

1 International Criminal Court  
2 Trial Chamber VII  
3 Situation: Central African Republic  
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo  
5 Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and  
6 Narcisse Arido - ICC-01/05-01/13  
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut, and  
8 Judge Raul Pangalangan  
9 Closing Statements - Courtroom 1  
10 Wednesday, 1 June 2016  
11 (The closing statements start in open session at 9.00 a.m.)  
12 THE COURT USHER: All rise.  
13 The International Criminal Court is now in session.  
14 PRESIDING JUDGE SCHMITT: Good morning. Please be seated.  
15 Would the court officer please call the case.  
16 THE COURT OFFICER: Thank you, Mr President. The situation in the  
17 Central African Republic in the case of The Prosecutor versus Jean-Pierre  
18 Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,  
19 Fidèle Babala Wandu and Narcisse Arido, the case reference ICC-01/05-01/13.  
20 And we're in open session.  
21 PRESIDING JUDGE SCHMITT: Thank you. And now we come to the  
22 presence in the courtroom and we start with counsel for the Prosecution.  
23 MR VANDERPUYE: Thank you, Mr President, and good morning to you,  
24 your Honours. Good morning, everyone. Today, the Prosecution is  
25 represented by Ester Kosova in the third row, Sylvie Wakchom,

1 Nema Milaninia in the second row, with Ruth Frolich and Hesham Mourad  
2 and in the first row, Sylvie Vidinha, Olivia Struyven and myself, good  
3 morning.

4 PRESIDING JUDGE SCHMITT: Good morning. Thank you very much.  
5 Then we go over to the Defence teams and I see a front runner to put it this  
6 way. Mr Gosnell, please.

7 MR GOSNELL: Good morning, Mr President, Your Honours. I've been  
8 promoted from the back benches. It's Christopher Gosnell and  
9 Maître Vercken representing Mr Mangenda, assisted by Nikki Sethi, Rita Yip,  
10 and Antonia Reiss. Thank you very much, Mr President.

11 PRESIDING JUDGE SCHMITT: Thank you. Your promotion has been  
12 noted. And then, we get over to our, I think we continue with the Defence of  
13 Mr Arido.

14 MR TAKU: May it please your Honours. I appear for Mr Arido, with me  
15 today is my learned colleague and friend, Beth Lyons. Mr Arido himself is  
16 here. Mr Tharcisse Gatarama, Mr Michael Rowse and Mr Tibor Bajnovic will  
17 be joining us shortly.

18 PRESIDING JUDGE SCHMITT: Thank you very much. And perhaps then,  
19 Maître Djunga for the team of Mr Kilolo.

20 MR DJUNGA: (Interpretation) Good morning, Mr President. Good  
21 morning, your Honours. For Maître Aimé Kilolo Musamba's Defence,  
22 Steven Powles, counsel. Tara Nasrollahi, case manager, and myself,  
23 Mr Djunga.

24 PRESIDING JUDGE SCHMITT: Maître Kilenda for Babala.

25 MR KILENDA: (Interpretation) Good morning, Mr President. Good

1 morning, your Honours. Our team is the same as yesterday. Thank you.

2 PRESIDING JUDGE SCHMITT: The team for Mr Bemba.

3 MS TAYLOR: Good morning, Mr President. Good morning, your Honours.

4 The Defence for Mr Bemba has the same configuration as yesterday. Thank  
5 you.

6 PRESIDING JUDGE SCHMITT: Thank you very much. Excuse me, I

7 deduce from the fact Mr Gosnell sits in the first line that the Defence of

8 Mr Mangenda is the first to make their closing statements. Please.

9 MR GOSNELL: That's right, Mr President. Thank you very much. And  
10 it's an honour to do so.

11 To listen to the Prosecution's submissions yesterday, you would think that

12 this entire trial was an inconvenient concession to the rights of the accused,

13 an essentially unnecessary concession to the obvious on the way to the

14 obvious truths that all the accused are guilty as charged. After all, how

15 could they not be guilty with so many charges against them?

16 And yesterday the Prosecution told you, and I quote, "That its witnesses said  
17 exactly what we said they would say."

18 Your Honours, notwithstanding the Prosecution's self-confidence, it's a good

19 thing there was a trial, because during that trial you heard certain things that

20 the Pre-Trial Chamber did not know and did not hear. You learned from

21 D2 and D3, for example, that Mr Mangenda did not participate in any

22 discussions with the witnesses in Yaoundé about their testimony.

23 This was a fact presented as truth to the Pre-Trial Chamber and that they

24 accepted. And it was one of the bases for confirming the charges against

25 Mr Mangenda.

1 You learned from those same witnesses that Mr Mangenda was not present  
2 during any undocumented payments to witnesses on that occasion.  
3 You learned that there is ambiguity about the purpose for which those  
4 telephones were provided in Yaoundé, and there was no confirmation from  
5 the witnesses that Mr Mangenda was present when any improper, let alone  
6 criminal, purpose was explained to the witnesses about why they were  
7 getting those telephones.  
8 And you learned something else of unexpected importance from those two  
9 witnesses. And it's unexpected because up until the closing submissions by  
10 the Prosecution, the Prosecution's position in this case was that between 11  
11 October, when the Prosecution says that Mr Mangenda and Mr Kilolo first  
12 learned of the potential existence of an investigation by the Prosecution, and  
13 26 October 2013, when Mr Kilolo allegedly met D2 that during that time  
14 period, the intercepted telephone calls show a fictitious scenario, a fictitious  
15 pretextual discussion between Mr Kilolo and Mr Mangenda about the  
16 existence of two people who are informers.  
17 And now we learn in the closing brief that it's the Prosecution position that  
18 this was, in fact, a discussion about a real cover-up.  
19 Now, this fundamental change of position at the 11th hour of proceedings  
20 already says a lot about the Prosecution case. It already says a lot about the  
21 reliability of the Prosecution's interpretations of those intercepts.  
22 But what's important is that you heard D2 describe his conversation, his  
23 contacts with Mr Kilolo on or around 26 October 2013. He doesn't make the  
24 slightest suggestion that Mr Kilolo tried to bribe him, suggested that he  
25 should cover anything up about what had happened in Yaoundé, nor does

1 he even suggest that Mr Kilolo implied that there was an investigation into  
2 the offing into such matters.

3 The witness was here, not here, in the courtroom in the other building in  
4 front of you. The Prosecution asked about that meeting. The meeting was  
5 described. There was no follow-up from the Prosecution. No suggestion  
6 from the Prosecution that any bribes or any suggestion had been made to the  
7 witness that he should cover anything up. And as we'll see in the course of  
8 my remarks, Mr President, that is part of a pattern of the Prosecution asking  
9 you to draw inferences where there was no evidence or where there was  
10 quite simply evidence contrary to the inference that the Prosecution is asking  
11 you to draw.

12 So it's a good thing, Mr President, that you heard that witness, because if you  
13 hadn't heard that witness, you might just be tempted to accept the  
14 Prosecution's submission at paragraph 314 of its closing brief that, and I  
15 quote "Clearly Kilolo's trip to Cameroon was made to execute the cover-up  
16 discussed in the preceding weeks."

17 Wrong, Mr President. Wrong, as clearly shown by D2's testimony as well as  
18 by D3's testimony.

19 Now, Mr President, I will come back a little bit more to this theory of the  
20 Prosecution. But first I'd like to set out for you what I propose to cover  
21 today. And there are five topics that I hope to cover. The first is to say just  
22 a few words about the criminal standard of proof that applies in these  
23 proceedings. It's one of the few areas where I can say we agree with the  
24 Prosecution closing brief, so it's not a bad place to start.

25 The second area is to address just a few of what I suggest is a large number

1 of misstatements of evidence by the Prosecution in its closing brief.

2 Third, I propose to discuss again a bit more fully the alleged cover-up.

3 Fourth, specific issues concerning D15 and D54 in particular, what I say is

4 the Prosecution's absurd claim that forwarding questions by the Legal

5 Representatives for Victims, which Mr Kilolo already had in his email, in his

6 possession could possibly constitute the actus reus of an offence against the

7 administration of justice.

8 And finally I propose to briefly address you on an issue that came up

9 yesterday, namely, whether the Prosecution's own practises are in any way

10 relevant to your Honour's assessment in this case, and we say that it

11 certainly is.

12 Your Honours, Article 66(3) of the Statute requires that you, and this is a

13 word -- there is a verb in this provision, you be convinced of the guilt of the

14 accused beyond reasonable doubt. Now, these words reflect what I would

15 say are the core guarantee of any criminal trial anywhere in the entire world

16 no matter what system you belong to. It's the universal principle that before

17 you visit upon a person the grave consequences that go along with a

18 conviction in a criminal proceeding, that the Judge be darn sure that the

19 person committed the offence.

20 It's also a fragile guarantee, your Honours, because as you know from your

21 own experience, it's not really reviewable. It's a question of an intimate

22 assessment of the facts by your Honours, having heard the evidence and

23 having sifted through the massive volume of documentary information that's

24 presented to you.

25 Maybe the French formulation is better, actually, presenting a more realistic

1 view that it is an "intime conviction." This is not something that is written  
2 in an encyclopaedia. It is something that actually goes on in the bosom of a  
3 judge, based on your long years of experience and not based upon anything I  
4 could possibly tell you today about what any particular cases have said.  
5 But as a lawyer, of course, I have to at least say one or two things about how  
6 the standard has been elaborated. And I'll just give you this very typical  
7 definition from the common law, which is this standard of proof is very  
8 exacting. It is a standard far beyond the civil threshold of proof on a  
9 balance of probabilities. This is not a standard of absolute or scientific  
10 certainty, but it is a standard that certainly approaches that. Anything less  
11 entitles an accused to the full benefit of the presumption of innocence and  
12 the dismissal of the charge.

13 Now, the Prosecution invoked common sense yesterday morning, and there  
14 is nothing wrong with common sense, your Honours. And we'll talk about  
15 whether or not some of the Prosecution's claims stand up to the standard  
16 even of common sense. But the standard of proof is not met by loose  
17 conjecture. Even if we do think that that loose conjecture accords with  
18 common sense, it's not about what may have been the case based upon  
19 common sense. It's not even what was probably the case based upon  
20 common sense.

21 Your Honours need more than that under Article 66(3). It's a particularly  
22 stringent form of common sense where you can be sure that the acts alleged  
23 occurred, that they're true. That's what reasonable doubt is all about.

24 Now, to what does this standard apply? Now, we agree with paragraph 23  
25 of the Prosecution closing brief, which says first that it applies to the

1 elements of the crimes.

2 Second, it applies to the elements of the modes of responsibility. And your  
3 Honours, you'll notice that we've set out what we consider to be the elements  
4 of the modes of responsibility and the crimes at paragraphs 18, 23 and 27 of  
5 our brief. And we say that each and every one of those elements must be  
6 proven beyond a reasonable doubt.

7 But that's not all, Mr President. And this is where I place particular reliance  
8 on the Prosecution brief. That standard also applies to facts indispensable  
9 for entering a conviction.

10 Now, what is a fact that is indispensable for entering a conviction? That in  
11 itself is a fact specific question that only your Honours will know in the  
12 course of your deliberations, because we don't know yet what you may or  
13 may not rely upon.

14 What can be said, your Honours, is that you should be at least alert that there  
15 will be some factual findings that will be so important, so decisive in your  
16 finding of guilt or innocence that that particular material fact ought itself to  
17 be subject to the standard of proof beyond a reasonable doubt.

18 Now, your Honours will know that at paragraph 75 to 89 of our brief, we say  
19 that Mr Mangenda, even if he heard the promise, the famous promise in  
20 Yaoundé, that he would not have inferred anything improper, let alone  
21 criminal. But we say that if your Honours are even going to make the  
22 preliminary finding that Mr Mangenda heard that promise, that's a finding  
23 of fact that's so important, I suggest, that it ought to be subject to your  
24 standard of proof beyond a reasonable doubt.

25 I make that submission advisedly because of course I have no idea what your



1 reasoning may be. It depends. I suggest that this is a candidate for the  
2 application of that particular standard.

3 Misstatements in the Prosecution closing brief. And your Honours, I'm told  
4 that if you turn to evidence channel 2 since I'll be referring to some  
5 quotations coming up, you may wish to just see the quotations that I'm  
6 referring to in black and white, so to speak.

7 Misstatement number one: Paragraph 73 of the closing brief, Prosecution  
8 closing brief: "Kilolo and Mangenda kept close contact with witnesses  
9 immediately before and during their testimony."

