Cour
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International
Criminal
Court

Original: **English**

No.: **ICC-01/05-01/13**
Date: **6 July 2016**

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, AIME KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU AND NARCISSE ARIDO

Public Redacted Document
with
Confidential Annexes A-L

Public redacted version of "Prosecution's Application for Warrant of Arrest", 19 November 2013, ICC-01/05-01/13-19-Conf

Source: **The Office of the Prosecutor**

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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REGISTRY

Registrar Mr Herman von Hebel	**Counsel Support Section**
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I. Introduction

1. The Office of the Prosecutor ("Prosecution") requests the Single Judge of Pre-Trial Chamber II to issue warrants of arrest under Article 58 (1) of the Rome Statute ("Statute") for: (i) Jean-Pierre BEMBA GOMBO ("BEMBA"), (ii) Aimé KILOLO MUSAMBA ("KILOLO"), (iii) Jean-Jacques MANGENDA KABONGO ("MANGENDA"), (iv) Fidèle BABALA WANDU ("BABALA") and, (v) Narcisse ARIDO ("ARIDO") for offenses committed against the administration of justice under Article 70 of the Statute.

2. The evidence submitted with this Application establishes reasonable grounds to believe that the above named individuals have committed the crimes of corruptly influencing witnesses and knowingly presenting false evidence. With the exception of BEMBA, who is presently in the Court's custody, their arrest is necessary to (i) ensure their appearance at trial, (ii) ensure that they do not obstruct or endanger the investigation or the court proceedings; or (iii) prevent them from continuing with the commission of the crime.

II. Concise statement of Article 70 offences committed by Jean-Pierre BEMBA GOMBO and his associates (Article 58 (2) (c))

3. The evidence shows the existence of an on-going scheme, likely begun in early 2012, to provide benefits to Defence witnesses in exchange for false testimony and false documents in the case The Prosecutor *v*. Jean-Pierre Bemba Gombo ("Main Case") in violation of Article 70 (1) (a) (c) of the Statute.

4. In particular BEMBA orchestrated the scheme which involved Defence team members KILOLO (lead counsel) and MANGENDA (case manager); BABALA (a close confidant of BEMBA within the political leadership of the *Mouvement de*

Libération du Congo (''MLC''), Caroline Wale BAMANISA BEMBA ("Caroline BEMBA"), BEMBA's sister; and Robert NGINAMAU ("NGINAMAU"), allegedly Democratic Republic of Congo (''DRC'') parliamentarian.

5. Western Union records (attached at Annex B) reveal that consistent and important money transfers took place among the above-mentioned individuals. KILOLO and MANGENDA received regular funds from BABALA, Caroline BEMBA, and NGINAMAU. Between February 2010 and March 2013, KILOLO has received a total of at least US $92,318.88 from BABALA, NGINAMAU and Caroline BEMBA via Western Union. During the period of February 2011 and April 2013, MANGENDA has received a total of at least US $30,774.66 from BABALA, Caroline BEMBA, NGINAMAU and Jean-Pierre SINGO, another close associate of BEMBA through the same channel. Some of these funds were used to bribe Defence witnesses to testify falsely and procure false documents.

6. Western Union records show that KILOLO, BABALA, NGINAMAU, and [REDACTED] Joachim KOKATE ("KOKATE") transferred money to at least nine Defence witnesses.

7. Additionally, the Western Union records show that KILOLO and MANGENDA received large payments on dates coinciding with the dates of testimony of several witnesses in The Hague. In turn, payments to Defence witnesses coincided with the period immediately preceding and/or following their testimonies.[1]

[1] Annex B. For instance, [REDACTED] (CAR-D04-PPPP-0057), whose relative received US $655 from BABALA on 16 October 2012, testified from 17-19 October 2012. [REDACTED] (D-64) was paid once directly and his relative in Sweden received money immediately prior to [REDACTED] testimony in The Hague.

8. BEMBA was able to orchestrate and manage this scheme from the Detention Centre through his contacts with KILOLO. In fact, BEMBA and KILOLO circumvented the Registry's monitoring system to discuss matters with third parties under the cloak of the lawyer-client communication privilege. This allowed BEMBA to give instructions to BABALA and KILOLO on payments in the bribery scheme and to corruptly influence witnesses directly.

a. Money transfers to Defence witnesses

9. The information obtained from Western Union and Express Union of Cameroon shows that money transfers were effected to the following Defence witnesses:

- [REDACTED] (D-52) received a total of at least US $6,935.40 from KILOLO, BABALA, NGINAMAU, and Caroline BEMBA during the period 11 August 2011 to 1 October 2012;
- Narcisse ARIDO (D-11) received a total of US $8,257.13 from KILOLO, BABALA, KOKATE and NGINAMAU from 27 January 2012 to 22 September 2012;
- Octave DIOBA (D-59) received a total of US $7,053.00 from KILOLO and BABALA on 10 July 2012 and 30 August 2012;
- [REDACTED] (D-64) received US $106.14 from KILOLO on 14 June 2012. [REDACTED]'s relative received US $700.00 from NGINAMAU on 17 October 2012;
- [REDACTED] (D-57) received US $106.14 from KILOLO on 14 June 2012. [REDACTED]'s relative received US $655.00 from BABALA on 16 October 2012;
- [REDACTED] (D-45) received US $300.00 from KILOLO on 21 July 2012;
- [REDACTED] (D-38) received a total of US $203.22 from KOKATE on 11 and 13 June 2012;

- [REDACTED] (D-7) received US $200 from KILOLO on 21 July 2012. He also received CFA 710,000 from ARIDO on 22 July 2011 and 21 September 2011 via Express Union of Cameroon;
- [REDACTED] (D-55) received US $130.11 from KILOLO on 5 October 2012;
- [REDACTED] (D-4) received CFA 180,000 from ARIDO on 19 January 2012 via Express union.

Annex B sets forth all of the payments made to Defence witnesses.

10. To determine whether payment transactions described above could be legitimate, the Prosecution requested Trial Chamber III to order the Registry to release information on the payments made by the Victims and Witnesses Unit ("VWU") to the Defence witnesses.[2] However, an analysis of this information[3] failed to yield any legitimate explanation for the money transfers via Western Union and Express Union from BEMBA's associates to Defence witnesses or their relatives.

11. Further, upon questioning, Defence witnesses under oath before the Court uniformly denied receiving payments from any person, including any member of the Defence.[4] However, acceptance of a Western Union payment requires physical presence at a Western Union location and valid identification by the person to whom the payment is addressed.

[2] ICC-01/05-01/08-2412-Conf-Exp, Prosecution's Request for Record of Payments made by the Registry to Witnesses called by the Defence of Mr. Jean-Pierre Bemba Gombo, 15 November 2012.
[3] ICC-01/05-01/08-2481-Conf-Exp, Victims and Witnesses Unit's Transmission of Information Requested by the Office of the Prosecutor Following the Decision on the Registry's observations on the prosecution's request relating to Article 70 Investigations (ICC-01/05-01/08-2461-Conf-Exp), 13 December 2012.
[4] *See e.g.* Testimonies of [REDACTED] (ICC-01/05-01/08-T-258-CONF-ENG CT, 19 October2012, p. 2, line 25 to l p. 3, line 10), [REDACTED] (ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012, p. 6, lines 14-23), [REDACTED] (ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p. 10, line 15 to p. 11, line 2), [REDACTED] (ICC-01/05-01/08-T-265-CONF-ENG ET, 30 October 2012, p. 15, lines 1-18).

b. Fabrication of false documents

12. Based on the chain-of-custody information provided by the BEMBA Defence, ARIDO handed over 14 documents to KILOLO on 21 February 2012.[5] These documents, which purport to contain governmental instructions and messages from former or existing Central African Republic (''CAR'') authorities, were included in the list of documents to be relied upon during the presentation of the Defence case.

13. The Prosecution took steps to investigate the authenticity of these documents and to this end interviewed two of the purported authors of the 14 documents. Both the individuals interviewed provided statements and information that establish that all the 11 documents supposedly signed or authored by them are forgeries.

14. As stated above, ARIDO received a total of US $8,257.13 from KILOLO, BABALA, KOKATE and NGINAMAU during a time span ranging from right before the delivery of the forged documents to his expected testimony.[6]

c. Coaching witnesses to provide false testimony

15. Call Data Records (''CDR''), provided by the Dutch authorities, show that KILOLO called sworn Defence witnesses located in Brazzaville, Republic of Congo and under the control of the VWU, from 20-24 August 2013.[7]

16. Pursuant to the Single Judge's order,[8] the VWU clarified whether KILOLO had a specific authorisation to contact Defence witnesses during overnight

[5] Annex G.1, Screenshot of Ecourt chain of custody listing ARIDO as the provider of the documents. The documents in question are: CAR-D04-0003-0128, CAR-D04-0003-129 CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-134, CAR-D04-0003-0135, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139, CAR-D04-0003-0140, CAR-D04-0003-141.
[6] Narcisse ARIDO, after obtaining a visa, failed to travel to The Hague to give testimony in September 2012.
[7] Annex H.1.

adjournments of their testimonies.[9] They confirmed that he did not. Over the course of multi-day testimonies Defence witnesses have often changed their testimony overnight.[10] Additionally, a report made by the Independent Counsel assigned by the Single Judge to monitor the content of Kilolo's intercepted phone calls establishes that KILOLO has contacted and coached witnesses during the evenings regarding testimony the witnesses gave the next day.[11]

III. The Suspects

A. Jean-Pierre BEMBA GOMBO

a. Identification of the suspect under Article 58(2) (a)

17. Jean-Pierre BEMBA GOMBO was born on 4 November 1962 and is a national of DRC.

18. On 23 May 2008, BEMBA was arrested by the Belgian authorities pursuant to a Warrant of Arrest issued by Pre-Trial Chamber III, and surrendered to the International Criminal Court (''ICC'') on 3 July 2008. He has since been detained at the ICC Detention Centre while he stands trial before Trial Chamber III for crimes against humanity and war crimes.

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[8] ICC-01/05-62-Conf-Exp, Decision on the Prosecutor's "Third request for judicial order to obtain evidence for investigation under Article 70", 10 October 2013.
[9] Annex K.13. .
[10] *Compare* ICC-01/05-01/08-T-332-Conf-Eng ET, 20 August 2013, p. 79-80 (Defence witness D-26 states and confirms to the Presiding Judge that Bozize troops arrived in Bangui, CAR on 25 November 2002) *with* ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p. 63 (Defence witness D-26 changes his testimony to state that Bozize troops arrived on 25 October 2002). This inconsistency would not necessarily be explained by coaching but for the fact that the witness later denied having been contacted by anyone between his days of testimony on 20 August 2013 and 21 August 2013, a statement which was false according to KILOLO's CDR. *See* ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, pp. 68-69.
[11] ICC-01/05-64-Conf-Exp, Premier rapport du Conseil indépendant (période du 15 au 30 août 2013), 25 October 2013.

b. Crimes committed by Jean-Pierre BEMBA GOMBO (Article 58 (2) (b))

19. There are reasonable grounds to believe that BEMBA is individually criminally responsible for the offences of:

i. **Presenting evidence that the party knows is false or forged** under Article 70 (1) (b) read with Article 25 (3) (b) by ordering, soliciting or inducing his associates to present such evidence.

ii. **Corruptly influencing witnesses** under Article 70 (1) (c) read with Article 25 (3) (b) by ordering, soliciting or inducing his associates to pay money to, and coach witnesses.

c. Concise statements of facts pursuant to Article 58 (2) (c)

20. The evidence presented establishes reasonable grounds to believe that BEMBA directs a scheme to bribe and coach Defence witnesses to provide false testimony and false documents in the main case.

