International Criminal Court
Trial Chamber VII
Situation: Central African Republic
In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido - ICC-01/05-01/13
Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut, and Judge Raul Pangalangan
Closing Statements - Courtroom 1
Tuesday, 31 May 2016
(The closing statements start in open session at 9.02 a.m.)
THE COURT USHER: All rise.
PRESIDING JUDGE SCHMITT: As you see, the Presiding Judge needed technical help, but this is solved for the moment, and I would ask the court officer to please call the case.
THE COURT OFFICER: Thank you, Mr President. Situation in the Central African Republic in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, case reference ICC-01/05-01/13.
And for the record, we are in open session.
PRESIDING JUDGE SCHMITT: Thank you very much. I would like to welcome everybody in the courtroom for the closing submissions in this case, and as always, I would introduce, ask the counsel to introduce themselves and their clients for the record. We start with the Prosecution like always.
MR VANDERPUYE: Thank you very much, Mr President. Good morning

to you, your Honours. Good morning, everyone. Today the Prosecution is represented by, I'll start with the third row: Ester Kosova, Teodora Todorova, Sylvie Wakchom. Second row: Nema Milaninia, Ruth Frolich, Hesham Mourad. And this row: Sylvie Vidinha, Olivia Struyven and myself, Kweku Vanderpuye.

PRESIDING JUDGE SCHMITT: Thank you very much.

For the Defence, I think we start with the Defence of Mr Kilolo.

MR DJUNGA: (Interpretation) Good morning, your Honours. The Defence team for Mr Kilolo is made up of Ms Camille Strosser, case manager, Leuka Groga, case manager, Rosalie Mbengue, case manager, Mr Steven Powles, co-counsel, member of the London bar, and myself, Paul Djunga, lead counsel, member of the Paris bar.

PRESIDING JUDGE SCHMITT: Thank you very much. I think we go in this direction and continue with the Defence of Mr Arido.

MR TAKU: May it please your Honours, my name is Chief Charles Achaleke Taku. I am lead counsel for Mr Arido who is here present. With me today is my friend and colleague, Beth Lyons. We have our case manager, Mr Tibor Bajnovic. Mr Michael Rowse and Mr Tharcisse Gatarama will join us subsequently in these proceedings, your Honours. Thank you so much.

PRESIDING JUDGE SCHMITT: Thank you very much. Perhaps we continue with the Defence of Mr Mangenda.

MR GOSNELL: Good morning, Mr President, good morning, your Honours. Christopher Gosnell and Arthur Vercken for Mr Mangenda who is present here today, assisted by Nikki Sethi and Agnes Hugues. Thank you very

much.

PRESIDING JUDGE SCHMITT: Thank you very much. Now, the Defence for Mr Babala.

MR KILENDA: (Interpretation) Good morning, your Honours. The Defence team for Mr Babala Wandu is, well, we have Coralie Klipfel and Adriana-Marie Manolescu, case manager, Mr Godefroid Bokolombe, legal assistant, and two counsel: Mr Azama Shalie Rodoma, member of the Brussels bar and co-counsel, and myself, Mr Kilenda, lead counsel and a member of the bar as well.

PRESIDING JUDGE SCHMITT: Thank you very much.

And finally the Defence for Mr Bemba.

MS TAYLOR: Good morning, Mr President. Good morning, your Honours, good morning, everyone in the courtroom. My name is Melinda Taylor. I'm appearing on behalf of Mr Jean-Pierre Bemba today, together with Ms Natacha Lebaindre, Ms Ines Pierre de la Brière and Mr Joshua Bishay. Thank you.

PRESIDING JUDGE SCHMITT: Thank you very much to everybody. As a short reminder the Chamber will sit extended hours today. This means we will sit from 9 to 11 and then from 11.30 to 1.30 and from 3 to 5.

First, the Chamber notes that in its closings submissions, the Arido Defence requests several reliefs. These applications will not be subject of closing submissions. Instead, the normal response deadline will apply and the Chamber will issue a written decision on the matters in due course.

We also note the email by the Defence of Mr Arido from yesterday and its reference to a decision by the Oberlandesgericht Wien. Any request that

might result out of this and the parties wish the Chamber to rule upon should be made by written filing. This underlines what we have already said yesterday via email.

Third, the Chamber notes that several Defence teams have announced that the accused wishes to make an unsworn statement. The Chamber recalls its decision 1890, in which it decided that these statements must fall within the two-hour time allotment - I trust you recall that - of the closing statements. The Chamber would like that the Defence teams indicate at the beginning of their presentation whether the accused wishes to provide such a statement, the fact if he wishes to provide such a statement, and if so, also at which point in time the closing submissions this will be done.

Another preliminary point is that Judge Perrin de Brichambaut wishes to address the Prosecution and ask some questions related to their final trial brief. Therefore, before we start with the closing submissions of the Prosecution, I give the floor to my colleague Judge Perrin de Brichambaut.

JUDGE PERRIN DE BRICHAMBAUT: (Interpretation) Thank you. Now, Mr Prosecutor, the jurisprudence of the Court says that a common plan with more than two people to commit the crimes in question is a necessary element so that the mode of liability of direct perpetration as set out in Article 25 can be established. Now, in your final brief you said in a footnote, footnote -- by its terms -- (Speaks English) "By its terms, the overall strategy is properly legally characterised as a common plan."

(Interpretation) In the absence of an official translation, I understand this to mean that in light of the wording "overall strategy," this must be understood as representing a common plan from a legal point of view. Yet, the part of

your brief that is devoted to the overall strategy is made up of 120 pages and no other indication is provided regarding the content of the common plan in light of the activities of Mr Bemba, Mr Mangenda and the others.

On the basis of these findings, I would like to put two questions to you.

First of all, could you tell the Chamber in which part of your closing brief is reference made to the objective of the common plan between Mr Bemba, Mr Kilolo, and Mr Mangenda?

Secondly, could you tell the Chamber what evidence in your closing brief comes -- points to the conclusion that there was, indeed, a common plan?

Furthermore, in paragraph 52 of your closing brief, you say that the evidence adduced shows, and I quote, "that by the end of 2012 and early 2013, Bemba, Kilolo, Mangenda, Babala and Arido worked together and with others in accordance with a plan intended to shelter, to protect Mr Bemba against the charges that had been laid against him in the main trial."

And in paragraph 318 of that same brief, you argue, and I quote: "Bemba was the general planner, the coordinator and the main beneficiary of the overall strategy. The objective of which was to obtain acquittal in the main case."

Is the Chamber to understand that your proposal in 52 according to which Arido and -- followed the same plan with the other co-accused did not lead to the intent to have them condemned as indirect co-perpetrators?

If you could kindly shed light on these matters for the Chamber. And then one final question regarding someone who is mentioned, Mr Kokate, the role of Mr Kokate in the recruitment of Defence witnesses in the main case. The question of his influence over these witnesses and the contents of their

testimony are mentioned in several occasions in the closing brief as well as those of the Defence of the different accused. However, Mr Kokate has not been convicted and did not appear as a witness, neither for the Prosecutor, nor for any of the accused.

His role is presented in different ways by the Prosecutor and by the various Defence teams. It would be interesting for the Chamber to know what are the views of the Prosecutor regarding the role of Mr Kokate in this case.

The Defence teams who may wish to share their views with the Chamber on the question should feel free to do so as well.

I thank you, your Honour.

PRESIDING JUDGE SCHMITT: Thank you very much, Judge Perrin de Brichambaut. Any other questions of the Chamber?

JUDGE PANGALANGAN: I have no questions, Mr President.

PRESIDING JUDGE SCHMITT: Thank you very much. This is, of course, addressed to the Prosecution and is a new situation for the Prosecution. I would suggest the following: You may weave, if you feel able to do this on the spot, the question, the remarks on that what my colleague has asked you into your closing submissions if you want, or you may address them afterwards. Since you announced that you will only use one and a half hour of the allotted time, it would also be a possibility that you address the questions for example after the next break. This is perhaps an idea, but it's up to you when you address them and how want to address them. Any comments on that for the moment?

MR VANDERPUYE: Thank you very much, Mr President. And thank you, your Honour.

Yes, I think it would probably be best if I addressed them at a later point. I would like to address all of them but I can't retain them all, because they are quite a number of questions that you have. But I think also in the substance of the closing remarks, some of those questions will be answered. So, hopefully, I will be able to deal with them afterwards, if they are still outstanding, then I think it would be best to approach it at that point.

Thank you, Mr President.

PRESIDING JUDGE SCHMITT: So thank you very much. But what we can say for now for sure is that if you want to address them, you will have to address them today and in a timely sequence with your closing submissions.

So now I give you the floor, Mr Vanderpuye, for the closing statement.

MR VANDERPUYE: Thank you, Mr President. There is one thing I neglected to mention, and that is, during the course of our closing submissions, we will have a few PowerPoint slides to show. I understand the Chamber should be aware so there are no technical problems as a result of it. So just bear with me one moment while I set up.

THE COURT OFFICER: The PowerPoint presentation will be displayed on the Evidence 2 channel.

MR VANDERPUYE: Thank you. Good morning again, Mr President. Good morning, your Honours. Good morning, everyone.

It is my privilege to appear before you once again on behalf of the Office of the Prosecutor to present the Prosecution's closing submissions in this important case.

Four years ago, the Office of the Prosecutor received an anonymous tip that the integrity of the Bemba trial was being compromised, that witnesses were

being paid for false testimony. Bemba's trial involved the commission of war crimes, crimes against humanity including rape, murder and pillaging under Articles 7(1) and 8(2) of the Statute.

It involved more than 5,000 victim participants and was the result of a long and difficult investigation which began in May of 2007.

With the trial having lasted the better part of six years until Bemba's recent conviction on all counts in March of this year, the matter remains pending sentencing.

After a meticulous and thorough investigation and the accused's arrest on the 23rd and 24th of November 2013, the Pre-Trial Chamber unanimously confirmed 180 counts of offences against the administration of justice under Article 70.

As you know, this case has been heavily contested. There have been hundreds upon hundreds of filings by the Defence and by the Prosecution, over 370 written decisions have been issued by this Court, half of them rendered by this Chamber alone.

Its related aspects have been litigated throughout the Court, before Pre-Trial Chamber II, Trial Chamber III, Trial Chamber VI, the Presidency of the Court, the Appeals Chamber and, of course, before this Chamber.

It's a testament to the fairness of the proceedings before this Court as ensured by the Statute and which this Chamber has jealously guarded throughout the trial process.

We now reach this final stage and the accuseds have had a fair trial.

Nothing undermines the strength of the evidence adduced by the Prosecution in this case, nothing attenuates the charges against the accused

and nothing the Defence has argued, or can argue, changes the hard facts proved by the evidence before you.

I don't intend to take up the Court's valuable time and resources retracing old ground, but there are some important matters that I think are important to highlight. While we very much appreciate the four hours the Chamber has allotted the Prosecution for its submissions, as your Honour indicated, we don't expect to take more than 90 minutes in our presentations.

The Prosecution stands on the extensive body of evidence in the trial record in this case and we invite the Chamber's careful consideration of our arguments set out in our pre-trial brief, evidentiary and legal submissions and motions such as our bar table motions, submissions on the elements of the offences and, of course, in our closing brief.

Your Honours, you know the evidence in this case. You heard the witnesses. You saw them testify. You know what the evidence comprises. And you know what it all means. Nothing that the Defence have argued changes that. Nothing that the Defence can argue changes the words of the accused captured in intercepted conversations. Their words, captured in recordings provided by the ICC detention centre on Bemba's non-privileged telephone line, the records of money transfer agencies, the material seized from the accused, SMSs, emails, other documents, the material provided through the cooperation of states, the call data records obtained from telephone companies and the testimonial evidence, including from participants in the charged incidents.

No attempt to deflect attention away from the facts of this case can succeed because the facts of this case all point in one direction, and one only, and that

is the accused's guilt.

Clearly the accused have the right to put the Prosecution to proof and they have done that. The burden of proof in this case is ours alone. We accept that and we welcome it, Confident that on the strength of the evidence before this Chamber and the record of the proceedings, the involvement of each accused in the dedicated campaign to undermine the integrity of the Bemba trial is proved beyond any reasonable doubt.

At the outset of this trial, we made clear that this case is not about the Defence as an institution. It is not an attack on the role of the Defence, not at all. This case is about ensuring that individuals who would seek to pervert the course of justice before this Court are brought to justice. That the Prosecution brought this case to begin with recognizes the importance of the legitimate role of the Defence within this Court's framework.

The Court must remain a viable institution in which justice can be had, particularly as a court of last resort for victims of the most serious crimes.

Contrary to the arguments advanced in the Defence briefs, this case is about the accused, the five individuals before you today. To be sure, this case, this trial, is concretely about what those accused did. It is about the evidence in the trial record taken as a whole and not parcelled up to the point of absurdity. Proof, not speculation. Reality, not fantasy. Common sense, and yes, common sense.

It's about whether the evidence proves the accused's criminal responsibility, which it does beyond reasonable doubt, and importantly it's about the truth of what happened.

And truth is that they did everything confirmed by the Pre-Trial Chamber.

Briefly, the accused are charged with corruptly influencing witnesses in violation of Article 70(1)(c) of the evidence. Presenting false evidence, namely false testimony, in the violation of Article 70(1)(b). Falsely testifying in violation of Article 70(1)(a). And they are responsible for these offences under the following modes of liability, committing under Article 25(3)(a), soliciting or inducing under Article 25(3)(b), aiding abetting or assisting under Article 25(3)(c).

Each is charged distinctly and commensurately with their role and in the overall strategy as characterised by the Pre-Trial Chamber in its 11 November 2014 decision on confirmation of charges. The details of their respective liability are spelled out in the confirmation decision, and they are also set out in our brief and in the document containing the charges.

The case against the accused could not be clearer and the evidence is as we said it would be in our opening statement. No doubt, the respective Defence teams failure to substantiate any of what they claimed they would in their opening statements is not lost on you. No doubt, the fact that their closing briefs rely on factual assertions that were not formally submitted and to which no witness testified is not lost on you. No doubt, their withdrawal of witnesses within their control and willing to testify, presumably favourably to their positions, isn't either. The Prosecution's case proved, through over 1,000 pieces of incriminating evidence, could not be stronger, your Honours.

Our closing brief clearly and concisely addresses much of that evidence. Our arguments there, which also address many of those raised in the accused in their final briefs are further replete in the record of these proceedings.

Between the recordings of the accused themselves, who had no idea that they were being intercepted, and the evidence of the Prosecution witnesses, 16 of them, many of whom were complicit in the crimes themselves, the accused respective guilt of the charges under the relevant modes of liability is reliably and overwhelmingly proved beyond any reasonable doubt.

But as you know, there is even more evidence before the Court, which I will outline shortly. The accused participated in a common criminal plan. No question about it. What we alleged and what the Pre-Trial Chamber referred to in the confirmation decision as an overall strategy: "To defend Mr Bemba against the charges in the main case by means which included the commission of offences against the administration of justice," and that's at paragraph 52 of that decision, filing 749.

The trial evidence leaves no doubt about the evidence nor about the accused involvement in it, notwithstanding their differing roles. Like any good organisation, each participant in the overall strategy had a function.

Mr Bemba was at its core. Mr Bemba directed it. He okayed, he approved, he authorised and he instructed the acts of the other participants.

Everything revolved around him, everything went through him and everything was for him, the chief beneficiary of that plan.

Kilolo was the prime implementer, the planner, the scriptwriter, the one who auditioned the witnesses for their roles and their participants in the trial.

He was the face of the organisation and he reported to Mr Bemba.

Mr Mangenda was Kilolo's right hand, the person who helped him plan the crimes, execute the scripts, the person whose assistance he knew he could count on and that he got, the one who liaised between Bemba and Kilolo,

relaying instructions and information needed to implement the plan.
Mr Babala was the treasurer, Bemba's confidant. He controlled the finances who, on Bemba's authorisation and approval, dispensed the money needed for the overall strategy to function.
And then there is Mr Arido. Mr Arido was the man on the ground implementing the overall strategy in Cameroon. He was the one lining up the witnesses, the false ones to testify in Bemba's favour and casting their parts accordingly.
You've heard and seen all of the evidence substantiating their specific roles and their actions.
But the evidence also proves that the overall strategy was not limited to the 14 representative incidents that the Prosecution elected to charge in this case. It was broader than that. It extended to as many witnesses as the accused believed were necessary and that they could get away with without risking exposure of the overall strategy.
You will recall Mangenda's reaction on 17 October 2013 in the face of the news of the Article 70 investigation that was ongoing. I think we have this up in the PowerPoint. What he says, and what I would like to draw your attention to, in this candid conversation with Kilolo at 16.37 of that day, he recounted having told Mr Bemba: (Interpretation) "Now it will destroy all the witnesses we have."
(Speaks English) Not 14. Also the Chamber will have taken note that the Douala meeting in February 2012, in addition to the four witnesses who are the subject of the charged incidents, D2, D3, D4 and D6, the evidence proves that D7, D8 and D9 and others, were among the spurious witnesses

assembled by Mr Arido. D7 and D9 testified in the main case and their testimonies are among the transcripts of which the Chamber has taken judicial notice.

And those transcripts reveal the same lies regarding the contacts with the Defence and the monies paid by the Defence as those told by virtually every witness comprising the 14 incidents charged in this case.

The common plan, the overall strategy was not limited and the evidence proves that and it proves the intent of the accused.

The accused intent in this case is key. And while the Defence argue giving witnesses a phone is not a crime, paying them is not a crime, discussing their testimony with them is not a crime, being aware of witnesses' false testimony is not a crime, failing to correct the record of false evidence before a court is not a crime, speaking in code, circumventing the detention centre regulations, assisting a client to do that, giving gifts, proofing witnesses, violating the VWU contact protocol and the orders of a Chamber are not crimes.

The arguments miss the point entirely. While those acts may not be crimes in and themselves, they cannot be looked at in a vacuum or in isolation.

In the context of this case, they are clear evidence of the accused's intent to commit the charged crimes. When you put all of these acts together, what they show is the accused's consistent and deliberate violation of the safeguards put in place by the Trial Chamber III and by the Registry to prevent exactly the type of corruption of evidence before the Chamber that occurred before Trial Chamber III.

They show the lengths to which the accused went to disguise and conceal

their illicit conduct from the Court, the Chamber, the detention centre unit personnel, the Registry. They reveal the coordination involved in executing the overall strategy. All of this proves intent.

In our opening statement, we said that in addition to the documentary evidence, that is the call data records, telephone network data, Western Union records, detention centre calls -- detention telephone log data and recordings, and the wiretaps involving the accused and the witnesses in the main case, that you would also hear from witnesses involved in the charged incidents themselves, who we said would prove the criminal plan, the overall strategy, the implementation and the accused culpability as well. Those witnesses, who the accused acted corruptly to influence, those witnesses who were paid, those witnesses who received gifts, who were made promises of relocation, who were made promises concerning their security if they signed up for the deal, those witnesses who were solicited to lie in their testimony and did lie in their testimony, you saw those witnesses and they said exactly what we said they would say. They prove exactly what we said they would prove.