10 I can't -- I'm not here to represent Mr Kilolo. I'm here to represent  
11 Mr Mangenda. And what I can say is that this claim is utterly false in  
12 respect of Mr Mangenda. There is no evidence at all in this case of  
13 Mr Mangenda having been in touch with any witness during their testimony.  
14 There is no evidence whatsoever in this case of Mr Mangenda having been in  
15 contact with any witness after the cut-off date. There is no evidence at all of  
16 Mr Mangenda having spoken to any witness at any time about their  
17 testimony let alone, as the Prosecution says here at paragraph 73,  
18 "Immediately before or during their testimony."

19 Now, these statements I would have thought were uncontroversial because  
20 the Prosecution didn't even allege that in its closing brief or its opening  
21 station. As obvious as it might be and unnecessary as it might be for me to  
22 point this out to you, Mr President, this claim presented to your Honours,  
23 asking you to make a conviction, draw inferences is utterly false and without  
24 evidential foundation.

25 Misstatement number 2, Paragraph 74: "In these contacts, Kilolo,

1 Mangenda, and Arido illicitly coached witnesses on what and how to  
2 testify."

3 Well, I'm tempted, your Honours, to right away say that this is manifestly  
4 false, and it is manifestly false in light of what I've just said. But let's go  
5 onto the third misstatement.

6 Misstatement number 3, paragraph 332 of the Prosecution closing brief:

7 "Mangenda was also present with Kilolo at the Yaoundé meeting, and  
8 specifically when Kilolo was explicitly instructing the Cameroon witnesses  
9 on the content of their testimony."

10 Now, your Honours, if there had been no trial, if you did not know how  
11 witness D3 understood the word "present," if you had not heard his entire  
12 description of the situation, it's just possible that this claim would not be a  
13 misstatement based upon a partial reading of the witness's statements given  
14 before trial.

15 But what did the witness say, both witnesses, D2 and D3? I quote, "Maître  
16 Jean-Jacques was exclusively in charge of security issues. He needed to  
17 receive each one of us and take their details relating to their identity...  
18 meanwhile, we continued to have other discussions with Maître Kilolo."

19 "Maître Mangenda did not know what we were doing. He did not take part  
20 in the discussion. And in the presence of means you're present in the room  
21 even if there are different parts but you are indeed in the room."

22 Pre-Trial Chamber found at paragraph 74 of its decision almost precisely  
23 what the Prosecution has now put in its closing brief.

24 Pre-Trial Chamber didn't have the benefit of this testimony which shows that  
25 that claim is simply untrue. There are many more quotations, many more

1 contextual descriptions I could have presented to your Honours. It's not  
2 necessary. You were here. You heard the evidence. It's clear.  
3 Mr Mangenda did not participate in those meetings about the substance of  
4 testimony. And therefore I suggest that to do as the Prosecution has done at  
5 paragraph 332, to use the word "present" as probably most of us in the room  
6 would understand it, as if to mean participating, listening, understanding,  
7 that's misleading, Mr President, and it's certainly a misstatement of the  
8 evidence.  
9 By the way, D3 already indicated during his pre-trial statement that that was  
10 the case. Here is what he said in a portion of his statement that was not  
11 drawn to the attention of the Pre-Trial Chamber: (Interpretation) "In fact,  
12 when Maître Kilolo was having discussions with me, Jean-Jacques and the  
13 four other witnesses were on the other side having discussions as well."  
14 (Speaks English) Misstatement number 4, Mr President, paragraph 335 of the  
15 Prosecution closing brief: "Mangenda was present when Kilolo illicitly  
16 coached" - we've just covered that one, Mr President - "and paid the  
17 Cameroon witnesses."  
18 Serious allegation, important allegation, central issue of fact. Your  
19 witnesses heard a lot -- your Honours heard a lot of testimony from one of  
20 the witnesses about this particular fact. In fact, you heard the witness's  
21 answer four times on this particular fact. And the witness confirmed, even  
22 after being misled during redirect as to what he had previously testified to,  
23 he still affirmed quite clearly that Mr Mangenda was not present.  
24 It doesn't matter, Mr President, into the brief it goes. More spaghetti into  
25 the pot. Slow it against the wall and hopes that something sticks.

1 Misstatement number 5: "On 5 June 2012, Kilolo, Mangenda and D55 met in  
2 Amsterdam, where Kilolo sought to convince D55 to testify for Bemba and to  
3 negate the damning letter."  
4 Then there is a footnote where many of the most interesting things in a brief  
5 can be found, "D55 did not identify Mangenda by name. However,  
6 Mangenda is the only member of the Bemba Defence meeting the witness's  
7 description (Interpretation) Another person, an African."  
8 (Speaks English) Well, let's just start by analysing this claim on its own  
9 terms. Where is the evidence that there was no other African man on the  
10 Defence team?  
11 It's not cited there. I may be wrong but I'm not aware of evidence showing  
12 that there wasn't another African man on the Bemba Defence team. I could  
13 tell your Honours that there were other African men on the Defence team  
14 standing here in front of you. That wouldn't be a very suitable submission,  
15 Mr President, so I'm not going to do it, because there is no evidence about  
16 whether there were other African men on the Bemba Defence team at any  
17 time or during this time period.  
18 But more fundamentally, Mr President, the witness in his statement, which  
19 was tendered into evidence and upon which this inference the Prosecution  
20 asks you to draw, there is never any indication that the person  
21 accompanying Mr Kilolo was a member of the Bemba Defence team. It  
22 could have been a taxi driver. It could have been a friend. There is no  
23 indication by the witness that this was a member of the Bemba Defence team.  
24 And even more, Mr President, no indication from the witness that this  
25 person who met the witness in a grey Mercedes at the hotel attended any

1 subsequent meeting to discuss testimony. No indication of that whatsoever.  
2 And it's not just filling in the blanks that's the problem here. It's not just  
3 asking you to draw inferences for which there is no evidence or on  
4 foundations that do not exist. It's even worse than that, Mr President,  
5 because the witness was here. The witness was in front of you. This  
6 particular allegation is not even to be found in the pre-trial brief. And here  
7 it comes in the closing brief, after the witness has been here and could have  
8 been asked: Who was this person? No such questions were asked.  
9 Nonetheless, the Prosecution in its closing brief says that it's Mr Mangenda.  
10 Misstatement number 6, the purpose of the telephones. Now, this one I  
11 concede, Mr President, does require a little bit more analysis. It's not a clear  
12 misstatement, although I hope at the end of this analysis you'll see that there  
13 is a specific aspect that's been confused that clearly shows that the  
14 submission is not correct. And the Prosecution submission which again  
15 they're asking you to accept, to rely upon in order to convict Mr Mangenda  
16 is: "In Mangenda's presence, Kilolo explained to the group that to maintain  
17 contact, they should choose a phone and use a different SIM card in it  
18 because VWU would take away their regular telephones."  
19 Now, I'll just say for starters, Mr President, that this argument has been  
20 anticipated and addressed at our brief, I say thoroughly, at paragraphs 41 to  
21 50. And I'm not going to repeat everything that's there. You can read it.  
22 But the specific issue that needs to be addressed is whether it's correct that  
23 Kilolo explained to the group, which implies telling the group together  
24 assembled, at haute voix so everyone can hear and implicitly so that  
25 Mr Mangenda heard.

1 Now, D3 made quite clear that the purpose of the telephone that was being  
2 given to him was explained the night before the meeting with the group,  
3 which was the next morning according to him. He did not specify, although  
4 he did say that the explanation was given the next day, he said that the  
5 information was given to other members of the group. He did not say to the  
6 group.

7 D2 testified and I quote, "We shared information amongst each other,  
8 amongst ourselves," unsurprising, these witnesses knew each other to some  
9 degree. Of course they would compare notes or discuss with each other  
10 what had transpired. So the mere fact that D3 would have said that the  
11 other members of the group were informed of this the next day in no way  
12 confirms that this was an instruction given to the group as a whole.

13 And what did D2 say about this question? And I've put the entire quotation  
14 on a slide for your Honours in somewhat of Star Wars format getting  
15 gradually larger as you get down to the bottom of the page, because that, I  
16 suggest, is what's most important. Because when you read this as a whole,  
17 and this was certainly my impression as I was sitting in the courtroom, but  
18 sometimes impressions in the courtroom are not quite correct. And then  
19 you look back at the transcript and you correct yourself, and you say, well,  
20 my impression was not quite correct.

21 But actually when I reread this passage multiple times, I actually came to the  
22 conclusion that my initial correction, my initial impression was entirely  
23 accurate, namely, that by the end of it, after the Prosecutor had asked a few  
24 follow-up and clarifying questions, and I credit him for having done that, but  
25 at the end of the day, what does the witness say?

1 "My question -- My question is just what did you observe and what do you  
2 recall about how those phones were distributed and by whom?"  
3 Answer: "It is clearer now, the question is clearer, but I don't remember.  
4 The telephones were placed on the table. We had to -- I really don't  
5 remember who handed over the phone to me. I don't remember."  
6 Now, your Honours know from the questions that we asked to these, to this,  
7 to D3 in particular, that it was not our position that Mr Mangenda did not  
8 know that the phones were given. Our position was that there wasn't  
9 evidence showing that an illicit explanation or purpose of the phones had  
10 been explained to the witnesses in his presence. That was the issue that we  
11 raised.  
12 And that is why it is important to know whether or not this alleged  
13 instruction was given individually, when it was given, was it given to the  
14 group, where was Mr Mangenda at the time. And yes, it's right that in  
15 response to the question was Mr Mangenda around, D2 did say yes. But  
16 around where? Around when exactly? And by the time you get to the  
17 bottom of this passage, you realise that this witness manifested a lack of  
18 memory about those details, which are important.  
19 Now, the Prosecution would probably say in response to what I've just told  
20 you, well, this is really splitting hairs and quite trivial, isn't it? This is not in  
21 accord with common sense. He surely must have been there listening to  
22 this explanation. Mr President, I beg to differ. It is not obvious. It is  
23 certainly not shown beyond reasonable doubt that he was physically there  
24 listening to this particular explanation. Even D3 had to concede that  
25 Mr Mangenda went away for at least one period of time. That's not proof

1 beyond reasonable doubt. And I would suggest to your Honours it's not  
2 even proof on a balance of probabilities.

3 And the Prosecution's submission that Kilolo explained to the group is its  
4 own spin, its own interpretation, its own inference, which does not derive  
5 directly from the evidence. And yet that's not clear from the submission  
6 that's been made in the closing brief. That is not transparent for your  
7 Honours that this is an inference being drawn based upon the witness's  
8 evidence.

9 And while we're discussing the telephones, it's perhaps useful to recall that  
10 D2 gave inconsistent testimony, he gave an inconsistent statement in his  
11 prior statement to the Prosecution about the purpose of the phones as he  
12 says was explained to him by Mr Kilolo. And D2 says, (Interpretation)  
13 "Kilolo having left, left us the telephone there with which we communicated  
14 with him because it was absolutely necessary to have it in order to  
15 communicate with him because we had to go home and come back so that he  
16 could make us available to the Court" (Speaks English) Now, here D2 is  
17 giving what appears to be a different explanation of what he was told by  
18 Maître Kilolo, namely, that the purpose of the phones was to stay in touch  
19 with the witnesses before the handover, not after the handover.

20 Now, secondly, your Honours, it's important to remember that the  
21 hand-over and the cut-off did not occur on the same day.

22 And on the page in front of you, you see the VWU submissions. The hand  
23 over of these witnesses occurred on 27 and 28 May. The cut-off was on 10  
24 and 13 June. That's a long time, your Honours. It's not the day before the  
25 cut-off that the phones are being given. It's not the day before the



1 testimony. The circumstances wouldn't show that obviously these phones  
2 are being given so that Mr Kilolo can call the witnesses up and be in touch  
3 with them during their testimony. And by the way, the contact logs don't  
4 show that.

5 So where do we -- what do we conclude from the Prosecution's submissions  
6 in respect of just these six matters which we say are not the totality of  
7 misstatements? Well, first of all, I would suggest to your Honours it shows  
8 that you should treat the Prosecution's closing brief with great caution. Not  
9 all of the submissions are directly reflective of the evidence itself. They are  
10 interpretations. In some cases they are blatantly incorrect interpretations,  
11 not supported in any way by the evidence.

