OTP-0072-0114](#); [ICC-01/05-01/13-594-Corr-Red](#), para. 3.

responsibilities as lawyers and law graduates in their respective jurisdictions, are the duties of candour and honesty to the Court violated in this case. **BABALA** is also a member of the DRC government and equally incurs other professional responsibilities consistent with that position.

169. As the Convicted Persons are each in positions of trust requiring high levels of ethical conduct and integrity, the respective professional bodies under which they operate should assess the Convicted Persons qualifications in light of their current convictions. For this reason, the professional bodies to which they belong should be notified of this Chamber's Judgment and impending Sentencing decision.

## VIII. CONCLUSION

### *Recommended Sentence for Jean-Pierre Bemba Gombo*

170. For the aforementioned reasons, the Prosecution recommends that **BEMBA** be sentenced to a joint sentence of eight (8) years imprisonment, or alternatively, to a singular sentence of five (5) years imprisonment, to be served consecutively to his sentence in the Main Case and fined in accordance with rule 146.

### *Recommended Sentence for Aimé Kilolo Musamba*

171. For the aforementioned reasons, the Prosecution recommends that **KILOLO** be sentenced to a joint sentence of eight (8) years imprisonment, or alternatively, to a singular sentence of five (5) years imprisonment, and fined in accordance with rule 146. The Registry should be further directed to remove **KILOLO** from its List of Assigned Defence Counsel and to notify the Brussels and Lubumbashi Bars of the article 74 judgment and the sentence imposed against **KILOLO**.

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<sup>428</sup> [ICC-01/05-01/13-596-Conf](#), para. 14; [CAR-D24-0001-0032-R01](#), at 0033.

Recommended Sentence for Jean-Jacques Mangenda Kabongo

172. For the aforementioned reasons, the Prosecution recommends that **MANGENDA** be sentenced to a joint sentence of seven (7) years imprisonment, or alternatively, to a singular sentence of five (5) years imprisonment, and fined in accordance with rule 146. The Registry should further be directed to notify the Kinshasa/Matete bar of the article 74 judgment and the sentence imposed against **MANGENDA**.

Recommended Sentence for Fidèle Babala Wandu

173. For the aforementioned reasons, the Prosecution recommends that **BABALA** be sentenced to a joint sentence of three (3) years imprisonment, or alternatively, to a singular sentence of (3) years imprisonment, and fined in accordance with rule 146.

Recommended Sentence for Narcisse Arido

174. For the aforementioned reasons, the Prosecution recommends that **ARIDO** be sentenced to a joint sentence of five (5) years imprisonment, or to alternatively, a singular sentence of (5) years imprisonment, and fined in accordance with rule 146.




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**Fatou Bensouda, Prosecutor**

Dated 12<sup>th</sup> Day of December 2016  
At The Hague, The Netherlands