21. BEMBA's non-privileged phone conversations with BABALA and excerpts of phone conversations detailed in the Independent Counsel's report show that BEMBA not only is aware, but orchestrates from the Detention Centre the activities performed by his associates. He actively participates in the bribery scheme by giving instruction to his associates on the payments to be done and on the evidence to be provided by the witnesses during their testimonies.

22. BABALA consistently seeks BEMBA's approval for any payment to witnesses. The Detention Centre intercepts show that BEMBA approves the specific amounts of money and the individuals to whom money should be paid. BEMBA provides the financial means to bribe the witnesses and informs BABALA of where the necessary funds for the payments can be found.

23. To implement the large-scale bribery scheme, BEMBA devised a method of bypassing the Registry's monitoring system, to communicate directly with third parties under the guise of privileged communications with his lead counsel. At least 76 three-way conference calls appear in KILOLO's CDR between 24 September 2012 and 13 September 2013.[12] BEMBA and KILOLO are always parties to these conference calls. The third parties include mostly BABALA, (although BEMBA is able to call BABALA directly), and in some instances MANGENDA. The records also show that BEMBA spoke directly to at least three Defence witnesses during conference calls.[13]

24. On many occasions, when talking to BABALA, BEMBA mentioned the option of speaking "on the other line" to discuss another matter.[14] For instance, the recordings of a phone call on 22 November 2012 show BEMBA directing the use of the method in question:[15] he instructed BABALA to "use the channel you know" (KILOLO's phone line) the next day or later if there was anything else [to discuss]. Later on that day BEMBA, KILOLO and BABALA talked in a three way conference call.[16]

25. Indicative of BEMBA's criminal conduct is also the fact that BEMBA uses codes in Lingala and French whenever he discusses aspects of the instant trial or any matters related to finances with BABALA and Caroline BEMBA. Yet BEMBA and his interlocutors speak in plain language to discuss any other subject. In some instances,

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[12] Annex H.1.

[13] Annex H.1, Call Data Records of KILOLO, [REDACTED]…. BEMBA spoke to [REDACTED] (CAR-D04-PPPP-0021) prior to his testimony at least 9 times via KILOLO, on 2 November 2012 at 11:24:08, 18:16:19; on 6 November 2012 at 16:42:55 and 19:59:18; 8 November 2012 at 19:39:38; 19 November 2012 at 16:27:42; 20 November 2012 at 19:27:34; 28 February 2013 at 14:43:01 and 20:04:50. BEMBA spoke to [REDACTED] (CAR-D04-PPPP-0019) on 11 July 2013 at 12:26:58, after he had testified. BEMBA spoke to [REDACTED] (CAR-D04-PPPP-0042) on 21 November 2012 at 14:21:06. The Defence subsequently withdrew [REDACTED] from their witness list.

[14] Annex I.1., Phone call 2013/000045759 on 05 February 2011.

[15] Annex I.1., Phone call 2013/000035136 on 22 November 2012.

[16] Annex H.1, BEMBA, KILOLO, and BABALA started a conference call on 18:37:28 on 22 November 2012.

BEMBA warned BABALA to be careful about his language, as they were talking over the phone.[17] While talking to BABALA, BEMBA referred to the codes they had set up and reminded BABALA to use them.[18] The decryption of several of those codes, however, allowed the Prosecution to understand the contents of relevant phone conversations.[19]

26. The evidence submitted demonstrates not only BEMBA's awareness of the money transfers, but clarifies his crucial role regarding the payments to Defence witnesses. The contents of some phone conversations between BEMBA and BABALA establish that BEMBA is constantly informed of money transfers among his associates.[20]

27. The Independent Counsel's report confirms this. It reflects, for example, that on 23 August 2013, KILOLO informed BEMBA of the circumstances of a money transfer via Western Union. BEMBA enquired with KILOLO as to why someone involved in the matter did not comply with the instructions received.[21]

28. Recordings of other phone calls between BEMBA and BABALA clarify how the bribery scheme operates with regard to paying off Defence witnesses. In a phone

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[17] Annex I.1., Phone call 2013/000034778 on 15 September 2012.
[18] Annex I.1., Phone call 2013/000029758 on 18 January 2013.
[19] For instance, in a phone conversation with BABALA, BEMBA referred to the 1 kg. that someone put on someone's "account". This clarifies that "kg" is the code they use for "money". More specifically, 1 kg. means 1,000 $ in coded language. Annex I.1., Phone call 2013/000035018 on 05 October 2012.
[20] Annex I.1., Phone call 2013/000034810 on 07 September 2012. BABALA told BEMBA "I asked Canon (=[REDACTED]), he said that for them it will be on Monday, it will be available on Monday but my guy told me that he is bringing tonight a total of 10kg; and once it's secured the priority is as you know with the colleague at the top (=Kilolo) and Mama Leki". The following Monday 10 September 2012, KILOLO received $3,601.60 from NGINAMAU via Western Union. *See* Annex B.
Annex I.1., Phone call 2013/000035203 on 13 November 2012. "JPB: Look, do you know Ndokwa? Ndokwa, Ndokwa (=Françoise Ndokwa Bemba) you know her, don't you? JPB: OK, she will give 2kg: 1kg has to go to a person that the colleague at the top (Kilolo) will tell you; and the other kilogramme has to be given to the colleague at the top (Kilolo); do you understand?
[21] ICC-01/05-64-Conf-Exp-Anx, Annexe au premier rapport du Conseil Indépendant, 25 October 2013, page 15. Note, however, that Prosecution counsels [REDACTED] and [REDACTED] were permitted by the Single Judge to listen three audio recordings that unequivocally confirm key contents of the report and provide a strong indication of the general reliability of the report.

call on 28 September 2012, BEMBA instructed BABALA to make a payment to a person that will have to "talk" (likely to a witness).[22]

29. On 16 October 2012, BEMBA instructed BABALA on how to divide a certain amount of money between two individuals referred to with codes ("07" and "the child").[23] BEMBA directed that part of the money had to be given by "the child" to a person referred to as "Bravo Golf". On 30 November 2012, BABALA informed BEMBA that KILOLO had asked for money in order to give it to "the young man". BABALA was seeking BEMBA's approval to pay that money.[24]

30. These phone conversations demonstrate that BABALA conveys requests for payment to BEMBA, and that sometimes BEMBA requests BABALA or his other associates, through BABALA, to transfer money to witnesses. In either case, the evidence establishes that no payments to Defence witnesses are made without BEMBA's approval and authorisation.

31. In a 20 November 2012 phone call,[25] BEMBA instructed BABALA to contact "the little sister" to get 2 kg. (the Prosecution believes to be US $2,000). BEMBA directed that the money be sent to "the child over here for the issue you know". As the conversation was non-privileged, BEMBA would have been aware that it was being recorded and avoided stating the reason for the payment. Further to BEMBA's instructions, the same day, on 20 November 2012, MANGENDA received US $1,866 from BABALA.[26] It is the amount that BEMBA ordered transferred to "the child" (MAGENDA) - 2 kg. = US $2,000 less US $134 in Western Union transaction fees.

[22] Annex I.1., Phone call 2013/000034808 on 28 September 2012. BEMBA instructed BABALA to "give 1kg." to that person.
[23] Annex I.1., Phone call 2013/000034984 on 16 October 2012. BEMBA instructed BABALA "Yes, but I think she has already secured 3; it's now up to 07 (=Fidèle Babala) to take it and send the rest to the child he knows to help with what you know about 10 of Bravo Golf, do you understand?".
[24] Annex I.1., Phone call 2013/000035163 on 30 November 2012.
[25] Annex I.1., Phone call 2013/000035152 on 20 November 2012.
[26] Annex B.

32. On 22 November 2012, BEMBA requested BABALA to contact someone to get "0,5 kg." and then to contact KILOLO for instructions.[27] The evidence collected by the Prosecution shows that BABALA contacted KILOLO and NGINAMAU later on that day.[28] In another phone conversation on 12 February 2013, BEMBA requested BABALA to contact the "young sister" so that money would be sent to "Charly Mike" through "the child".[29]

33. On another occasion BEMBA explicitly instructed BABALA to coach a witness's testimony. During a 28 September 2012 phone conversation, BEMBA told BABALA "you need to tell him how to talk. He has to mention the name of that prophet".[30]

34. This confirms that BEMBA gave orders to BABALA regarding the release of funds and that BEMBA is managing the money.

35. The Independent Counsel's report further establishes that BEMBA is directing KILOLO and MANGENDA's activities to bribe and fabricate Defence witness testimony. On 27 August 2013 KILOLO, calling MANGENDA, inquired about BEMBA.[31] MANGENDA told KILOLO that BEMBA was satisfied since he had realized that a real behind the scenes work had been accomplished.

36. On 30 August 2013, MANGENDA communicated to KILOLO instructions coming from BEMBA with regard to the "preparation" of a witness, identified by the

[27] Annex I.1., Phone call 2013/000035136 on 22 November 2012.
[28] Annex H.2.
[29] Annex I.1., Phone call 2013/000029853 on 12 February 2013.
[30] Annex I.1., Phone call 2013/000034808 on 28 September2012.
[31] ICC-01/05-64-Conf-Exp-Anx, pp. 18-19.

code "[REDACTED]". BEMBA also instructed his associates on how to coach the witness during the preparation for the expected testimony. [32]

37. The scheme orchestrated by BEMBA clearly aims for him to benefit from coached testimonies calculated to exonerate him from criminal responsibility in the main case. All of the individuals carrying out activities in the furtherance of the bribery scheme have close ties to BEMBA. The nature of the relationships between BEMBA, his close associates, and his sister, is further clarified during the phone conversations between BEMBA and BABALA. BEMBA has significant authority and influence over his associates that prompt them to obey instructions coming from him.

38. Based on the above, reasonable grounds exist to believe that BEMBA ordered, solicited or induced the acts performed by his associates within the bribery scheme. BEMBA is consequently responsible under Article 25 (3) (b) for all the offences under Article 70 (1) (b) and (c) committed by his associates.

d. Necessity of arrest (Article 58 (1) (b) and Article 58 (2) (e))

39. The issuance of an arrest warrant for BEMBA is necessary to (i) ensure his appearance at trial; (ii) ensure that he does not obstruct or endanger the investigation or the court proceedings; and (iii) prevent him from continuing with the commission of the same crimes or related crimes which are within the jurisdiction of the Court and which arise out of the same circumstances. The Prosecution is fully aware that BEMBA is currently in pre-trial detention. However the Prosecution submits this request to ensure that, independently from the main proceedings, there are reasonable grounds for BEMBA's continued detention.