12 But there is a second lesson I think to be learned by these statements. And it  
13 may be one of the great weaknesses of the adversarial system that one would  
14 hope could be corrected perhaps by the modifying influence of the civil law  
15 system that parties tend to be affected by centrifugal forces in a trial. We  
16 tend to become more oppositional to one another. Perhaps your Honours  
17 have already seen this, just in this very friendly trial.

18 And I don't think for a moment, Mr President, that the Prosecution in putting  
19 some of these submissions in its closing brief was trying to mislead your  
20 Honours or was acting in bad faith. It's something much more basic than  
21 that, and that is that in an adversarial trial, all of us tend to see things a little  
22 bit less objectively. My colleague, Ms Taylor had an expression for it  
23 yesterday. We do put our blinders on. We do put our rose coloured  
24 glasses on. We don't tend to see the weaknesses in our case. We do tend to  
25 exaggerate facts that may be helpful to our side.

1 This partisanship is simply inevitable given the nature of these trials. And I  
2 think that, your Honours, is an important phenomenon to keep in mind  
3 when thinking about the alleged duty on Mr Mangenda to spot facts to  
4 which witnesses testified that the Prosecution says were objective lies and  
5 that they say he had a duty to somehow, never mind that he is a case  
6 manager, to somehow denounce or to take some remedial measure. It's  
7 always easy to say in retrospect to go through various pieces of evidence,  
8 carefully consult what was said, review the record and say, well, that's not  
9 true.

10 But in realtime and in the heat of a trial that is very hard to see, let alone do,  
11 your Honours.

12 And so these misstatements are actually in my opinion very significant, not  
13 so much for their, the fact that they are not correct and that your Honours  
14 need to look at the evidence and make sure that in fact you're not misled, but  
15 more importantly, to understand that they reflect the dynamic of what  
16 happens in a trial of this nature. And the Bemba trial, as you can tell from  
17 reading the submissions was much more adversarial, much more contested  
18 than the atmosphere in this particular trial.

19 A third issue, Mr President, and that concerns the Prosecution's change of  
20 position in respect of the alleged cover-up. Now, the Prosecution, this is the  
21 Prosecution's position. This is not my position. The Prosecution's position,  
22 to be clear, is that Mr Mangenda became aware of the Article 70 investigation  
23 on 11 October. Their position is then that Mr Kilolo met D2 on or around 26  
24 October and that he exchanged SMSs around the same date with D3.

25 Now, if Mr Mangenda and Mr Kilolo were involved in a scheme to procure

1 false testimony from those two witnesses, which they had executed in May,  
2 so that's about five months before October, then one would expect that their  
3 conversations would reveal a genuine concern about this misconduct that  
4 they had engaged in. This is what would be expected if they possessed  
5 what we call consciousness of guilt.

6 And remember that the Prosecution told you yesterday at page 13 of the  
7 transcript that the subjects, "had no idea they were being intercepted."  
8 And I should hasten to add, and this really is a point that cannot be  
9 overstated, is that even if they had engaged in no acts of misconduct  
10 whatsoever, with any of the Yaoundé witnesses, it would be only normal  
11 and natural upon learning of an investigation, a criminal investigation  
12 against them, that they would have expressed fears that maybe there is  
13 something that could be misunderstood.

14 Every lawyer who has worked in an international case, and particularly any  
15 lawyer who has worked for the Defence on an international case, has  
16 experienced meetings with witnesses that have left the lawyer extremely  
17 uncomfortable. It would be nice if we lived in a world where the lawyer  
18 could simply wash their hands of such witnesses and walk away.

19 But in some cases, the witness might be particularly important. Witnesses  
20 might be hard to find. And more broadly, what you start to discover is that  
21 many witnesses in certain situations will leave that impression when you are  
22 meeting with them.

23 You can't just reject a witness that you sense is dodgy because, for example,  
24 you're worried that they might later make false allegations against you, false  
25 allegations in order to get benefit for themselves, especially considering that

1 many witnesses are perfectly aware of the benefits that might arise from that  
2 one way or another, or much more innocently, simply because they don't  
3 understand the role of a lawyer or an investigator and may for one reason or  
4 another take offence at something that occurred in the course of the  
5 relationship with the witness.

6 This is endemic to international criminal investigations and the Defence are  
7 more exposed to this problem than the Prosecution. The Prosecution has  
8 institutional protections that prevent such allegations from rising to the level  
9 of being taken seriously and ending up in a criminal trial. The Defence  
10 doesn't. The Defence is largely left to its own devices in such matters and  
11 all of us know that on the Defence side. And there is not one of us, I dare  
12 say, no matter how perfect our investigation had been, no matter how well  
13 documented, there is not one of us who wouldn't be concerned if we learned  
14 that the Prosecution had opened an investigation into alleged misconduct  
15 against us because one or more witnesses came forward and said, "You  
16 know, that Mr Gosnell, he came down here and he tried to get me to say X, Y  
17 and Z. And I felt under a lot of pressure. He coerced me."

18 Even if I knew that wasn't true at all, if I heard that the Prosecution had  
19 opened such an investigation, I would be nervous. I would be concerned.  
20 And if I was having private conversations with a colleague, I very well could  
21 express that concern. And it would be all too easy, Mr President, for that  
22 concern to be mistaken, confused with a reflection of consciousness of guilt.  
23 And it's a remarkable thing to imagine that the Prosecution accepted up until  
24 its closing brief that there was no genuine expression of consciousness of  
25 guilt by Mr Kilolo and Mr Mangenda during that critical time period

1 between the 11th of October and 26 October. Think about it, you learn  
2 about the existence of a potential investigation. And the Prosecution is  
3 listening to your realtime reactions immediately after you learn about such  
4 an investigation. If there is consciousness of guilt, the Prosecution should  
5 have it, and it should be distinct and clear for your Honours to see.  
6 Instead of that, not even the Prosecution says that there was conscious -- at  
7 least up until the closing brief, not even the Prosecution said that there was  
8 consciousness of guilt in respect of these conversations. Instead, the  
9 Prosecution says that there was a fictitious scenario to gain a little bit of  
10 money from Mr Bemba and that there was on that basis a pretextual  
11 discussion about witnesses as not real informers, but fictitious informers.  
12 The Prosecution told you that during the opening statement.  
13 Then, in fact, the exact words were: "Kilolo and Mangenda's stories about  
14 informers being amongst Defence witnesses in October 2013 were entirely  
15 made up."  
16 By the way, the Prosecution didn't necessarily have much choice in that  
17 respect considering that that was also the interpretation of the independent  
18 counsel.  
19 Now, at paragraph 294 of the Prosecution closing brief, "Kilolo and  
20 Mangenda discussed their suspicions that the leak came from witnesses D2  
21 and D3."  
22 This is said as if it's now being submitted as the truth, that this is a proper  
23 interpretation of the intercepts. And then we see that confirmed even  
24 further at paragraph 314 of the Prosecution closing brief: "Clearly, Kilolo's  
25 trip to Cameroon was made to execute the cover-up discussed in the

1 preceding weeks among Kilolo, Bemba, Mangenda and Babala."  
2 Well, Mr President, that may be clear to the Prosecution. It wasn't clear to  
3 D2.  
4 D2, the person whom the Prosecution says is the object of the cover-up plan,  
5 D2, whom the Prosecution says is being discussed by Maître Kilolo and  
6 Mr Mangenda during this period between the 11th and the 26th of  
7 October 2013, D2, the one who is supposed to be bought off in order to keep  
8 quiet.  
9 And what does D2 say about his interaction with Mr Kilolo at the end of this  
10 period between the 11th and the 26th of October? "That is where we spoke  
11 to one another. We chatted for a while. It took a little while. He gave me  
12 some money. He paid for the transportation so that I could go there."  
13 "I had received 100,000 francs and he paid for the transportation."  
14 And 100,000 francs, your Honours, is about 152 euros.  
15 Now, as your Honours know from having looked at our submissions, that  
16 amount of money bears no relation whatsoever to the ostensible amounts  
17 that were being discussed in the intercepts. On its face clearly it's not  
18 enough to be a bribe to conceal criminal conduct. And quite obviously, it  
19 was not a quid pro quo to keep quiet because there is absolutely no  
20 indication from D2 that Kilolo mentioned any such thing even subtly, even  
21 suggested a little sous-entendu, maybe I'll give you and this -- no,  
22 Mr President. No evidence of that whatsoever.  
23 And if it was the Prosecution's case that this was the case, then more  
24 questions should have been asked of this witness. I say the answers are  
25 already clear enough to show obviously that there was no discussion of a

1 cover-up, that this money clearly was not a bribe. But even if you're not  
2 willing to accept that, it was the Prosecution's burden to ask questions, to  
3 clarify, to adduce the evidence upon which the material fact, the conclusion  
4 that it would ask your Honours to draw at the end of the case was  
5 established.

6 And the same could have been done with D3, and it wasn't done.

7 Now, yesterday the Prosecution at page 36, line 12, tried to wallpaper over  
8 this change of position saying, and I quote "True or not, what it means is that  
9 Mangenda was involved in all of this."

10 All of what, your Honours? What was he all involved in? Was he involved  
11 in a fictitious scenario or was he involved in an actual cover-up?

12 And I think it should be alarming to your Honours that the case can change  
13 in such a fundamental way and then have it explained away so casually as if  
14 it really doesn't matter at all, as if it's not different than what had been  
15 presented at the very start of trial in the opening statement.

16 And of course it is hugely significant to what your Honours can infer about  
17 the meaning of those conversations and whether they reflect consciousness  
18 of guilt.

19 And related to this, your Honours heard a portion of an intercept from 17  
20 October played by the Prosecution at page 40 of the transcript. And there is  
21 laughter being heard. And the Prosecution seems to infer that this laughter  
22 shows you that the interlocutors thought that it was preposterous that  
23 Mr Bemba could think that he would not somehow be implicated in  
24 Article 70 offences if Mr Kilolo was. That was the interpretation of the  
25 laughter.

1 Now common sense, your Honours, common sense. If what is really being  
2 talked about, if Mr Kilolo is actually hypothesising about becoming a  
3 sacrificial lamb, and charged with Article 70 offences by Mr Bemba, if that is  
4 what is really being discussed, would he laugh? Would he consider it so  
5 risible the situation that he would just laugh and that Mr Mangenda would  
6 laugh with him?

7 Common sense, your Honours. And we say that that passage is  
8 fundamentally ambiguous, but most importantly, it's got to be viewed in  
9 light of what the independent counsel agreed was this fictitious scenario.  
10 That can't just be glossed over as if it doesn't exist, as if these intercepts  
11 should be read as if they're talking seriously, except when they're laughing  
12 about the absurdity of Mr Kilolo being on trial for an offence against the  
13 administration of justice.

14 D15. The Prosecution alleges that Mr Mangenda assisted the procurement  
15 of lies from D15 because on the evening of the first day of his testimony  
16 Mr Kilolo made a reference to having spoken to the witness, and because on  
17 the evening of the second day of his testimony, Mr Kilolo called  
18 Mr Mangenda and insisted rather strongly that Mr Mangenda forward the  
19 Legal Representative for Victims' questions to him.

20 Now, before addressing the specificities of these allegations, it's perhaps  
21 useful to consider the wider context. First, the Prosecution alleges that  
22 Mr Kilolo spoke to the witness 33 times between the cut-off and the start of  
23 the witness's testimony. That's their allegation. There is no allegation and  
24 there is no evidence that Mr Mangenda was informed of any of those 33  
25 contacts.



1 That is the prelude to the incident that the Prosecution relies on. And let's  
2 remember that the Prosecution's allegation is that there is a scheme in place.  
3 There is an effort at co-perpetration in which Mr Mangenda is involved,  
4 involved and yet somehow not informed of these 33 contacts. And let's  
5 remember that during this period Mr Mangenda's phone is being  
6 continuously monitored.

7 Now, in this case there hasn't been any representation by any victims, but in  
8 cases where they are present and participating, their questions are circulated  
9 by email to all the parties. The lead counsel receives those questions. If the  
10 lead counsel in this case had Citrix and knew how to use it, he wouldn't have  
11 even had to ask Mr Mangenda to forward the questions to him.

12 So are we really here basing a case on the fact that Mr Mangenda forwarded  
13 a document that he was duty-bound as a case manager to supply to  
14 Mr Kilolo, a document that Mr Kilolo already had undoubtedly in his email?  
15 Is this really the contribution that is said to be substantial or essential as is  
16 required in case of co-perpetration and aiding and abetting?

