

## **I. Introductory remarks**

1. By way of background, on 19 October 2016, the five accused in this case were found guilty of offences against the administration of justice related to intentionally corruptly influencing witnesses and soliciting, inducing or assisting the false testimonies of 14 defence witnesses in the other case against Mr Bemba at the ICC. On 22 March 2017, this Chamber delivered the sentences in the present case.
2. On 8 March 2018, the Appeals Chamber issued its judgments on the convictions and sentences. The Appeals Chamber upheld all convictions entered under Articles 70(1)(a) and (c) of the Statute and reversed all convictions entered under Article 70(1)(b) of the Statute.
3. For Mr Babala and Mr Arido, the Appeals Chamber confirmed their sentences. This means that their convictions and sentences are both final.
4. For Mr Bemba, Mr Kilolo and Mr Mangenda, the Appeals Chamber reversed and remanded their sentences to this Chamber for a new determination.
5. Today, the Chamber issues its re-sentencing decision for Mr Bemba, Mr Kilolo and Mr Mangenda. This is just a summary of the Chamber's decision. The written decision alone is authoritative.

## **II. Relief sought**

6. The Prosecution requests the Chamber to sentence the three convicted persons to the statutory maximum sentence of five years of imprisonment each and would additionally welcome a substantial fine.
7. Following Mr Bemba's acquittal in the Main Case, the Bemba Defence now requests 'a complete discharge following payment of a reasonable fine to the Trust Fund for victims'.

8. The Kilolo Defence requests the Chamber to refashion Mr Kilolo's sentence so as to keep his original sentence intact. This would entail a time-served imprisonment term of 11 months and a 30,000 Euro fine.
9. The Mangenda Defence requests that Mr Mangenda's new sentence should be reduced to time served, noting that Mr Mangenda had been previously detained in the present case for just over 11 months.
10. The Chamber will first pronounce its new joint sentences, and then summarise the basis for them:
  - For Mr Mangenda, the Chamber sentences him to a total of 11 months of imprisonment. After deduction of the time he previously spent in detention, the Chamber considers his sentence of imprisonment as served.
  - For Mr Kilolo, the Chamber sentences him to a total of 11 months of imprisonment. After deduction of the time he previously spent in detention, the Chamber considers his sentence of imprisonment as served. The Chamber further imposes a fine on Mr Kilolo of 30,000 euros.
  - For Mr Bemba, the Chamber sentences him to a total of 12 months of imprisonment. After deduction of the time he previously spent in detention, the Chamber considers his sentence of imprisonment as served. The Chamber further imposes a fine on Mr Bemba of 300,000 euros.

### **III. New joint considerations**

11. In reaching these sentences, the Chamber has re-assessed all sentencing factors again. When the Chamber considered that its prior considerations remained accurate, it incorporated the reasoning from the prior sentencing decision. As the Chamber has said in the past, re-

sentencing is not an opportunity to re-litigate matters which have been definitively resolved by the Appeals Chamber Judgments.

12. The Appeals Chamber Judgments found errors only on limited points, particularly in relation to: (i) the assessment of the nature of the false testimony going to non-merits issues; (ii) the justification for distinguishing principal from accessorial liability in this case; (iii) the Chamber's power to suspend sentences; and (iv) entering convictions under Article 70(1)(b) of the Statute.
13. Before summarising its new considerations in light of these points, the Chamber preliminarily addresses certain Prosecution's arguments in relation to the Main Case acquittal of 8 June 2018. The Prosecution submits that the corrupted and tainted evidence introduced by the convicted persons affected the Main Case appeal proceedings. The Prosecution argues that the acquittal evidences the damage caused by the conduct of the convicted persons and constitutes an aggravating circumstance.
14. The Chamber recalls that this case has been clearly understood as independent from the Main Case. This means that none of the Chamber's evidentiary findings in this case were affected by the Main Case appeal judgment in any way. This also means that, in order to evaluate to what extent the corrupted witnesses affected the merits of the Main Case, the Chamber would inevitably need to assess the Main Case record. Doing so would be tantamount to disregarding the Chamber's consistent directions in this case.
15. Further, there is absolutely no indication that the Appeals Chamber Majority in the Main Case relied upon the corrupted witnesses.