[32] ICC-01/05-64-Conf-Exp-Anx, pp. 21-22.

40. BEMBA's arrest is necessary. First, there are reasonable grounds to believe that BEMBA will not appear for trial unless he is in custody. Taking into consideration BEMBA's past political position and current political connections, assistance from MLC supporters, his international contacts and professional background, BEMBA has the necessary network and the financial means to flee. The commission of the crimes for which arrest warrant is sought indicate that BEMBA has easy access to substantial funds. If not in detention, BEMBA would be able to travel and abscond to non-state parties that would have no legal obligation to transfer him to the Court.

41. Second, given his past conduct, the funds and resources that BEMBA still appears to have at his disposal, and the assistance of his close associates, it is reasonable to conclude that BEMBA may likely obstruct and endanger investigations and court proceedings. BEMBA has demonstrated his ability to obstruct the course of justice although in custody. Needless to say, this ability would greatly increase, should BEMBA not be in custody and should there not be more restrictions imposed on him.

42. BEMBA's arrest will prevent him from continuing with the commission of crimes under Article 70. The evidence supporting this application demonstrates BEMBA's determination and willingness to engage in this type of criminal conduct, although already in custody. It therefore appears that, if not detained, with no movements and communication restrictions, BEMBA would be even more able and determined to commit further offenses against the administration of justice.

B. Aimé KILOLO MUSAMBA

43. Aimé KILOLO MUSAMBA is BEMBA's lead counsel in the Main Case. He resides [REDACTED], Belgium and works at the premises of the Court. KILOLO's date of birth is 1 January 1972. He is a national of the DRC. KILOLO has been a member of the Brussels Bar since 26 June 2001.

a. Specific Reference to Crimes Committed

44. There are reasonable grounds to believe that KILOLO is individually criminally responsible for the offences of:

i. **Presenting evidence that the party knows is false or forged** under Article 70 (1) (b) read with Article 25 (3) (a) by knowingly presenting forged and false documents to the Court during the trial proceedings in the Main Case.

ii. **Corruptly influencing witnesses** under Article 70 (1) (c) read with Article 25 (3) (a) by bribing and coaching witnesses to provide false testimony in Court in the Main Case.

b. Concise Statement of Facts

45. The evidence establishes the existence of a scheme to bribe and coach Defence witnesses to provide false testimony and false documents. BEMBA directs the scheme from the ICC Detention Centre. KILOLO makes bribery payments to Defence witnesses, coaches Defence witnesses to provide false testimony in Court, and knowingly submitted false documentary evidence in Court.

46. KILOLO has received at least US $92,318.88 from BEMBA associates involved in the scheme to corruptly influence witnesses.[33] And KILOLO has paid at least US $9,799.52 to eight Defence witnesses as part of the scheme.[34]

47. KILOLO submitted false documentary evidence in Court in the Main Case. On 16 August 2012 KILOLO submitted 14 false documents which he claims were provided in an electronic format to BEMBA's Defence team by ARIDO.[35] However, the Defence was unable to provide the originals for inspection.[36]KILOLO and others in the scheme have paid ARIDO at least US $8,257.13.[37] On 6 September 2012, the Prosecution put the Defence on notice of the evidence demonstrating that the documents are false.[38]

48. The CDR provided by the Dutch authorities shows that KILOLO called sworn Defence witnesses located in Brazzaville, Republic of Congo and under the control of the VWU, from 20-24 August 2013.[39] On 20 August 2013, minutes before stepping into Courtroom I, on four occasions KILOLO contacted Defence witness [REDACTED], CAR-D04-PPPP-0026 ("D-26"). D-26 started his testimony via video-link from Brazzaville, in the afternoon on 20 August 2013. KILOLO contacted D-26 later that evening and spoke for approximately 23 minutes. D-26 continued his testimony the next day. KILOLO contacted D-26 again on 22 August 2013 and spoke for 25 minutes. D-26 finished his testimony the next day on 23 August 2013.

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[33] Annex C.3, KILOLO Summary WU, tab "K IN". *See* also Annex B.4.under tab "A MUSAMBA", *see* Annex B.6. under tab "Aime K MUSAMBA" containing the original Western Union spreadsheets.
[34] *Ibid.*
[35] ICC-01/05-01/08-T-231-CONF-ENG ET, 16 August 2012, p. 59, line 5 to p.60, line 1. See also Annex F, Screenshot of Ecourt chain of custody listing ARIDO as the provider of the documents.
[36] Annex F.1. *See* also Annex D containing the 14 false documents and Annexes E.1 and E.4 two statements from the purported authors stating the false nature of the documents *and* Annex E.2. an order dated 16 January 2003 showing the appointment of Colonel Gambi to the position of Chief of Staff. Note that Gambi was a colonel and not a brigadier general as depicted in the false documents.
[37] Annex C.3, KILOLO Summary WU, tab "K IN". *See* also Annex B.4.under tab "A MUSAMBA", Annex B.6. under tab "Aimé K MUSAMBA" containing the original Western Union spreadsheets.
[38] ICC-01/05-01/08-2301-Conf, Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012, 6 September 2012.
[39] Annex H.1.

49. The Independent Counsel's report confirms KILOLO's engagement in fabricating witness testimony.[40] Using MANGENDA's mobile phone, KILOLO contacted Defence witness D-26 between 11:00 and 11:30 during the half-hour morning recess of Court on 20 August 2013.[41] D-26 started his testimony at 15:11 on 20 August 2013.[42] KILOLO told D-26 how to testify and what matters he should mention during his testimony.[43] KILOLO provided D-26 with dates, place names, names of persons and their respective positions in the Bozizé rebel group.[44] KILOLO started his questioning of D-26 on 20 August 2013. KILOLO asked questions related to the information he provided to D-26 earlier in the day[45] to which D-26 duly provided the rehearsed answers.[46] During cross-examination, D-26 denied having had contact with any person between 20 and 21 August 2013 regarding his testimony.[47]

50. On 20-21 August 2013 KILOLO also called Defence witness [REDACTED], CAR-D04-PPPP-0023 ("D-23") five times, talking past midnight for a total of approximately 25 minutes. D-23 had started his testimony via video-link from Brazzaville, on the morning of 20 August 2013. He continued his testimony the following day.

51. The Independent Counsel's report establishes that on 26 August 2013 KILOLO and MANGENDA discussed the instructions given to Defence witness [REDACTED] ("D-25").[48] KILOLO asked MANGENDA if the witness followed the

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[40] ICC-01/05-64-Conf-Exp.
[41] ICC-01/05-64-Conf-Exp-Anx, at calls on 20 August 2013.
[42] ICC-01/05-01/08-T-332-ENG ET, 20 August 2013 at p. 54.
[43] ICC-01/05-64-Conf-Exp-Anx, at calls on 20 August 2013.
[44] *Ibid*.
[45] ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p. 63.
[46] *Compare* ICC-01/05-64-Conf-Exp-Anx, at calls on 20 August 2013 *with* ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p. 63.
[47] ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, pp. 68-69.
[48] ICC-01/05-64-Conf-Exp-Anx, at calls on 26 August 2013.

story and MANGENDA replied that the witness followed their story well.[49] KILOLO disagreed with MANGENDA to the extent that KILOLO noted that the witness failed to mention part of the story about an event at PK 12, a location in Bangui.[50]

52. The Prosecution has identified at least 76 three-way conference calls on KILOLO's CDR in the period 24 September 2012 to 13 September 2013.[51] BEMBA and KILOLO are always parties to these calls. BABALA and BEMBA both speak of topics that should only be discussed on "the other line" with "the colleague on high"[52] when talking on calls they know are subject to Registry monitoring.[53]KILOLO is the "the other line" to which BABALA and BEMBA refer.

c. Necessity of Arrest (Article 58 (1) (b) and Article 58 (2) (e))

53. An arrest warrant for KILOLO is necessary under Article 58(1) (b) (i)-(iii).

54. KILOLO is at the premises of the Court during hearings, days surrounding hearings, and during miscellaneous appointments but appears to spend most other days in Belgium. First, there are reasonable grounds to believe that KILOLO will not appear for trial unless compelled to do so by arrest. KILOLO is able to freely travel anywhere he wants to, including unnoticed and without facing any administrative formalities throughout the European Union Schengen area where the free movement of persons is guaranteed, and including to non-state parties, such as Cameroon. This non-state party has no legal obligation to cooperate with the Court. KILOLO likely has contacts in several countries that would enable him to avoid arrest. In addition, KILOLO has access to significant funds. BABALA, NGINAMAU and Caroline

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[49] *Ibid.*
[50] *Ibid.*
[51] Annex H.1.
[52] The code for KILOLO, "the colleague on high" was determined by call patterns of the phone logs and conversations between BEMBA and BABALA. The Lingala phrase used is "colleague ya likolo". Likolo is an anagram of KILOLO.
[53] Annex I.1.,, Phone call 2013/000035136 on 22 November 2012.

BEMBA have both willingly provided KILOLO with funds for the criminal purposes in the past described above on BEMBA's orders and it is likely that any one of them would continue to provide funds to KILOLO to enable him to avoid arrest.

55. Second, with the funds and assistance of BABALA, NGINAMAU, Caroline BEMBA, and others, KILOLO has both the means and opportunity to obstruct and endanger investigations and court proceedings. KILOLO has already demonstrated his willingness unlawfully to interfere with witnesses and there are reasonable grounds to believe that he would do so again – where his personal liberty is at stake.

56. Third, arrest is necessary to prevent KILOLO from continuing with the commission of crimes within the jurisdiction of the Court within the context of current investigations or proceedings, in particular crimes under Article 70. It is clear from attached evidence that KILOLO is continuing to take steps to commit further offenses against the administration of justice.