17 Now, we say in our brief that of course it would not have been clear to  
18 Mr Mangenda that anything criminal was going to be done with those  
19 questions. And frankly, your Honours, it's not clear that anything criminal  
20 was done with those questions. And the reason I can say that is because  
21 there hasn't even been an allegation that any of the answers to the questions  
22 that were posed by the Legal Representatives for Victims was a lie.

23 So how is there a causal connection, let alone a connection satisfying the legal  
24 standard of connexity between forwarding those questions and any offence?  
25 It's not established, Mr President.

1 D54. Now, the Prosecution alleges that Mr Kilolo spoke to the witness on  
2 the evening before his testimony. Prosecution says that was about an hour,  
3 and that before his testimony, he spoke -- excuse me. And that during his  
4 testimony he also spoke to the witness at some length. And there is no  
5 evidence, Mr President, that Mr Mangenda was informed of the contacts on  
6 the evening before the testimony or during the testimony.

7 And in fact, it's important to assess what were the contacts between  
8 Mr Kilolo and the witness that Mr Mangenda was aware of and their timing,  
9 because the Prosecution brief gives the impression -- it's not a misstatement,  
10 but it gives the impression that Mr Mangenda was aware of many contacts  
11 that somehow would be indicative of something improper.

12 The witness, the witness's cut-off was only one day before his testimony.  
13 Contacts before that time were permissible. And as you see on the screen in  
14 front of you, which shows the dates prior to the commencement of testimony  
15 of the discussions between Mr Mangenda and Mr Kilolo about the testimony.  
16 Most of the discussions, Mr President, were 51, 59 and 60 days before the  
17 witness's testimony. We assert strongly that none of the contents of those  
18 discussions so long before testimony were in any way indicative of  
19 procuring lies.

20 And in assessing that, your Honours, you may wish to consider how long  
21 before the witness's testimony those discussions between Mr Mangenda and  
22 Mr Kilolo were occurring. It's not the night before the witness's testimony  
23 that these discussions are occurring. It's two months before.

24 Mr Mangenda does have notice of one contact 11 days before the witness's  
25 testimony in a fleeting reference by Mr Kilolo, which was a permissible

1 contact because it was before the cut-off. Whether the witness then later  
2 came and denied that that contact 11 days before took place, it's highly  
3 ambiguous that Mr Mangenda would have been able to remember that this  
4 reference, which was completely unremarkable because it was permissible,  
5 that he would remember that and that then he would think that the witness  
6 was lying about it.

7 And by the way, otherwise the witness did not lie about these contacts,  
8 because he said that, indeed, he had been in touch with the Defence up until  
9 about six weeks before the testimony.

10 Mr Mangenda did provide the LRV questions in respect of D54. And why  
11 wouldn't he? There is no indication here that there was anything untoward  
12 occurring, that there had been any improper contacts, let alone that the  
13 witness was being coached to lie.

14 Last topic, Mr President, and that is the relevance of the Prosecution's own  
15 practises. And the Prosecution seems to be suggesting that these practises  
16 are completely irrelevant to your Honours, that you shouldn't take it into  
17 account at all; or that you should only take it into account if there is proof  
18 that the accused knew about those practises at the time and therefore were  
19 somehow affected by that knowledge in their own conduct.

20 That seems to be the Prosecution's position at paragraph 24 of its closing  
21 brief.

22 Now, perhaps I should read the sentence so that your Honours have it in  
23 mind. "Despite repeated and unsubstantiated claims that the Prosecution's  
24 reimbursement practises in the main case somehow influenced the accused's  
25 conduct, the Defence has failed to articulate, let alone adduce any evidence

1 establishing a link between the Prosecution's legitimate provision for witness  
2 expenses and the accused's criminal conduct."  
3 Now, Mr President, maybe this submission is unnecessary because it's so  
4 obvious, but this statement obviously puts the cart before the horse. It  
5 assumes that the accused are engaged in criminal conduct, ergo any  
6 payments made are obviously criminal as well. But that's not the way that  
7 the case is structured. The Prosecution is asking you to draw inferences  
8 from the money that was provided on various occasions. They are asking  
9 you to infer mens rea, to infer a guilty mind. Based upon those payments.  
10 Whether that is a reasonable inference for you to draw, of course must assess  
11 the Prosecution's own practises, because the Prosecution's own practises  
12 should, unless someone says otherwise, be assumed to be appropriate and  
13 correct, and the right way and the necessary way in many cases of dealing  
14 with difficult witnesses in difficult circumstances. Of course it's relevant.  
15 And it doesn't matter at all whether the accused had actual knowledge of  
16 those practises.  
17 And it's vitally important because of what the Prosecutor said herself on the  
18 very first day of this trial when she said "This case is not a case against the  
19 Defence as an institution."  
20 Now, that statement must imply that there can't be any double standards,  
21 that the same inferences that would apply to the conduct of the Prosecution  
22 must also apply in respect of any inferences in respect of the Defence  
23 conduct, of Defence conduct.  
24 Mr President, may I take this opportunity now on behalf of myself and  
25 Maître Vercken to thank everyone on the Mangenda Defence who has

1 assisted in presenting this Defence to your Honours, and it's been a privilege  
2 to appear in this case with so many quite talented lawyers on both sides of  
3 the courtroom. And of course your Honours it's been a privilege to appear  
4 before you, who have brought this case to such an efficient and successful  
5 conclusion.

6 And in closing, I wish also to express my thanks to Mr Mangenda. He has  
7 suffered a great deal from these charges, including having been in prison at  
8 the time of the birth of his third child. And what remains to be known is  
9 whether he will receive some vindication from this Trial Chamber by being  
10 found, as we say the evidence shows, not guilty of all charges against him,  
11 and that is a question, your Honours, that is now exclusively in your capable  
12 hands, and I thank you for your time.

13 PRESIDING JUDGE SCHMITT: Thank you very much. We would have  
14 enough time to start with the next Defence team, but of course it may be well  
15 so that the next Defence team does not want to split their closing statements  
16 so we could also have a break now. Mr Kilenda, you have the floor.

17 Do you, Mr Kilenda, do you prefer to start now with your closing statement  
18 or is it better to have a break so that you can have your statement as a whole?

19 MR KILENDA: (Interpretation) Mr President, we have three persons to  
20 speak, Maître Azama and our client, who will be speaking, and I believe that I  
21 will not take much time myself. And for that reason I would like to speak  
22 now, I would like to address the Court now.

23 PRESIDING JUDGE SCHMITT: We give you a little bit time to discuss this,  
24 but.

25 MR KILENDA: (Interpretation) Rather, Mr President, we could take the

1 break now and I'm in your hands, come to think of it.

2 PRESIDING JUDGE SCHMITT: Yes, yes. We have heard this many times  
3 now that you are in our hands. But of course we take this up, as I just  
4 suggested, we have the break now until, let's say 11 o'clock, so we have  
5 substantial coffee break here. Thank you.

6 THE COURT USHER: All rise.

7 (Recess taken at 10.16 a.m.)

8 (Upon resuming in open session at 11.01 a.m.)

9 THE COURT USHER: All rise.

10 PRESIDING JUDGE SCHMITT: Please be seated.

11 Now in open session.

12 I have been informed for the Prosecution there are two new team members  
13 in the room. If you will, Mr Vanderpuye, you can introduce them for the  
14 record.

15 MR VANDERPUYE: Thank you very much, Mr President. The Prosecution  
16 is joined by Céline Fontaine seated in the third row in the middle and Maman  
17 Aminou Amadou seated in the middle in the second row as well. Thank you  
18 very much, Mr President.

19 PRESIDING JUDGE SCHMITT: Thank you very much. We will now give  
20 the floor to Mr Kilenda.

21 MR KILENDA: (Interpretation) Thank you, your Honour, for the floor.

22 Mr President, your Honours, among one of its very famous albums entitled  
23 "Loi," which came out in 1997, the Congolese musician Antoine Agbepa, alias  
24 Koffi Olomide, a top artist, stated these words which deserve being stated  
25 before the oral submissions for Mr Babala.

1 "A lie always takes the lift and gets there first, whereas even when it takes  
2 the stairs truth will always get there." To put it in other words, truth will  
3 always triumph ultimately.  
4 Your Honour, your Honours, Mr Babala for whom today we ask for the  
5 acquittal of, was very much outside any alleged plan to sabotage the judicial  
6 process in the main case. He is not complicit of any charge against him, his  
7 involvement in this case is the consequence of massive untruths. It's also  
8 the result of inconsiderate haste in the examination of his case, of procedural  
9 incomppliance which constitutes no more, no less than a lack of rigour in the  
10 analysis of his real status, and the exact relations both with the accused in the  
11 main case, as well as with the members of his Defence team with whom he  
12 has been in contact.

13 As regards alteration of the facts by the Prosecution, Mr Babala for no reason  
14 was charged by the Prosecution with the help of independent counsel  
15 indeed. While without being heard first, the Single Judge issued an arrest  
16 warrant against him, the execution of which was brutal and it constitutes  
17 inhumane and degrading treatment.

18 With regards to the real statute of Mr Babala during the pre-trial phase,  
19 which is coming to an end -- or the trial phase which is coming to the end,  
20 the Prosecutor ascribed a fallacious statute to Mr Babala: A lawyer,  
21 confidant, financier, treasurer, manager of Mr Bemba.

22 Yesterday, too, in its pleadings, the Prosecutor even exaggerated the role,  
23 saying that Mr Babala held the funds, untruth with regards to the real  
24 financial status of Mr Bemba's Defence in the main case.

25 To give credence to its theory of hidden financing of the Defence of

1 Mr Bemba with a view to corrupting, influencing witnesses, the Prosecutor  
2 deliberately does not bring out the situation of financial distress in which this  
3 team found itself. It presents the funds made available to it as being dirty  
4 money aimed at sabotaging the judicial process. However, it remains void  
5 of details as regards the budget for this as well as the financial cost of the  
6 alleged sabotage operation in the main case.

7 In the oral submissions yesterday afternoon, my esteemed colleague,  
8 Mr Djunga, a mathematician on one day carried out a calculation to show the  
9 insignificant character and nature of the sums provided to the witnesses to  
10 justify legitimate expenses. But as American realists state neither facts nor  
11 law are data which can just be used, that is to say, Mr President, your  
12 Honours, that the facts that the Prosecution presented to you were  
13 deliberately altered. Maître Gosnell spoke about an exactitude. They are  
14 false and they cannot -- they can only be used in an acritical way by you.  
15 They have to -- you have to take a distance with regards to this fault by  
16 omission, by reestablishing the exact facts with regards to Mr Babala.

17 Your Honour, your Honours, the pre-trial brief of the Prosecutor in its  
18 paragraph 263 and its closing brief in annex E thereof, paragraphs 338 to 342,  
19 as well as in paragraphs 5, 9, 21, 41, 44, 61 to 84, 227 to 246 are crammed full  
20 of untruths against Mr Babala. There are allegations which are unfounded  
21 which constitute incommensurable injustice and they have been  
22 formed -- but we have formed our responses to them in our written  
23 submissions.

24 The Office of the Prosecutor, we heard from them that there had been no  
25 injustice because all the formal aspects of the statutes and rules of the ICC



1 have been observed, but as Montesquieu wrote in "Considerations on the  
2 Causes of the Greatness of Romans": "No tyranny is more cruel than that  
3 which is practised in the shadow of the law and under colour of justice."  
4 Shakespeare also wrote in "The Merchant Of Venice" that even the devil can  
5 quote scripture for his own use.

6 The fundamental texts of the ICC are only employed correctly when they are  
7 brought to support facts that are correctly respected because when law does  
8 not respect the facts, the facts take vengeance and they take over law.

9 Altering, exaggerating or masking facts and submitting them to law can only  
10 be as a varnish on an unsavoury reality. Sooner or later reality will come to  
11 the fore. And the reality, your Honour, your Honours, is that criminal  
12 justice is time ascribed. Patiently you have instructed this affair. You've  
13 led this case, listened to the parties present their thesis and their evidence,  
14 while you have ensured the equity of the trial. The evidence of the Defence,  
15 contrary to those claimed by the Prosecutor as being abundant and  
16 impressive before the Pre-Trial Chamber, have come via the staircase, a sign  
17 of being taken slowly in a sure way and in a reasoned way.