We also said that during the course, with respect to those witnesses that we described as complicit in the crimes that the Chamber should look at their evidence with caution, that they may try to minimise their own conduct or the conduct of others, that they may try to exaggerate. But you recall that I also told you that what you would be able to see where the witnesses were telling the truth. You would be able to see where their evidence was corroborated. And you would be able to discern from their testimony what really happened in this case.

And I want to take just a few moments to highlight some of that evidence for you.

The Prosecution called eight such complicit witnesses in this case. D15 and D54, who appeared by summons, D57 and D64, D55, D23, D2 and D3, the Cameroon witnesses.

All of them effectively admitted lying in their testimony before Trial Chamber III in the main case, all of them. Although some were more evasive than others in regard to admitting those lies, their evidence before the Court proving the accused's responsibility was crystal clear.

Both D15 and D54 admitted lying to Trial Chamber III and to the extent that they denied certain lies, that they clearly told the evidence of the accused's corrupt acts to influence them, the solicitation of the witness's false evidence and the presentation of that false evidence is unassailable and undeniable.

In the case of both, their testimonies in this case comprise their acknowledgment of the telephone numbers on which the incriminating conversations with Mr Kilolo were intercepted.

The intercepts themselves and their content, their subsequent testimonies in conformity with Kilolo's explicit directions, their preparation by Mr Kilolo on confidential questions provided by the legal representatives in the Bemba trial, which Mangenda provided to Mr Kilolo for that purpose. You have before you the questions themselves, which were attached to emails sent by Mr Mangenda in response to Mr Kilolo's request for them from the field.

You have the transcripts of the intercepted communications, with Mr Kilolo going over those questions. You have the transcript in the main case which mirror Mr Kilolo's instructions to the witness.

You have all of that. You have the intercepts in which Mr Kilolo is telling D15 to change his answer, to say that he did not see another witness, D45 when he travelled to Bangui, where the witness clearly said that he did, twice.

You have an intercept in which D54 actually disagreed with Kilolo's suggestion to testify in a certain way because what he was asking made no military sense. You have this evidence. You have the transcripts.

You have the intercepts wherein, despite having spoken with the witness on 60 some odd separate occasions, Mr Kilolo tells the witness to say that they were in contact on only three occasions. Remember that number.

The list goes on and on. And of course, there is Kilolo's 30 October 2013 conversation with D54, who having directing the witness on what to say during his testimony and while in course added this word of crucial advice.

I think we have that up on the PowerPoint, it says: (Interpretation) "You can do as you wish to me. No one called you. No one from the Defence called you at night to prepare you and to tell you to be careful tomorrow and to say this or that. Never, never, never." (Speaks English) Is that refreshing a witness's recollection? That argument finds no support in the evidence before you.

Does Bemba know? Have a look at the intercept in which Kilolo reports to Bemba on three topics on which he's just coached D15.

CAR-OTP-0074-1006. The conversation occurs immediately before Kilolo resumes his second day of D15's direct examination. It occurs just hours after his extensive coaching of D15 the night before. And in the conversation, Kilolo isn't just telling Bemba what he plans on asking D15.

He's telling Bemba what D15 will say.

In the case of D57 and D64, we have two witnesses who, like others, lied about their contacts with the Defence. D57 testified that he had only, yes, three prior contacts with Kilolo deliberately withholding the fact of his meeting with him and particularly the multiple phone calls on the day Kilolo organised payments to the witness.

D64 did the same thing. He testified that he had only, that's right, three contacts with Kilolo and intentionally omitted the conversations he had shortly before his testimony concerning the transfer of money to the witness. They both lied about payments they received prior to testifying in the main case, money they both received through a third party whose names they were specifically asked to provide and gave to Mr Kilolo for that purpose. And although their interactions with the Defence had only ever been through Kilolo, they both received their payments through Babala, either directly or indirectly through his driver P-272. You have his statement and you saw him testify.

Further still, the payments D57 and D64 received were specifically authorised by Bemba. This is captured in detention centre recordings with Babala and confirmed by the dates and amounts of the payments contained in the Western Union records, the transfers.

Payments that while Babala does not dispute, if you look at his confirmation submissions, the witness nevertheless falsely testified or, rather, falsely denied receiving before Trial Chamber III. While the Defence may argue that the witness's testimony that he did not receive the money in "exchange" for their testimony in the main case was not a lie, per se, I'd invite you to

consider the following circumstances:

One, both were paid not months before they testified, but within hours before travelling to The Hague, before setting foot on any plane to bring them here.

In D57's case, while he testified before you that he denied receiving the payment before, before Trial Chamber III, because he did not know if the person that he sent to collect it the very morning that it arrived had done so, his awareness that the money had been received on his account before sending the person to collect it in the first place is obvious, and it happened days before the witness ever even testified about it.

And while clearly lying about his contacts with the Defence, he could not explain a nearly 70-minute telephone call with Mr Kilolo prior to his testimony. You have those records as well in front of you.

D64 was no different. His false testimony in the main case about his contact with the Defence is clear, carefully leaving out the conversations he had with Mr Kilolo about the money transfer for him while he was on route to The Hague and the subsequent contact that he had with Babala, who provided him with the required codes to receive that payment.

He further testified that he never received any money from Bemba or anyone on his behalf, including for travel expenses, the Western Union records, to the third party that he identified, that the third party he identified to receive the payment for him say different. They show payments intended for him were made on 17 October 2012. He testified on the 22nd of October 2012.

D55's deliberate omission of his meeting with the Defence prior to his testimony and telephone contact with Bemba when he was asked during the

main case could not clearer evidence he was coached. You will, no doubt, recall his testimony Kilolo specifically directed him not to mention this. He told him it was a titre privé.

But you don't have to rely on his testimony alone concerning his call with Bemba because you have a detention centre telephone log and an independent call data record which prove that contact with Bemba, that contact facilitated by Mr Kilolo, notwithstanding the cross-examination of the witness in this case by the Defence suggesting that he might have been placed in contact with an impostor.

Further, if there were any question about this contact, Kilolo's confirmation submission makes clear that the issue is not contestable. And you have his direct evidence, that is, the witness's evidence that he was coached, in those terms, that's exactly what he said, "I was coached. He was coaching."

He also lied in conformity with those instructions. True to form, D55 attempted to minimise his responsibility, claiming to have followed Kilolo's advice because he was the lawyer. This evidence only underscores Kilolo's corrupt conduct to influence the witness and it also shows the witness's complicity in the charged incident.

Unsurprisingly, and true to form, D23 similarly tried to minimise his responsibility for his actions, stating that it was not his fault that he lied during -- during his main case testimony. But the fact is that he did. And he also admitted that. In doing so, in Bemba's favour and at Kilolo's direction and another individual working with Bemba, that the Chamber has heard as referred to as Bob.

D23 admitted that he was never a soldier in the Central African army. He

never personally witnessed the events in the Central African Republic about which he testified in the main case.

Having given the witness money and a laptop just before he was about to testify, Kilolo told the witness, "Never make a mistake," and say to the Court that he had received anything from the Bemba Defence or from him.

Well, the Defence submissions allude to the notion of African solidarity presented through an expert by the -- called by the Babala Defence, who by the way was called out presenting an undeniably plagiarised report and confirmed that his report had nothing to do with the facts of this case, the fact is this, if the payments were made and the laptop as a normal cultural gesture, there would have been no need to hide the fact of it. It wouldn't have occurred to anybody to do so. There wouldn't have been any need to warn the witness, "Not to make a mistake before the Chamber and reveal it." And there would have been no need for the accused to point out to the witness, this is not a corruption, when paying the witness $100 US for a $1 taxi fare because that's exactly what it was, because the payments, the laptop weren't merely cultural gestures. They were exactly what they appeared to be.

D23's evidence is key in another important aspect because it shows that Kilolo and Bob were working together to procure false evidence before the Court. Remember both Kilolo and Bob told the witness to lie about his knowledge of Bob, to conceal that it was Bob who introduced the witness to the Bemba Defence, that they both, that is, Kilolo and Bob both told the witness to lie about the same fact is not random. It's not coincidental. What it tells you is that Kilolo and Bob had to have discussed what the

witness would say when testifying or what he should say when testifying. What it tells you is that they were on the same page. What it shows you is that, unknown to the witness himself, Kilolo and Bob were working together on him. And what it shows you is that contrary to Kilolo's claim, he wasn't fooled by anybody. He wasn't conned by Bob. He wasn't conned by the witness or anybody else. Rather, Bob was his partner in producing the witness and in corruptly influencing him, and he wasn't the only one, your Honours.

Like other witnesses in this case, Kilolo also contacted D23 during the course of his testimony at least 6 times. And although D23 testified that he researched some of what Kilolo told him in order to testify, the evidence shows that he also simply testified to what Kilolo told him to say. His denial of knowing Bob for one thing, his evidence concerning the structure of the FACA command and a certain Sambate, the so-called coordinator of Bozizé's general staff, all lies, all coached.

You also had the opportunity to see and to hear D2 and D3, two witnesses who testified about the circumstances of their recruitment by Arido and Bob as false witnesses to give evidence in Bemba's favour. And having been coached in that respect by Arido, by Bob and by Kilolo, both admitted having lied in the main case pretty much about everything.

Both admitted that they were never soldiers, that they were never trained as such, and that their testimony about the events they purportedly witnesses -- that they purportedly witnessed was totally contrived. Both recounted how Arido approached them, how he recruited them, what he did and what he told them to say, and the deal he proposed for them to testify

falsely in Bemba's favour. The deal, the promise of the possibility of relocating to Europe, the promise of money, the 10,000,000 Central African francs that you heard about, the deal which Arido broke, the deal which D2 and others discussed with Kilolo in May of 2013.

You'll recall the circumstances of how they met Kilolo in Douala in 2012 February, how they prepared for their parts and the meeting as if it was a casting call, with Kilolo there to audition them for their roles along with several other, several other prospective Bemba witness, D4, D6, D7, D8, D9 among others.

Most of these witnesses were on Arido's list of witnesses in this case. Most of whom would ostensibly testify in his favour. Most of whom Arido's counsel alluded to in his opening statement, none of whom the Arido Defence dared to call, instead opting to drop them wholesale.

D2 and D3 testified about Arido, about how Arido assigned them fictitious ranks, assuring them that even if they were not soldiers it didn't matter because he knew how to instruct them as a former soldier himself. Those instructions Arido had to get them from somewhere because they had to meet what Bemba needed. They had to be in line with the Bemba Defence's theory of the case. They testified about the cover stories Arido scripted for them and about the issues he went over with them that would be helpful to Bemba.

You heard about how Arido had notes and what they needed to say, and indeed, the stories had to be straight. Arido had to know the theory of the Defence, of the theory of the Defence case inside out, backwards and forwards, to be able to instruct these witnesses. He had to know what

would help Bemba in Bemba's trial.
Have a read of their interview statements and note the detail that's in them.
There is only one way Arido could have coached these witnesses and known what would work for the Defence and that is through Bemba's lawyer, otherwise the plan simply couldn't work.
There would be inconsistencies, there would be guesswork involved, and it simply would not fly.
You saw what happened with D29 when he came off script. He testified that Bemba's troops had committed crimes. The one witness who according to Mangenda told the truth, but even then only partially. Now, while the Kilolo Defence suggests, if not outright claims, that he was tricked by D2 and D3 and maybe even Arido, you will not have missed that during their interviews Kilolo never asked a single question probing their identity as soldiers.
He never asked them for a single document. He never asked so much as the name of another member of a unit in which they, in which they purportedly served. He never asked for a photograph from the field or anything like that. He never asked for their registration number, something any soldier would know. Nothing. Fooled? I don't think so. You've heard him at work on those intercepts. Gullible, he is not.
You'll recall the May 2013 meeting in Yaoundé with the same group of witnesses where Kilolo and Mangenda gave them phones so they could remain in contact with them when testifying, knowing that the VWU would take their regular phones once they were handed over to their care.
That meeting where D2 discussed the deal with Kilolo, the money they were

supposed to receive in exchange for testifying promised by Arido, the 10 million CFA. That meeting where both witnesses were introduced to the VWU and shortly thereafter Kilolo paid them 540,000 and 550,000 CFA respectively. Indeed the evidence in this case is that D4, D6 and D9 were also paid around that same amount.

And while the Kilolo Defence concedes his paying D2, D3 and D6 in his confirmation submissions, claiming that the payments were for the witnesses' living expenses, it's curious that the witnesses didn't know that, that they, like others, denied receiving anything at all before Trial Chamber III.

In D6's case, a $1,300 Western Union transfer to his associate P-264, whose statement you have, from Bemba's sister Caroline and which the witness lied about, cements Bemba's involvement in that pay-off.

You have a statement of P-264. You have the Western Union transaction. You have D6's unequivocal false testimony denying receipt of this money, true to the pattern of every other testifying witness in the main case and every incident charged in this one.

Both witnesses were unequivocal that they were coached by Arido, they were coached by Kilolo, and they lied in accordance with the instructions that they received. They testified that they did not know Bob. A lie. They testified that they did not know Arido, Arido. A lie. They lied about the nature and extent of their contacts with the Defence and about the monies they received. D2 testified in the main case that he received nothing from the Defence either as compensation or for expenses or in exchange for his testimony.

Following Kilolo's direction that he should not say that he "received anything whatsoever," from him.

And again, not only did these witnesses admittedly testify falsely before Trial Chamber III, but like all other witnesses who did, Bemba, Kilolo and Mangenda knew it. Bemba knew they lied about their association with Arido because his counsel pointed out twice in this case that Bemba was provided with all of the interview statements of prospective witnesses because he needed them in order to instruct counsel. So he knew the contents of D2 and D3's statements to the Defence in February 2012 and in which both refer to Arido as either their leader or their contact person.

But as mentioned in their testimony in the Bemba trial, they claimed not to know Arido. Bemba was in court. Mangenda was in court. The Bemba Defence was in court.

Then there were the notes D2 took as he was being coached. We invite your Honours to have a look at those documents. We refer to them as annexes 1 through 3. Because when you do, you will see how they demonstrate the evolution of the coaching of his prospective testimony by Mr Kilolo, how he reincorporated the additional information that he was given to testify about, which included that they had only two meetings and one telephone contact.

There is the magic number again, three.

That their interview wasn't recorded. Curious, because the Arido Defence played it in court.

That the functions of the roles, he spoke about the functions and the roles of the FACA command, Central African forces, the whereabouts of the MLC in the communication, their communication with Central African forces when

crimes were committed by Bozizé and so on and so forth. Have a read of those documents. It's all very clear and it's explained and detailed in our brief.

Having gone over just some of the evidence showing how the accused worked together to put the overall strategy into action, I would like to remind you that not all of these witnesses knew each other. D15 and D54 did not know D2 and D3, vice versa, D2 and D3 did not know D23 and vice versa, D23 didn't know any of them, D55 didn't know any of them.

But then consider the similarity of their evidence. They all interacted with the participants in the overall strategy and they all lied about the same sorts of things. That is the pattern. That is how you know that they have been tampered with. And that is how you know that that is the fruit of an organisation.

They lied about the contacts they had with the Defence. They lied about the monies that they received, the gifts that they received from the Defence and the promises that were made. They lied about substantive matters on which they testified, all in favour of Bemba.

The trial record is rife with that evidence corroborated by the available documentary evidence as well, the logs, the CDRs, the money transfer records, the receipts, the SMSs, the emails, the detention centre records and of course the wiretaps, the most damning of them all.

And I said -- as I said in our opening statement, this kind of thing doesn't just happen. It's not a coincidence. It's made to happen and it's the result of a plan, of a design.

What happened after the accused got wind of the Article 70 investigation in

this case absolutely crystallises their involvement in the overall strategy and the charged offences.

As you know, intercepted communications show that after the unsealing of the arrest warrant against Walter Barasa in the Kenya situation for Article 70 offences, Bemba got a hold of Mr Mangenda on the 2nd of October 2013 concerned about the development.

He wanted to know all about it. He wanted to know what the charge was, what it was based on and tellingly he wanted to know if it would reach the level of the Kenyan vice-president, Ruto.

And why should Bemba care what Barasa was charged with? Or whether the charges would reach the vice-president of Kenya? Because he was interested in general legal matters? No. It's because he believed that his situation was not so different and the evidence before you proves him right.

Over the next weeks he revisited the question in more detail with Mangenda and Kilolo. Five days later, Bemba told Babala in a conversation, clearly referring to what Mangenda and he had discussed, not to be alarmed, because, he said, (Interpretation) "We have people inside. They will keep us informed." (Speaks English) On 11 October at 10 o'clock, Mangenda told Kilolo about the investigation in this case. He received information from a friend, a court staffer who told him about it and revealed this sensitive information. I think you have that now in front of you.

It says: (Interpretation) "For him, as he informed me, he didn't say that. He'd asked if he had problems between you, and I answered well, it's true, recently there have been tensions with our whites. He said, if that's the case it's that your people are not good. That's to say that they are telling things

behind you. But I'm just giving you the information. It's up to you to understand it as you wish. But I don't know. I'm just asking you and your brother to be careful because according to the information that there has been, there is an investigation under way and it's particularly targeting you and me." (Speaks English) 16 October Kilolo informed Mangenda that he told Bemba about the investigation and he described Bemba as being in a state of panic, (Interpretation) "fear, isn't it?"

(Speaks English) That Bemba was afraid makes sense. He had every reason to be, he was involved in the crimes of the investigation and he knew there was a real possibility that would be found out.

Kilolo spoke with Mangenda later that evening and told him that he explained to Bemba that the Article 70 offences carried five year sentence, potentially even consecutive time because it was based on different acts.

You have the intercept. It speaks for itself.

Bemba's reaction, (Interpretation) "Ask around." (Speaks English) To direct Kilolo to call up the Defence witnesses.

I think you have it now in front of you. This is Kilolo speaking.

(Interpretation) "Now, he says no. Then I should get an overview, that I should call up all these people one after another."

(Speaks English) He told him to find out who leaked the information. Given Bemba's state, Mangenda and Kilolo seized the opportunity to exploit it and to get a little money out of him. They embellished the story. They agreed to tell Bemba that the leak to the Prosecution emanated from Defence witnesses in Cameroon and that they would need to be paid off, aiming to pocket the money.

They felt justified in this, too, because they put their careers at risk for Bemba. You have that intercept as well.

17 October, Kilolo told Bemba about his progress in identifying the purported informers. He told Bemba that the three witnesses who had informed on the Defence, that they had acknowledged the illicit coaching, bribery and also said who was involved. But they hadn't signed statements yet. In that and related conversations, as we explain in our trial brief, it is clear that the individuals to whom Kilolo is referring include D2, D3, and Arido.

In the relevant conversations, Bemba asked whether Arido still has control over those witnesses, to which Kilolo responds that he does not because they had a falling out. And you heard from D2 who explained that he did have a falling out with Mr Arido. You even have the email that he sent to Kilolo explaining it.

One of the individuals Kilolo refers to in those conversations is a witness who he identifies or who he refers to as (Interpretation) "Illiterate." (Speaks English) The evidence proves that that person is D3.

You have the transcript of his evidence in the main case in which co-counsel Haynes states that the witness needs, "reading assistance."