C. Jean-Jacques MANGENDA KABONGO

57. Jean-Jacques MANGENDA KABONGO is the case manager for BEMBA and resides [REDACTED], The Netherlands. MANGENDA's date of birth is 10 January 1979. MANGENDA is a national of the DRC. MANGENDA is at the premises of the Court during hearings and normal working days.

a. Specific Reference to Crimes Committed

58. There are reasonable grounds to believe that MANGENDA is individually criminally responsible for the offences of:

i. **Presenting evidence that the party knows is false or forged** under Article 70 (1) (b) read with Article 25 (3) (c) by aiding and abetting the presentation of false or forged documents in the Main Case.

ii. **Corruptly influencing witnesses** under Article 70 (1) (c) read with Article 25 (3) (c) by aiding, abetting, or otherwise assisting in the bribing and coaching of witnesses to provide false testimony.

b. Concise Statement of Facts

59. MANGENDA assists both KILOLO and BEMBA to actualize the bribery and witness coaching scheme. MANGENDA received at least US $30,774.66 from BEMBA associates involved in the scheme.[54] MANGENDA has received large Western Union payments on dates that coincide with the dates of testimony of several defence witnesses in The Hague. The Western Union records indicate that payments to these witnesses coincide with the time of their testimonies. For instance, [REDACTED] (CAR-D04-PPPP-0049) testified from 19 to 23 November 2012 and MANGENDA received US $1,866[55] from BABALA on 22 November 2012.[56]Prosper NDOUBA (CAR-D04-PPPP-0065) testified from 14 to 18 September 2012 and MANGENDA received US $1,866 from NGINAMAU on 17 September 2012.[57]

60. The Independent Counsel's report also establishes that MANGENDA acted together with BEMBA and KILOLO to corruptly influence witnesses.[58] KILOLO, using MANGENDA's mobile phone, contacted Defence witness D-26 between 11:00

[54] Annex C.5, MANGENDA Summary WU, tab "M IN". *See* also Annex B.3.,under tab "Kabongo" and Annex B.6. under tab "Jean K Mangenda" containing original Western Union spreadsheets.
[55] This sum is shows that the amount sent was around US $2,000 minus the approximately 7% Western Union transaction fee.
[56] Annex C.5, MANGENDA Summary WU, tab "M IN". *See* also Annex B.3. under tab "Kabongo" and Annex B.6.under tab "Jean K Mangenda" containing original Western Union spreadsheets.
[57] *Ibid.*
[58] ICC-01/05-64-Conf-Exp, Premier rapport du Conseil indépendant (période du 15 au 30 août 2013), 25 October 2013.

and 11:30 during the half-hour morning recess of Court on 20 August 2013.[59] Furthermore, the evidence shows that KILOLO and MANGENDA acted together to corruptly influence witnesses. For example, the Independent Counsel's report establishes that on 26 August 2013 KILOLO and MANGENDA discussed the instructions given to Defence witness D-25.[60] KILOLO asked MANGENDA if the witness followed the story they gave to him and MANGENDA replied that the witness followed the story well.[61] KILOLO disagreed with MANGENDA since according to KILOLO the witness failed to mention part of the story about an event at PK 12, a location in Bangui.[62]

61. The Independent Counsel's report shows that BEMBA is directing KILOLO and MANGENDA's work to fabricate Defence witness testimony and payments via Western Union. On 27 August 2013 MANGENDA told KILOLO that BEMBA was satisfied since he had noticed that "a real behind the scenes work had been accomplished."[63] KILOLO stated to MANGENDA that he gave clear instructions to D-25 to omit from his testimony anything not in the colour red, implying the existence of written instructions to the witness.[64]

62. The Prosecution has identified three-way conference calls on KILOLO's CDR involving third parties like BABALA and in some instances MANGENDA.

c. Necessity of Arrest (Article 58 (1) (b) and Article. 58 (2) (e))

63. An arrest warrant for MANGENDA is necessary under Article 58 (1) (b) (i)-(iii). First, there are reasonable grounds to believe that MANGENDA will not appear

[59] ICC-01/05-64-Conf-Exp-Anx, at calls on 20 August 2013.
[60] ICC-01/05-64-Conf-Exp-Anx, at calls on 26 August 2013.
[61] *Ibid.*
[62] *Ibid.*
[63] ICC-01/05-64-Conf-Exp-Anx, at calls on 27 August 2013.
[64] *Ibid.*

for trial unless compelled to do so by arrest. MANGENDA is able to freely travel anywhere he wants to, including unnoticed and without facing any administrative formalities throughout the European Union Schengen area where the free movement of persons is guaranteed, and including to non-state parties, such as Cameroon. This non-state party has no legal obligation to cooperate with the Court. MANGENDA likely has contacts in several countries that would enable him to avoid arrest. In addition, MANGENDA has access to significant funds. BABALA, NGINAMAU and Caroline BEMBA have all provided MANGENDA with funds for the criminal purposes in the past described above on BEMBA's orders. It is likely that any one of them would continue to provide funds to MANGENDA to enable him to avoid arrest.

64. Second, with the funds and assistance of BABALA, NGINAMAU, Caroline BEMBA, and others MANGENDA has both the means and opportunity to obstruct and endanger investigations and court proceedings. MANGENDA has already demonstrated his willingness to unlawfully interfere with witnesses and there are reasonable grounds to believe that he would do so again where his personal liberty is at stake.

65. Third, arrest is necessary to prevent MANGENDA from continuing with the commission of crimes within the jurisdiction of the Court, in particular crimes under Article 70. It is clear from evidence submitted that MANGENDA continues to take steps to commit further offenses against the administration of justice.

D. Fidèle BABALA

a. Person against whom a warrant of arrest is sought (Article 58 (2) (a))

66. Fidèle BABALA WANDU ("BABALA") was born on 15 April 1956[65] in Kinshasa, DRC.[66] He is a career politician and close associate of BEMBA in the Main Case. BABALA, a DRC national of *Mbala* ethnicity,[67] is married to Nicole LINENGI.[68] He resides in Kinshasa with his family.

67. BABALA is the *Secrétaire Général Adjoint* in charge of political matters for BEMBA's MLC opposition political party.[69] First elected in 2006 as *Député national* for Tshangu in Kinshasa,[70] BABALA is a parliamentarian in the DRC National Assembly.[71] BABALA, a public figure, provides statements and interviews on the state of the main case and acts as the BEMBA's unofficial spokesperson on political issues.

68. Between 2003 and 2006, during BEMBA's tenure as Vice-President of the DRC, BABALA was his *Chef de Cabinet* and principal adviser.[72] A photograph of BABALA is attached as Annex K.14.

b. Crimes committed by BABALA (Article 58 (2) (b))

69. There are reasonable grounds to believe that BABALA is individually criminally responsible for the offences of:

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65 Annex C.2.
66 Annex K.1.
67 *Ibid.*
68 *Ibid.*
69 Annex K.5.
70 Annex K.3.
71 Annex K.4.
72 Annex K.6.

i. **Corruptly influencing witnesses** under Article 70 (1) (c) read with Article 25 (3) (a) by bribing witnesses to provide false testimony in the Main Case.

ii. **Presenting evidence that the party knows is false or forged** under Article 70 (1) (b) read with Article 25 (3) (c) by aiding, abetting, or otherwise assisting in the crime of presenting evidence that he knows is false or forged.

c. Concise statement of facts (Article 58 (2) (c))

70. BABALA is BEMBA's long-time confidant[73] and financial manager. Under instructions from BEMBA, BABALA disbursed money to Defence witnesses and/ or their relatives, KILOLO and MANGENDA. He transferred these funds directly or through NGINAMAU, a trusted partner. NGINAMAU's only direct link to BEMBA appears to be BABALA. BABALA's CDR show several phone calls between him and three Defence witnesses. These calls and payments together demonstrate that BABALA, directly and indirectly through NGINAMAU, corruptly influenced Defence witnesses in exchange for false testimony and false documents on behalf of BEMBA. Following money transfers sent by BABALA or NGINAMAU to the Defence team, additional payments were made to witnesses by KILOLO and used to corruptly influence more witnesses. BABALA's participation in unmonitored telephone conference calls with BEMBA, KILOLO and Defence witnesses reasonably reflect his complete knowledge of the entire bribery and witness coaching scheme.

71. For over 10 years, BABALA has remained a loyal and trusted associate of BEMBA. BABALA worked very closely with BEMBA throughout the latter's political career and during his current incarceration at the ICC Detention Centre. As BEMBA's *Chef-de-cabinet,* BABALA was *Conseiller Principal au Collège Economique au Cabinet du Vice-Président de la République chargé de la Commission Economique et*

[73] Annex K.7.

Financière.[74]The history behind their current relationship has earned BABALA his colloquial title of "*homme de confiance*"[75] or the "wire" through which instructions from BEMBA are passed to various people.[76]

72. The Detention Center's CDR establishes that BABALA spoke almost on a daily basis with BEMBA on the phone. On many occasions, BABALA acts as an intermediary between BEMBA and his family members or the Defence team.[77] In fact, BABALA is the "wire" through which BEMBA's instructions are communicated to his family and political staff.[78]

73. BABALA's role as BEMBA's financial agent despite the latter's official status before the Court as indigent, is further evidence of their close relationship. BABALA, as with Caroline BEMBA, is one of the few people BEMBA trusts with his finances. In October 2009, one year and five months after BEMBA's arrest, for example, BABALA publicly admitted to receiving US $180,000 from BEMBA for the MLC's political campaign in the Equateur Province.[79] Furthermore, on 19 January 2011, using the code word 'coffee' to refer to 'money',[80] BABALA told BEMBA that "I always tell you not to worry about coffee issues".[81]

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[74] Annex K.6.
[75] Annex K.7.
[76] Annex K.1.
[77] *See*, for example: Annex I.1., Phone call 2013/000034801 on 8 September 2012, from 06:48:35 to 06:49:55: "FB: Just one piece of news, [REDACTED] has informed me that [REDACTED] has accepted. [REDACTED] has accepted. JPB: What has he done? FB: [REDACTED] has agreed. JPB: Ah! OK fine. What is it? FB: He didn't tell me. JPB: OK, fine, tell the Colleague at top (=Kilolo) right now." AND 2013/0000636, 30 December 12, at …:00:03:52. JPB: You need to get in touch with the little sister (Caroline) to find someone as you know. FB: I'll call her tomorrow morning - The next day at 07:08am, BABALA sent Caroline BEMBA a text message (See: BABALA's CDR, Annex H.2. on 31/12/2012 at 07:08:06, he sent a text to [REDACTED] (Caroline BEMBA's number). OR: 2013/000029891, 01 February 2013, at 02:50 - ...:"JPB: Do tell the little sister about the problem of [REDACTED] so that she's aware and tell her that her brother will contact her through the other channel. Tonight, now that she is back, she needs to prepare that thing for [REDACTED]. OK."
[78] Annex K.1.
[79] Annex K.2.
[80] ICC-01/05-63-Conf-Exp-AnxA, Prosecution's Report to the Single Judge on provision to the Independent Counsel of list of codes used during telephone conversations and witness calendar, 21 October 2013.
[81] Annex I.1., Phone call 2013/000045783 on19 January 2011 from 07:41:59 to 07:49:17.FB: No problem, I always tell you not to worry about coffee issues.

74. BABALA is a key financier of the bribery and witness coaching scheme. His role is instrumental in securing the funds central to implementing the scheme directed by BEMBA. He acts in co-ordination with NGINAMAU, whose payments to witnesses or to the Defence team are directly attributable to BABALA. NGINAMAU's use of BABALA's telephone number when making certain transfers in relation to the scheme as well as payments he has made following instructions or confirmation from BEMBA to BABALA, underscores their collaboration.