18 The professional judges that you are will, therefore, note that the truth is that  
19 Mr Bemba and our client have had friendly relations since their university  
20 studies in Belgium. Several years afterwards they met in their country of  
21 origin where at a particular time they decided together to be members of the  
22 same political party, the Mouvement de Libération du Congo. When  
23 Mr Bemba was in trouble with international criminal justice, Mr Babala did  
24 not abandon him. He remained in solidarity with him respecting the law,  
25 public order.

1 The fact that made Mr Babala involved in this case beyond friendship and  
2 solidarity is that Mr Bemba's team never had free legal aid provided by the  
3 Court. Mr Bemba's funds, as Melinda Taylor said yesterday in her  
4 submissions, T48, lines 19 to 21, were frozen. We don't have money for the  
5 investigations and the financing of the Defence has always been a difficult  
6 point to address.

7 The Registry did not recognize Mr Bemba as indigent. See paragraph 26 of  
8 Mr Kilolo's submissions and 455, annex A of Mr Kilolo, taking advantage of  
9 the frozen assets, the Registry established a sui generis system of financing  
10 which consisted of an advance of funds, a sort of loan which Mr Bemba  
11 would reimburse when the procedures had been carried out.

12 This financing which just covered the fees of members of the team were  
13 insufficient to cover the needs for investigations in the field, hindered by his  
14 deprivation of liberty. Mr Bemba, at a particular time and given the death  
15 of his father, Papa Jeannot, whose memory we greet now, called upon those  
16 close to him to help him meet his needs and it is -- that is how there was a  
17 great synergy that took place, a chain of solidarity composed both of  
18 members of his biological family, as well as his political and other friends.  
19 Mr Babala, therefore, appointed -- was appointed by Mr Bemba himself.

20 The same goes for Mr Kilolo. He was appointed as a focal point. This is in  
21 paragraph 455 of annex A from Mr Kilolo and I quote, "that he was  
22 responsible for bringing together necessary funds to advance the funds for  
23 travel, meals and hotel expenses linked to the work and needs of his Defence  
24 team."

25 And yesterday too in his statement under Article 67(1)(h) of the Statute,

1 Mr Kilolo had the right words on this subject. To mention the financial  
2 difficulties of the team that he supervised, the nature of the expenses to be  
3 carried out, and the alternative financing which explained, and here I quote,  
4 "the movements of money disputed by the Office of the Prosecutor." This is  
5 the transcript 48, page 120, lines 10 to 29 and page 121, lines 1 to 25.  
6 Mr Babala's Defence, your Honour, your Honours, challenges the Prosecutor  
7 to show that Mr Kilolo was not saying the truth on this point. In its letter of  
8 the 15th of July 2013, the Counsel Support Section spoke about the lack of  
9 availability of funds to pay for field missions and asked the Defence to  
10 advance the funds itself linked to missions. This is in paragraph 457 of  
11 annex A of Mr Kilolo.

12 As one sees, this sui generis financing of the Defence of Mr Bemba, contrary  
13 to what the Prosecution wants to admit to the Chamber, it's not hidden  
14 financing. We are talking about financing which is completely transparent  
15 which the Prosecutor, for reasons not mentioned, does not correctly describe  
16 the function of deliberately keeping quiet as to the real financial status of the  
17 Defence of Mr Bemba. And this fault by omission is symptomatic of a lack  
18 of objectivity and impartiality on the part of the Prosecutor. It constitutes a  
19 regrettable evasion or avoidance of his obligations under Article 54(1) of the  
20 Statute.

21 Your Honour, your Honours, altered facts, facts altered by the Prosecutor are  
22 not proved. The evidence of the Prosecutor, allegedly documentary  
23 evidence, is unable to prove beyond reasonable doubt any involvement of  
24 Mr Babala in the alleged overall strategy. Indeed, none of the witnesses of  
25 the Prosecutor were in contact with Mr Babala. All of them under oath

1 before your Chamber said they did not know him. The submissions of the  
2 Prosecutor with regards to the alleged overall strategy written about in the  
3 closing brief, whether its officers -- witnesses from the DRC, paragraphs 188  
4 to 124, witnesses from Brazzaville, paragraphs 178 to 226, those from (Redacted)  
5 which my colleague Steven Powles yesterday called the Scandinavian  
6 witnesses, paragraphs 227 to 246, all those who the Prosecutor states are  
7 other witnesses, 247 to 282, these submissions reveal nothing that is  
8 criminally incriminating against Mr Babala. Mr Babala is, however, frank  
9 and spontaneous in recognising before you, your Honour, your Honours,  
10 that he transferred at the request of Mr Kilolo sums of money to D57, D64  
11 and his co-accused Mr Arido. In doing so, Mr Babala did not know all of  
12 the capacities of the beneficiaries. Furthermore, these people were never  
13 illicitly prepared by the Defence. Cross-examined by the Defence of  
14 Mr Kilolo, these people have said that the sums they received had no impact  
15 whatsoever on the content -- on the content of their submission -- of their  
16 pleadings.

17 And Prosecutor has not shown the contrary beyond reasonable doubt.

18 Mr Arido, who Mr Babala saw for the first time in the detention centre,  
19 justifies as Mr Kilolo does for the rest, the sums justified by Mr Babala as  
20 compensation for an expert work which was carried out for the Defence in  
21 the main case.

22 Paragraph 14 to 30 of the final conclusions of Mr Lyons.

23 Now, the alleged documentary evidence of the Prosecutor is a mishmash of  
24 different telephone calls between in particular Mr Bemba and Mr Babala.

25 All the time is taken out of context and they try to impute logical coherence

1 to them to support, although in vain, the factual allegations which are  
2 without any proof beyond reasonable doubt.

3 In her submissions, Ms Taylor showed, highlighted the serious problems of  
4 synchronisation with regards to telephone calls thanks to the remarkable  
5 work of an expert in acoustics that the Prosecutor vainly tried to discredit  
6 while they had no technical competence in the matter.

7 You don't contradict work of an expert with good sense or common sense  
8 but with another counter expert report.

9 Complicity is one of the modes of criminal participation. It consists of  
10 ascribing or bringing to the main perpetrator or co-perpetrators of a crime,  
11 aiding or abetting or otherwise assisting them and without such aid, the  
12 crime could not be committed. Like any other mode of criminal  
13 participation, complicity is something that needs to be proved, and at the  
14 ICC, it has to be proved beyond reasonable doubt. Here in the case in point,  
15 this does not seem to have been the case in the written or oral submissions of  
16 the Prosecutor.

17 With regards to the submissions paragraphs 88 to 282 of its final brief, the  
18 Prosecutor gives a description overall the witnesses concerned. It mentions  
19 the acts allegedly carried out by the accused in coaching and preparing them.

20 If we look at what they write, we see that the name of Mr Babala rarely  
21 appears. Our case managers, Adriana-Maria Manolescu and Coralie Klipfel  
22 were able to establish statistics yesterday relating to the number of times  
23 Mr Babala's name was mentioned in the brief of the Prosecutor, 14 times.  
24 And furthermore, wrongly. Clearly the Prosecution mentions no aid or  
25 other assistance that Mr Babala allegedly brought to the alleged

1 co-perpetrators of the alleged overall strategy with a view to corruptly  
2 influencing witnesses. Respect of the norms of administration mean that  
3 each witness describes and demonstrates the aid that Mr Babala should have  
4 brought with a view to turning the administration of justice in the wrong  
5 direction.

6 The name Mr Babala only appears in paragraph 227 and 246. And here it's  
7 precisely in regard to D57 and D64.

8 Your Honours, Mr Babala does not deny having directly himself transferred  
9 a sum of money and also via 272 to these two people who he didn't know.

10 Now, the question is whether the sum of money which was provided in this  
11 way to these two witnesses can be analysed as an act of complicity, that is to  
12 say, aid or other assistance brought to these people with a view to corruptly  
13 influencing them.

14 The answer to this question is factually and legally negative, for the 9  
15 following reasons:

16 One, if we remember the objective aimed at by the alleged global strategy, it  
17 was according to the Prosecutor the acquittal of Mr Bemba in the main case,  
18 paragraphs 283 to 316 of the Prosecution brief.

19 Secondly, D57 and D64 were never coached nor illicitly prepared by any  
20 member of the Defence of Mr Bemba. The Defence of Mr Babala challenges  
21 the Prosecutor to prove the contrary beyond all reasonable doubt.

22 Three, the lie which has been ascribed to them by the Prosecutor would  
23 consist in denying the fact that they received, from the Defence of Mr Bemba  
24 a sum of money, even as reimbursement for legitimate expenses linked to  
25 their transport. Such a lie, even though there isn't one, because it did not

1 exist, is completely outside the objective of the alleged global strategy.

2 Fourthly, when questioned by the Prosecution at hearing, D57 and D64 did

3 not provide any incriminating evidence against Mr Babala nor any other

4 accused.

5 Fifthly, when cross-examined by the Defence of Mr Kilolo, and more

6 precisely by Mr Djunga, D57 and D64 affirmed, under oath, that the sum of

7 money received had no impact on the content of their testimony.

8 Sixth, the sum of money transferred to D57 and to D64 was not

9 criminally -- had no -- any element of criminality there, too.

10 Seven, in the additional questions, the Prosecutor showed nowhere beyond

11 all reasonable doubt the pointlessness of this response from D57 and D64.

12 We would even ask after why the Prosecutor had these people even come in

13 the first place. A Defence witness is not by definition a liar. Obtaining the

14 appearance and the examination of witnesses for Defence witnesses under

15 the same conditions as Prosecution witnesses is a right under Article 67(1) of

16 the Statute.

17 Nine, D57 and D64 did not lie in the main case. The Prosecutor has never

18 shown evidence of lies or of their illicit preparation.

19 The oral submissions of the Prosecutor have brought no added value to the

20 Prosecutor's written submissions, and indeed, the oratory of the Prosecution

21 has been sterile, it just regurgitate the written submissions and are unable to

22 prove beyond reasonable doubt the aid brought by Mr Babala to the alleged

23 co-perpetrators of the common plan, and it is here for the Defence of

24 Mr Babala, this is where we have to highlight that manifestly the Prosecutor

25 is confused, confusing the alleged overall plan with the true full scenario

1 upon which we will not go further into.

2 But the Prosecutor himself in paragraphs 155 and 316 of the final brief

3 recognized this full scenario but doesn't take the consequences at a legal level

4 because this is an impossible crime, neither Jean-Jacques Mangenda or

5 Mr Kilolo committed any crime.

6 Now, the role of focal point which was attributed to Mr Babala. With a

7 view to providing financial aid brought by Mr Bemba for the legal needs and

8 others is uncontested.

9 But with regards to the dossier of the Prosecutor is empty when we look at

10 paragraph 17 of its final conclusions. And we would invite you to look for

11 other evidence which he himself has produced.

12 Now, the Prosecution is open and honest when it comes to being unable to

13 come up with relevant evidence which would establish the individual

14 criminal responsibility of the accused. It admits the handicap in its

15 argument and is asking you for crutches. You will understand why the

16 Defence of Mr Babala considers that the Prosecutor nowhere answered the

17 relevant questions that your colleague put to them.

18 Your Honour, in the case of Mr Babala, it merits being examined with

19 regards to the notion of accomplice, the Prosecutor is unable to prove this

20 and we would ask that the jurisprudence of this Court in the Ngudjolo case

21 is examined and that a disjoinder is made and so immediately, if this view

22 that the Defence expresses is taken on by yourselves, Mr Babala should be

23 judged by others, you will see that the charges against him are not proved, as

24 the associate counsel will demonstrate.

25 Your Honours, ladies and gentlemen, members of the Office of the



1 Prosecutor and dear Defence team, I would like to thank you for your  
2 attention. Thank you very much.

3 MR RODOMA: (Interpretation) Mr President, your Honours, dear learned  
4 colleagues.

5 Mr President, you will recall that at the beginning of this trial on the 29th of  
6 September 2015, Mr Babala told you that he did not understand why he was  
7 before you. That question at this juncture and on this day seems even more  
8 relevant because going through this case has demonstrated the shortcomings  
9 of the case. The Prosecutor has brought only a few items before you,  
10 whereas he should have, as is the case with other accused persons, would  
11 have been to call the person who is mainly involved in these cases and it has  
12 not been established by the Prosecutor beyond reasonable doubt the charges  
13 that are brought against Mr Babala. At the close of these hearings,  
14 Mr Babala must be acquitted. The Prosecutor has reminded you again that  
15 facts are escapable. And if this were to be true in reality, it must also be  
16 true, Mr President, that the law is the law and that is it. When it comes to  
17 matters of legality, in matters of evidence, it must be said that this is what  
18 puts order into evidence. An offence can only be held against someone  
19 when the conditions laid down by the law are upheld. *Nullum crimen sine*  
20 *lege*.