16. The Prosecution manifestly fails to establish any causation between what the three convicted persons were convicted of and the outcome of the Main Case appeal judgment. This means that the Chamber cannot consider the Main Case acquittal as aggravating the new sentences to be imposed in the present case.

**A. Nature of the unlawful testimony**

17. As to the assessment of the nature of the false testimony going to non-merits issues, and for reasons explained in the written decision, the Chamber now considers that the independence of the cases warrants not giving weight to the fact that the false testimony went only to 'non-merits' issues.

18. However, despite specifying that the false testimony went only to 'non-merits' issues, the prior Sentencing Decision did otherwise give appropriate weight to the importance of the issues on which false testimony was given. These issues were determined to be 'of crucial importance when assessing [...] in particular, the credibility of witnesses'. The Chamber also emphasised that these issues 'provide indispensable information and are deliberately put to witnesses with a view to testing their credibility'. So, this error has only a relatively small effect on the new sentences to be imposed.

**B. Modes of liability (degree of participation and intent)**

19. As to the justification for distinguishing principal from accessorial liability in this case, the Chamber appreciates that the differences in principal and accessorial liability in this particular case do not lead to much of a distinction in the appropriate sentences to be imposed on Mr Bemba and Mr Kilolo. Mr Bemba and Mr Kilolo are responsible for both

the Article 70(1)(a) and (c) offences on the basis of essentially the same acts and conduct.

20. Mr Mangenda's situation is different. The Prosecution did not appeal this point in reference to Mr Mangenda. Even if the Chamber did extend the same considerations above to Mr Mangenda, Mr Mangenda is the only one of the three convicted persons who was not convicted under Article 70(1)(a) in respect of all 14 corrupted witnesses. Mr Mangenda was convicted in respect of only nine of these 14 witnesses, and the Chamber considers that this, together with all other factors, still needs to be duly reflected in a lower Article 70(1)(a) sentence relative to his Article 70(1)(c) sentence.

**C. Loss of the power to suspend sentences**

21. As to the loss of the Chamber's power to suspend sentences, although the suspension conditions imposed by the Chamber no longer carry any legal force with regard to Mr Kilolo and Mr Mangenda, they abided by all of them for about half the time period set out by the Chamber in the Sentencing Decision (1.5 years out of the imposed three years). The Chamber considers their conduct while released on suspended sentences must be taken into account for their new sentences, making a time served penalty (i.e. imprisonment of about 11 months) more appropriate.
22. This is consistent with the non-custodial penalty originally imposed by the Chamber. Mr Kilolo was given a 30-month joint sentence and Mr Mangenda a 24-month joint sentence. But the remaining terms of imprisonment beyond what had already been spent in detention were suspended. This meant that the additional time given in the Sentencing Decision served only as an incentive to prompt compliance with the conditions of the suspended sentences. Mr Kilolo and Mr Mangenda

have met all the conditions of their suspended sentences to date, and there is no indication that they would not have continued to meet them.

23. In this regard, it is emphasised that the Appeals Chamber directed this Chamber to make a new sentencing determination, not to treat the old sentences as 'unsuspended' and adjust them only from that starting point. If the only outcome of the Appeals Chamber's findings had been to require that Mr Kilolo and Mr Mangenda serve at least their original sentences without suspension, then it stands to reason that the Appeals Chamber would have returned them to custody following its Sentencing Judgment. It did not do so, suggesting that the prospect of a non-custodial penalty for Mr Kilolo and/or Mr Mangenda was not foreclosed by its reasoning.