But that's not the only -- that's not the only evidence you have. Kilolo's position in the case, as framed in his confirmation submission, specifically identifies D3 as illiterate.

Regardless of whether D3 was or was not literate, and you saw him, he testified in this case, the point is that is what the Bemba Defence believed and that is how you know that the conversation between Kilolo and Bemba,

referring to the illiterate refers to D3. And that is how you know that Bemba's inquiry as to who has control over those people, particularly the illiterate, (Interpretation) "and the others," (Speaks English) refers to those witnesses.

We invite the Chamber to carefully consider our submissions on this because what it shows, without a doubt, is that Bemba is in the know regarding Kilolo's, Arido's and Bob's activities concerning the Cameroon witnesses.

The same day 17 October, Bemba and Kilolo discuss the Kenya Article 70 case where Kilolo tells him, and I quote, (Interpretation) "I wouldn't want us to get to this type of things."

(Speaks English) The same day Mangenda recounts to Kilolo how he told Bemba that any contact between the informers and the Prosecution needed to be cut, that if the Prosecution were to relocate these witnesses, that would be it. (Interpretation) "It's finished." (Speaks English) True or not, what it means is that Mangenda was fully involved in all of this.

Earlier, Kilolo discussed the matter with Babala telling him that he had identified (Interpretation) "the notorious leak," (Speaks English) the Defence leak which he needed to plug.

Not surprisingly, he referred to the Kenya Article 70 case as he did with Bemba, explaining that Barasa, a journalist, was suspected of pressuring the witness. You have, I think, the slide in front of you now and he's describing it there. He says, (Interpretation) "He's suspected of having pressured witnesses." (Speaks English) And you see Babala's reaction at the bottom of this slide: (Interpretation) "Do you think it's manageable?" (Speaks English) He wanted to know if the situation was manageable. And why

would Babala care what was going on in the Kenya case? For the same reason as Bemba did. They were in a similar situation and he knew and understood the consequences.

Kilolo explained to Bemba, explained in the conversation how Bemba had considered that the situation with these witnesses arose because he had failed to stay in contact with the witnesses, the so-called (Interpretation) "After-sales service." (Speaks English) Again, you have the intercept before you. And if it's not clear enough, you need not look further than Kilolo's and Babala's subsequent conversations in which they discuss exactly how to go about paying off the purported informants.

In one such conversation on 22 October 2013, Kilolo, to Kilolo's suggestion that a one-time payment of 1,000 per person be made, Kilolo says this, (Interpretation) "Continue to carry out the after-sales service. Sometimes a 50. Sometimes a hundred. Doesn't hurt anyone." (Speaks English)

Returning to the question of the leak, with Bemba the day Kilolo -- that day Kilolo walked away with his approval to pay off the purported informers with a cap. He's not going to pay more than 15,000. He was supposed to arrange that with Babala. You recall that conversation in which Bemba expressed serious concern that Western Union payments, which were referred to as risky, leave traces.

I think you have it on the slide in front of you now and it reads: (Interpretation) "Because the problem with Whisky as you know, really particularly with this type of thing, is certainly going to leave a trace." (Speaks English) You have before you the documentary evidence of Kilolo's subsequent trip to Cameroon. You have the evidence of D2, who was paid

when Kilolo arrived. You have their SMS exchange in which D2 testified, to which he testified concerning going to get the money from the hotel where Kilolo was. You have D3's testimony about a transaction paid by Kilolo's associate, 263. You have that statement to a third person that Kilolo asked D3 to identify so that the Court could not associate that person with the witness.

You have Kilolo's SMS to the witness. You have the transaction record. You have the code of the transaction record in the SMS.

The reactions of Bemba, Kilolo, Mangenda and Babala aren't the only obvious of the accused's involvement in the overall strategy in the crimes.

I'd also like you to have a look, a close look at Mr Arido's statements to the French authorities after he was arrested. For example in his 23 November 2013 statement, he claims that Kilolo introduced him to the very witnesses that the evidence clearly shows he assembled to meet Kilolo.

(Interpretation) "They were introduced to me by Maître Kilolo as being Central African soldiers, but as myself, I was a former soldier. I knew that none of these witnesses had been a soldier."

(Speaks English) And again where he claimed in his 17 January statement that he knew D4 as a former military, but then claimed in the same statement that he did not know him.

In a few moments, I will cede the floor to counsel to make their closing arguments, your Honours. But before I do I think it's important to underscore a few things. This process, this case is not a vehicle to serve as a referendum on how the Court should operate or even how it has in other cases.

It's not a platform for airing general grievances about perceived inequalities and biases in the manner in which the Court or the Registry manages the affairs of the Defence.

It is not a forum in which to seize the opportunity to spout reckless and irresponsible, unfounded accusations of misconduct and impropriety.

It's about the facts of this case and this case only. And it is, as I said, about what the evidence proves. Make no mistake, the evidence in this case has proved the accused's individual criminal responsibility for the charges as confirmed beyond any reasonable doubt. They were all involved in the overall strategy to which they subscribed, notwithstanding their varying roles as perpetrators, co-perpetrators, solicitors, and inducers and aiders and abettors. Bemba had a lot to lose in his trial before Trial Chamber III, a lot. His stature, his standing, his political power, the possibility of a successful presidential election, his freedom. He had every reason, every motive to do exactly what the evidence shows that he did, attempt to guarantee the favourable outcome of his trial by any means necessary including the offences charged in this case.

The notion that Kilolo and Mangenda or anyone else acted without Bemba's knowledge and authority is not only supported by the evidence, rather, is not supported by the evidence.

Kilolo's and Mangenda's conversation on 17 October 2013 at 16.37 makes this abundantly clear, and I want you to hear what they thought about that notion. What I would like to do now is just to play the recording without interpretation so that you can hear it and then we can review it with interpretation or with the transcript, if we could play that, please.

(Playing of the audio excerpt)

MR VANDERPUYE: We're going to show you the transcript now or excerpt of the transcript. While the tape wasn't that clear, that sound you heard in the background was laughter.

It reads as follows: "Kilolo: And I'm sure that knowing the guy, he's wondering deep down how to sacrifice me, that I did it myself without his knowledge.

But the only hesitation now who is naive enough to believe that, that you even take money from that.

That's it, that's right, that's it."

That's what they thought about the idea that someone could believe that they acted without Bemba's knowledge and authority and so on and so forth. Kilolo knew what he had to do to get his client off. And he was willing to do it. He knew as a lawyer that what he was doing was wrong in coaching witnesses and bribing witnesses. And although as the intercepted conversations show, he was sure he would get away with it by abusing his stature as counsel before the Court. There is no question that he knew the illegality of his conduct and he intended everything that he did and everything that the evidence proves he did.

Mangenda is a lawyer. He's a member of the Kinshasa Matete Bar. He's no different. He was Kilolo's closest advisor and he helped him to plan and effectuate all of his activities. Remember the reports from the courtroom whether the witnesses followed the instructions or not followed the instructions. The transmission of the legal representatives' questions so that Kilolo could use them to coach witnesses.

He helped him plan of all his activities and effectuate them reporting and conveying instructions between Bemba and Kilolo and even advising them both.

Babala, a jurist also and Bemba's closest confidant. He cannot pretend not to have known that the purpose of his many dealings with witnesses, directly or indirectly, in the main case was corruptly motivated.

He was in contact with Bemba in thousands of calls throughout Bemba's detention. He knew about the case. He knew about the witnesses, as well as through his contacts with Kilolo and Mangenda and Bemba. And if there was any question that he knew that he was participating in a criminal plan, those conversations in October dispel that notion beyond any doubt. I should also remind the Court those conversations occurred before the last witness testified in the main case. They occurred before D13 and D54, both of whom are charged incidents in this case, testified.

In other words, those conversations occurred and the plans to buy off the witnesses were made while the overall strategy was still going on and so that it could still go on.

Arido, last but not least, yet another jurist, cannot claim that his actions in respect of the prospective witnesses that he assembled were unwitting, although the Prosecution elicited, elected to charge, rather, incidents regarding only four Cameroon witnesses, the evidence makes clear that his intentions and his conduct were more ambitious. They involved more than the four.

Your Honours, we're confident that when you evaluate the evidence in this case in its totality, you will conclude beyond a reasonable doubt that each of

the 180 counts against the accused collectively have been amply established in the record before you, beyond any reasonable doubt.

Your Honours, this concludes our closing remarks. If you'd like to take a break, we can do that and then I can return and answer the questions with your leave.

PRESIDING JUDGE SCHMITT: Thank you very much. I think it would make sense now to make a break, of course, and I have suggested that. I suggest now that we meet again here in the courtroom at 11 o'clock. Is this okay or would you need a little bit more time?

MR VANDERPUYE: I'll take however much time you're willing to grant me.

PRESIDING JUDGE SCHMITT: 11 o'clock seems to be fine. 11 o'clock.

MR VANDERPUYE: Thank you.

THE COURT USHER: All rise.

(Recess taken at 10.20 a.m.)

(Upon resuming in open session at 11.03 a.m.)

THE COURT USHER: All rise.

PRESIDING JUDGE SCHMITT: It is still the turn of the Prosecution and I give you again the floor to address the remarks and questions that have been put to you by Judge Perrin de Brichambaut.

MR VANDERPUYE: Thank you very much, Mr President. Good morning to you, your Honours again. Good morning, your Honour.

I will try to address your questions as best I can. I have them in English, and I think the English translation might not have been entirely faithful to what you asked, but I'm sure that you will correct me if I've got it wrong.

The first question is, could you tell the Chamber which part of the closing

brief reference is made, in which reference is made to the objective of the common plan between Mr Bemba and Mr Kilolo and Mr Mangenda.

I would say first that is referred to in paragraph 52 of our closing brief. And that concerns all of the accused, not just the three of them. Not just Mangenda, Kilolo and Mr Bemba, but all of the accused we allege are involved in the common plan, are participants in the common plan as is set out at paragraph 52 in the confirmation decision.

The second thing is we incorporated by reference in our pre-trial brief at paragraph 317 of our closing brief, the paragraphs 237 and 238 of the pre-trial brief. And in those paragraphs we set out what the common plan is. We allege the scope of it, the duration of it. We talk about the plan being espoused and its implementation by the accused and other persons, and we show how it is demonstrated. In particular, we list the specific acts and events that establish its existence. And that's at paragraph 238 of the Prosecution's pre-trial brief. Roughly, those include the following, the following evidence, I should say: The planning of acts of corruptly influencing witnesses and presenting their false testimony, the payments made to witnesses, their relatives, close associates through each other and others, other forms of inducement to bring the witnesses to testify or to induce them to testify falsely in particular, the planning and implementation of the common plan, the manufacturing of testimony with the witnesses over the telephone, scripting their evidence and so on.

All of these, we submit, are evidence of the common plan itself and they are supported by the documents that are tendered before the Chamber and also referred to in the closing brief.

I'm not sure if that answers your question entirely, but you'll, I suppose, you'll let me know if it hasn't.

The second question, could you tell the Chamber what evidence in your closing brief points to the conclusion that there was indeed a common plan? And to that I would say the evidence in the closing brief that points to the existence of a common plan is, in fact, the occurrence of the crimes themselves. We argued that those crimes are essentially the result of the common plan and help define it.

So in other words, if you have 14 witnesses, they all lie about the same thing, but did none of them know each other and they're interacting with different participants in the common plan, from that, one can reasonably infer, and we think the evidence shows beyond a reasonable doubt, that there is a common plan.

So it's a circumstantial inference based on the commission of the crimes there involved.

We don't have a specific document that anybody subscribed to saying that there was a plan. We don't have a specific meeting that occurred where anybody said, "This is the plan." What we do have, and what we allege is sufficient to demonstrate the existence of a common plan, are a number of crimes involving all of the accused and the participation of the accused in various parts of that crime, which establish circumstantially the existence of a common plan as a whole.

Yeah, I think that hopefully answers your question.

The third question is more detailed. It reads that in paragraph 52 of the closing brief you say that the evidence adduced shows and I quote, "that by

the end of 2012," it's 2012 in the English but it's 2011 in the French text as I saw, which is correct, "by the end of 2011 and early 2013, Bemba, Kilolo, Mangenda, Babala and Arido worked together with others in accordance with a plan in intended to protect Mr Bemba against the charges laid against him in the main trial."

Let me just break it down this way. The first part of it is, that's correct, the period is what we are referring to is their actions within that period. So that's not to say that everybody necessarily has to be a member of the plan at the moment of its inception, but during its course, the evidence points to that each one of these individuals was a member of the plan, acted pursuant to the plan and so on and so forth.

The question then continues: "And in paragraph 318 of the brief, you argue, and I quote, 'Bemba was the general planner, the coordinator and main beneficiary of the overall strategy,'" which is right, "the objective of which was to obtain the acquittal in the main case."

Yes. The objective was in fact to obtain the acquittal in the main case by means which included the commission of offences, but effectively that's right. And you ask: "Is the Chamber to understand that your proposal in paragraph 52, according to which Arido followed the same plan with the other co-accused did not lead to the intent to have them condemned as indirect co-perpetrators."

Now, I'm not sure that I've understood the question properly. I'm wondering if you're asking whether it was our intention to charge Arido as a co-perpetrator rather than a direct perpetrator as was confirmed by the Pre-Trial Chamber. The answer is yes, it was our intention to charge

Mr Arido as a co-perpetrator, pursuant to the common plan. It was our intention to charge Mr Babala as a co-perpetrator, pursuant to the common plan. My understanding of the confirmation decision is, and I think it's quite clear, what the confirmation decision seems to say is that all of the accused were involved in the overall strategy. Three had essential roles in the overall strategy, Two had lesser roles, let's say. But all involved. And that probably explains the decision in terms of attributing to Arido the direct perpetration of crimes in relation to D2, 3, 4 and 6 and with respect to Mr Babala, his -- the confirmation of charges against him and with respect to aiding and abetting all of the witnesses given his role in the plan. That probably explains it, but the short answer is yes, it is our position. It is how we charged it in the document containing the charges that this is a common plan involving all five accused, all five contributed to the plan in an essential way.

We argue that arranging the financing for the plan facilitating the ability of the direct perpetrators of the plan to commit those offences, knowing what the plan was about is an essential contribution. We've made that argument throughout. Committing the crimes which are the object of the plan, knowing of the plan is an essential contribution to the plan. So that's always been our position. But we accept obviously the confirmation decision and we think that the evidence proves the charges as confirmed.

Okay. So I think I've hopefully managed to deal with that question. That was the third one. The fourth question, okay, one final question regarding someone who is mentioned, Mr Kokate you referred to. The role of Mr Kokate in the role of the Defence -- the role of Mr Kokate in the role of the

Defence witnesses in the main case, the question of his influence over these witnesses and the contents of their testimony are mentioned in several occasions in the closing brief, as well as those of the Defence of the different accused. However, Mr Kokate has not been convicted and I think maybe you mean -- maybe the interpretation should be charged. I'm not sure. And did not appear as a witness, neither for the Prosecutor nor for the accused. In the French it appears that what you said was: (Interpretation) "Not at the request of the Prosecutor or at the request of a Defence team." (Speaks English) I do want to just note he was a witness that was on the Arido Defence's witness list. He's not a witness that was ever on the Prosecution list because the Prosecution couldn't locate him until he was actually put on the Arido Defence list and we had an opportunity to speak to him.

"However, Mr Kokate is not -- has not been convicted, did not appear. His role is presented in different ways by the Prosecutor and the various Defence teams. It would be interesting for the Chamber to know what are the views of the Prosecutor regarding the role of Mr Kokate in this case."

What we've said all along and I think we've repeated it in our closing brief is that Mr Kokate was a person that participated in the overall strategy, that he was one of the people that implemented the overall strategy or helped to implement the overall strategy.

I think it's quite clear in our pre-trial brief, I'm not sure how much we got into it in our closing brief, but I think it's also there.

We view his role not differently from the role of Caroline Bemba, who I referred to as having made the payment, Françoise Bemba, Nginama (phon)

although we consider those, those individuals of somewhat lesser significance than Mr Kokate, who was actually in the field with the witnesses, that we spoke about earlier. We've detailed in our brief how it is that he was involved in the coaching of witnesses. And we understand that his role from the Defence was as one of their intermediaries. You've seen, I believe, some evidence to suggest that, some communications between he and Mr Kilolo and our position is yes, that essentially he was a participant in the overall strategy, and yes, he's not charged in this case as it stands.

I don't know if there is anything further you would like me to add or any further questions you have, but I'm happy to answer them as well.

PRESIDING JUDGE SCHMITT: Thank you very much, Mr Vanderpuye. I think this will do.

MR VANDERPUYE: Thank you very much, Mr President.

PRESIDING JUDGE SCHMITT: And we come now to the closing submissions of the Defence teams. Have you decided amongst each other who will start? I see two Defence counsel standing, Mr Kilenda perhaps first.

MR KILENDA: (Interpretation) Thank you, your Honour. I thought or I was given to understand, I thought I had understood that when your colleague, Judge Perrin had finished putting his questions, he had asked the OTP to respond and I had the opportunity, the Defence would have an opportunity to weigh in. I believe this would be the appropriate moment.

PRESIDING JUDGE SCHMITT: I think this is, this is a little bit, not a real misunderstanding. You have, of course, you are very invited by my colleague to incorporate this in your closing submissions. I think this would

make more sense. We do not, we do not start a back and forth now. You have all the possibility now in the next two days, probably, to speak and you have your time. It's up to you of course to decide if you want to go into the issues that my colleague has addressed and that have been also part of the answer of Mr Vanderpuye, yes.

MR KILENDA: (Interpretation) I believe your response makes more sense, yes, indeed.

PRESIDING JUDGE SCHMITT: Then I interpret the fact that Mrs Taylor has been standing up that you want to be the first.

MS TAYLOR: I'm not sure want is the word. Good morning, Mr President, your Honours. I think the fact that on one of the last days of the trial we have so many questions about the Prosecutors common strategy is a damning indictment of their indictment. And the fact that even today, the Prosecutor has stated that accused joined the common plan at different times. But we still lack clarity as to when they joined that common plan, which really leaves us with the question as to how we, as Defence, are to know whether their alleged contribution was give pursuant to the alleged common plan. As someone who has worked in the area of internation criminal defence for a few years, I have often encountered the regrettable question, how can I defend someone who is a accused of crimes against humanity or war crimes.

For myself, I am proud, I am privileged and I am honoured whenever I'm asked by an individual to uphold their rights before a court of law. That is particularly the case with Mr Jean-Pierre Bemba.

Mr Bemba is someone who greatly cares for his family and for the future of the Democratic Republic of Congo.

It is also a reflection of his liberal, modern and somewhat overly trusting personality that he selected me to be his only counsel in this case. In taking this case, it was my understanding that it is the role of the Prosecutor to search for the truth, the role of the Chamber to decide guilt or innocence, and my role as Defence to ensure that the Chamber has every possible relevant argument at their disposal when it is time for them to reach their verdict. As Defence, we help the court to uphold the rule of law in a fair, independent and adversarial manner.