21 Mr President, your Honours, Maître Kilenda has just been talking about  
22 Mr Bemba -- Mr Babala being charged with criminal liability. And such  
23 criminal participation is what determines liability, particularly when several  
24 persons are involved in a crime and to determine when and to what extent  
25 the material facts can be linked to the person who may have been part of that

1 offence.

2 Someone who is not physically participating in an offence may be liable  
3 criminally for conduct that facilitates the creation of a situation that amounts  
4 to a crime, particularly under Article 25(c) of the Statute, which calls for the  
5 fulfilment of a number of conditions, such as knowledge of the criminal  
6 nature of the main crime and the will to be associated thereto.

7 I believe, Mr President, that these two conditions are not in the alternative,  
8 but they are cumulative.

9 Second point, execution in one of the acts that is covered by the law,  
10 particularly by Article 25(c) of the Statute.

11 And the third point is the existence of an offence that amounts to a crime.

12 Conduct is criminally punishable, not because it has a criminal nature, but  
13 because it is linked to an offence that is determined by the law. Article 25(c)  
14 of the Statute provides this relationship and complicity in this matter and  
15 I believe that this particular article --

16 PRESIDING JUDGE SCHMITT: We do not like to interrupt you, but I have  
17 been told that you are a little bit too quick. So it would be nice if you could  
18 slow down a little bit so that interpreters have enough time to translate.

19 Thank you very much.

20 MR RODOMA: (Interpretation) Thank you. For this correlation to exist,  
21 there must be direct participation in the crime or in the offence. There must  
22 be a situation where direct assistance is provided or where such a crime may  
23 not be committed, or in the case where the author has provoked or caused the  
24 crime to come into existence. Mr President, your Honour, none of these  
25 conditions was met by Mr Babala. In fact, when it comes to direct

1 participation in the execution of the crimes charged, there is no indication in  
2 the case file of criminal participation by Mr Babala.

3 Nowhere in the case file do you find any evidence that Mr Babala provided  
4 indispensable aid by which the alleged crimes could not have been  
5 committed.

6 The Pre-Trial Chamber II, on 11 November 2014, dismissed the direct or  
7 indirect co-perpetration of Mr Babala as well as any participation  
8 whatsoever, and simply admitted the so-called aid and assistance to the  
9 other co-accused with a view to facilitate the commission of crimes by the  
10 co-accused such as false testimony, false evidence and influencing witness  
11 statements.

12 This help allegedly was provided by Mr Babala when he managed and  
13 distributed funds belonging to Mr Bemba.

14 Mr Babala, therefore, is charged by the Prosecution to be complicit in the  
15 influencing of witnesses and testimonies and producing false evidence.

16 Mr President, you have before you fuzzy and limping charges which relate  
17 to matters of onus and matters of evidence. Let me explain what I mean.

18 In fact, in its final submissions at paragraph 17 on page 10, the Prosecution  
19 itself acknowledges that it is impossible to enumerate all the material and  
20 relevant material that would establish the individual criminal responsibility  
21 of the accused.

22 The Prosecution again invites you, you, your Honours, to consider as  
23 relevant and important all other materials or elements that you will discover  
24 in the course of your deliberations although the Prosecution did not bring up  
25 those points.

1 Quite surprisingly, the Prosecution invites you to play its role and its  
2 prerogatives of conducting exculpatory and inculpatory investigations.  
3 This is tantamount to a breach of the rules that uphold the rights of the  
4 Defence.  
5 As usual, and throughout this trial, the Prosecution has put before you a tote  
6 bag. And this is still the case today, and is inviting you to figure out by  
7 sorting through this tote bag and this definitely violates Mr Babala's rights.  
8 How can Mr Babala mount a proper Defence for himself when the  
9 Prosecution has failed to be as specific as possible when it comes to the  
10 charges against him?  
11 Let me recall, Mr President, your Honours, that the burden and onus of  
12 proof is on the Prosecutor. In fact, at paragraph 27 of its brief, page 15, the  
13 Prosecution recognized that Defence suggestions are reasonable and  
14 plausible and that a thesis is deducted then that the thesis will not be able to  
15 raise reasonable rights -- reasonable doubt.  
16 The Prosecution, therefore, has used a number of telephone conversations  
17 and reports by independent counsel as Maître Kilenda has highlighted to  
18 come to the conclusion that there was an alleged common plan between the  
19 accused, without mentioning them and without indicating how they were  
20 used to influence witnesses, pages 42, page 23 of the Prosecution brief.  
21 In the following minutes, Mr President, I would like to talk, address the  
22 Court on eight telephone conversations as well as the various documents  
23 used by the Prosecutor, namely, the telephone conversations, to point out to  
24 you that there was never a common plan and that it is not possible for a  
25 common planned to have existed.

1 Mr President, when it comes to the theory of a common plan, it must be  
2 understood to be a fraudulent, so to speak, agreement with a view to execute  
3 a criminal plan with others.

4 Therefore, there is need for reciprocity in the conscience and the will of those  
5 working for that criminal undertaking.

6 (Counsel confer)

7 MR RODOMA: (Interpretation) I'm sorry. I've been reminded that I'm  
8 going too fast. That tends to be my habit.

9 Failure to establish knowledge and a will to be part of the crime, this must  
10 also be viewed in terms of looking at a number of conversations. In an  
11 attempt to show that Mr Babala was aware and had the intent to agree with  
12 the other accused, the Prosecution basically relies on telephone conversations  
13 between Mr Babala, Mr Kilolo at the time when Mr Kilolo was Mr Bemba's  
14 lead counsel.

15 In this regard, Mr President, your Honours, let us point out that these  
16 conversations must be assessed globally and in context. There is no reason  
17 in this regard to not take into consideration the report by expert witness,  
18 Harrison, who highlighted a number of technical problems. This was raised  
19 by Mr Bemba's Defence yesterday, and I think that this point must be taken  
20 into attention.

21 Excerpts of conversations taken separately may lead to the point where it  
22 appears that Mr Babala is answering questions that were not put to him  
23 whereas he might be dealing with issues that were raised a minute or two  
24 before.

25 The Prosecutor also for the first time and regardless of the adversarial

1 procedure says that Mr Babala was a politician and he had changed his  
2 phone number because he thought he was being tapped. This is not only a  
3 matter that pertains to Mr Babala's fear of being tapped by Congolese  
4 authorities, but it is unfair because it was not actually part of the pleadings.  
5 The Prosecutor charges Mr Babala in an attempt to establish mens rea, a  
6 number of conversations. One, the fact that he communicated with  
7 Mr Bemba, informing him about money requests from the colleague above  
8 and requiring his authorisation before making any such transfers.  
9 This is absolutely irrelevant for the following reasons. One must wonder,  
10 Mr President, your Honours, what the link may be between intention as  
11 described here before, because Mr Babala himself does not challenge the fact  
12 that he provided some funds to Mr Bemba's team which was deprived of the  
13 necessary requisite funds required for his Defence and for his subsistence at  
14 the detention centre.  
15 These sums of money, it must be said, do not belong to Mr Babala. He  
16 simply raised funds from other persons in order to make the transfers. And  
17 now to make a link between that and corruption of the trial process is  
18 something that is totally inadmissible because it lacks clarity.  
19 In the conversations mentioned, there is no indication whatsoever that  
20 Mr Babala is an intermediary between Mr Bemba, the accused and any other  
21 persons. Therefore, it must be determined at what time and at what  
22 moment the other accused persons are linked in this. There is no evidence  
23 of that.  
24 At what time did Mr Bemba and Mr Babala all, one or both of them, come  
25 together with other persons to establish a common plan. There is no

1 evidence to that regard, in that regard whatsoever.

2 What is the common plan? No evidence. At what time did Mr Bemba,  
3 Mr Babala transfer the information from Mr Bemba to the others? There is  
4 no evidence to that matter.

5 Is it then therefore the fact that Mr Babala requested Mr Bemba's opinion  
6 before making the transfers? Is that what is criminal?

7 Second conversation. Payments made to the accused, namely Aimé Kilolo  
8 and Narcisse Arido. On this point, Mr President, your Honours, the  
9 Prosecutor argues at paragraph 57 or refers to paragraph 57 of his pre-trial  
10 brief and to a number of documents which I would not outline here but  
11 simply mention a few.

12 He points out at paragraph 57 of the pre-trial brief that the charges are  
13 brought on the basis of Article 70, but there is no link with Mr Babala.

14 Further on in documents CAR-OTP-0077-1324, page 1327, 1328, at lines 66  
15 and 67, mention is made of one Ndokwa. And name of payments. At line  
16 72 they talk about Wale's sister and not about payments. Line 79-80  
17 reference is made to transfers to somebody at 07 and that the colleague d'en  
18 haut will tell you and there is no relation with Mr Arido and influencing  
19 witnesses.

20 In document CAR-OTP-0077-1341, page 1343, line 7 to 18, Mr Babala informs  
21 Mr Bemba as follows: "Charlie, okay. Eke, okay. Mama Leki, okay. Le  
22 collègue d'en haut, okay."

23 The Prosecutor then alleges that this refers to distribution of money to the  
24 accused particularly by, namely, Mr Kilolo and Arido for influencing  
25 witnesses.

1 The reasons for the transfers have been explained by Mr Kilolo and for this  
2 reason Defence does not see what evidence there is to point to the fact that  
3 money is transferred to Mr Kilolo were destined for influencing witnesses.  
4 And if there were any such influences, who would it be? Charlie, Eke,  
5 Mama Leki or does reference to these relate to Mr Arido or to any other  
6 witness?

7 In his annex to the trial, the Prosecutor argued that Charlie refers to  
8 Cameroon, as well as to Mr Kokate. It could also mean, using the NATO  
9 alphabet, the name of anyone beginning with C, such as Carlos or Canada.  
10 Mama Leki refers to Mr Bemba's cousin. So on what grounds does the  
11 Prosecutor come to the conclusion that Charlie refers to Eke or, Mama Leki in  
12 a conversation between Mr Arido and a witness?

13 In document CAR-OTP-0089-0515, page or lines 384 to 385, after a lengthy  
14 conversation on politics as usual, Mr Bemba asked Mr Babala in a very direct  
15 way, send an SMS to the colleague. I am looking for him.

16 PRESIDING JUDGE SCHMITT: Mr Rodoma, just a moment. There seems  
17 to be a problem with the French transcript. Is this true or has this been  
18 solved in the meantime?

19 THE COURT OFFICER: Mr Rodoma is speaking way too fast to allow the  
20 court reporters to type his speech.

21 PRESIDING JUDGE SCHMITT: So Mr Rodoma, we don't have a technical  
22 problem. So I remind you to really try to slow down. Although we all  
23 know that temperaments are different, of course.

24 MR RODOMA: (Interpretation) Thank you, Mr President. I will make a  
25 significant effort.



1 Mr President, in the third conversation, Mr Babala is being charged with  
2 paying witnesses and families through direct transfer of funds, directly or  
3 through intermediaries such as P-0272. In support of this argument the  
4 Prosecutor refers to paragraph 180 of his brief which has nothing to do with  
5 this charge. Clearly, Mr Babala transferred at the request of Mr Kilolo \$665  
6 to the lady witness D57 and through P-0272 and (Redacted). At paragraph  
7 171 of his pre-trial brief, the Prosecutor argues that in its -- and as well as in  
8 its final submissions at page 172, 116 rather, Mr Kilolo had at least two  
9 telephone conversations during that week with D64 and that they  
10 communicated by messages during that time.

11 But the Prosecutor does not establish that during the same period Mr Babala  
12 had any contacts with Mr Kilolo, during which there was discussion of  
13 witness influencing.

14 How can it be that the Prosecutor is so specific when it comes to Mr Kilolo's  
15 contacts with that witness and is vague when it comes to Mr Kilolo's contacts  
16 with Mr Babala and the same witness? How would Mr Babala have known  
17 that the beneficiary of the transfer requested by Mr Kilolo was a witness?

18 So unfortunately, the Prosecutor relies on a conversation about "faire du  
19 sucre aux gens" and comes to faulty conclusions when it comes to Mr Babala.