75. Further, the evidence establishes that BABALA speaks to BEMBA almost every day.[82] Talking about his 15 visits to BEMBA at the Detention Centre, BABALA has been quoted as saying: «*Nous y restons deux heures voire quatre, la limite maximale autorisée par le greffe*» and that they speak up to six times per day.[83] BABALA has sufficient knowledge of the telephone system at the ICC Detention Centre, including the recording of conversations.[84] While addressing rumours about a potential political deal between BEMBA and President KABILA of DRC, BABALA stated publicly that the only way such a conversation could have taken place is if he set up the phone call.[85] BABALA and BEMBA discuss DRC politics and other issues in plain language. However, they use code to conceal any issues related to finances or the trial to avoid monitoring by the Registry. Through these codes, BABALA receives directives or confirmation from BEMBA regarding payment of witnesses and money transfers to members of the Defence team. BEMBA has, on occasion, explicitly reminded BABALA that: "You need to know how to speak properly as you know we are on telephone, speak in such a way that we are the only ones to understand; otherwise there's no point to set up codes''.[86]

[82] Annex H.2.
[83] Annex K.1.
[84] *Ibid.*
[85] *Ibid.*
[86] Annex I.1., Phone call 2013/000029758 on 18 January 2013, from 04:53.

76. BABALA implements BEMBA's directives on the scheme. For example, on 14 November 2011, BEMBA told BABALA "I hope that you have not forgotten one to be given to the other side and another one to the top "[87] On the same day, NGINAMAU sent US $1,330.69 to KILOLO.[88] Similarly, on 20 November 2012, BEMBA told BABALA "Did you receive the message from the little sister that you need to see her to take 2kg to send to the child over here for the things you know?"[89] The Prosecution decoded "the child over here" as referring to MANGENDA.[90] On the same day, BABALA sent US $1,866.00 to MANGENDA.[91]

77. Where KILOLO directly requests BABALA to provide funds, BABALA consistently seeks BEMBA's confirmation. On 12 December 2012, for example, BABALA informed BEMBA of KILOLO's request to send US $1,500.00 to MANGENDA, which BEMBA confirmed by saying "Yes, I know".[92] Whilst on 6 February 2013, BABALA sought confirmation from BEMBA about KILOLO's request for funds for some people to which BEMBA responded that he only knew about one person but not the others so he would check with KILOLO first.[93]

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[87] Annex I.1., Phone call 2013/000035197 on 14 November 2012 from 04:07 to 04:19.
[88] Annex B.4 NGINAMAU's payments sent on 14 November 2012 at 06:59:00.
[89] Annex I.1., Phone call 2013/000035152 on 20 November 2012 at 04:04.
[90] The code for Mangenda was deciphered based on call patterns.
[91] This supports the interpretation that 2kg means $2,000.00, which minus the transaction fee is about 7% would amount to approximately $1,866.00.
[92] Annex I.1., Phone call 2013/000035648 on 12 December 2012, at 00:17, "FB: There's nothing special, the only thing is that the colleague at the top (=Kilolo) asked me to remember 1.5 for Jean-Jacques. JPB: Yes, I see. I know."
[93] Annex I.1., Phone call 2013/000029875 on 6 February 2013, "FB: In the meantime the colleague has said that with the small 300, it will not work. I'm waiting. And he added another 300 I'm still waiting. JPB: Yes, but I didn't understand very well when you started, you said who do they want to give it to? FB: I'm also waiting for the friend on the other side he asked what day they are coming, he hasn't given his formal approval yet, that's why I can't say that formally… but I know that…it's a four legged / four wheeled, I'm waiting. JPB: OK, yes fine… FB: He first gave me…and he added yesterday for his assistants over here JPB: Yesterday already, what's happening here, have they started their things again? FB: …it's useful but I need your formal approval Boss, it's important. No he only told us but he will first with the priests and civil society. The priest will start their synod on the 16th& 17th. And …JPB: The only thing I know is for Sierra not for anyone else. The rest I don't know the only one I know is Sierra. I need to check with him first. FB: …JPB: Regarding the 3 other did the colleague at the top (Kilolo) give a name of someone?
FB: … JPB: You haven't anything, because sometimes his things can be tiring FB: … JPB: I'll speak with him (=… colleague at the top = Kilolo) in a few moments he has to clarify first."

78. BABALA and NGINAMAU have transferred a combined total of US $10,619.80 to eight Defence witnesses and their relatives via Western Union. The Western Union records do not show any prior financial relations between BABALA or NGINAMAU and any of these witnesses. The only link appears to be the case against BEMBA.

79. Between February 2011 and October 2012, Western Union records show that BABALA directly sent a total of US $6,142.00 for three Defence witnesses in connection with the bribery scheme:[94] (i) On 22 February 2012, he transferred US $733.00 to D-52; (ii) On 25 February 2012, he sent US $4,744.00 to D-11; and (iii) On 16th October 2012, he sent US $665.00 to [REDACTED], a relative of D-57 residing in Sweden. The payment to D-57's relative was made while he was testifying before the Chamber.[95]

80. NGINAMAU sent an additional total of US $4,477.80 to four Defence witnesses: D-52, ARIDO, D-7 and D-64.[96] These payments: (i) On 21 February 2011 and 17 September 2012, he sent US $572.00 and US $1,641.80 respectively to D-52; (ii) On 27 January 2012 and 22nd September 2012, he sent US $100.00 and US $1,264.00 respectively to ARIDO; (iii) on 21st July 2012, he sent US $200.00 to D-7; and (iv) on 17 October 2012, he sent two payments of US $500.00 and US $200.00 to [REDACTED], a relative of D-64 also residing in Sweden. The payment to D-64's relative was similarly made while he was testifying before the Chamber.[97]

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[94] Annex C.2.
[95] ICC-01/05-01/08-T-256-CONF-ENG ET, 17 October 2012; ICC-01/05-01/08-T-257-CONF-ENG ET, 18 October 2012; ICC-01/05-01/08-T-256-CONF-ENG ET, 19 October 2012.
[96] Annex B.4, NGINAMAU's payments.
[97] ICC-01/05-01/08-T-259-CONF-ENG ET, 22 October 2012; and ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012.

81. During their testimonies, both D-7 and D-64 stated under oath that they had not received any money from anyone associated with the BEMBA Defence team.[98] This was in spite of the fact that because no prior financial relationship existed between them, the only way BABALA or NGINAMAU would have known to pay these witnesses was through KILOLO, MANGENDA or BEMBA. Nor can these payments be explained as legitimate reimbursement from the Registry. The Registry report clearly establishes that none of these five witnesses were compensated through the Defence.[99]

82. The payments to these witnesses followed a clear pattern: partial payment in advance of trial and a subsequent payment during or soon after testifying. D-7, ARIDO and D-52 were exceptions.[100] Nevertheless, the circumstances under which they appeared or failed to appear in the Main Case firmly support the existence of the scheme. D-7 voluntarily disappeared before the end of his testimony. ARIDO disappeared and failed to testify after the Prosecution challenged the authenticity of documents he allegedly provided the Defence. Similarly, D-52 did not come to testify and ceased answering the Registry's phone calls to plan his travel after clearly identifying the calling party. The payment patterns show that BABALA acted to further the scheme by directly paying off Defence witnesses.

83. BABALA's CDR shows frequent contact with NGINAMAU, KILOLO, MANGENDA, Caroline BEMBA, and Defence witnesses on dates that coincide with arrangements for payments.[101] Between February 2010 and April 2013, BABALA disbursed over US $73,489.15 to KILOLO and MANGENDA.[102] NGINAMAU

[98] ICC-01/05-01/08-T-260-CONF ENG CT, 23 October 2012, p. 6, lines 14-23; and ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p. 10, line 14 to p. 11, line 2.
[99] ICC-01/05-01/08-2481-Conf-Exp.
[100] ICC-01/05-01/08-T-252-ENG ET, 2 October 2012, p. 4, lines 6-11.
[101] Annex H.2.
[102] Annex B.1 and Annex C.2.

transferred an additional total of US $47,656.19 to them.[103] From this combined total of US $121,145.34 sent to BEMBA's Defence team via Western Union, at least US $10,249.52 was paid to eight Defences witnesses and their relatives via the same medium: D-64, ARIDO, D-57, D-45, D-52, D-7, D-55 and D-59.[104]

84. BABALA's communications with BEMBA and his Defence team demonstrate his knowledge of the purpose of these payments and the scheme. On 25 May 2012, for example, BABALA sent US $3,189.00 to KILOLO and US $4,744.00 to ARIDO. Later that day, BABALA spoke to BEMBA who asked BABALA: "and on the side of the people from Charlie also, it's OK?" BABALA replied that: "For Charlie, it's OK. It was sent and already withdrawn and for the colleague on high, it's OK."[105] The Prosecution believes that the code "Charlie" refers to the country where ARIDO was residing at the time – Cameroon. ARIDO withdrew the money in Cameroon that same day. This evidence further shows BABALA's knowledge of the scheme to pay Defence witnesses in Cameroon via ARIDO. For instance, on 22 November 2012, BEMBA told BABALA to contact KILOLO who "will give you the details" regarding a payment of US $500.00 that BABALA would send.[106]

85. BABALA's CDR shows direct contact with several Defence witnesses: [REDACTED] ("D-21"), [REDACTED] ("D-25") and [REDACTED] ("D-18") who all subsequently testified between April and August 2013.[107] The Prosecution has cross-referenced available information contained in BABALA's CDR with BEMBA's telephone logs from the Registry. The calls of BEMBA to KILOLO and the calls of

[103] Annex B.4.
[104] Annexes B.2, B.3 and B.4.
[105] Annex I.1., Phone call 2013/000031430 on 25 May.2012 at 00:01:33: "FB: But Charly OK, [REDACTED] OK, Mama Leki OK, eh, and the colleague at the top (=Kilolo) OK. JPB: Fine. FB: Yeah. JPB: And the people from Charly as well, yes. FB: Charly, that has gone and it has already been withdrawn."
[106] Annex I.1., Phone call 2013/000035136 on 22 November 2012 at 01:23, "JPB: Yeah, OK. I see. Yes, now tomorrow you need to see with uh…for 0.5kg, and you'll contact the colleague at the top (=Kilolo), he'll give you the details. FB: 1.5kg. JPB: Half, ½. FB: OK JPB: Fine, he'll give you the details. Tomorrow then; if there's an issue, use the channel you know. Thank you.''
[107] Annex H.2.

KILOLO to BABALA coincide on at least 13 occasions during the period of November 2012 to February 2013, showing that BEMBA is speaking to BABALA in concealed conference calls initiated on KILOLO's phone line, despite being able to call BABALA directly. KILOLO regularly facilitates telephone communications between BEMBA and external third parties, which allows BEMBA to communicate freely with anyone.[108] BABALA coached Defence witnesses. For example, BEMBA told BABALA that "you need to tell him how to talk" and that the witness had to mention "that prophet"[109]. BABALA's participation in a majority of the unmonitored privileged calls between BEMBA and KILOLO, which have at times included Defence witnesses, strongly suggests that BABALA not only financed the scheme but that he had complete knowledge of the entire scheme.[110]

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[108] Annex K.1.: BABALA was quoted as saying that if there had been a deal between BEMBA and Kabila, he would have been the one fixing it.