There are, of course, limits. I can not assert something that I know to be false. I can not rely on evidence I know to be false. But the duty to search for the truth, that is a duty of the Prosecutor. It is not mine as the Defence. But these charges and this case seeks to run roughshod through key notions of what I understand Defence work to be. They seek to change the rules of the game and to make it virtually impossible to defend a case or to be defended.

Take the Prosecution charges that Mr Bemba, a defendant, is responsible for presenting false evidence or false testimony because witnesses lied under oath.

I have no idea how that is to be reconciled with the defendant's right of silence and the practice in international criminal courts.

In terms of the practice in this case, I sat in my chair, I was silent in the back row, even though it was clear that Prosecution witnesses were not necessarily being entirely truthful or credible. Indeed, if one witness would have been Pinocchio, at one point, his nose would have been touching Mr Vanderpuye's microphone.

But when I looked across the court-room, the Prosecution team was also silent. But according to the theory advanced by the Prosecution, if a witness you call lies under oath on any issue, you have a duty to inform the court. I'm not sure how they envisage this being implemented, whether counsel, assistants, case managers are expected to jump up and down and wave their arms. Perhaps the more reasonable position might be that the party should not rely on the testimony in future submissions.

Except that this is, of course, exactly what Mr Bemba did. The Defence renounced its reliance on the 14 witnesses in its final trial brief in closing arguments in the main case.

This raises the question as to why the Prosecution seeks a conviction against Mr Bemba for tendering false evidence which he did not tender and did not rely on.

Of course, the Prosecution allegations don't even address the issue that Mr Bemba had no right of audience in the main case. He had no right to tender evidence in the main case.

And even if he wanted to address the Chamber, as a represented defendant he had no right to do so. This is a gaping hole in the Prosecution's case. They've assumed that as the client, Mr Bemba somehow controlled and induced his Defence to take certain steps.

But Mr Bemba's control over his Defence is laid out clearly in the code of conduct. Mr Bemba decides the objectives of his Defence, but it is the Defence counsel, not Mr Bemba who decides how to carry them out.

Mr Bemba's authorisation or approval cannot be termed an essential contribution to the implementation of the common plan to defend him

because it was not required.

According to the ICTY Blagojevic Appeals decision of 7th November, 2003, there was not even a strict legal obligation on counsel to consult with the client before taking steps on their behalf. Counsel should, however, endeavour to do so. For that very reason, whenever I contemplated asking questions to witnesses, I asked Mr Bemba for his views. I passed him notes or I whispered to him at the back of the room. Of course, I could do this because I was right next to him, but in the ordinary, full Defence team configuration in the main case, counsel would have been at the front, assistants behind and Mr Bemba at the back.

If Mr Bemba wanted to speak to counsel, before the witness was questioned, he would either have to meet counsel or call them before the hearing. But, according to the Prosecution, if Mr Bemba were to speak to his counsel, on the eve of the witness's re-examination, and if the counsel were to lay out his plan for re-examination, that would be evidence of Mr Bemba's illegal involvement in coaching the witness. There could not be a more crystal clear example of the Prosecution's attempt to penalize Mr Bemba for attempting to defend himself and to participate in his Defence. Mr Bemba's limited participation in this conversation was a lawful contribution to the lawful objective of defending himself against the charges. No matter what Maître Kilolo is alleged to have done before or after their conversation, it was lawful for Mr Bemba to speak to him, in relation to his proposed line of questioning for this witness.

To muddy the waters further, the Prosecution has yet to even provide a clear definition as to what coaching is. The lack of clarity as to what is or is not

inappropriate coaching was, in fact, demonstrated during the testimony of witness D0213 in this case.

During the course of cross-examination, the Prosecution intended to put an intercept to the witness. While the witness was present in the court-room, the Prosecution stated that it was the Prosecution's position that the conversation was about the witness, and they therefore wanted the witness to comment on it. This request was rejected, on the grounds that the witness had no personal knowledge of the conversation.

Now, later, during the same hearing, a Defence counsel objected to the Prosecution placing a document to the witness, on the grounds, again, that the witness had not signed or given any formal approval of the document. The Prosecution reacted by stating that they found what the Defence counsel had done to be, and I quote, "entirely inappropriate." And I further quote, the Prosecution said, "It is a form of coaching. He knows it's a form of coaching."

Having deprecated what it considered to be coaching through suggestive questioning, the same Prosecutor, in the presence of the same witness, then asked the court technicians to place, and I quote, "The camera on Mr Gosnell's client." And this was so that he could ask the witness whether he identified that individual as Jean-Jacques Mangenda. That is, of course, Mr Gosnell's client. If that's not the ultimate form of suggestive questioning, then I don't know what is.

Basically, in advancing the allegations and definitions of improper Defence conduct, the Prosecutor has asked the Chamber to don guilt tinted glasses. When viewed through these lens --

PRESIDING JUDGE SCHMITT: Excuse me. I really am very sorry that we interrupt you, but we have obviously a technical problem. I have here a notice that the English court reporter needs to reboot her system and there will be no realtime at the moment. So how long will this take? It's up. Okay. So it was -- to interrupt you was unnecessary. I'm really sorry. It has been fixed already. So please continue. Excuse me.

MS TAYLOR: It's no problem.

When viewed through these lens, legal or anodyne case preparation, suddenly becomes evidence of coaching or bribing. The Prosecution case is equivalent of the Rorschach Inkblot test which seeks to exploit potential bias against the Defence.

By constantly repeating the refrain the defendants were coaching or corrupting witnesses, the Prosecution has sought to transform conversations on banal or legitimate topics into evidence of conspiracy.

They have done it by inserting interpretations of codes into the text, bolding words, using subjective translations and randomly linking unrelated phrases.

Effectively, the Prosecution case they have presented to you is this, this is what they have alleged against the Defence or the witnesses. But if one takes off the guilt tinted glasses it can also look like this. It just depends on the perspective.

This approach is exemplified by their analysis of intercepts presented in the closing brief. The Prosecution has argued that Mr Bemba instructed, authorised or was aware of payments to witnesses. In support of the allegation that he authorised or approved money transfers, they cite a

handful of conversations. Most of these conversations are irrelevant to the charged offences. At their highest, they relate to payments to Maître Kilolo himself or payments to persons not concerned by the charges.

Payments to counsel cannot equate to payments to witnesses. The Prosecution advanced its case at the confirmation stage regarding transfers to Mr Mangenda, only for it to be discovered that these were, of course, legitimate transfers for Mr Bemba's needs at the detention unit. This underscores the danger of assuming rather than proving.

In citing these conversations, the Prosecution has also failed to take into consideration the issue of synchronisation. This issue means that the recordings do not reflect the realtime sequence of conversation. The conversation was recorded by two different channels and when it was put together, the two speakers were misaligned. Effectively if you say hello, I say goodbye.

Person A is talking about the weather. Person B is responding about a funeral.

And Dr Harrison testified, he clearly stated that as a result of this problem, the transcripts produced by the Prosecution cannot be considered to be reliable reflection of the actual conversation.

He also testified that due to the cause of this problem it was reasonable to assume that all conversations recorded in the same manner would be affected by this problem. The Prosecution itself argued in a filing it was not necessary for the Defence to adduce further evidence of synchronisation regarding specific recordings, because they conceded that the detention unit recordings suffered from synchronisation.

It seems, however, that in reading their closing submissions, the Prosecution has invited us to go down the rabbit hole and enter an alternate topsy-turvy universe.

Even though Dr Harrison testified that even a native speaker would not be able to reliably reconstruct the transcripts, the Prosecution has now claimed the opposite. The Prosecution has also sought to criticise Dr Harrison's methodology because he did not listen to every single recording, and there are many. But they did this even though the Prosecution itself conceded that there was no need to do so.

Finally, even though Dr Harrison very clearly demonstrated that if the two channels are misaligned, the sequence of speakers in the transcripts will be incorrect, the Prosecution has sought to sweep this problem under the carpet.

Mr President, your Honours, the proper sequence of speakers is of paramount importance in a case in which it is alleged that Mr Bemba authorised illicit activity in these recordings. Two to 3 seconds of misalignment can make all the difference between um, um, yes or what? Or definitely not.

As an example, the Prosecution has relied on a conversation dated 16 October 2012. And they have argued that it is evidence of direct approvals by Mr Bemba for payments to witnesses and their relatives. This is CAR-OTP-0074-0610. This is a conversation that Dr Harrison confirmed was flawed by synchronisation errors. He also confirmed the specific section relied upon by the Prosecution was misaligned.

The Prosecution has now proposed that the Chamber can just consider the interventions of one speaker in isolation.

The Prosecution has therefore cited to the fact that Mr Babala refers to giving sugar to people to imply that the conversation itself concerns improper payments.

But if the Chamber were to do this and only listen to the speech of Mr Babala, then they would miss exculpatory elements contained in Mr Bemba's responses.

And to demonstrate this, I'll play Mr Bemba's channel from the 1.03 minute mark to 2.52. The French interpreters have been given the transcripts of CAR-OTP-0077-1299.

THE COURT OFFICER: The document will be displayed on the evidence 1 channel.

(Playing of the audio excerpt)

THE INTERPRETER: "No, no, no, she's at the mass until 8.30. But tomorrow 3 o'clock let 7 collect it, that part, and the rest can be for the child, for Bravo gulf, in fact.

What? What?

He's Susu (phon)?

All right. That's fine.

Okay. That's fine. But okay, yes, that's fine. However -- no, that's fine. Let's be clear so that there is no mistake."

(Counsel confer)

MS TAYLOR: I'm sorry, Mr President, there might have been elements missing from that, but you should have heard Mr Bemba repeatedly insist that the payments should only be for debts or recuperation and there should be no mistake on this.

The Prosecution has also relied on a conversation dated 13 August 2013 between Mr Bemba and Mr Babala, and argued that they showed that Mr Bemba was annoyed because 500 euros hadn't been paid to five witnesses.

The audio is CAR-OTP-0079-0885, again, the French transcript has been given to the interpreters. This is a conversation which is affected by synchronisation issues. And if we play it from the 9:15 mark we can hear Mr Babala hang up while Mr Bemba continues speaking.

(Playing of the audio excerpt)

MS TAYLOR: If we pull up a screenshot of the waveforms of the last part of the conversation, you can see that there is no output from Mr Babala's channel for the last 40 seconds of the conversation. That means the two channels are misaligned by 40 seconds at the end of the conversation.

This means that Mr Babala's earlier interventions are squashed in time. They do not align with Mr Bemba's responses.

And this is further demonstrated by the fact that the section the Prosecution is relying on has overlapping speech as you can see from this screenshot.

So it's not only impossible to determine the sequence of speakers but they could also be out of sync by up to 40 seconds.

Now, if we do what the Prosecution proposes, which is to listen to Mr Bemba's channel in isolation, this is what we would hear. We're going to play from the 5:30 mark to the 6:49 mark. It's line 153 to 195 of the French transcripts.

(Playing of the audio excerpt)

THE INTERPRETER: Well, if it's only about those things.

(Playing of the audio excerpt)

THE INTERPRETER: Mr President, the speaker is combining French and another language which we cannot interpret from the booth.

MS TAYLOR: We gave the French transcripts to the interpreters and it was our understanding they would translate from the French transcripts, not the audio.

THE INTERPRETER: We can't locate what the speaker is saying, Mr President. And so it's difficult to follow, except we just blindly translate from the document we have. It's not possible to synchronise.

PRESIDING JUDGE SCHMITT: I understood it this way that you intended it this way.

MS TAYLOR: Yes.

PRESIDING JUDGE SCHMITT: So I think we have to give it another try because we did not have translation and it is at least important for two judges on the bench to have the full picture and have this translation. So it would be nice if we could start the process again. And you really strictly adhere to what you have written on the paper. Thank you very much.

MS TAYLOR: If you can start again.

THE INTERPRETER: Matter of synchronisation, Mr President, if we could start all over. But then we need to be pointed to the point at which to synchronise with the statement.

PRESIDING JUDGE SCHMITT: Could you do this, Mrs Taylor, at which point in time they should start with the process?

MS TAYLOR: If the translator could just read or translate from line 153 to 195. Perhaps we can do it without playing the audio.

THE INTERPRETER: It's possible, Mr President.
(Playing of the audio excerpt)
THE INTERPRETER: (Interpretation) Well, in fact, it's possible to recall that this is half half. And that's it.
I -- I don't understand. I didn't quite inform him.
THE INTERPRETER: Mr President, we're totally lost here, because we don't know which CAR document is being played now and the sound in the interpreter's ear is totally different from what is on this script.
PRESIDING JUDGE SCHMITT: So, I have one suggestion. We, at some point in time, restarted this process, so we start it again, wherever it -- say again, please, which CAR number it is and then we restart the whole thing anew.
MS TAYLOR: Yes, sorry.
PRESIDING JUDGE SCHMITT: So there still seems to be -- the interpreters seem to be confused, and we would solve this, would have to solve this problem.
So would it be appropriate for the interpreters, if you have the CAR number, and then I understand you have copies of the French transcript, and then you start the process; is this possible to do it like this?
THE INTERPRETER: Yes, Mr President. But at the same time we have the difficulty of the sound in our ears which doesn't necessarily correspond to the transcript we have in hand.
PRESIDING JUDGE SCHMITT: Then what about the following suggestion, since you are not translating from hearing what is played, why not put it off and just translate what is written down. So I think this was as it was

intended.
MS TAYLOR: Yes.
PRESIDING JUDGE SCHMITT: This should work. Perhaps we give it another try. Please say again the CAR number and then we try it again. And of course, we hear then the translation and this must not be exactly one on one what is played. But do you want to make another point of course, I would say.
MS TAYLOR: Thank you, Mr President. If it simplifies things further, we could not play the audio since the interpreters have the transcripts prepared by the Prosecution of the audio. It was simply Mr Bemba's interventions from the transcripts. So that's also an approach if it's creating confusion.
PRESIDING JUDGE SCHMITT: If you agree to that. But on the other side, Judge Perrin could listen to the original of course which would serve him. So I think we should -- we should give it another try with the two, two ways, audio and translation from the papers.
MS TAYLOR: Yes.
PRESIDING JUDGE SCHMITT: And the interpreters only translate from the paper that they have in front of them.
MS TAYLOR: Thank you very much, Mr President. Just to confirm, we gave the interpreters CAR-OTP-0089-0716. It's lines 153 to 195, but the version we sent to them yesterday has just Mr Bemba's interventions, not Mr Babala's.
THE INTERPRETER: We have the document, Mr President, but it's even more complicated now, because we don't know whose voice we would be interpreting and at what point, except if you just want us to read out the

statement.

PRESIDING JUDGE SCHMITT: What is intended now you read out -- it has of course to be clear that you are reading out now what the Defence for Mr Bemba wants to. That is exactly what is ascribed to Mr Bemba, of course. You only translate this for us, please, yes? Okay. Then you have, I think you would have the right document and we can start the process. Thank you very much.

(Playing of the audio excerpt)

THE INTERPRETER: (Interpretation) Well because, in fact, the problem, the problem of that half, that half there. I don't know those problems and I don't know that half that have. I had very, very well notified him that I will remind him about the true total limitation and that in fact -- not beyond that. You see, I told him very clearly, um, ah, yes, yes, no. Yes. Tell him that I said so. I did say so, indeed. There will be nothing this time, this time around. No, no, no, no, no. Well, because that has all been -- yes, no, no, no. But please wait. There are people every time, each time, there is someone. It's the same, it's the same problem. Um, so he does the same thing all the time. No, no. It's, again, one of those is his things, yes, those things for his personal comfort. Yes, that, no. That's enough, enough is enough. Yes, that as well. Um. Well, finally yes, yes. But truly, ah truly, yes, the you know, in fact, that's not possible. What? He's only asking for news, for more news if everybody is doing well, is everybody fine in the village? What? No. Not possible. Quite frankly, I -- I'm upset. What? Well, okay. Apart from that, any other news?

MS TAYLOR: Thank you, Mr President, for your indulgence. That seemed

to have worked that time. I think I counted roughly 13 no's and a it's not possible. Far from approving or authorising, Mr Bemba is expressing his opposition and his dissatisfaction. So how is it that all these no's became a yes in the Prosecution case?

Again, it's only if you wear guilt tinted glasses and sweep the synchronisation problems under the carpet.

And this is the danger of relying on the detention unit recordings. A particular exchange speakers might seem like a plausible alignment. It might make sense in terms of the order of words, but there is no way to know if it's what the speakers actually said in realtime. And if it's not the correct order, then this can have a significant impact on the Chamber's assessment of the intent and responsibility of the individual speakers.

Dr Harrison calculated the average misalignment of the recordings he analysed as 27 per cent. That means the odds of a particular section being reliable is even less than the odds associated with rolling a dice. The standard of beyond reasonable proof has to mean something more than this.

The closing brief should have been the high watermark of the Prosecution case. This was their chance to highlight the best evidence against Mr Bemba. But the Prosecution's reliance on flawed conversations only serves to underline their inability to prove their own case.

Even if the unreliability of these recordings were to be ignored, taken at their highest, Mr Bemba's conversations with Mr Babala only concerned payments of money, not the commission of Article 70 offences.

There is nothing illegal or improper as concerns compensating witnesses. The Prosecution and Victims and Witnesses Unit do it all the time.

Although the Prosecution has argued that using Western Union and sending money to relatives is evidence of bad faith, the Prosecution itself used Western Union in this case to pay witnesses. They even sent money to P-261's wife.

Mr Bemba wasn't charged with the non-existent crime of chatting about money which was not his. He was instead accused of directing, planning and organising a common plan which involved the commission of Article 70 offences. This is the case the Prosecution had to meet.

In their closing brief, the Prosecution boldly proclaimed the evidence shows nothing was done to implement the overall strategy without Mr Bemba's approval or instructions.

If nothing was done to implement the overall strategy without Mr Bemba's approval or instructions, where are these instructions?

Where is the evidence that Mr Bemba instructed Aimé Kilolo, Jean-Jacques Mangenda, Fidèle Babala, or Narcisse Arido to bribe witnesses in exchange for false testimony?

Where is the evidence that Mr Bemba knew that D23, D2, D3, D4 and D6 lied to the Defence about being soldiers in the CAR?

Where is the evidence that Mr Bemba instructed Aimé Kilolo to coach witnesses for the purpose of providing false testimony?

Well, wherever this mythical evidence is, it's certainly not in the Prosecution's closing brief. Instead, the Prosecution has asked the Chamber to infer, to speculate. They have asked that the notion of intent in Article 25(3)(a) be transformed into a should have known standard, because Mr Bemba was a defendant, he should have known that witnesses called on

his behalf were lying. He should have known if his lawyers were breaching witness protocols.

The Prosecution has evidently confused the charges in this case with the main case. Mr Bemba is not charged with command responsibility in this case. He is charged in his capacity as a defendant, not the president of a political or military movement. Mr Bemba was also detained throughout the entire period at the ICC detention unit where he was subjected to constant monitoring and surveillance.

By my count, there are only six persons in this courtroom who have been a defendant and a detainee, who know what it's like to be shut off from the outside world, to be wholly dependent on other people to uphold and protect your rights.