20 There is no evidence anywhere to point that Mr Jean-Pierre Bemba and  
21 Fidèle Babala in any way whatsoever were talking about a witness. In fact,  
22 it was a matter of Mr Bemba's sister having to receive some money through  
23 such transfers, and therefore it is in this context that there was reference to  
24 the death celebrations of Honourable Kanku, and there is no way by which  
25 such a sentence could be linked to the rather foggy strategy of the

1 Prosecutor.

2 The Prosecutor is misleading the Chamber by using terms which have no  
3 content and no relation to the conversations.

4 Let me read material relating to various witnesses, D64, D57, whose words  
5 and expressions do not appear in document CAR-OTP-0071299 (phon).

6 Number four, dissimulating the common plan by the use of codes during  
7 conversations with Mr Jean-Pierre Bemba. Mr President, your Honours, the  
8 Prosecutor has referred you to paragraphs 29 and 52 of his pre-trial brief in  
9 support of this argument. And once again this is light-handed, a  
10 light-handed way of proceeding because there is no reference to the  
11 allegations. These are contained, in fact, at paragraphs 46 and 47.

12 At paragraph 46, the Prosecutor mentions four conversations between  
13 Mr Bemba and Defence persons as well as between Mr Kilolo and  
14 Mr Mangenda in which they talk in codes.

15 Those conversations clearly indicate that Mr Bemba used codes when he  
16 communicated with most of his interlocutors, particularly for political and  
17 strategic reasons.

18 So when you take a conversation between Mr Bemba and Mr Babala, as  
19 mentioned in argument in support of the dissimulation of the common plan,  
20 there is no evidence that has been proven that has been put forth to support  
21 that allegation. In fact, Mr Babala had some contact with Mr Bemba and  
22 they discussed matters of diplomatic and political nature.

23 Fifth fact, paying witnesses in order to influence their testimony. This is as  
24 cloudy an argument as the others. At paragraph 58, 57 and 74, the  
25 Prosecutor refers to these paragraphs in his brief, but once again they are not

1 clear. A document that has been produced by the Prosecutor in itself does  
2 not argue the absolute reality or materiality of the facts that he, the  
3 Prosecutor himself, seeks to establish.

4 The argument that witnesses were paid in full knowledge, that the witnesses  
5 were aware of the relationship, I refer here to a document in which  
6 Mr Babala is required to determine whether Mr Babala actually made these  
7 transfers at the behest of Mr Bemba. And so the whole issue here is about  
8 whether or not such payments could be made.

9 The Prosecutor further attempted to demonstrate the existence of a common  
10 plan by referring to conversations Mr Babala and Mr Kilolo and he used  
11 expressions as after-sales service, from time to time 50 from time to time  
12 100 --

13 PRESIDING JUDGE SCHMITT: The court officer is standing. This means  
14 something.

15 (Counsel confer)

16 MR RODOMA: (Interpretation) On 31 May 2016, the Prosecutor in his oral  
17 submission once again attempted in vain to demonstrate the existence of this  
18 so called common plan when he referred to conversations between Mr Babala  
19 and Mr Kilolo. And said that terms such as after-sales service from time to  
20 time 50, from time to time 100, and so on and so forth.

21 These conversations actually are part of what could be referred to as a false  
22 scenario as recognized by the Prosecutor himself. And I think this was  
23 reiterated to the Court this morning by counsel who spoke before.

24 Mr President, your Honours, we are convinced that even without reading  
25 through the chronological conversations between Mr Kilolo and

1 Mr Mangenda of 16 October 2016, 18.48 and 12.38 and 16.38, as well as a  
2 conversation of 22 October, at 20.26, that chronology of events is all the more  
3 important because it demonstrates that Mr Babala is simply answering to  
4 those faulty explanations that were given to him and the blame that was  
5 placed on Mr Kilolo in relation to the treatment of vulnerable witnesses  
6 without taking into consideration the various conditions laid out by Trial  
7 Chamber III.

8 Mr Babala, today, it must be said is the victim because in spite of himself,  
9 and against his own will, he has been placed before you in an unjust and  
10 unfair manner.

11 Mr President, your Honours, from what has been stated above, it is clear that  
12 the Prosecutor has not established the proof that Mr Babala collaborated with  
13 the other accused in this matter of transferring funds to members of the  
14 Defence teams and were used for other purposes. Under Article 70(1)(c) of  
15 the Rome Statute, subornation of witnesses presupposes that the author  
16 deliberately seeks to mislead the Court.

17 This is only possible where one is able to influence witnesses and where the  
18 said false testimonies were actually implemented from the proceeding, and  
19 going by the very confessions of Mr Kilolo's Defence team, it must be said  
20 that Mr Babala did not know the beneficiaries of the transfer. He did not  
21 know their status, AND the relation in the case against Mr Bemba and that  
22 they had no possible family ties with any other person relating to this case.

23 I refer to document ICC01/05-01/13-674CONF paragraph 274. Same  
24 reference to ICC01/05-01/13-CONF-CORR2 (phon), footnote page 228.

25 Mr President, your Honours, how could Mr Babala under such conditions

1 have been able to determine what to do or brought anyone else to make a  
2 false statement, given that he was neither the main perpetrator nor a  
3 co-perpetrator? This makes the offence impossible. Article 70(1)(b) refers  
4 to false evidence or falsified evidence and therefore deals with false material  
5 which involves physical alteration of a document, as well as intellectual  
6 forgery, which would mean subtly influencing the truth in the content of a  
7 document as it is being drafted.

8 To be charged as complicit of such an offence, one must have knowledge of  
9 the main crime, and at the same time, demonstrate an interest to be part of  
10 the commission of the crime.

11 Pre-Trial Chamber II extensively interpreted this provision when it held that  
12 Article 70(1)(b) should include all material evidence such as documents,  
13 evidence, exhibits and oral testimonies. In this regard, Mr President, your  
14 Honours, Mr Babala, it must be said, was not only unaware and is still  
15 unaware of all the 14 documents that were allegedly produced before the  
16 Chamber, as well as has been the argument of his Defence team.

17 Furthermore, in its closing arguments on 30 May, the Prosecutor himself  
18 agreed that Mr Babala did not know the identity of the witness as a soldier,  
19 ICC-01/05-01/13, T48, page 23. For Mr -- according to that report for  
20 Mr Kilolo, the persons met in Douala in 2012, namely, D004, D006, D008, and  
21 D009 were, indeed, to his mind soldiers. Therefore, it is not of bad faith and  
22 for bad faith that he brought them before this Court as he himself stated  
23 before this Court on 31st May 2016.

24 In these circumstances therefore, the offence under Article 70(1)(b) as upheld  
25 in the document containing the charges has not been substantiated when it

1 comes to the accused and even, given that Mr Kilolo himself stated that  
2 Mr Babala was not aware of the status of the Defence.  
3 It therefore follows that Mr Babala can only be punished for crimes to which  
4 his conduct relates. It has been argued that such a crime does not exist and,  
5 furthermore, the Prosecutor has failed to establish beyond reasonable doubt  
6 that Mr Babala provided any assistance or aid whatsoever in the preparing  
7 and drafting of documents in relation to any witness whatsoever.  
8 When it comes to Article 70(1) of the Statute, if one were to suppose,  
9 Mr President, that false testimony was committed by any of the 16 witnesses  
10 listed by the Prosecutor, it must be said that Mr Babala never had any contact  
11 with any of these witnesses as corroborated by the very confession of  
12 Mr Kilolo's Defence team, Mr Kilolo, former lead counsel for  
13 Mr Babala -- Mr Bemba rather, when he said Mr Babala was external to the  
14 team and only acted as a focal point without being associated in whatsoever  
15 manner to the strategy and to any other confidential matters of the Court.  
16 How then could he have been able to influence any of the witnesses to  
17 commit a false testimony or any other such act in the main case? In this  
18 regard, once again, the Prosecutor has failed to prove the various elements  
19 that point to a common plan between the five suspects, and that is also in  
20 line with what the Trial Chamber III, Pre-Trial Chamber, held. It is  
21 therefore also the case that the Prosecutor has failed to specifically identify  
22 the witnesses who provided false testimony.  
23 It therefore must be said, Mr President, that the Prosecutor has failed to  
24 demonstrate beyond a reasonable doubt that Mr Babala in one way or  
25 another provided assistance to witnesses in a bid to get them to provide false

1 testimony or to alter their statements and that he -- and that he conferred in  
2 any manner whatsoever with any members of Mr Bemba's Defence team.

3 It has been demonstrated, Mr President, above that Mr Babala did not know  
4 any of the witnesses in the main trial, and he could not and therefore cannot  
5 be able to influence either directly or indirectly, because all he did was  
6 simply to help in the financial functioning of a Defence team without  
7 knowing any details as to the purposes for which the funds will be used.  
8 The charges against him are, therefore, simply impossible and the only  
9 possible outcome is to simply acquit him.

10 Thank you, Mr President. I thank the entire courtroom for the time that was  
11 given for us to present our arguments. Thank you.

12 PRESIDING JUDGE SCHMITT: I understand that Mr Babala now wants to  
13 make his unsworn oral statement.

14 You have the floor then, Mr Babala.

15 MR BABALA: (Interpretation) Mr President, I thank you for allowing me  
16 to address the Court. Your Honours, I thank you for this opportunity to  
17 finally address the Court, *intuitu personae*. The only time I was ever able to  
18 address the Court since the beginning of these proceedings, which I would  
19 describe as nightmarish, was at the identification hearing three days after my  
20 arrest and transfer.

21 On this unique occasion, I wondered to myself precisely what I was doing  
22 before the International Criminal Court.

23 After 11 months of detention, after having familiarised myself with all of the  
24 evidence of the dossier during the time in detention, and especially after  
25 having followed in passive yet interested manner the presentation of the

1 Prosecution case and followed the various testimony provided by the  
2 Prosecution witnesses and all of those provided by the Defence teams, I'm  
3 still wondering precisely what I'm doing here.

4 THE INTERPRETER: Request from the interpreter. Could you please be  
5 requested to slow down.

6 MR BABALA: (Interpretation) Your Honours, ladies and gentlemen, ladies  
7 and gentlemen, members of the OTP teams and Defence teams, what brings  
8 us together today in this courtroom despite our opposing interests is a quest  
9 for truth. Some would say we are in such of a judicial truth. But I would be  
10 more inclined to say we are in such of the right truth.

11 Your Honours, I responded to a call of distress on the part of  
12 Mr Jean-Pierre Bemba for whom I have great respect, who was and I, please  
13 forgive the expression, between a rock and a hard place because of the  
14 proceedings against him on the one hand and also because he was being  
15 prosecuted for serious offences. And on the other hand, because he lacked  
16 the means to assert his rights to defend himself.

17 Along with his family, friends and co-workers, a chain of solidarity was set  
18 up with an aim to finding resources for him to face, to mount a Defence and  
19 live decently. And that was the sole objective that I had in mind at the time.

20 Coming to the aid of somebody one respects is a humanistic value, not a  
21 form of dishonesty.

22 The resources mobilised were meant to be put towards the Defence team and  
23 the investigations and also for his subsistence at the detention centre, which  
24 explains the quite regular contact that existed between the members of the  
25 team and myself.



1 In brief, these contacts consisted in assessing the needs of lead counsel or  
2 Mr Bemba, or in transferring the resources and the communication that the  
3 operations details, which is where I came in, for the withdrawal of the  
4 requested funds.

5 I was not interested in the details of this case that was confided in the hands  
6 of the lawyers.

7 There was never any question between Mr Bemba and myself or between  
8 any member of his team and myself of corrupting witnesses or sabotaging  
9 the judicial process.

10 If Mr Bemba had asked me to do this, I would not have recognized him. His  
11 mandate to the deputy presidency of the republic in charge of economic and  
12 financial affairs involved fighting against corruption, misappropriation of  
13 public funds and other such practises. He did not hesitate to punish even  
14 his closest co-workers who were involved in such practises.

15 And I could not therefore imagine that he would do likewise. Our  
16 conversations with essentially political and private in nature and the only  
17 times that we talked about the case was quite simply to ask how the last  
18 hearing went. It was really a question of decorum.

19 When, for example, you talk of somebody who is sick, the question that you  
20 put to him or her is how they are doing. It is not because you want to give  
21 this person treatment or because one has become a doctor overnight, it is  
22 merely because such a question is timely. This was also the case when I  
23 would give him the information of requests made by his Defence team. It  
24 was simply a question of transparency.

25 THE INTERPRETER: Request from the interpreter. Could he please be

1 requested to slow down.