[109] *See*, for example: (i) Annex I.1., Phone call 2013/000034780 on 14 September 2012 from 06:35:45-06:52:21: "FB: Did you talk to the colleague at the top (=Kilolo), did he tell you? JPB: He had nothing to say and asked: Let's stop, I'll resume on Monday…
FB: he told me that he needs 2 to communicate…JPB: He had exposed that guy putting him in an uncomfortable position with precision and dates; let them claim again that our people were there. They were really shaken. It had caused a lot of damage on their side."(ii) Annex I.1., Phone call 2013/000034808, 28 on September 2012, from 10:21:33 to10:26:07: "FB: I'm with the guy of the letter JPB: We'll go to the end, Hallo! To end, what? FB: On this line it will not be possible
JPB: Yes, FB: The colleague at the top (=Kilolo) asked me to send him 1kg, do you agree? JPB: Hallo, what's this? Yes, yes you'll tell him how to talk. He has to mention the name of that prophet.
FB: I didn't understand very well Boss. JPB: OK, fine, fine. Are you with him then? FB: He will be with me until we are in touch with the colleague at the top, affirmative. JPB: Yes, yes. But, I don't know. You understand it yourself in this case it must be quick; that he has to get it quickly. FB: OK, affirmative.
JPB: He has to get it quickly FB: OK. JPB: Do you understand?
FB: Affirmative, he will get it. JPB: He needs to get it quickly, right now FB: JPB: But you are saying that the guy of the letter is there
FB: Until the time my bother will be available, he'll get it. It will be possible. JPB: Are you with him? FB: Do I need to send him 1kg right now? JPB: That's what I'm saying you do understand that quickly. You need to get the other one quickly. FB: OK. JPB: Do you understand? FB: JPB: OK, OK, OK FB: … JPB: You'll be with him till what time?
FB: OKJPB: OK, really don't give up, don't let him go FB: … JPB: Look, listen, even half of it and tell him that it's coming from yourself. FB: … JPB: Because, I don't understand if, maybe on the other line, try from your end, uh."
(iii) Annex I.1., Phone call 2013/000035203 on 13 November 2012 from 03:01 to 04:49: "JPB: Look, do you know Ndokwa? Ndokwa, Ndokwa (=Françoise Ndokwa Bemba) you know her, don't you? FB: President, I'm saying this, yesterday there was a power cut because of a heavy rain. JPB: The sister of Wale (=Caroline Wale Bemba), the sister of Wale
FB: …Radio Okapi and Newspapers today JPB: 07 colleague (Both Fidèle Babala and Françoise are MLC Members of the DRC Parliament); are you with me or not? FB: I have not received it yet but BDD told me that the coverage… I know her ++JPB: OK, she will give 2kg: 1kg has to go to a person that the colleague at the top (Kilolo) will tell you; and the other kilogramme has to be given to the colleague at the top (Kilolo); do you understand? FB: I've not heard from anybody Boss. JPB: OK, fine."

[110] *Ibid.*

d. Necessity of arrest (Article 58 (1) (b) and 58 (2) (e))

86. An arrest warrant for BABALA is necessary under Article 58 (1) (b) (i)-(iii). First, there are reasonable grounds to believe that BABALA will not appear for trial unless compelled to do so by arrest. BABALA faces charges carrying a penalty of up to five years imprisonment and potential fines of up to 50 per cent of his identifiable assets. BABALA is a DRC parliamentarian with access to his own network and that of BEMBA, including MLC supporters, who could assist his flight from the Court's jurisdiction. BABALA has access to funds, including those of BEMBA, which provides him with adequate means to freely travel anywhere he wants to, including to non-state parties, such as Cameroon. This non-state party has no legal obligation to cooperate with the Court. BABALA likely has contacts in several countries that would enable him to avoid arrest.

87. Second, with the funds and assistance of Caroline BEMBA, and his own network, including MLC supporters, BABALA has both the means and opportunity to obstruct and endanger investigations and court proceedings. BABALA's full knowledge of the entire scheme and possession of evidence, such as access to relevant actors and other documentary evidence, as well as his means and influence may lead him to destroy evidence. BABALA has already demonstrated his willingness to unlawfully interfere with witnesses and there are reasonable grounds to believe that he would do so again –where his personal liberty is at stake.

88. Third, arrest is necessary to prevent BABALA from continuing with the commission of crimes within the jurisdiction of the Court within the context of current investigations or proceedings, in particular crimes under Article 70. It is clear

from attached evidence that BABALA is continuing to take steps to commit further offenses against the administration of justice.

E. Narcisse ARIDO

a. Person against whom warrant of arrest is sought (Article 58 (2) (a))

89. Narcisse ARIDO was born in Bangui in the CAR on 15 May 1978. His alleged father is General Ferdinand BOMBAYAKE who was the *Directeur Général* of the CAR *Garde Présidentielle* during the conflict period of October 2002 to March 2003[111] and currently Chief of staff of the CAR army. ARIDO is married to [REDACTED].[112] After the overthrow of Ange Felix PATASSE in March 2003, he fled to Cameroon where he lived without official status.[113] He is currently living [REDACTED] in France.[114] The information he provided to the United Nations High Commissioner for Refugees ("UNHCR") suggests that his family lives [REDACTED].[115]

90. ARIDO is said to have been a member of the CAR *unité spéciale présidentielle* during the conflict period.[116] He is Defence witness D-11 in the main case at the ICC. ARIDO provided the false documents that were subsequently presented to the Chamber by the Defence. He was scheduled to travel to The Hague to testify on the 26 and 27 September 2012 but failed to board the plane[117] after the Prosecution and Legal Representatives of Victims disputed authenticity of the documents he gave the

[111] ICC-01/05-01/08-2222-Conf-AnxA, Annex A to Submissions on Defence Evidence, 28 May 2012. [REDACTED].
[112] Annex K.10.
[113] ICC-01/05-01/08-2222-Conf-Anx A, Annex A to Submissions on Defence Evidence, 28 May 2012.
[114] Annex B.5. See the western union spread sheet showing his address when he received a payment from CAR-D04-PPPP-0059 (D-59) on 3 April 2013.
[115] Annex K.10.
[116] *Ibid.*
[117] ICC-01/05-01/08-T-252-ENG ET, 2 October 2012, p. 4, lines 12-16.

Defence.[118]He was also a resource person for the Defence in Cameroon.[119] In this capacity he introduced the VWU to witnesses [REDACTED], CAR-D04-PPPP-0007 ("D-7") and Octave DIOBA, CAR-D04-PPPP-0059 ("D-59").[120] Moreover, the VWU telephone records show that [REDACTED], CAR-D04-PPPP-0004 ("D-4"), [REDACTED], CAR-D04-PPPP-0006 ("D-6") and [REDACTED], CAR-D04-PPPP-0009 ("D-9") gave VWU ARIDO's number as their contact number .[121] A photograph of ARIDO is attached as Annex K.15.

b. Crimes committed by ARIDO (Article 58 (2) (b))

91. There are reasonable grounds to believe that ARIDO is individually criminally responsible for the offences of:

i. **Corruptly influencing witnesses** under Article 70 (1) (c) read with Article 25 (3) (c) by bribing witnesses to provide false testimony.

ii. **Presenting evidence that the party knows is false or forged** under Article 70 (1) (b) read with Article 25 (3) (c) by aiding, abetting, or otherwise assisting in the crime of presenting evidence that he knows is false or forged.

c. Concise statement of facts pursuant to Article 58 (2) (c)

92. On 14 June 2012 the Prosecution information desk received information from an anonymous informant ("AI") stating that he is of Central African origin and that he possessed information on witnesses in the Bemba case. He stated that four (4) Defence witnesses who were not in Bangui during the 2002-2003 events would provide false testimony in the BEMBA case after a "Central African in France" had

[118] ICC-01/05-01/08-T-240-CONF-ENG ET, 10 September 2012,pp. 4 to7, line 17. See also ICC-01/05-01/08-2301-Conf.
[119]ICC-01/05-01/08-2261-Conf-Red, Confidential redacted version of ICC-01/05-01/08-2261-Conf-Exp - [REDACTED] [Redacted], 24 August 2012, para. 6.
[120] *Ibid*.
[121] Annex K.8.

provided them money. He further stated that he could provide details on one of the four, and added that that they were all recruited in Cameroon and Congo-Brazzaville.[122]

93. On 13 July 2012 the Defence disclosed to the Prosecution a list of documents to be relied upon during the presentation of its evidence.[123] The list contained 14 documents whose authenticity is disputed by the Prosecution.[124]

94. Information on the chain-of-custody submitted by the Defence show that these documents were given to KILOLO by ARIDO, on 21 February 2012.[125]

95. During the trial hearing of 16 August 2012, the Defence sought to tender the 14 documents into evidence through their military expert, General Jacques SEARA, CAR-D04-PPPP-0053 ("D-53").[126] The Prosecution objected to the Defence request on the basis that this expert witness was not in a position to authenticate any of the documents in question.[127] In addition, the Legal Representative of Victims, using the same documents challenged Witness D-53's testimony regarding several aspects of their content including the varying date of General Gambi's appointment as *Brigadier Général*, establishing that those documents allegedly authored by General Gambi bore varying letterheads and a signature that is not his.[128]

96. Subsequent to the hearing of 16 August 2012 the Prosecution requested to inspect the originals of several Defence documents, including the 14 documents in

[122] ICC-01/05-44-Conf-Exp, Request for Judicial Assistance to Obtain Evidence for Investigation under Article 70, 3 May 2013, para. 9.
[123] ICC-01/05-01/08-2243-Conf-AnxB, Defence Disclosure of its List of Witnesses and the Factual and Legal Elements of its Case, 13 July 2012.
[124] Annex D.
[125] ICC-01/05-01/08-2301-Conf, para 5.
[126] ICC-01/05-01/08-T-231-CONF-ENG ET, 16 August 2012, p. 59, lines 16 to 25.
[127] ICC-01/05-01/08-T-231-CONF-ENG ET, 16 August 2012, p. 60, lines 7 to 18.
[128] ICC-01/05-01/08-T-234-CONF-ENG ET, 22 August 2012, p. 29, line 9 to p. 36, line 12.

question.[129] The Defence did not provide the original documents and therefore the Prosecution could only inspect the copies of the documents that were submitted to E-court.[130]

97. Having reviewed the documents in their entirety, the Prosecution noted the apparent differences in relation to their content, signatures, layout, headings, stamps, abbreviations, list of recipients, etc. Accordingly, the Prosecution took steps to investigate the authenticity of these documents. The Prosecution interviewed two [REDACTED] and [REDACTED]. [REDACTED] all of the documents [REDACTED] are forgeries.[131]

98. ARIDO received a total of US $ 8,452.61 from individuals close to BEMBA including: KILOLO, BABALA and NGINAMAU. He also received payment from [REDACTED] who the Anonymous Informant identified as the CAR citizen paying bribes to other witnesses in exchange for false testimony.[132]

99. Payments from the above listed individuals commenced shortly before ARIDO submitted the false documents to KILOLO and stopped four days before the date he was scheduled to travel to The Hague to testify. The first payment of US $100 was made by NGINAMAU on the 27 January 2012. Between 2 and 18 February 2012 KILOLO made three payments totalling to US $1149.20 to ARIDO. The first two payments of US $157 each were made on 2 and 14 February 2012. On 18 February 2012 he made a payment of US $834, and two days later on the 21 February 2012

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[129] Annex F.1.
[130] *Ibid.*
[131] ICC-01/05-01/08-2301-Conf, paras. 10 - 12.
[132] ICC-01/05-44-Conf-Exp, Request for Judicial Assistance to Obtain Evidence for Investigation under Article 70, 3 May 2013, para. 11. On 12 October 2012, the Prosecution met with CAR-OTP-PPPP-0007 (P-7), a person whom the Prosecution previously interviewed. P-7 spontaneously informed the Prosecution that [REDACTED] which confirmed part of the Anonymous Informant's tips to the Prosecution. P-7 also stated that [REDACTED] told him that [REDACTED] facilitated contact with a person from The Hague who promised him relocation to Europe if he testified that he was a Bozize fighter. P-7 stated that in fact [REDACTED] has never been a Bozize fighter.