When you are in jail, your life is defined by the four walls surrounding you. It doesn't matter how big those four walls are or how modern. A cage is a cage, even if it's gilded and a person in a cage is not free as long as the door is shut. This is not a position of power or authority. Thankfully, the Honourable Trial Chamber does not have to go to jail themselves to appreciate the clear evidence in this case that, as a defendant and a detainee, Mr Bemba was not in a position of power and had no effective access to information about what was going on on the ground.

These matters are reflected by multiple conversations in which Mr Bemba expresses frustration at being told incorrect information, at not being able to contact persons, at not knowing what individual Defence members were doing, what they were working on. It is reflected by the many conversations between persons he trusted in which they decide not to tell

him things or decide to feed him false information.

Most importantly, it's reflected by the fact that people were able to lie to Mr Bemba and hide information from him for prolonged periods because Mr Bemba had no way to check, he had no way to verify what was said to him.

Mr President, your Honours, the Prosecution has failed to establish any grounds for concluding beyond reasonable doubt that Mr Bemba as a detained defendant should have known what was being done beyond the four walls of the detention unit in Scheveningen.

The Prosecution have also established no basis for transforming the passive or reactive interventions of Mr Bemba into intentional instructions, orders, or inducements to commit Article 70 offences.

The fact that Mr Bemba utters random fillers words like um, um, aha, aha, yes, yes, yes, that does not in itself equate to actual knowledge of what the other person is talking about.

During his testimony, Dr Harrison explained that there are certain unwritten rules on how to conduct a conversation.

Firstly, it's unusual for there to be long pauses in a conversation. If one person finishes, normally the other person will say something in response because it's unusual for them to be silence.

Secondly, it's usual to take turns to speak. I wait for you to speak, then you speak and vice versa.

Dr Harrison testified that if people spoke on top of each other, it wouldn't be a productive means of having a conversation. So we can extrapolate two things from this. Firstly, if speaker A finishes talking, it would be unnatural

or awkward for speaker B not to say something just to fill up the gap.
Secondly, it would not be productive or promote comprehensibility if the two speakers talk over each other.
I'm going to play a short extract from a conversation which took place at 7.47 in the morning. I would ask the translators not to translate it because I'm playing it just for the purpose of hearing the original.
(Playing of the audio excerpt)
MS TAYLOR: As you can hear, the two speakers speak over each other. When Maître Kilolo speaks at the beginning, Mr Bemba gives mm-mm sounds and interrupts him.
Like the all-knowing narrator in a play, the Chamber can see what all the actors are doing on all parts of the stage, in all different acts. But this is a privilege which is denied to the actors themselves. The Trial Chamber might have known what was happening the night before, but Mr Bemba didn't.
And this is exemplified by his question "Why couldn't I contact you?" This is also a very brief snippet of speech. The Trial Chamber has the transcripts and can read them slowly and carefully and ponder their meaning. But that luxury didn't exist for Mr Bemba. These are fleeting words in a short conversation which could have easily gone in one ear and out the next.
Just because the Trial Chamber, for the benefit of time, analysis, a raft of contemporaneous information can guess what certain words or phrases mean does not mean that Mr Bemba was able to do so, and in fact, did do so.
For this reason, the Chamber cannot give any weight to the fact that

Mr Bemba says um, um or oui, oui, oui in a quick, early morning conversation.

7.47 a.m., you could tell me that you're Elvis Presley and you're running for president, I would respond yes, yes, that's nice and grab myself a coffee.

Mr Bemba's ability to appreciate legal consequences of what is said is also impeded by the fact that he had no legal training or background and was for this reason that on the first day of trial it was not enough for the accused to simply hear the court officer read the charges. The Trial Chamber then took the second step of asking each counsel whether they had explained the charges to the accused. They then took the third step of asking each accused and clearly Mr Bemba if he actually understood these charges.

Conversely, in the absence of such a verification process by Maître Kilolo, there was no basis to assume, on the basis of a few filler sounds and overlapping interventions by Mr Bemba, that he knew and understood everything Maître Kilolo may have been saying.

The co-defendants have not testified under oath. Unlike live witnesses, it's not possible to assess the demeanour of the speakers in the intercepts. With the intercepts, we have just disembodied voices cut off from context. We can't see the speakers' faces. We can't see what they're doing at the same time. When Maître Kilolo clears his throat and goes -- we can't see if Mr Bemba moves the phone away in reaction.

On some intercepts, we can hear Mr Bemba chewing, but we can't see if he has a television on in the background. We can't see if he's watching France 24 or watching the headlines on the news while waiting for Mr Kilolo to finish so Mr Bemba can bring up other pressing issues.

The speakers also use convoluted, coded language. Mr Bemba has always used coded language in his communications with Mr Babala. Mr Babala is a fellow political opponent who lives in Kinshasa. They had every reason to suspect the DRC authorities could, at any point, intercept their conversations.

After auditing Mr Bemba's conversations in 2008 and 2009, the Registry and Pre-Trial Chamber concluded that these coded communications reflected no evidence of witness interference.

The Prosecution has now argued that some of the same codes which Mr Bemba used in 2008 and 2009, and this was before he had any Defence witnesses, now mean Defence witnesses.

But of course the Prosecution has also argued that the codes can mean different things, which begs the question as to how the speakers were supposed to know which version of the code was being used in any one communication.

The Defence has led clear evidence on this which shows that the different speakers often understood different codes in different ways from each other. Speaker A might think that they're discussing a Congolese person while speaker B might think that they're discussing a group of militia.

We cannot as a result assume the two speakers always know what each other is speaking about.

Of course, the ability of the Defence to ascertain that this was the case was impeded by the fact that the Prosecution translations left out key pronouns which would mark a code as a group of persons.

The Prosecution transformed les Romeos to Romeo, even though it was

linguistically inaccurate, because it was what the Prosecution wanted to see while wearing guilt tinted glasses.

In their closing brief the Prosecution has even controverted the reliability of its own translations. For the duration of the trial, the Prosecution relied on a French translation in which Maître Kilolo refers to the figure 1.7. But at the very end of the case, they have suddenly asserted that the Lingala original is closer to 17. How are we as Defence supposed to respond to intercepts which can have incorrect, ever-changing translations and interpretations? What weight can be given to an ever-shifting terrain?

A striking feature of this case is how little the Prosecutor did to try to authenticate, analyse and corroborate the contents of these intercepts. International case law regarding the need to authenticate intercepts is clear. But even though the Prosecution was given the name and contact details of the person who recorded the intercepts, they simply declined to interview or call him.

International case law regarding the level of explanation and argumentation required to tender evidence from the bar rather than a live witness is also clear.

Nonetheless, the Prosecution tendered all the Dutch intercepts with no explanation as to the relevance and reliability of each intercept. Instead, the Prosecution incorporated wholesale the descriptions and summaries prepared by the independent counsel.

The problem with this approach is that the Prosecution has indicated, on multiple occasions, they disagree with the manner in which the independent counsel interpreted and analysed some of the conversations. So where does

this leave the Defence? How are we supposed to know how and why each intercept relates to the charges and respond to that if the Prosecution has failed to articulate this?

For example, in relation to one conversation, the French transcript is CAR-OTP-0090-1428, which the Prosecution tendered on the last day of the Prosecution case, the Prosecution assert without proof that a term, which has never been used before, must be a code for witnesses.

In making this assumption, they ignore references to January, that is a time period after the close of the Defence case, and without any actual evidence of bribery, they assert that any payments of money in it must equate to a plan to bribe witnesses as part of a non-existent cover-up.

How are we as Defence supposed to respond to Prosecution allegations that are based on speculation and conjecture rather than evidence? We can't.

And at the end of the case we've been left with far too many known unknowns and unknown unknowns as concerns the content and meaning of the intercepted communications.

As a result, the intercepts can only be relied upon as evidence of what the speakers said, not what the speakers understood. They cannot be a sound evidential basis for determining actual knowledge and intent.

Apart from the fact the Statute simply doesn't recognize a should have known standard for Article 25(3)(a), there is also no basis for lowering the evidential threshold for establishing Mr Bemba's knowledge and intent in this case.

This is not a case in which the Prosecution were forced to rely on inferences or circumstantial evidence. This is not a case where a lack of state

cooperation impeded their investigations. To the contrary with the assistance of both state and non-state parties, main case Defence files and communications were effectively turned inside out.

The Prosecution had the ability to access all of Mr Bemba's non-privileged Defence communications. And this ability included conversations with two other co-accused, Jean-Jacques Mangenda and Fidèle Babala. The Prosecution had the ability to access all of Mr Bemba's privileged telephone logs. From July 2013 onwards the Dutch and Belgian authorities monitored all of his privileged communications with another co-accused, Aimé Kilolo. They also received call data records from a range of different telecom providers.

The Prosecution received all of the Western Union payments and transfer records of a range of persons associated with the Defence dating back, in some cases, eight years. The Victims and Witnesses Unit provided them with payments of certain Defence witnesses. The Prosecution received all relevant emails from the Yahoo email accounts of three of the five co-accused.

The detention unit cell of Mr Bemba was searched and documents given to the Prosecution.

Three of the five co-defendants were interviewed by national authorities.

The Prosecution interviewed 13 former Defence witnesses, including 11 of the 14 witnesses who were the subject of these charges.

If the truth was out there, the Prosecution had no excuse for not finding it.

But after having been given extensive, unparalleled access to Defence records, documents, accounts, communications, after over three and a half

years of investigation and prosecution, the Prosecution were unable to adduce any evidence that Mr Bemba directed, planned, organised the commission of Article 70 offences in this case.

The recordings and intercepts, even taken at their highest, only establish that Mr Bemba was told about payments. They did not establish that he knew and intended for his Defence to rely on false testimony, nor did they establish that Mr Bemba knew and intended for witnesses to be paid for the purpose of inducing false testimony.

These are the key elements and they make all the difference between a legal plan and a criminal plan. They cannot therefore be assumed.

The recordings and intercepts also underscore Mr Bemba's passive involvement in such matters. He is informed of developments after they have happened or after they have been agreed upon by others. He reacts to what he is told and what he is advised by his court appointed lawyers.

Mr Bemba does not instruct, direct or control these discussions.

The recordings and intercepts provide no basis to conclude Mr Bemba was a co-perpetrator or that he solicited the commission of Article 70 offences.

The Prosecution introduced evidence from 16 witnesses, but not one, not one gave any evidence of Mr Bemba's knowledge, intent or complicity in the commission of these offences.

The Prosecution's own expert witness, who was called to establish the existence of multiparty calls involving Mr Bemba did exactly the opposite and confirmed that it was not possible to verify the existence of multiparty calls.

The Prosecution has also advanced a completely irrational case as concerns

Mr Bemba's contact with D55.

The Prosecution closing brief argues that Mr Bemba and Maître Kilolo exploited D55's fear of Bemba and his concern about the repercussions for his testimony on himself and his family.

How did Mr Bemba commit this heinous act of exploitation? Well, apparently Mr Bemba did so by communicating his appreciation to D55 for accepting to testify.

Mr President, your Honours, this must be the first case in the annals of history where an accused is charged because he didn't threaten a witness, because the accused made the witness less afraid to testify.

So when we wear the Prosecutor's guilt tinted glass it would seem that if a witness specifically asked to speak to a defendant and the defendant under the supervision of his lawyer thanks the witness for testifying, does not discuss money, does not discuss the contents of their testimony, that is contempt.

But if we take off these glasses, how does the conduct of Mr Bemba compare to the conduct of the Prosecution as concerns the same witness?

D55 requested to speak to Mr Bemba. He initiated the contact. In contrast, at the behest of the Prosecution, D55 was dragged out of his house by national police, interrogated with counsel in an interview that was not recorded.

D55 informed the Prosecution that he had been traumatised by this experience, that it had been a form of psychological torture.

D55 complained about being repeatedly contacted by the Prosecution. At one point he expressed his concern regarding the tone and angry reactions of

a Prosecutor investigator as concerns D55's reluctance to testify. In his testimony, he described this tone as threatening.

The Trial Chamber found that the conduct of the Prosecution and the national authorities regarding D55 was not coercive.

If that level of encouragement did not cross the line, how can simply thanking a witness for agreeing to testify constitute contempt?

The fundamental weaknesses in the Prosecution case are also exemplified by the manner in which it has mutated throughout the trial.

In the charges, the Prosecution argued that the inducements to witnesses D2 and D3 were comprised of actual promised witness payments and promises of asylum.

The Pre-Trial Chamber in turn found the precarious personal situation of these witnesses had been exploited to induce them to provide false testimony.

In the pre-trial brief, the Prosecution repeated its case that D2 and D3 were induced to provide false testimony through witness payments and promises of asylum. D3's actual testimony and evidence nonetheless threw a spoke in the wheel of the Prosecution theory. D3 testified that he was not induced to testify falsely due to promises of asylum or money. D3 insisted that he was able to obtain asylum in a particularly desirable country through his own efforts.

Rather than recognising that they had failed to prove this aspect of the case, the Prosecution simply changed it. Their case altered when alteration found. The Prosecution in their closing brief now allege the topo (phon), the bargain for their false testimony, was that once liberated, Mr Bemba was

going to help their ringleader, who we call Bob, to mount a coup d'état overthrowing General Bozizé.

The Defence did not question D3 on these allegations because the allegations fell outside the scope of the confirmed case. We had no duty to shadow-box every random allegation that pops up at trial. The case law of the ICC is clear regarding the role of the confirmed charges in defining the parameters of the case. Just because a witness stepped outside the ring doesn't mean that we should have been forced to follow them.

In any case, the Prosecution has introduced no evidence which would support the existence of this fanciful scheme. Mr Bemba's political party is exactly that, a political party. He had no access to weapons, no means to support a coup d'état. But more importantly, the Prosecution closing brief explicitly concedes that this theory has absolutely no legs.

The Prosecution acknowledges that Bob asked the witnesses to lie about their background to the Defence.

If the Defence had entered into a bargain to obtain false testimony, why would the witnesses have been required to hide their real background from the Defence? Why would they have bothered to send private emails to the Defence, which were signed off with their false persona?

The Prosecution closing brief puts a further nail in the coffin of its own theory. At paragraph 141, the brief states, "During their meeting, D3 realised Bob was acting only in his own interest."

We couldn't have said it better ourselves. Bob was acting in his own interest. He had his own interest to bring false testimony before the ICC. General Bozizé was his rival, procuring testimony that Bozizé's forces

committed crimes in the CAR directly advanced his political agenda.
Bob's own interest was underscored by the fact that he approached his friends members of political or military movement to help him with this endeavour. Bob sabotaged the Defence for Mr Bemba. He introduced false witness to them and instructed them to lie to the Defence. He made promises to these witnesses and encouraged them to take advantage of the ICC to improve their personal situation.
Of course, when the political winds changed, Bob joined forces with Bozizé and conveniently decided not to testify for the Defence.
Bob was never charged. Instead, the Prosecutor has sought to make Mr Bemba responsible for the havoc and mayhem which was wrought by a bad intermediary.
Of course, the ICC as a court is familiar with the chaos that can be created by unreliable intermediaries. But unlike the situation in other ICC cases, Mr Bemba didn't know these witnesses. He had no way to verify that they were lying about their identity. If the Trial Chamber affirms that this group of witnesses intentionally lied under oath, then someone should be charged and convicted under Article 70. But that someone is not in this courtroom.
A further volte-face in the Prosecution case concerns the manner in which they have addressed the faux scenario, the false situation. The closing brief claims that Mr Bemba actively sought advice on the so-called leak regarding the Article 70 investigations. It claims that he directed his Defence to warn witnesses that they could be arrested and that he sought to buy witnesses' silence.
This is false and disingenuous. There was no cover-up plan.

The Prosecution admitted as such in its opening statement. They admitted that Maître Kilolo, Mr Mangenda plotted to extract money from Mr Bemba, not to give to witnesses but to keep for themselves. They weren't planning to hush up the leak because the leak was fake. They made it up.

Mr Bemba also did not actively seek advice. There was instead a plan to actively lie to him. Far from directing, organising, planning a cover-up, Mr Bemba was a passive victim, not a perpetrator.

This false scenario runs roughshod through the Pre-Trial Chamber's finding that Mr Bemba was at the origin of the acts of the Defence and that he was the planner whose actions led to the commission of the charged offences.

This simply isn't true. Maître Kilolo and Mr Mangenda concocted this plan, not Mr Bemba, and they did so not for the benefit of Mr Bemba, but for themselves. The false scenario highlights Mr Bemba's vulnerability, his lack of control over the acts of his Defence team.

Mr Bemba's response to the false scenario is also completely inconsistent with the intent and actions of a person engaged in bribery or a cover-up plan.

As set out in the confirmation decision and as mentioned, one of the components of the Prosecution's case is that the precarious living situation of D2, D3 were exploited to induce them to provide false testimony.

Well, because of the false information that was fed to him by his Defence, that's exactly what Mr Bemba believed the Prosecution were doing with D2 and D3. His Defence told him that the Prosecution were exploiting the witnesses' discontent and dissatisfaction with the Defence and it was the Prosecution that was inducing them to provide false testimony.

Mr Bemba suggested in response that Maître Kilolo should contact Defence

witnesses by phone one or two minutes to check in on them. This is something that is completely consistent with the role of the Defence in monitoring the well-being of its witnesses after the completion of their testimony.

If Mr Bemba had wanted his Defence to induce the witnesses to become part of a cover-up, it beggars belief that he would expect his counsel to do this over the telephone in just one or two minutes.

The Defence witnesses who were actually contacted by Maître Kilolo during this time period also confirmed that they were not asked to participate in a cover-up.

Indeed, rather than suggesting a cover-up, Mr Bemba asked his Defence to do the opposite, to expose what he believed to be improper conduct by the Prosecution, to collect documents from the witnesses which the Defence could use to demonstrate this improper conduct.

In the same manner that the Prosecution eventually deployed to the country in question in order to obtain evidence that D2 or D3 had been exploited, Mr Bemba wanted his Defence to do the same. He wanted to catch the OTP in the act.

There is nothing wrong, illicit or improper about this. Other Defence teams had done the same. In the Kenya cases, evidence of such impropriety had even triggered the Prosecution withdrawing charges against the defendant.

Contacting witnesses to check their well-being, collecting statements or documents concerning improper pressure, that's standard, permissible conduct.

When the Prosecution set out to explore issues of possible impropriety, they

did so by hauling D2 and D3 into police stations, waving the equivalent of immunity agreements under their noses and arranging for them to have furnished houses and to receive significant sums of money. In contrast, when Mr Bemba was informed about this, his approach was to direct his Defence teams to inform D2 and D3 that due to the ethical obligations of the Defence, the Defence would not be able to accede to their demands.

How is it that the Prosecution can ignore or transform clear evidence that Mr Bemba did not instruct or authorise his Defence to bribe witnesses as part of a cover up scheme into the opposite?

Again, rather than focusing on what Mr Bemba actually said, the Prosecution has put their guilt tinted glasses back on. For example, when Mr Bemba and Maître Kilolo first discussed the possibility of collecting evidence on the Prosecutor's impropriety, and this was 17 October 2013, Maître Kilolo states that going down this route should be the last resort, the strategy would also affect the credibility of the witnesses who had been suborned to provide false testimony to the Prosecution. Effectively, even if the Defence witnesses admitted to lying to the OTP for money, this admission would necessarily affect the witness's credibility in the main case.