**D. Article 70(1)(b) convictions**

24. As to the loss of the Article 70(1)(b) convictions, it is self-evident to the Chamber that the loss of the Article 70(1)(b) convictions should have some effect on their joint sentences. This is a direct consequence of the application of Article 78(3), first sentence, of the Statute. In view of the fact that the offences in the present case were characterising essentially the same acts and conduct of the three convicted persons in three different ways under Article 70(1)(a), (b), and (c) of the Statute, the loss of one of the three convicted offences should not lead to anything approaching a proportional reduction in the sentences to be imposed. But the Chamber does consider that this loss must be taken into account.

**IV. Final conclusions**

25. The Chamber considers that the combined effect of these considerations is that, when re-sentencing: (i) Mr Bemba and Mr Kilolo have been given

the same term of imprisonment under Article 70(1)(a) and (c) of the Statute; (ii) Mr Mangenda's Article 70(1)(a) sentence remains proportionately lower than his Article 70(1)(c) sentence; (iii) Mr Kilolo and Mr Mangenda have been given non-custodial penalties; and (iv) the individual sentences under Article 70(1)(b) are discarded entirely.

#### **A. Joint sentences**

26. More broadly speaking, the Chamber is not convinced that its original joint imprisonment sentences, properly understood, require substantial change following the Appeals Chamber judgments in this case. Many of the Chamber's new considerations cut in opposing directions and, to an extent, cancel each other out. This leads to a result akin to what was pronounced in the original Sentencing Decision.
27. As regards Mr Bemba's original 12 month joint sentence in particular, the Chamber notes that, following Mr Bemba's Main Case acquittal, the Bemba Defence requests that the Chamber only impose a reasonable fine with no imprisonment term. The Chamber recalls its finding that the Main Case acquittal has no impact on the sentences to be imposed, and considers that it would not adequately reflect Mr Bemba's culpability for him to have no term of imprisonment declared against him.
28. Beyond the terms of imprisonment given to Mr Bemba and Mr Kilolo, the Chamber has concluded that the most appropriate way to reflect that they have been convicted for two distinct offences is through the use of fines. Given that Mr Bemba has considerably more means than Mr Kilolo, Mr Bemba's fine would need to be substantially higher in order to have an equivalent deterrent effect. For Mr Mangenda, the Chamber recalls the additional considerations unique to him which justify a lower sentence. Considering the combined effect of all these considerations

warrants setting joint imprisonment only as high as his highest individual imprisonment term, with no further penalty.

### **B. Proportionality**

29. As a final consideration, the Chamber will address the Prosecution's submissions that, above and beyond the errors found by the Appeals Chamber, the sentences previously imposed – and now effectively reimposed – are manifestly disproportionate.
30. Determining sentences is not a natural science. For all the guidance provided by the statutory framework, it inevitably falls to the judges to make a personal decision on what is a fair penalty. This explains why trial chambers have broad discretion in determining a sentence. In its newly determined sentences, the Chamber considers it immaterial that its conclusions result in certain terms of imprisonment being reduced following the Prosecution's successful appeal. What matters is setting appropriate and proportionate sentences under the circumstances – the Appeals Chamber remanded the sentences for a new determination, and not to set a higher sentence *per se*.
31. The Chamber places special emphasis on the fact that the three convicted persons have been imprisoned for significant periods of time in the present case. The case has had significant effects on their professional reputations, financial circumstances (irrespective of any fines) and family circumstances. The Chamber sees a large deterrent effect in the very notion that persons working on an ICC defence team could be arrested, put in detention for a significant period of time, and convicted for criminal conduct in the course of their work. Future accused persons can look at Mr Bemba's conviction as a cautionary example as to what consequences obstructing the course of justice can

have. Mr Bemba's acquittal in the Main Case should have been the end to his exposure to the Court, yet he continues to have the spectre of this institution hanging over him because of his obstruction of the administration of justice. Maximum prison sentences are not necessary for this case to matter.

32. The Chamber considers that the penalties it imposes during re-sentencing are proportionate relative to the seriousness of the offences in this case and reflect all relevant factors set out previously, especially as regards mitigating factors. More broadly, the Chamber considers that the Prosecution fails to appreciate the full retributive and deterrent effect of what has already been done.