KILOLO received false documents from ARIDO. After receiving the false documents, KILOLO made only one other payment to ARIDO. There is no evidence that ARIDO had pre-existing financial or other business relationships with the above listed individuals prior to the commencement of the trial. The timing, frequency and amounts of the payments made by these individuals suggest that ARIDO was paid to provide false documents and give false evidence for the Defence.[133]

100. On 25 May 2012, BABALA sent US $3,189.00 to KILOLO and US $4,744.00 to ARIDO at 13:40 and 13:43, respectively. At 16:53, on 25 May 2012, BABALA and BEMBA had a very short conversation where BEMBA asked BABALA: "and on the side of the people from Charlie also, it's OK?" BABALA answered BEMBA with "For Charlie, it's OK. It was sent and already withdrawn and for the colleague on high, it's OK."[134] Though ARIDO did not actually withdraw his Western Union payment until 23:33 on 25 May 2012, there is no evidence that BABALA sent any other payments during this time period. The Prosecution believes that the code "Charlie" may refer to the country where ARIDO was residing at the time – Cameroon.

101. The large payments made to ARIDO as compared to other witnesses suggest that in addition to being paid to provide false documents, his payment includes payment to other Defence witnesses in Cameroon. In the conversation of 25 May 2012 with BABALA, BEMBA makes reference to "…and on the side of the people from Charlie also". This means that apart from ARIDO who received payment on that day, BEMBA was aware of other witnesses involved in this scheme who were in Cameroon. Registry report shows that ARIDO was Defence resource person in Cameroon who facilitated VWU contact with five Defence witnesses in Cameroon.[135]

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[133] Annex B.2. See the Western union spreadsheet showing payments made to ARIDO.
[134] Annex I.1., Phone call 2013/000031430 on 25 May 2012 from minute 00:01:33.
[135] These are witnesses D-4, D-6, D-7, D-9 and D-59.

Express Union records also show that ARIDO made payments to D-4 and D-7.[136] There is no evidence of existing financial or other business relations between ARIDO and D-4 and D-7. The only known relationship between ARIDO and these witnesses is that they are all Defence witnesses in the Bemba case.

102. There is also no evidence showing that these payments relate to genuine witness expenses. The Registry report shows that VWU established contact with ARIDO, D-7, and D-59 on 22 July 2012 to make arrangements for their travel to The Hague.[137] However, Western Union records show that ARIDO received two payments from D-52 and NGINAMAU after these contacts.[138] Having handed over the witnesses to VWU there is no justification for Defence to pay expenses for witnesses under the VWU care.

103. ARIDO avoided travelling to The Hague shortly after the authenticity of false documents was disputed in court. On 16 August 2012 during the questioning of D-53, the Prosecution opposed the Defence request to admit into evidence 14 documents submitted to it by ARIDO.[139] The Legal Representative of Victims also questioned authenticity of these documents during her examination of D-59 who was aware of these documents since he relied on them in his report.[140] Registry report shows that ARIDO had contact with D-59 in Cameroon in his capacity as Defence resource person.[141] Western Union records also show that in April 2013

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[136] Annex J.2. on 19 January 2012, ARIDO paid CFA 180,000.00 to D-4. Annex J.1. at p. 0035, on 22 July 2011 ARIDO paid D-7 CFA 280,000.00. Again on 21 September 2011, ARIDO paid D-7 CFA 430,000.00.
[137] ICC-01/05-01/08-2261-Conf-Red, para. 7.
[138] Annex B.2.On 25 July 2012 ARIDO received US $ 549.93 from [REDACTED]. Again on 22 September 2012 ARIDO received US $ 1,264.00 from Robert NGINAMAU.
[139] ICC-01/05-01/08-T-231-CONF-ENG ET, 16 August 2012, p. 60, lines 7-18.
[140] ICC-01/05-01/08-T-240-CONF-ENG ET, 10 September 2012, pp. 5-12, lines 1-22. D-59 testified from 3-11 September 2013. *See* also Annex K.12. D-59 report to the Chamber titled "*Study and analysis of the political and military crisis and strategic planning of combined operations in the Central African Republic 2001-2003*" In this Report, D-59 relied on the disputed documents to reach his findings.
[141] ICC-01/05-01/08-2261-Conf-Red, para. 6.

ARIDO who is in France received money from D-59.[142] This information show that the two are still in contact and communicating with each other to date.

104. Registry reports show that ARIDO introduced D-7 to VWU. It also shows that these ARIDO and D-7 [REDACTED]. [REDACTED] in the presence of ARIDO, D-7 and D-59.[143] On 20 September 2012, the Prosecution and the Chamber questioned D-7 about his contact with ARIDO prior to his testimony.[144] D-7 denied seeing or speaking with ARIDO in 2012.[145] He also denied [REDACTED].[146] The Chamber informed D-7 that it had a report that contradicted what he said.[147] This information shows that D-7 lied under oath about his contact with ARIDO in 2012. There are reasonable grounds to believe that D-7 lied because he was corruptly influenced by ARIDO.

105. D-7 testified the next day and then disappeared without completing his testimony.[148] The Western Union records show that ARIDO and D-7 are currently living [REDACTED] where they are seeking asylum.[149] There are reasonable grounds to believe that D-7 and D-59 informed ARIDO that payments to Defence witnesses and authenticity of the false documents he submitted to the Defence were being disputed in court prompting him to avoid coming to court to testify.

106. As Defence resource person in Cameroon, ARIDO knew that the false documents would be presented in court to show that BEMBA is not criminally responsible for the crimes with which he is charged.

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[142] Annex B.5.
[143] ICC-01/05-01/08-2261-Conf-Red, paras. 6, 20 and 23.
[144] ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, pp. 11-16.
[145] ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p. 12, lines 5-11.
[146] ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p. 16, lines 7-25.
[147] ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p. 16, lines 3-13.
[148] ICC-01/05-01/08-T-252-ENG ET, 2 October 2012, p. 4, lines 6-11.
[149]Annex B.4, D-7 address in the western union records is; [REDACTED], while at Annex B.2. that of ARIDO is; [REDACTED].

107. During trial D-7 denied receiving any payments from the Defence.[150] However, Express Union records show that D-7 received a total of CFA 710,000 from ARIDO.[151] Again on the 21 July 2012 D-7 received US $200 via Western Union from KILOLO who also examined him in court. The Prosecution asked D-7 under oath about funds provided by the Defence to ascertain whether he was paid or compensated and whether there was a legitimate reason for such payments. The above evidence shows that he lied in response to questions about payments from the Defence.

108. To receive payment, Western Union requires physical presence at a Western Union location, a reference number as provided by the sender, a valid identification by the person to whom the payment is to be made, the correct names of the sender, the amount to be received as well as the right answer to a test question. This information could only come from ARIDO. Express Union has more or less similar requirements to receive payment. These payments show that D-7 knew ARIDO and communicated with him.

109. During trial, D-4 denied knowing ARIDO.[152] However, the Express Union records show that on 19 January 2012, D-4 received a payment of CFA 180,000 from ARIDO.[153] To receive payment, one must present a reference number that can only be obtained from the sender as well as identify the person who sends the money. This payment shows that D-4 and ARIDO communicated with each other. There is no evidence that show prior financial relations between the two witnesses or link this payment to witness expenses.

[150] ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p.10, lines 15-25.
[151] Annex J.1., on the 27 July 2011 and on the 21 September 2011, ARIDO paid CFA 280,000 and CFA 430,000 respectively to D-7.
[152] ICC-01/05-01/08-T-326-CONF-ENG ET, 19 June 2013, p. 28, line 23 to p. 29, line,4, D-4 denied ever knowing ARIDO.
[153] Annex J.2.

110. Telephone records from the VWU also show that for it to establish contact with D-4, it had to go through ARIDO. According to VWU records, D-4's contact telephone number is [REDACTED]. Cameroonian authorities have confirmed that this number belongs to ARIDO.[154] The above information as well as the Express Union payments show that there was contact maintained between D-4 and ARIDO. D-4 therefore lied under oath when he testified that he did not know ARIDO. D-4 is among a group of witnesses in Cameroon who were corruptly influenced by ARIDO and the Defence in exchange for false testimony and documents.[155]

d. Necessity of arrest (Article 58 (1) (b) and Article 58 (2) (e))

111. An arrest warrant for ARIDO is necessary under Article 58(1) (b) (i)-(iii). First, there are reasonable grounds to believe that ARIDO will not appear for trial unless compelled to do so by arrest. ARIDO was scheduled to travel to The Hague between the 26 and 27 September 2012 to testify but he did not board the plane. ARIDO misused the visa obtained with the Court's assistance to travel secretly to France where he is seeking asylum. According to the Registry report, he [REDACTED].[156] Shortly thereafter he requested relocation. These incidents show that ARIDO is a flight risk and the prospects of him voluntarily attending court are slim. ARIDO is able to freely travel anywhere he wants to, unnoticed and without facing any administrative formalities throughout the European Union Schengen area where the free movement of persons is guaranteed, and including to non-state parties, such as

[154] Annex K.9.

[155] The Prosecution has conducted an on-going analysis of the CDR provided by the Dutch authorities. The Prosecution compared phone numbers from the CDR to phone numbers attributed to some Defence witnesses in the Bemba case. Thus far, the Prosecution has found that KILOLO's CDR indicates that from 20-24 August 2013, KILOLO called sworn Defence witnesses located in Brazzaville, Republic of Congo and under the control of the VWU. On 20 August 2013, minutes before stepping into Courtroom I, on four occasions from 8:43 AM to 8:57 AM KILOLO contacted Defence witness [REDACTED], (D-26). D-26 started his testimony via video-link from Brazzaville, in the afternoon on 20 August 2013. KILOLO contacted D-26 later that evening at 11:23 PM and spoke for approximately 23 minutes. D-26 continued his testimony the next day. KILOLO contacted D-26 again on 22 August 2013 and spoke for 25 minutes. D-26 finished his testimony the next day on 23 August 2013.