This is CAR-OTP-0082-1309 at 1318.

The Prosecution has ignored this exchange. Instead they have claimed that Defence concerns regarding witness credibility show that the Defence knew that witnesses were false witnesses. Once again, they have invited the Chamber to go down the rabbit hole into a topsy-turvy world.

Similarly, if Maître Kilolo or Mr Mangenda in a conversation between themselves say notre frère said this or that, the Prosecution has, when it suits

them, claimed that notre frère is Mr Bemba.

In many instances, they have completely hidden the artifice, their pre-trial brief and closing brief straight up claim that Mr Bemba said X, Y and Z, even though the citation to such a claim concerns a conversation between Mr Mangenda and Maître Kilolo in which Mr Bemba is not even mentioned. African solidarity aside, references to notre frère and intercepts do not automatically refer to Jean-Pierre Bemba, nor can such a key issue be assumed without concrete objective evidence. Even though the burden is on the Prosecution they have made no effort to discharge it. They have failed to adduce any evidence which would establish, for example, that Maître Kilolo spoke or met with Mr Bemba on the day in which the conversation with notre frère allegedly occurred.

There were a lot of notre frères in this case. The Court records and intercept reflect the fact that Mr Kilolo was in contact with a lot of notre frères during the relevant time period. The viewpoints ascribed to notre frère are also at odds with the position adopted by Mr Bemba in conversations which we can actually hear him speaking. The fact that the Prosecution has assumed rather than established is Mr Bemba as a notre frère in question is emblematic of the blurred lines of identity and responsibility which run through its case. This is highlighted by the closing brief in which the Prosecution employs a strategy of merging the five co-accused into one amorphous concept, the accused. It's as if Jean-Jacques Mangenda, Fidèle Babala, Aimé Kilolo and Narcisse Arido and Mr Bemba were sown together to create one Frankenstein-esque person called the accused.

The brief asserts that the accused met witnesses, the accused paid witnesses,

and the accused coached witnesses. But this simplistic approach ignores the duty of the Prosecution to prove the intent and contribution of each individual accused. It ignores the reality. Mr Bemba was in detention. He didn't meet witnesses. He didn't pay witnesses. He didn't coach witnesses. It ignores the reality there is no evidence that Mr Bemba knew or intended witnesses to be paid for false testimony or that he knew and intended for witnesses to be coached to provide false testimony. There was no uniform entity called the accused and there was no uniform criminal plan between the different accused.

Contrary to the Prosecution's submissions, the Bemba Defence was also not a criminal organisation. It was a team of multiple lawyers doing multiple things. During the period of the charges, it was not just composed of Jean-Jacques Mangenda and Aimé Kilolo. It was also composed of Peter Haynes QC, Dr Guénaël Mettraux, Nicholas Kaufman, Kate Gibson, a variety of legal interns and assistants.

None of these people have been alleged to have engaged in Article 70 activity. They met with some of the 14 witnesses. They examined them. They prepared submissions concerning them, all of them doing so on the basis of the overarching objective, the overall strategy to defend Mr Bemba against the charges.

There was nothing inherently illegal or improper about this objective. If Mr Bemba had been discussing the proposed re-examination of D15 with Peter Haynes QC, if he had used exactly the same words and phrases, privilege would not have been lifted.

Similarly, if Mr Bemba had been chatting to Kate Gibson about the news,

there was a new arrest warrant in the Kenya cases, privilege would not have been lifted.

Defending Mr Bemba was a legal objective but external factors made it a well-nigh impossible task. Defending an acting president may have its advantages, but defending a former vice-president doesn't.

Witnesses had every reason to be scared to testify for the Defence. Defence witnesses would drive to Kinshasa, interrogated by DRC authorities before their testimony. Defence team members, including Kate Gibson, were detained by national authorities, subjected to illegal searches.

As the Prosecution has noted, there were over 5,000 victims participating in the main case. These applications poured in throughout the trial and were a constant source of work and distraction.

Mr Bemba's funds were frozen. There was no investigations budget. Defence funding was a constant source of frustration, concern and discussion.

If, during the course of defending Mr Bemba, someone clearly crossed the line, then of course the Chamber should enter a conviction. But there cannot be one line for the Prosecution and one line for the Defence. The line also cannot be set so low that the Defence counsel or assistants trip over it.

Defence work is hard enough as it is. Please do not criminalise the work the Defence have to do in order to defend their clients vigorously, independently and effectively.

Defendants appearing before this Court need to know that the Chamber will protect their right to mount an independent Defence, because no one else will.

Article 70 aims to uphold the administration of justice, but Article 70 can only uphold the administration of justice if it does so in a manner consistent with the right to a fair trial. The right to a fair trial will have no meaning if defendants are sanctioned for doing what defendants do, which is to speak to their lawyers and to trust their court appointed lawyers to defend them. And that is all that Mr Bemba did. He was a defendant in the main case, but he should never have become a defendant in this case.

Mr President, your Honours, even if this Chamber does not possess the power to release Mr Bemba, it should still acquit him.

As a final word, Mr President, your Honours, it's been a privilege to appear as Defence counsel before this Court and before this Chamber.

I would like to express my appreciation to my colleagues, Defence, Prosecution and Registry, for all working from our respective sides of the courtroom towards the goal of a fair, impartial and expeditious trial. I am grateful to all of them for this unique, and at all times, interesting professional experience.

I would like to thank my team for their remarkable assistance and dedication. Thank you.

PRESIDING JUDGE SCHMITT: Thank you very much. I think we will have now the lunch-break until half past 2, I would suggest, and then we continue with whatever Defence team will tell us then. We have a break now.

THE COURT USHER: All rise.

(Recess taken at 12.51 p.m.)

(Upon resuming in open session at 2.31 p.m.)

THE COURT USHER: All rise.

PRESIDING JUDGE SCHMITT: Continue now with the next Defence team. I would like to inquire who this will be.

Then I give Maître Djunga for the accused Kilolo the floor.

MR DJUNGA: (Interpretation) Mr President, thank you for giving me the floor.

Mr Aimé Kilolo's Defence team will use its two hours as follows: I will speak, my learned colleague, Stephen Powles will speak and Mr Kilolo will himself also address the Court.

Mr President, your Honours, let me start by first of all appreciating the Chamber's reading and understanding of the final submissions of the Prosecutor.

The relevant questions that you raised at the beginning of this hearing were not addressed. And I know that you will draw the appropriate consequences therefrom.

I listened with keen and sustained attention to the submissions of the Prosecutor and I note the statement of the Prosecutor to the effect that "In a few moments," and I'm quoting, "I will give Defence counsel the floor for them to present their arguments, but before I do so it is important to highlight a number of things." And I continue, "in this matter which is not a referendum on the functioning of the Court. This case is not a forum to highlight general grievances in the manner in which the Court or the Registry may manage the affairs of the Defence."

I'm really sorry that the Prosecutor would have to say this because, unfortunately, the history of any institution is usually marked by some

decisive moments; for example, when a situation opens up a new era, a new era will open for this Court, this prestigious Court, this august Court with the verdict that you will hand down on this case. This clearly is not the kind of case that leads to the creation of an institution like ours. However, this trial must once and for all determine the nature of the relations between the Defence, or Defence teams, and the Office of the Prosecutor.

This case is an illustration of the excessive zeal exercised by the all-powerful Prosecutor against the Defence.

As we address the Court in these final submissions, we feel bitterness and revolt all at the same time. Revolt because the trial initiated by the Prosecutor simply despises the Defence and the duty of counsel for counsel was light-handedly arrested and humiliated by being thrown into jail, simply to satisfy an ego and to distract us from a poorly-committed process. We feel bitterness because of the waste of the resources that have been used to try to discredit this prestigious institution, which will never again be seen as an institution where the equality of arms is properly upheld.

After looking at the totality of the evidence from the Prosecutor, who at the initial appearance declared that they had substantive evidence, we must now note that this has all added up to nothing. Therefore, we must ask the following questions: All of that noise for this? Yes. All of that for this? Unfortunately, the proceedings were based on suspicions by the Office of the Prosecution and they have all led to particularly serious measures that have been taken which lead to an imbalance in the trial between the parties.

From this forum, we are going to argue again our case as has been the case from the beginning of this trial. During his submissions today, the

Prosecutor said one and one truth only, and it is that facts die hard. Indeed, facts do not go away. It is because facts die hard that the Prosecutor was unable to establish beyond a reasonable doubt that Mr Aimé Kilolo is guilty. We want to highlight the procedural and flagrant mistakes that were made which must be guarded against in order to avoid gagging lawyers. We also want to state that it is absolutely necessary to adopt procedures to adapt the functioning of matters in this Court, particularly with relation to the management of victims and witnesses even before trial so that no party can become an easy catch for the other and so that the International Criminal Court may sustain the hope that it created at the time of its creation.

An analysis of this brief shows that it is replete with speculation and criminal procedures allow no place for speculation. My learned colleague Stephen Powles will address this matter further during his submission.

Mr President, your Honours, the Prosecutor has asked you to convict Mr Bemba's lead counsel in the main case based on Article 70 of the Rome Statute. However, we must note that no witness in the main case, for which the allegations of false testimony have been made, has been charged as a perpetrator of such an offence. Witnesses who have affirmed having made false testimonies say that they lied to Maître Kilolo regarding their status as soldiers and as to their presence in Bangui in 2002.

Please recall and remember that one of these witnesses, even shamelessly testified that they dipped documents into tea with a view to misleading Mr Kilolo. The Prosecutor has asked you to convict Mr Kilolo based on witness statements from witnesses who both lied to Mr Bemba's Defence and to the Trial Chamber under oath.

The fundamental question that we must then raise is to know why these liars have not been charged under Article 70 of the Rome Statute. Why is it that rather than prosecute them, the Prosecutor has offered them immunity and other financial benefits and chosen, rather, to charge persons who did not make any statements under oath before the Judges?

Would it be wrong to claim that the purpose of the Prosecutor is simply to settle scores with its former adversaries in the main case by using some Defence witnesses?

Furthermore, you are definitely aware of the fact that contrary to the verdict in the Lubanga case where the Judges came to the conclusion that some Prosecution witnesses had testified falsely, the Judges of the main case did not refer to any false testimony in their verdict. And as you know, the Prosecutor did everything except follow the instructions of the Judges to trigger Article 70 against the witnesses in the Lubanga case.

On 24 May 2012, the Prosecutor filed his final brief and has made his closing remarks today. From those remarks, both written and oral, it emerges that the Prosecution is asking that the Court would convict our learned colleague for corruption and illicit preparation of witnesses. We will, therefore, very briefly and quickly address each of these allegations and then revert to the final conclusions subsequently.

Mr President, your Honours, regarding allegations of corruption, the Prosecutor's case may be simply outlined as follows: Mr Kilolo personally gave cash or transferred funds to witnesses amounting to 3,649 euros. This amount is alleged to have been given to 10 witnesses as follows: 1,069 euros to D2, 1,130 euros to D3, 350 to D4; 250 to D6, 700 to D23, 100 euros to D25.

300 euros to D26, 100 euros to D55, 75 euros to D57, and 75 euros to D64.
Furthermore, the Prosecutor mentions five other persons who were involved in the payment of money to witnesses; namely, Mr Arido, Mr Babala, P-0270, Madam Caroline Bemba and Mr Mokula.
In the document containing the charges these various persons together transferred a total amount of 2,506 euros to seven out of the 14 witnesses involved. The amount of money was distributed to these witnesses as follows: Money from Mr Arido, 27 euros to D4, 32 to D3 and 53 euros to D2 for a total of 112 euros.
Money from Mr Babala. It was a single transfer of 475 euros to D57.
Money from witness P-0272, it was also a single transfer of 500 euros to D64.
Money from P-0 -- finally, from Caroline Bemba was also a single transfer of 954 euros to D6.
In fact, three witnesses can be excluded from this discussion since the file does not contain any evidence or any material act proving money having been sent to these people; namely D15, D54 and D13.
The Prosecutor himself reverted to the evidence and puts no amount to having been transferred to those witnesses. In summary, therefore, the alleged corruption that the Prosecutor refers to in this trial is in relation to a total amount of 6,155 euros divided between 10 witnesses.
One is very far off the mark. In fact, well below the mark of a $100,000 American which the Prosecutor so pompously talked about at the beginning of this trial in November 2013. Furthermore, nine further witnesses in the main case appeared during this trial, eight of them were called as Prosecution witnesses. Only one was called by Mr Kilolo's Defence. None of these

witnesses stated that Mr Kilolo had given them money and told them that it was a kind of corruption or retribution for the false testimony they were expected to give. Even the most hostile Defence witnesses stated that Mr Kilolo told them the following: It is not corruption. I am looking for soldiers who were on the field and who experienced the events in the Central African Republic.

Of the nine factual witnesses who appeared, only three, only three claimed that Mr Kilolo allegedly gave instructions on the content of their testimony. We are talking here about witnesses D2, D3 and D23.

However, contrary to the six others, these three witnesses lied clearly under oath before the Judges in the main case.

Mr President, your Honours, in this trial you also heard an expert in witness protection and protection of victims before international courts, I'm referring to Mr Vaatainen. This expert stated that there is no prohibition for Defence teams to cover witness costs during investigations such as costs relating to accommodation, transport, meal, medical attention, as well as travel for their minor children in order to bring families together. That expert in that regard said that it was the responsibility of each Defence team to cover such expenses. The expert also confirmed that within this jurisdiction there is no instruction whatsoever from the Registry pertaining to the types of expenditure to be covered by Defence teams within its investigations and relating to witnesses.

Yes, indeed, Mr President, there is no regulation within this Court, there is no specific orientation within this Court which clearly outlines the degree and level of assistance to witnesses.

In document ICC-01/05-01/13-3-42 contains the relevant information I am referring to.

The Defence team of Mr Bemba in the main case went well beyond the amount of money made available to Prosecution witnesses, and this, in the absence of all or any regulation in that connection.

In this present case, the Prosecutor gave a lot of money to a number of witnesses within this trial. It is, therefore, absolutely unjust for Prosecutor to claim that the amount of money paid out by the Bemba team in the main case was either excessive or equivalent or tantamount to corruption.

The Prosecutor gave P-169 the amount of $5,774 US, $13,000 US, making a total of $18,774 US. The prosecutor also gave the witness money to pay six months of rent, one year of school fees for his children, money to buy a lorry in order to relaunch his commercial activities or business; therefore, one cannot reasonably assert that the amount paid or given to Defence witnesses was disproportionate, mindful of the extremely preoccupying practice of the Prosecutor in this matter. I refer you to document ICC-01/05-01/08-2827.

Mr President, I would therefore now like very rapidly to demonstrate by comparison the amounts of money received by some witnesses who appeared in the two cases, first of all as Defence witnesses in the main case and then subsequently witnesses as Prosecution witnesses in this case. Let me take the case of witness D2.

D2, in the main case, according to the Prosecutor, received some 550,000 francs CFA from Mr Kilolo. That very witness received, when testifying as a Prosecution witness, P-260, the amount of 573,000 francs CFA, that is about 874 euros, and additionally 7,176.84 euros. He also received 1,248,000 francs

CFA per month for hotel and food allowances. I refer you to the following document CAR-OTP-0090-2121, CAR-D1-008-0001.

Now, let me turn to the case of witness D3. Witness D3 in the main case. In that case the Prosecutor claims that Mr Kilolo gave him the amount of 600,000 francs CFA. That very witness received when appearing as a Prosecution witness P-0245 in this case, the amount of 1,844,400 francs CFA. The witness requested money to furnish his house and the reason being that his furniture was old and rudimentary and to that effect he was given the amount of 286,000 francs CFA to buy new furniture. I hope that you will find the interest to read the following document CAR-D21-0008-0004 and CAR-OTP-0091-0892 from pages 22 to 23 in this connection.

Let me now turn to the last witness as an example. I'm not going to mention all the witnesses, but if we take witness D23, the Prosecutor claims that Mr Kilolo gave to witness D23 in the main case the amount of $600. The same witness in this case when appearing as a Prosecution witness received the amount of 873 euros. Please refer to the following document CAR-OTP-0090-2122, CAR-OTP-0084-1422, CAR-OTP-0085-0488.

Mr President, your Honours, just one word on the illicit preparations alleged by the Prosecutor. Mr Vaatainen, the expert witness, confirmed that the general practice within this Court is for all parties to meet potential witnesses before they appear to review their testimony with them. According to him there is no Rule within this Court which prohibits a calling party from putting his theory in the case or even some evidence to the witness in order to elicit their comments.

Furthermore, the Prosecutor himself asserted that witness preparation makes

it possible for the witness's memory to be jogged in relation to the facts pertaining to his testimony and, therefore, give him an opportunity to give structure to the narration of his story in a precise manner.

The Prosecutor, in a written submission to Judges of this Chamber, asserted that witness preparation has the virtue of helping to obtain targeted and structured testimonies so that all evidence can be received. The Prosecutor also confirmed that a meeting before the testimony is the last opportunity for the calling party to determine the most efficient manner in which the witnesses will be examined and to determine which areas of examination will elicit the most relevant and probative evidence. I refer you to the following document ICC-01/05-01/13-1276.

Mr President, to talk to and prep a witness does not in any way amount to an interference so long as the conversations do not seek to alter the truth, but rather to discuss with the witness information that had already been communicated in a prior statement.

More than a success story for the Prosecution, this case speaks to the absence of Rules pertaining to contacts between the lawyer and the accused person as well as the witnesses who are to appear in an adversarial system which involves parties from various legal traditions, backgrounds and systems.

In this context, we must necessarily then wonder what difficulties practitioners of various legal systems might face, particularly when it comes to the margin of interaction with their prospective witnesses.

Mr Kilolo, Aimé is a lawyer at the Brussels and Lubumbashi bar and he was trained in a legal system where the concept of relations between counsel and witness is extremely different from the practice in the adversarial system

which obtains in this Court.

In the civil law system, the role of Defence in the administration of criminal law is less active than within the processes that obtain within this Court. Indeed, both the rules of criminal law as well as the ethical corpus behind their system of origin are particularly restrictive in this regard. In these systems, the defence lawyer in criminal matters does not have the possibility to carry out an investigation in an autonomous manner. This is all the more true given that the procedural regime is generally that of searching for the truth under the instruction of an investigating magistrate who organises the necessary measures on his own initiatives or on requests made by the parties. As such, lawyers from this continental tradition who exercise before this Court, do not have the appropriate reference mechanisms in establishing relationships with potential witnesses, exercising investigative prerogatives in an autonomous way, contacting witnesses as well as gathering their statements and refreshing their memory therefore becomes an exercise which is harder in this regard. It is in this situation that Aimé Kilolo found himself in while the code of professional conduct before the Court does not set out particular Rules beyond the provisions of Article 24 and 29. These texts unfortunately govern in too general terms the counsel beyond the Court as well as relations with witnesses and victims. Article 29 limits itself to stating that counsel abstains from intimidating, harassing or humiliating witnesses or victims or submitting them to disproportionate pressure within the courtroom or outside thereof.

Article 24, which defines the obligations of the Court, limits itself to prohibiting behaviour aimed at leading into error, intentionally or

unintentionally, the Court.

Furthermore, in the hypothesis that the accused is not considered as indigent, financing and organising travel of the witness is also an extremely difficult task. This situation is very unusual for lawyers from the continental system who almost never find themselves in a situation where they carry out such operations. It appears certain that the criticisms made of Maître Kilolo, while beyond the implementation of criminal proceedings would reveal or more than disciplinary measures. These criticisms should draw attention to the absence of appropriate training mechanisms and the creation of a body of technical rules to be known by lawyers of all traditions in a common ethical framework.

Under these conditions, the criminal proceedings taken against Maître Kilolo are particularly concerning with regards to the equality of arms between the Prosecution and the Defence. A total asymmetry has been set up with regards to intrusive measures, detention, loss of immunity against the counsel of one of the parties, a Defence lawyer, on the initiative of his adversary, the Office of the Prosecutor without there being any symmetry possible. And while the Prosecutor has the possibility of offering immunity to witnesses who can base the prosecution against the lawyer and his adversary, creating a significant lack of balance which is difficult to remedy between the Prosecution and the Defence. This case should be the occasion not to bring out disproportionate measures with regards to that defence, but to find mechanisms to come up with common practice for the different parties with a view to achieving equality of arms and a harmonisation of professional practice among actors from different legal tradition.

As a consequence, your courageous decision, your Honour, your Honours, has the merit of making it possible to review all the lacks in the provisions with regards to interaction between a lawyer, a defence lawyer and witnesses. Your Honour, your Honours, Aimé Kilolo who pleads not guilty is a man who for many years has been dedicated to justice. My colleague is married and a family father. Many former chairmen of the bar of Brussels and Lubumbashi in the Democratic Republic of Congo, as well as the former president of the International Criminal Bar and member of the disciplinary counsel, counsel before the International Criminal Court have all confirmed the honourableness, the probity and the dedication of Mr Kilolo to the service of justice. His reputation and his credibility as a lawyer has never been called into question by the disciplinary authorities under whose authority he is. The order of counsel in Brussels confirms that he has been exercising his profession for 18 years without the slightest reproach with regards to his professional behaviour. The Belgian state confirms that there are no judicial background, either.

Mr Kilolo is taking your shelter because he -- you are the ultimate rampart to bring justice in the international society in its great diversity but also you are there for the innocent who are destroyed by the accusations without evidence of the Office of the Prosecutor.

As Euclid stated, what one can state without proof can be denied without proof.

Thank you very much, your Honour. I shall give the floor to my esteemed colleague, Mr Powles.

PRESIDING JUDGE SCHMITT: Thank you very much.

Mr Powles.

MR POWLES: Good afternoon, Mr President, your Honours.

In some of the time remaining and certainly no more than 40 to 45 minutes what I hope to do is to go through and respond to some of the specific allegations made against Mr Kilolo in the Prosecution's written closing brief and in some of the comments they made today.

What is striking about the Prosecution's brief is that so much of what the Prosecution say is based on speculation and not proof. Fantasy, and not reality.

So much of what is asserted as fact or incontrovertible is simply the Prosecution's subjective interpretation of the evidence.

And while all that is very interesting, it doesn't come close to meeting the very high evidential standard that the Prosecution must satisfy before it is safe for any Trial Chamber to convict any accused on any count.

The statute requires that before convicting on any count, a Trial Chamber must be convinced of the guilt of the accused beyond reasonable doubt. No more is required, but certainly no less.

It follows that any feeling that the Prosecution's interpretation of the evidence or their case theory might be true, or could be true, is simply not enough.

Now, the main argument of the Prosecution in this case is that witnesses were paid by the Bemba Defence to give false evidence. "Spurious witnesses" is the term used by the OTP in their closing brief. But that, we submit, just does not add up.

Those witnesses who accept they gave spurious, false statements say that Mr Kilolo was unaware of their spurious status.

It follows that any money that they received from the Bemba Defence could not have been to procure false evidence from them and Mr Kilolo could not have, as asserted at paragraph 55 of the Prosecution brief, he could not have intentionally presented their false evidence before the Court.

And, on the other hand, witnesses who accepted that they received money from the Bemba Defence all say that the core of the evidence they gave was true, hence the money that they received could not have been a corruption and could not have been to procure false testimony.

At paragraph 24 of the Prosecution's closing brief, the Prosecution say this: "Despite repeated and unsubstantiated claims that the Prosecution's reimbursement practices in the main case somehow influenced the accused's conduct, the Defence has failed to articulate, let alone adduce, any evidence establishing a link between the Prosecution's legitimate provision for witness expenses and the accused's criminal conduct."

They say there is simply none of record. But that we respectfully submit completely misses the point and ignores the really important and clear evidence that is on record, the evidence of Simo Vaatainen who said when testifying before you, your Honours, the following two points: Point one, that during the investigation phase the Victims and Witness Unit does not cover the witness expenses of a particular party. It is responsibility of the calling party to cover those expenses.

Point two, that there is no prohibition on the calling party to pay expenses relating to the testimony of a witness that the VWU itself chooses not to cover.

Now, reference has been made to monies paid by the Prosecution to their

witnesses in order to highlight two things: Firstly, that monies paid by the Defence were at the very least comparable, if not outright modest, when compared to the sums paid to the witnesses by the Prosecution.

And secondly, if the Prosecution assert that witnesses were motivated to lie for the sums paid by the Defence, they can just as easily be said to have been motivated to lie for the far greater sums given to them by the Prosecution.

It is pure speculation and perhaps even double standards for the Prosecution to assert that assistance given to witnesses by the Defence is somehow criminal while monies given to them by the Prosecution is legitimate.

Now, what I propose to do for the rest of my submission is just to go through those chapters in the Prosecution's closing brief and follow the structure of the Prosecution closing brief dealing first with the DRC witnesses, second the Cameroon witnesses, third the Brazzaville witnesses, fourth the Scandinavian witnesses and finally, what the Prosecution call the other witnesses.

Turning first then to the DRC witnesses, D15 and D54.

The first point to make is that there is no evidence that D15 or D54 received any money from the Bemba Defence for their testimony.

The Prosecution assert at paragraph 91 that D15 was illicitly coached, and at paragraph 101 that Mr Kilolo circumvented the VWU cut-off date. Dealing with that second point first, speaking to a witness after the cut-off date does not, in and of itself, amount to an offence under Article 70 of the Rome Statute. So leaving aside the timing of any conversations with D15, let's consider what the Prosecution call illicit coaching.

The Prosecution seemingly fail to acknowledge that there are a whole range of acceptable practices and ways that a lawyer, either for the Prosecution or

the Defence, can employ when interviewing a witness and preparing a witness to give evidence at trial.

In international criminal proceedings, lawyers from very many jurisdictions come to appear before this distinguished Court. It is important to acknowledge that what might be acceptable to a lawyer from one jurisdiction may not be acceptable to a lawyer from another.

For example, in the United States, and as very helpfully set out in the Mangenda closing brief at paragraph 128, "persistently and aggressively putting a party's theory of a case to a witness is not only not unethical or criminal, but entirely proper."

They go on at paragraph 131 that in the US it is entirely appropriate to discuss with a witness effective courtroom demeanour, to give examples of questions that maybe posed in cross-examination, to provide the witness with a factual and legal context and how his context will likely influence the case and the role his testimony will play.

The Prosecution itself has asserted, albeit in other cases before the this Court, that it is quite proper to prepare a witness for testimony by: Reviewing topics likely to be covered in cross-examination, to review with the witness their prior statements, and to confirm whether their statements are accurate, clarify additional points, and to show the witness potential exhibits for their comment. And that's in the Ruto and Sang Prosecution motion, regarding the scope of witness preparation, 13 August 2012.

Similarly, in Ntaganda, the Prosecution motion regarding witness preparation of 5 February 2015, the Prosecution said is entirely appropriate to review and clarify the witness' evidence with counsel.

This, the Prosecution has said, is all for the purpose of streamlining in-court examinations and tailoring them to the most relevant or contested issues.

Now, it is against that backdrop that the Prosecution assertion at paragraph 92 of their closing submissions that Mr Kilolo was instructing D15 on what to testify about must be examined.

The Prosecution, we submit, are all too quick at paragraph 96 of their closing submissions to dismiss D15's explanation that Mr Kilolo was only giving him a lesson regarding facts he already knew.

The Prosecution assert at paragraph 96, that this is as incredible as it is predictable. But is it? Is it really as incredible as it is predictable?

They also assert at paragraph 105 that this is irrelevant and baseless, but it is plainly - plainly - not irrelevant, because if D15 did not give evidence about things that he did not believe to be untrue, there can be no allegation of false testimony under Article 70. So plainly not irrelevant.

(Redacted)

(Redacted)

Has the Prosecution really proved beyond reasonable doubt, as they must, that the things D15 and Mr Kilolo discussed were not things that D15 already knew and were his own truth? We respectfully say that they have not.

At paragraph 56, the Prosecution also asserts that D15 had not given details of the CAR general staff to Mr Bemba's counsel, Mr Nkwebe when they met in 2011.

But this ignores D15's evidence that there were other calls and discussions between him and Mr Kilolo that have not been presented to this Court. The Prosecution brief is silent on this. In fact, they go as far as to say in

paragraph 105 that there is no evidence showing that these matters were discussed at any other time, but that completely ignores D15's evidence about other discussions and other calls. The Prosecution may not agree with what he said but they cannot properly assert that there is no evidence. What D15 said is plainly evidence.

And even if D15 had never discussed an issue with a Bemba Defence, there is after all no prohibition on a lawyer putting a proposition or even giving information for a witness to either choose to accept as true or not.

Specifically, at paragraph 100 of the Prosecution's closing brief, they assert that Mr Kilolo told D15 what to say about contacts with the Defence prior to testimony.

First, it is important to be clear about the evidence of D15 and the evidence that he gave on contacts. Did he in fact give false evidence beyond reasonable doubt on this issue?

Second, and it is important to keep this in mind, that there are certain sensitivities regarding (redacted) admitting that they had contact with the Bemba Defence.

Moving on then to D54. At paragraph 110 of the Prosecution's closing brief, the Prosecution assert that Mr Kilolo and Mr Mangenda discussed how to shape D54's testimony. But there is nothing wrong or sinister about two lawyer colleagues discussing how to prepare a witness to give evidence before trial.

Significantly, as with D15, the Prosecution again erroneously assert, at paragraph 122 of their brief, that any suggestion that D54's main case testimony was in keeping with what he said to the Bemba Defence during

their interviews is, their quote, "irrelevant."

Again, it cannot be irrelevant. It goes to the heart of this case because you cannot instruct someone to lie about something which they already know about. D54 was in a position to either accept or reject anything discussed with Mr Kilolo.

At paragraph 122 of their closing submissions, the Prosecution assert that D54 gave false evidence about his contact with the Defence. Again, it is important to carefully consider his evidence in this case and any explanation for his evidence arising from his status as (redacted) and the sensitivities arising because of that regarding his contact with the Bemba Defence.

Might that possibly explain any reluctance to acknowledge such contact?

Moving on then to the Cameroon witnesses: D2, D3, D4 and D6.

The Prosecution state that at paragraph 128 of their closing submissions, that D2 admitted to neither being a soldier nor having received military training.

They also rely on his evidence that D4 and D6 were not soldiers.

This, the Prosecution say, make them spurious witnesses.

But what the Prosecution seemingly fail to acknowledge is the absolutely crucial point that D3 and D2 stated that they did not tell Mr Kilolo that they were spurious witnesses.

Now, today the Prosecution seem to question that, they seem to suggest that Mr Kilolo knew that D2 and D3 were not who they said they were. But the inescapable fact is that that is not the evidence that D2 and D3 gave in this case before you, Mr President, and your Honours.

PRESIDING JUDGE SCHMITT: Nothing to worry about, Mr Powles. It's just a small redaction and there's no problem with that.

MR POWLES: Thank you very much, Mr President. And I apologise for that.

They said that Mr Kilolo did not know that they were giving spurious false evidence.

Now, they were Prosecution witnesses, witnesses who the Prosecution called. It is not really fair and right at this late stage for the Prosecution to now seemingly go behind the evidence of witnesses they, themselves, have called. Even so and notwithstanding all that, the Prosecution assert that Mr Kilolo presented these spurious so-called witnesses in the Bemba case.

The irony, the irony of that accusation will surely not be lost on the Trial Chamber even if it is lost on the Prosecution because it is the Prosecution who is the only party who has tried to prevent D2 and D3 as witnesses who can be called as witnesses to be relied upon as truth after, after knowing that they gave spurious false testimony in the Bemba case.

By contrast, at the time they were called in the Bemba Defence by Mr Kilolo, they cannot properly said to have been presented as spurious false witnesses because they had not told the Bemba Defence and Mr Kilolo of that. And if that is right, it follows that any money that was given to D2, D3, D4, D6 was plainly not given to them to procure false testimony. You can't pay for something which you don't know what you're getting. At paragraph 152, the Prosecution claim that Mr Kilolo illicitly coached the witnesses. But again, there are a whole range of acceptable practices and methods a lawyer can employ to prepare a witness for trial.

At paragraph 151 of their brief, the Prosecution refer to witnesses receiving new phones. But the evidence of Mr Vaatainen was that it is not prohibited

for the calling party to give the witness a phone. Indeed, the VWU have confirmed in their own filing that witnesses are only invited to hand over their phones.

At paragraph 155 of their closing submissions, the Prosecution assert that Mr Kilolo instructed D2 and D3 to lie about knowing Arido and Kokate, the number of the telephone contacts they'd had, the money that they had received or the recording of D2's interview.

The first point: It is important to reiterate our submission that false statements under Article 70 must concern a material issue in the case. For example, the Prosecution itself in the Bemba main case, in a filing dated 16 October 2013, the Prosecution itself opposed Article 70 investigations regarding a witness who had apparently testified falsely about not having received payments from the Prosecution.

Second: In assessing allegations by D2 and D3, it is important to recall that they are both self-confessed perjurers, people who have previously lied to this Court, witnesses who have dipped documents in tea to make them look original when they were plainly not, and D3 may also have lied about having committed perjury in the Bemba case on his application to enter the country where he now is. He now won't grant access to the immigration paperwork to be able to get to the bottom of that important issue we say.

It is also important to bear in mind that witnesses in this case were under pressure by the Prosecution to incriminate and implicate others in their own wrongdoing in order to avoid prosecution.

At paragraph 31 of their closing submissions, the Prosecution try to assert that it was wrong to say to witnesses that the limited use agreements that

they had with the Prosecution suggest that the witnesses will be prosecuted if they don't stick to what they told the Prosecution.

The Prosecution assert, at paragraph 31, that the agreements, rather, expressly require the witness to tell the truth in their dealings with the Prosecution and warns the witness if he deviates from what he has told the Prosecution what is the truth that the statement can be used to rebut what they claim when testify at trial. But if one looks at an actual agreement, I'm being told to slow down, your Honour, if one actually looks at an agreement, but not put on the screen for the public, but for our internal use, and it is at CAR-OTP-0078-0303. Has it come up?

THE COURT OFFICER: Could you repeat the number, Mr Powles, please.

MR POWLES: CAR-OTP-0078-0303.

Agreement concerning statement of limited use. The first point is that it is as its title suggests, an agreement concerning a statement of limited use. Limited use against what? Plainly, anything said by the witness at interview, if the various conditions in the agreement are met that the -- what is said will not be used against that particular witness in any subsequent criminal prosecution.

At point 4, we can see that what is said in a limited use agreement, as the Prosecution say in their closing submissions, will not be used in -- at point 5 and this is one of the important points, at point 5 of the agreement, as we can see there, it is said that if the Prosecution becomes aware that the witness did not tell the truth in his declaration of limited use or did not disclose important information, he, the Prosecution, will not be bound by the present agreement and will not be able to use the declarations of limited use against the

witness -- will be able to use the declarations of limited use against the witness as he wishes. And importantly, over the page, CAR-OTP-0078-0304, the Prosecution has to determine -- the discretion to determine if the witness hid the truth or did not disclose information.

Now, that clearly says that the Prosecution can use anything said by -- at point 7, if the witness violates the present agreement by not answering in a sincere and exhaustive way, the Prosecution has all discretion to then transfer the declarations of limited use of the witness to any other law enforcement organisation.

Now, we ask rhetorically, why would the statements be given to any other law enforcement organisation if it is not for the purpose of prosecution? That is, after all, what law enforcement agencies do.

D2 and D3, we submit, are inherently unsatisfactory witnesses. It is therefore difficult, we submit, to be satisfied beyond reasonable doubt regarding any of their false claims that the false testimony that they, D4 or D6 gave was instigated by Mr Kilolo.

On their own evidence, on their own evidence, D2 sat in front of Trial Chamber III in the Bemba main case and lied and lied and lied and lied.

Now, if there is any chance that they have done the same with this distinguished Chamber, which we say they have, it would plainly be unsafe to convict on the basis of their testimonies.

(redacted): D23, D26 and D29.

D23, like D2 and D3, is a self-confessed perjurer. The Prosecution accept this at paragraph 181 of their closing submissions. Again, D23 says that Mr Kilolo did not know this. And it follows that if Mr Kilolo did not present

him knowing that he was a false spurious witness, he cannot have been presenting a false witness. It is the Prosecution that now presents D23, this spurious witness, as a witness of truth.

At paragraph 186 of their closing submissions, in a statement of extreme, extreme speculation, the Prosecution assert that Mr Kilolo must have known that it was untrue that D23 was a soldier in the CAR army. But why? Why? Why must he have known? It is pure speculation on the Prosecution's part. Certainly, Mr Kilolo took steps to ascertain the credentials of D23 through presenting him to the Defence expert in the Bemba main case. There is simply no evidence that Mr Kilolo must have known that D23 was lying about his military status.

And again, if Mr Kilolo did not know that D23 was lying about his military status, the Prosecution are wrong to assert, as they do at paragraph 188, that anything given to D23 by the Bemba Defence must have been a corruption. Whatever he was given, if it was not known that his evidence was untrue it was plainly not for the purpose of procuring false testimony from him. Moreover, as explained by Mr Vaatainen, it was the obligation of the calling party to pay the witnesses' expenses during the investigation stage.

Again, there is no prohibition on giving witnesses phones and D23 is as like D2 and D3 an inherently unreliable witness, therefore there must be doubt, we submit, about anything he says about Mr Kilolo telling him to give false evidence, as the Prosecution allege at 191 and 196 of their closing submissions.

D26, at paragraphs 180 and 201 of the Prosecution's closing brief, the Prosecution assert that intercepts concerning D26 show that Mr Kilolo illicitly

coached him. However, the Prosecution has chosen not to call D26. Unlike D15 and D54, who identified themselves and identified Mr Kilolo on the intercepts, it is impossible to be sure in the same way with regards to D26 as to who is actually on the calls.

The Prosecution has presented no voice analysis evidence. The assertions they make are therefore speculation. Moreover, even if the calls are of D26, it has been impossible, as a result of the Prosecution not calling him, it has been impossible for the Defence to explore with him any context or explanation for what is being said.