[156] ICC-01/05-01/08-2261-Conf-Red, para 20.

Cameroon. This non-state party has no legal obligation to cooperate with the Court. ARIDO likely has contacts in several countries that would enable him to avoid arrest. In addition, ARIDO has access to significant funds. BABALA, NGINAMAU and KOKATE have all provided ARIDO with funds for the criminal purposes in the past described above on BEMBA's orders. It is likely that any one of them would continue to provide funds to ARIDO to enable him to avoid arrest.

112. Second, with the funds and assistance of BABALA, NGINAMAU, and KOKATE, ARIDO has both the means and opportunity to obstruct and endanger investigations and court proceedings. ARIDO has already demonstrated his willingness to unlawfully interfere with witnesses and there are reasonable grounds to believe that he would do so again where his personal liberty is at stake.

113. Third, arrest is necessary to prevent ARIDO from continuing with the commission of crimes within the jurisdiction of the Court, in particular crimes under Article 70.

F. Summary of evidence and other information establishing reasonable grounds to believe that the suspects committed crimes within the jurisdiction of the court (Article 58 (2) (d))

a. Categories of evidence relied on primarily

114. Consistent with Article 58 (2) (d), the application contains a summary of evidence and other information sufficient to establish reasonable grounds to believe that Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO committed crimes within the jurisdiction of the Court.

115. The evidence submitted for the Single Judge's consideration was collected through a careful, thorough, and deliberate investigation process. The investigation into these crimes was conducted with safeguards to ensure the integrity of the evidence and of the main case. The Prosecution collected most of the evidence under the supervision of several layers of judicial authority. The Prosecution collected financial data and call history evidence pursuant to valid requests for assistance and with judicial authorisation of national authorities. The Prosecution collected telephone intercepts from the ICC Detention Centre pursuant to a valid order from the Single Judge. And the Prosecution collected reports of telephone intercepts of KILOLO and MANGENDA only after the evidence was reviewed by national judicial authorities, the Independent Counsel, and by the Single Judge. The evidence relied on by the Prosecution covers multiple events in the scheme and separate items of evidence overlap significantly to form a body of evidence that is reliable, corroborated, and convincing.

116. The Prosecution relies primarily on the following categories of evidence and information:

i. Western union and Express union data establishing payments received and/or made by the suspects;
ii. Transcripts/translations/summaries of recorded telephone conversations;
iii. Call Data Records;
iv. Statements of witnesses and accompanying documentation about false documents;
v. Public source material; and
vi. Emails exchanged with the Defence.

117. Furthermore, on 14 November 2013, [REDACTED] were permitted by the Single Judge to listen to three audio recordings that unequivocally confirm key contents of the report of the Independent Counsel. This causes the Prosecution to

rely upon the Independent Counsel's report as accurate and reliable in support of the Application for Warrant of Arrest (''AWA'') in this case.

118. The Prosecution relies on these materials to establish both the reasonable grounds to believe that the suspects committed the crime alleged and the necessity of his arrest, pursuant to Article 58 (1) (a) and (b).

b. Urgency for Request

119. The Prosecution requests that the present Application be considered as urgent. Trial Chamber III has ordered the Defence to close its case by 15 November 2013.[157] It has also stated that the last witness in the case CAR-CHM-PPPP-0001 will testify from 18 November 2013.[158] Thereafter, the Chamber is expected to start its deliberations and evaluation of the evidence in the case. For all of the reasons given above in relation to the necessity for the arrest of the suspects, their arrest should not be delayed beyond the close of the evidence in the main case more than necessary.

120. The Prosecution stresses the importance of the deterrent effect that such an arrest may have, given the pervasive nature of the witness interference in this case and the apparent impunity enjoyed by those responsible. KILOLO and MANGENDA are not in court today, Tuesday, 19 November 2013, and KILOLO was absent from court yesterday. It is unusual for both lead counsel and case manager to be absent from the court proceedings at the same time. The Prosecution is concerned that KILOLO and MANGENDA may have become aware of the investigation and are seeking to escape from justice.

[157] ICC-01/05-01/08-2863-Conf, para. 5.
[158] ICC-01/05-01/08-2863-Conf, para. 5.

c. Transmission of request for arrest and request for search and seizure

121. The information available to the Prosecution indicates that:

- KILOLO currently resides [REDACTED] Belgium and has offices [REDACTED] in Brussels, Belgium as well as an office space at the seat of the ICC in The Hague he also resides [REDACTED] during court-days;
- MANGENDA currently resides [REDACTED] The Netherlands and has office space at the seat of the ICC in The Hague;
- BABALA currently resides in Kinshasa, DRC, and has an office in the National Assembly building in Kinshasa, DRC;
- ARIDO currently resides [REDACTED] France.

122. In accordance with Article 57 (3) (a) of the Statute, and the Prosecution's obligations under Article 54 (1) (a), the Prosecution further requests that the Single Judge issue an order requesting the arresting State to take measures for (a) the search of KILOLO, MANGENDA, BABALA and ARIDO's person and any premises where they may be arrested, or where they resided at the time of their arrest; (b) the search of the premises where KILOLO resides in The Hague and of his office in The Hague, at the seat of the Court, as well as of his house and his office in Brussels; (c) the search of the office of BABALA in Kinshasa; (d) the seizure of any relevant evidence, such as cell phones, computers or PDAs, diaries, address books, notes or records of meetings or conversations, Western Union or other money transfer companies' records, financial or banking records and/or cash which is/are on reasonable grounds believed to be used in, connected with, or to provide evidence of, the crime described in this application; and (e) the permission for an investigator from the Prosecution to be present during the execution of any such searches, provided that the competent national authorities authorise it; (f) the transmission of such evidence to the Court.

123. The Prosecution has sent requests for assistance to Belgium, France, the DRC and The Netherlands in the course of its investigation related to this application and has had numerous exchanges with the competent national authorities. Pursuant to Article 89 (1) and 93 (1) (h) of the Statute, the Prosecution requests that the transmission by the Registry of any request for arrest and surrender and for search and seizure to the competent authorities be done in consultation and coordination with the Prosecution.

124. The Prosecution informs the Single Judge that, at a time immediately following the arrest of the suspects, it intends to simultaneously interview the suspects. This is intended to gather as much information as possible from the suspects before they communicate and contaminate each other.. The Prosecution further informs the Single Judge that it will therefore require the competent national authorities to ensure that there is no communication amongst the suspects and between the suspects and other people for a period of time after the arrest as long as legally possible under the relevant national laws and in any event not exceeding 72 hours to allow these interviews to take place. This limitation does not apply to Counsel of the suspects.

125. The Prosecution further notes that Counsel before the Court and persons assisting Defence counsel enjoy certain privileges and immunities which may only be waived by the Presidency.[159] However, such privileges and immunities, and their waiver, apply only with respect to the exercise of jurisdiction by national courts with respect to their official capacity before the ICC, and do not serve as a limitation to their prosecution under Article 70 of the Statute before this Court. Accordingly, in transmitting requests for arrest and surrender with respect to KILOLO and MANGENDA, the Prosecution requests the Court to specify to the relevant State(s)

[159] Article 48, ICC Statute; Articles18 and 26, Agreement on Privileges and Immunities.

that such persons are not entitled to invoke such privileges and immunities as a bar to their arrest and surrender to the Court.

d. Relief sought

126. For the reasons set out in this application, the Prosecution requests that the Single Judge:

1. Find that there are reasonable grounds to believe that Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO are criminally responsible for the offences against the administration of justice as stated above;
2. Find that the arrest of Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO is necessary;
3. Issue under seal a warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO;
4. Direct the Registry, in consultation and coordination with the Prosecution, to serve the warrant of arrest and all supporting documentation on Jean-Pierre BEMBA GOMBO at the Detention centre unit;
5. Direct the Registry, in consultation and coordination with the Prosecution, to prepare and transmit a request for arrest and surrender of Narcisse ARIDO to the competent authorities of France, and to prepare and transmit, in consultation and coordination with the Prosecution, a request for arrest pursuant to Article 89 (1) in relation to any other State to which there is information reasonable grounds, that ARIDO intends to travel;

6. Direct the Registry, in consultation and coordination with the Prosecution, to prepare and transmit a request for arrest and surrender of Fidèle BABALA to the competent authorities of the DRC, and to prepare and transmit, in consultation and coordination with the Prosecution, a request for arrest pursuant to Article 89 (1) in relation to any other State to which there is information that BABALA intends to travel;
7. Direct the Registry, in consultation and coordination with the Prosecution, to prepare and transmit a request for arrest and surrender of Aimé KILOLO to the competent authorities of The Netherlands and Belgium, and to prepare and transmit, in consultation and coordination with the Prosecution, a request for arrest pursuant to Article 89 (1) in relation to any other State to which there is information that KILOLO intends to travel;
8. Direct the Registry, in consultation and coordination with the Prosecution, to prepare and transmit a request for arrest and surrender of MANGENDA to the competent authorities of The Netherlands, and to prepare and transmit, in consultation and coordination with the Prosecution, a request for arrest pursuant to Article 89 (1) in relation to any other State to which there is information that MANGENDA intends to travel;
9. Direct the Registry, pursuant to Article 93 (1) (h) of the Statute to prepare and transmit, in consultation and coordination with the Prosecution, a request for the authorities of the arresting States to execute a search of Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO's person, offices, the premises where they are arrested and any known vehicles in their possession,, or where they resided at the time of their arrest, and to seize any relevant evidence, to request that members of the Prosecution be present during the searches and seizures to be conducted and to request that such evidence is transmitted to the Court;
10. Direct the Registry, pursuant to Article 93 (1) (h), to prepare and transmit, in consultation and coordination with the Prosecution, a request for the

authorities of The Netherlands to execute a search of Jean-Pierre BEMBA GOMBO detention cell and to seize any relevant evidence, to request that members of the Prosecution be present during the search and seizure to be conducted and to request that such evidence is transmitted to the Court;

11. Direct the Registry, to prepare and transmit, in consultation and coordination with the Prosecution, a request for the authorities of the arresting States to locate and freeze the suspects' assets to the extent possible as the scheme involves larges transfers of money used for criminal activities.
12. Direct the Registry, pursuant to Article 93 (1) (l) of the Statute, to prepare and transmit, in prior consultation and coordination with the Prosecution, a request for the authorities of the arresting States to ensure that there is no communication in any form amongst the suspects and between the suspects and other people apart from their Counsel for a period not exceeding 72 hours.

Fatou Bensouda, Prosecutor

Dated this 6th Day of July 2016

At The Hague, The Netherlands