In the absence of calling D26, we submit that it would be unsafe to convict on any count relating to him.

And D29, a witness called by the Defence. At paragraph 214, the Prosecution assert that D29's testimony in the Bemba main case was dependent upon him getting paid. But again, this is pure speculation on the part of the Prosecution.

What is clear is that D29 had concerns about his young son and his position while he, D29, was testifying. He asked that provision be made for him.

The VWU, indicated that it would not cover such expenses so it fell to the Bemba Defence to cover them.

Again, as Mr Vaatainen has made clear, there is no prohibition on a calling party giving assistance to a witness with something even where the VWU has themselves declined to do so.

At paragraph 218 of the Prosecution's closing brief, the unfairly -- they unfairly assert that D29 falsely testified that he was never promised anything in exchange for his testimony. But the assistance he received was plainly not

in exchange for his testimony. The assistance he received may have helped him, it may have helped his son, but it doesn't follow that his testimony was dependent upon it.

At paragraph 218 of their closing submissions, the Prosecution assert that D29 falsely testified that he was only in touch with the Defence four times when the CDR say the Prosecution show that he was in contact with him 12 times. Now, I don't propose to bring it up but it is CAR-OTP-0090-0707, that is the annex to the expert -- to the analyst report on CDR contacts. When you look at that page, yes, there are 12 contacts. However five were text messages, not telephone calls.

Of the seven calls or contacts between phones, only four are over one minute. Of the others, one is 13 seconds, one is 33 seconds and one is 54 seconds. Any witness can be forgiven for forgetting such short calls.

We respectfully submit that for a statement to be false, it must be proved that the maker knowingly and willingly knew it to be false. It's not enough for them simply to be incorrect, mistaken or confused.

Finally, at paragraph 219 of their closing submissions, the Prosecution assert that there is something wrong or sinister in conversations between Mr Mangenda and Mr Kilolo in discussing D29's testimony. Again, we submit, simply, that is a speculative claim by the Prosecution.

The Scandinavian witnesses: D57 and D64. I can deal with them quite briefly.

D57 and D64 stated that they gave honest evidence in the Bemba main case about their military roles. Hence, the money that they received was not and could not be to procure false testimony.

While the money that they received may have been more than they actually spent on meals, travel or helping their families, the amounts they received was not so excessive so as to amount to anything remotely suspicious. And moreover is entirely a matter for them to determine how they spent their money, The money given for travel for meals, et cetera. If that's what it was for it cannot be said for the purpose of procuring false testimony. A witness can be given a sum and it is up to them to decide how much and what to spend it on. The important thing is that it was given to cover expenses.

Finally, the other witnesses: D13, D25 and D55.

With regards to D13, at paragraph 250 of the Prosecution's closing brief, the Prosecution speculate that Mr Kilolo and Mr Mangenda's conversation related to coaching and D13, but that is pure speculation by the Prosecution. It is pure speculation that anything said by Mr Kilolo and Mr Mangenda indicates that Mr Kilolo did anything other than properly prepare the witness for testimony.

At paragraph 254, the Prosecution makes an assertion, without a foundation, in saying that the only one reasonable inference from CDR contacts was that Mr Kilolo illicitly coached D13 during the course of his testimony. But why? Why can there only be one reasonable inference? We make two points:

First, the Prosecution has not called D13, so it is impossible to determine beyond reasonable doubt whether it was he and Mr Kilolo who were, in fact, speaking.

Second, even if they were speaking, there is no evidence that D13 was encouraged to give evidence that Mr Kilolo knew was false.

The Prosecution wrongly assert at paragraph 256 that Mr Kilolo was under an

obligation to correct the record regarding any purported false evidence given by D13 on his contact with the Defence. But there is no such obligation on Defence counsel.

As the Prosecution seem to accept today, there is no obligation on counsel to correct something that a witness has given false evidence about. That may not have been the case previously but it seems to be their position now. But even so it is worth underlying and underscoring that Article 24(3) of the code of professional conduct provides only that counsel shall not deceive or knowingly mislead the Court. He or she shall stall take all steps necessary to correct an erroneous statement made by him or her by assistants or staff as soon as possible after becoming aware that the statement was erroneous. So the Article is only to counsel, his assistants or staff. It makes no reference to witnesses whatsoever.

If counsel has information that suggests that evidence given by a witness is false, the only obligation on Defence counsel on the code is not to subsequently rely upon it.

Moving on then to D25. Similarly, it is speculation by the Prosecution at paragraphs 259 and 262 of their closing submissions in asserting that Mr Kilolo was in contact with D25, coached D25 or was responsible for anything false that D25 may have said.

There is no evidence to support the Prosecution's claim at paragraph 266 that Mr Kilolo told D25 to lie about receiving money from the Bemba Defence, or at paragraph 267, that he was not coached by the Bemba Defence. Again, it is pure speculation.

Finally then, D55, the Prosecution make a really unfair claim at paragraph 269

in saying that Mr Kilolo set to work on persuading D55 to give false evidence about the falsity of, using the code, Charlie -- Charles's letter.

D55 gave evidence in this case that the letter by Charles was false. It follows that his testimony in the main case was therefore not false as the Prosecution claim, as they do at paragraph 273 of their closing submissions. If he was not giving false testimony in the main case he was not being persuaded to give false testimony.

Any responsible lawyer would want to call such a witness in the defence of their client. It was important evidence and the Defence were right to procure it.

The Prosecution refer to D55's reference to coaching at paragraph 273 of their closing submissions. But there is little evidence about what he was actually coached about.

The money that D55 received was to pay for his travel expenses from where he was to come and meet the Defence, the documents show that. There was, therefore, no reason for him to be told not to mention money or not to mention his trip.

As the evidence that D55 gave about the letter was not false, there can be no proper assertion as the Prosecution do at paragraph 276 that the evidence he gave was false and in exchange for his safety.

Finally, with regards to D55, even if it was Mr Bemba that was speaking to him there is no prohibition on an accused speaking to a witness being called on his behalf. There is no specific provision in the Regulations of the Court or the Regulations of the Registry which prohibit contact between a detainee and a potential defence witness. An accused is allowed to speak to

witnesses.

The cover-up of the overall strategy. The final section of the Prosecution's closing submissions.

At paragraph 283 of their closing submissions, the Prosecution assert that there is evidence of an alleged cover-up by Mr Bemba, Kilolo, Mr Mangenda and Mr Babala during the month of October 2013, but the basis of this claim relies heavily on intercepted calls between the four during that period, at paragraphs 287 to 316 of the Prosecution's closing brief.

The Prosecution's interpretation of these calls, in turn, relies very heavily on its own speculative interpretation of what was being said and the use of code words, coded language.

Now, I come from south, not east London, but even I speak a little bit of Cockney rhyming slang and if the Prosecution heard me on the dog and bone talking to a China plate, I bet they wouldn't have a Scooby Doo what I was talking about. Now, I don't know how that translates into French and if this case is anything to go by if the Prosecution were to hear that, they might interpret that as me offering someone called Scooby Doo a nice juicy bone, served on the finest Chinese crockery, to give false testimony, but in fact dog and bone is phone, China plate is mate, friend, and Scooby Doo is clue, idea. So what was really being said is if the Prosecution heard me speaking on the phone to a friend, they wouldn't have a clue what I was talking about. And it's exactly the same with the code that the Prosecution seeks to interpret in this case.

The Prosecution code submission is completely speculative. The language could mean anything and the Prosecution simply choose to interpret it in line

with their theory of guilt of the accused.

But there is not even any consistency in the Prosecution's interpretation of the

(Redacted)

(Redacted)

(Redacted)

(Redacted)

(Redacted).

It's pure speculation that has been selected by the Prosecution to fit their theory and version of the case. They've called no expert and there is no empirical way of determining the accuracy of what is being said. It is, at best, guesswork.

Even if "faire les couleurs" relates to witness preparation, again, there are a whole range of legitimate techniques of witness preparation that it could be referring to, a whole range of legitimate techniques that counsel can use to properly prepare a witness for testimony. How does the Prosecution know that "faire les couleurs" is not referring to that? They don't. It is pure speculation. Finally, then, to answer the question posed to by the learned judge, his Honour Judge Perrin de Brichambaut, with regards to the role of Kokate, we say this: He was an intermediary to help the Bemba Defence to find and identify potential witnesses. Mr Kilolo, rightly or wrongly, trusted him and the witnesses he presented.

If it now transpires that any witnesses presented by him were false, lying witnesses, Mr Kilolo, we submit, is as much a victim of that as anyone else.

Mr President, your Honours, defending anyone in criminal proceedings is always a huge responsibility. Representing a fellow professional is perhaps

an even greater responsibility. I'm therefore grateful to Maître Kilolo and Maître Djunga for having me as part of the Kilolo Defence team for this last year. We also owe a huge debt of gratitude to all our legal assistants, case managers and interns for the extraordinary work and help and assistance that they've given us over the last year. It has been truly invaluable. We must thank you, Mr President, your Honours, all of your team and all of the support staff at the ICC for your patience with us over the last year as we've sought to defend and present Mr Kilolo's case. Also may we echo the words of Ms Taylor that it's been a real pleasure working with such accomplished colleagues on both sides of the Bar.

So after all these hundreds of filings referred to by Mr Vanderpuye at the opening of his address, after all these hundreds of filings, after the 370 written submissions, after all the witnesses presented in this case, after all the documents, after all the thousands of exhibits, after all the transcripts, after all the many, many thousands of words, we will wait patiently for just two words from your Honours, not guilty. Thank you very much.

PRESIDING JUDGE SCHMITT: Thank you.

I understand Mr Kilolo that you want to have the floor and I give you the floor now.

MR KILOLO: (Interpretation) Your Honours, I said to myself that I was not going to be a witness in this particular case for obvious reasons, reasons of client/solicitor privilege and my duty not to reveal any information entrusted to me during the main trial.

Thus, I find myself now in a position where I must provide the background to my becoming counsel to Mr Bemba during the main case with a large team of

professionals. First and foremost, I would like to say that Mr Kokate is a former captain within the CAR armed forces. To my knowledge, he was in contact with many soldiers from the CAR, and owing to his own career within the military and also because of his political and military activities that he was engaged in, particularly in the region bordering the Central African Republic and Cameroon.

Thus, that was the context and that is why the former counsel of Mr Bemba, the late counsel, Liriss, had him come to The Hague in 2011. After discussion, it was decided that he would become an intermediary for the Defence team and his task was to locate and identify CAR soldiers who had been involved in military operations in the CAR in 2002, 2003, either as rebel forces or as a member of the pro-Bozizé forces. After Mr Liriss, Nkwebe passed away, I received a number of emails from Mr Kokate confirming that he had identified a number of soldiers who had served in the military at the time in the region. He also had found a number of civilians. In another email, Mr Kokate told our Defence team in the main case the names of a number of military staff and civilians who had taken part in the events of 20 October 2012 in the Central African Republic, and who had very useful statements to make that would shed light on the role played by the armed forces between October 2012 and March 2013.

Now, Mr Kokate also, through me, sent an email to Mr Bemba's Defence team in the main case expressing his willingness to make a contribution to the demonstration of the truth regarding the military hierarchy within the Central African Republic during the conflict. All the various emails that I have mentioned were provided and, indeed, placed on the record of the case

and were sent to Mr Bemba's Defence team in the main case well before the first meetings with the various witnesses in Cameroon or Brazzaville.

All the various counsel within Mr Bemba's Defence team in the main case knew and had agreed that Mr Kokate was the official intermediary. We officially provided that information to the victims and witnesses section, the name and the telephone number of Mr Kokate who was clearly identified as the resource person.

I had nothing, nothing, no item of information that would lead me to believe that Mr Kokate would have brought false witnesses, not myself, neither Kate Gibson, our legal assistant, who had met with him at least twice.

It is truly regrettable that the Prosecution, who met with Mr Kokate during their investigations in this case, did not call him to take the stand so that the truth would be revealed. The Prosecution had complete liberty to do so as they could have done for D15 or D54.

Your Honours, the Bemba Defence team in the main case was made up of -- for the period at stake, that is to say, late October 2012 and 2013 was made up of four counsel, a legal assistant, an assistant and a case manager, a grand total of seven people, seven permanent members of the team. These various people defending Mr Bemba in the main case took part in a number of meetings on several occasions, full team meetings that were held in the office made available to us at the premises of the Court, with a view to prepare investigations to be conducted in the field and to prepare the profiles of the witnesses, to draft questions to be put to witnesses in the field, and so on and so forth.

And finally, we met to select some 30 witnesses who would be called, from

the approximately 100 we interviewed in the field.

And you can see, your Honours, that the main people taking part in these meetings and who had the right to do so, including Peter Haynes, co-counsel, legal assistant Kate Gibson, and legal consultant, Professor Mettraux, all of these people were full-fledged members of the team and made intellectual contributions to these meetings which were indispensable.

Your Honours, I can also say that the theory that is being supported by the Bemba Defence team in the main case was drawn up basically, and for the most part, by Professor Mettraux in his capacity as legal consultant with the invaluable assistance of Mr Sluiter, and the theory did not come from a criminal common plan, nor was it intended to serve such a plan, rather it was the result of a careful analysis of the evidence who had been assigned to that very task.

The Defence theory was finished only after the fact, well after gathering all the statements from potential witnesses in the field. Before that, we had not yet hit upon the theory, we were still in the stage of identifying potential witnesses and taking statements. No objective consideration allowed us to presume at the time that those witnesses might have been lying.

Those witnesses who spontaneously gave us their accounts as soon as we met with them, accounts that were quite emotional at times, at times witnesses even broke down and cried. We spoke to former fighters, people who saw the atrocities that claimed entire villages to the horror of Africa and, indeed, the international community.

These witnesses appeared to be relevant and credible in my mind and in the mind of my colleagues. Any witnesses who did not meet the criteria were

dismissed, or rather, dropped from the list, so to speak, during our meetings. No witness could be called unless he/she had been approved by the entire group of counsel.

I was not the only person conducting interviews. The entire Defence team worked together in this regard. My co-counsel, Mr Peter Haynes and legal assistant, Kate Gibson, also went with me on a number of missions to the field to meet and question potential witnesses. We only asked appropriate questions and the questions, indeed, were really -- well, we began by asking for their identity, their civilian or military status, we asked them whether they had been in Bangui during the events of 2002, 2003, and, finally, we asked them to tell us what they had seen or experienced themselves and what role they had played during this initial questioning in the field. Witnesses responded freely, spontaneously to the various questions we put to them. Nothing suggested to us or to me that the witnesses were lying about the events that they were providing an account of or about their personal participation in said events.

I really must stress this particular point: All the members of the team, all the counsels, all the legal assistants in the main case were convinced that these witnesses were clearly credible, clearly relevant and this conviction was based on the initial questioning of witnesses. And this was without exception. All the witnesses were called in the main case were then carefully selected during meetings with me, co-counsel, Peter Haynes, legal assistant, Kate Gibson and Mr -- correction, Professor Mettraux, legal consultant. The choice of witnesses was done on the basis of hearings and the recordings of earlier statements that they had given to the Defence team in the field as well as on

summaries prepared of each witness. These summaries were done by the legal assistant, Ms Kate Gibson.

I never claimed, your Honours, I never claimed to be crafty enough to find some sort of -- well, I -- it's not as though I were smarter than the others, or I -- I must say that my colleagues, Mr Haynes, a barrister from London trained in the common law system, Queen's Counsel, in England, Ms Kate Gibson, legal assistant, experienced with past experience in several international criminal cases, these colleagues put questions to witnesses in a very natural way, in a very professional way, all questions that they thought were relevant, just as I did. Co-counsel Haynes personally questioned a number of witnesses during the investigations led by the Defence in the field, he also then conducted examination-in-chief when those said witnesses appeared before the Court.

At the end of each interview, we would ask each witness whether he had been subjected to any sort of efforts by anyone, Defence or anyone linked closely or indirectly to Mr Bemba, we asked whether the witness had been threatened, intimidated, promised inducements, anything like that in exchange for the statement given. All the witnesses said without exception that they had freely responded to the questions and not been subjected to any pressure or intimidation whatsoever.

Furthermore, because of our concern for transparency the initial questioning of potential witnesses during our investigations in the field were recorded. Audio recordings were made and then transcribed. The transcripts had two purposes: First of all they were provided to the witnesses and the witnesses were in a position to confirm what they had said. The transcripts were also

used by co-counsel and by legal assistants to jog their memories as they prepared for witnesses actually coming to the Court and giving testimony. Your Honours, the investigations conducted by Mr Bemba's Defence in the main case began in 2011 and continued until November 2013, three years in all. All in all, we conducted several investigating -- or, rather, fact-finding missions in several countries, both in Africa and Europe. We investigated events in Cameroon, the CAR, Congo-Brazzaville, France, Belgium, Sweden and the Ukraine. The various fact-finding missions were such that travel had to be paid, communications fees, housing, meals, et cetera. There were various expenses incurred by the Defence team and also by approximately 100 potential witnesses. We had asked them to travel within the field, not to mention the expert witnesses and the consultants in areas such as -- well, people well versed in many different subjects. They had provided their expertise to us. We also heard from people who had been victims or had been participants in the deadly conflicts that occurred between 2002 and 2003. Your Honours, all of this had but one aim, and I can say that in the main case the grand total of costs was approximately $100,000 on the basis of an application. We made the Appeals Chamber said that an amount should be paid to Mr Bemba as an advance for compensation of Defence team members and also for reimbursement of costs associated with the trial.

Mr Bemba had not been recognized as indigent. To my knowledge he is the only accused to come before the Court who has found himself in this situation, thus he could not request free legal assistance from the Court. What is more, we asked the Court, in addition to funding for compensation, we also asked for additional funding for investigations, $100,000, and we

never were provided with such funding. We even received an email, and this email is on the case record, from the Registry, namely from the Counsel Support Section.

In the email, we were informed that the costs for these -- and these various expenditures incurred in the main case would not be covered by the Court because no funding was available, and thus, in order to benefit from an effective Defence, Mr Bemba himself was to manage in some way or another to compensate his Defence team and provide them with the resources necessary before any fact-finding mission.

So this alternative source of funding for fact-finding missions conducted by the Defence team was known and agreed to by all within the Defence team, because there was nothing illicit about any of this. These expenses incurred -- well, travel of witnesses and intermediaries. And all of this explains the various flows of monies that have been mentioned by the Prosecution. In practical terms, the Registry approved fact-finding missions and the expenses, be it for Kinshasa, Brazzaville, but you see the Registry did not provide money to cover the related costs or the travel expenses and the housing - rather, accommodations of witnesses that we needed to meet with.

Your Honours, this trial has led me to question many things at a very deep level, and quite often a person needs to reflect upon the actions he has taken over the course of the years and to ponder the rules of conduct that he must live his life by. A person must consider imperfections and say did I do something, did I fail to do something within the professional sphere and outside of that sphere.

I have learnt a great deal from this trial and today I turn to you, I am an

innocent man. And if I look beyond the suffering I have already endured, I must say thank you.

PRESIDING JUDGE SCHMITT: Thank you very much.

This concludes today's hearing.

We resume tomorrow at 9.00.

(The closing statements end in open session at 4.18 p.m.)