2 PRESIDING JUDGE SCHMITT: Mr Babala, we have the same problem that  
3 we had before. And I understand, of course, that this is very special  
4 situation for you. But if you also could please try to slow down a little bit.  
5 Thank you very much.

6 MR BABALA: (Interpretation) I was always reassured when I heard from  
7 the mouth of the president that you were professional judges. You will,  
8 therefore, be able to distinguish between rushed, hashed and biased  
9 investigations and methods used by the Prosecution and the truth that you  
10 are seeking to establish via these proceedings.

11 Whatever the case may be, I am not a member of the Bemba Defence team. I  
12 am not the manager of his possessions, and I was never aware of any alleged  
13 plan to corruptly influence witnesses and sabotage the judicial process or  
14 any intention of taking part in it.

15 The Prosecution has not brought and will never bring any probative  
16 evidence to contradict my statements. Quite simply because these elements  
17 do not exist.

18 If the funds sent to the Defence team were unlawful, would it not have been  
19 more intelligent to hand them over mano a mano rather than send them via  
20 Western Union? I am not an imbecile.

21 I am being prosecuted, it would seem, for having used in my telephone  
22 conversations with Mr Bemba a language full of allusion, deemed to be  
23 coded by the Prosecution.

24 It is the manner that Mr Bemba expressed himself in before and after the  
25 material time whoever he might have been talking to.

1 What is more, this type of language could protect me because I was living in  
2 a dangerous country and 99 of our telephone calls were political in nature,  
3 after all.

4 That is why, despite the lack of probative evidence against me, I was arrested  
5 and transferred before this Court in violation of my rights. Why did the  
6 ICC never note that any of my rights had been violated whilst my counsel  
7 and I have constantly talked of this? And why was it that the documents, in  
8 the documents there exist a similarity in the practise of the organs of the  
9 Court and the authorities of my country?

10 Here are a few examples in support of my claim. When in violation of the  
11 presumption of innocence the authorities of my country filmed and  
12 broadcast continuously images of a major criminal handcuffed and prostrate  
13 with nothing but contempt for my human dignity, these very same images  
14 were then broadcast the world over. I did not once hear the Office of the  
15 Prosecutor rise up against this summary condemnation by the media.

16 Which then culminated in a press briefing by the minister of information and  
17 a press conference by the Prosecutor in Kinshasa claiming, in no uncertain  
18 terms, that I was guilty of the charges.

19 Your Honours, the crimes with which I am charged require an examination  
20 of my honesty. I accept that my ethics be scrutinised, but I wonder if the  
21 person calling my honourability into question is the touchstone by which  
22 international morality can be measured?

23 Especially if we know that this referred person validated the legal theories of  
24 one of the most retrograde dictatorships in Africa.

25 Worse still, when during the entire pre-trial phase, these same authorities

1 continued to impede my return to my home country, presenting me as a  
2 danger to public peace and a threat to peace while I was elected to universal  
3 suffrage on two occasions, and I never broke the laws of my country. My  
4 political combat has taken place for the most part within the hemicycle and  
5 through the activities of my party. When, unashamedly, the minister of  
6 justice, the ministry of justice, the deputy minister and the prosecutor  
7 general of my country, on behalf of my country in turn expressed their will  
8 that I should not return to DRC for very vacuous reasons, the Prosecution  
9 relied on these arguments and argued against my provisional release and the  
10 Single Judge repeated this in his successive arguments. Worse still, the  
11 Single Judge of the Pre-Trial Chamber, in the context of my provisional  
12 release, requested that I choose a host country in case the Congolese  
13 authorities continued to oppose my return to the DRC, forgetting that for  
14 one, my arrest took place in Kinshasa and, two, I am a Congolese national  
15 and not a stateless individual.

16 With regard to the Single Judge of the Pre-Trial Chamber, I was very  
17 impressed by his capacity to read 1,550 pages of the Prosecution's request for  
18 a warrant of arrest between 11.35 on 19 November 2013 and 11.48 on the next  
19 day, which is an average of 193 pages per hour for a normal working day  
20 comprising 8 legal hours of work.

21 With regard to the practises, both the Congolese authorities and the organs  
22 of the ICC indulged in exaggerated and superfluous activities. Indeed, at  
23 least 100 police officers came armed to the teeth to arrest me. Yet I would  
24 not have put up any resistance to a subpoena or an invitation to appear  
25 signed by the prosecutor general of the republic.

1 The ICC chartered an entire plane for me alone, whilst I have no crime of  
2 genocide, no war crime, no crime against humanity, no crime of aggression.  
3 I do not believe that this is the best way to use taxpayers' money.  
4 There is nothing surprising about this when we know the Prosecutor's  
5 generosity with regard to his own witnesses.  
6 Your Honour, Mr President, you will be the only people by virtue of your  
7 professionalism to be able to restore the image of this institution which has  
8 been significantly, significantly sullied by the dubious procedural practises  
9 of the Prosecution.  
10 Such practises give substance to those of those African countries who believe  
11 that your institution administers justice, to paraphrase La Fontaine, whether  
12 you be rich or poor, tall or short, black, yellow or white.  
13 Your Honours, with your authorisation I would like to revisit the conditions  
14 under which the warrant of arrest issued by the ICC was executed upon my  
15 person.  
16 At 2.40 a.m. in the night of 23 and 24 of November 2013, I was awoken by the  
17 constant barking of my dogs. And I glanced out of my window. From  
18 there I saw and was able to rapidly count approximately 30 individuals  
19 wearing balaclavas and armed with Kalashnikovs, tear gas and grenade  
20 launchers in my car -- in my garden.  
21 I was then, I only then had the time to put my wife and children safely in  
22 their rooms and I rushed a call for help, calling the president of the national  
23 assembly and the town governor to no avail.  
24 After having opened the door of the house, I had a gun pointed at me by at  
25 least 6 individuals with guns less than 30 centimetres away from my chest

1 and they then pressed me to follow them without any explanation in  
2 violation of the laws of the republic. The thought that went through my  
3 mind at that moment was that I was close to death.

4 Out of modesty, I shall not mention the trauma experienced by my wife and  
5 children. I was placed in a Jeep. The impressive police contingent had  
6 alarmed the neighbours in the area who were themselves surrounded by  
7 approximately 100 policemen. Without any further explanation, I am  
8 driven, manu militari, to the intelligence services offices.

9 During the journey, I was appalled to hear over the police communication  
10 system that my colleague, the MP for Bacongo, had been assassinated. You  
11 can imagine my terror at that moment because I did not know that a warrant  
12 of arrest had been issued against me and the prisons of the intelligence  
13 services are close to the Congo river, a favourite spot for extrajudicial  
14 executions.

15 I remained detained in these premises from 3 a.m. until 1 p.m. on the next  
16 day and was then taken to the office of the prosecutor general of the republic  
17 who, after a few formalities, notified me of the warrant of arrest issued by  
18 the ICC.

19 I was then taken to the air force base at Kinshasa airport where I was  
20 presented to the officers of the ICC, who then handcuffed me, gave me a  
21 bulletproof vest and loaded me onto a Falcon jet bound for The Hague.

22 All of this was filmed by TV cameras and I had not either slept or eaten nor  
23 had I been able to drink any water for two days.

24 And also you should know throughout the flight I was handcuffed the entire  
25 time. These images were played ad infinitum in the DRC for at least a week

1 until the Pre-Trial Chamber ordered it to be stopped because of the  
2 presumption of innocence.

3 Arrested on the very same day pursuant to a warrant of arrest, Mr Kilolo  
4 arrived at the detention centre two days after me. Mr Mangenda arrived  
5 three days after me and Mr Arido nearly four months after me.

6 This is because their country of residence decided to observe international  
7 procedures or internal correction procedures foremost, and then observe the  
8 warrant of arrest issued by the ICC. This was not the case regarding my  
9 person.

10 So this brings me to wonder. Am I the victim of a certain agreement with  
11 the DRC, a sort of mechanical form of cooperation, servile form of  
12 cooperation because they are servile to the ICC or rather am I victim of  
13 political commitment? Does the ICC not have provisions to protect people  
14 who are quite simply suspects against the arbitrary actions of the state  
15 authorities? And even against all-powerful OTP and Pre-Trial Chamber?  
16 Do human rights not exist before the ICC or do they simply not exist when  
17 opponents to the current regime face prosecution?

18 Your Honours, would an American, would a Frenchman or would a German  
19 have been arrested under similar conditions?

20 Is one still in the 21st century damned because one is born in Africa or more  
21 particularly born in the DRC?

22 I may not be familiar with your system, but I refuse to believe as an MP who  
23 a few years ago voted in the law ratifying the Rome Statute setting up the  
24 ICC, I refuse to believe that this Court is devoid of responsibility, be it by  
25 virtue of its action or lack of action when executing its texts.

1 I think that the acquiescence of the ICC with regard to the violation of my  
2 fundamental rights is a tacit form of agreement with countries like mine who  
3 indulge lightly in the corruption of this practise, whereas to my mind the  
4 ICC should incite or even have a didactic role towards other, less advanced  
5 legal systems.

6 Your Honours, you will no doubt have noted by way of the facts recounted  
7 with regard to my brutal and illegal arrest that, contrary to the arrests made  
8 in Paris, in The Hague and in Brussels against my co-accused present here  
9 today, the arrest conducted in Kinshasa against me by the judicial authorities  
10 of the Parquet Général de la République upon an injunction upon the  
11 ministry of justice constitutes a violation of the constitution of Congolese  
12 law, and the elementary rules of human rights, namely, the Universal  
13 Declaration of Human Rights and its Articles 3, 5 and 7, the African Charter  
14 on Human and People's Rights, to which the preamble of the Congolese  
15 constitution refers in its Articles 5, 6 and 7, the Rome Statute and Articles 21  
16 and 59 thereof and the International Covenant on Civil and Political Rights,  
17 notably Articles 9 and 10 thereof.

18 Now, to return to the law of this Court, I have noted that at Article 59 of the  
19 Rome Statute, a State Party which has received a request for arrest or  
20 surrender shall take steps to arrest the person in accordance with its laws  
21 and without any form of precipitation, considering that the arrested person  
22 can make use of any law provided for under this provision that requesting of  
23 the competent authority of the state that he be provisionally released.

24 In my case, there was no hearing, no interview, no reading of my rights.  
25 Number two, as an MP and mandated by the people of my country, my



1 arrest should and must be made with the authorisation of the national  
2 assembly of which I am a member. I was arrested without any prior  
3 information reaching the parliament and none of my rights were observed.  
4 Three, under Article 22 in fine of the code -- of the Congolese criminal code,  
5 visits to premises, searches and seizures, notably visits to private residences  
6 may only commence after 5 a.m. and no later than 9.30 p.m., unless  
7 authorised by the Presiding Judge of the Tribunal du Grand Instance.  
8 However, I was arrested and transferred to the ICC at 2.40 in the morning.  
9 That is five hours and 40 minutes after and two hours and 10 minutes prior  
10 to the legal hours authorised, without observing any of the rules of criminal  
11 procedure.

12 Your Honours, in addition to these violations of the conditions of my arrest,  
13 transfer and detention, which harmed me deeply and profoundly and  
14 affected me in an indelible manner, I returned to the main question: What  
15 precisely am I doing here? Your Honours, Mr President, I completely  
16 adhere to the observations and conclusions made by my Defence team since  
17 the outset of the proceedings, and I lay my full trust in justice and I thank  
18 you.

19 PRESIDING JUDGE SCHMITT: Thank you very much. I think this  
20 concludes for the moment the presentations by the Defence of Mr Babala.  
21 Is this correct, Mr Kilenda?

22 MR KILENDA: (Interpretation) That's correct, your Honour.

23 PRESIDING JUDGE SCHMITT: So then we would have now the  
24 lunch-break until 2 o'clock.

25 THE COURT USHER: All rise.

1 (Recess taken at 12.30 p.m.)

2 (Upon resuming in open session at 2.00 p.m.)

3 THE COURT USHER: All rise.

4 PRESIDING JUDGE SCHMITT: Please be seated.

5 I give now the floor to the Defence of Mr Arido. Please, Mr Taku.

6 MR TAKU: Good afternoon, your Honours.

7 The Prosecution at paragraph 347 of the Prosecution closing brief attempted  
8 to mislead the Court by stating that the Arido Defence conceded in the Arido  
9 opening statement that Arido provided false information to Mr Kilolo, as  
10 opposed to Trial Chamber III and that it also considered dealings with  
11 Cameroon witnesses, which Arido denied in his French statements. Your  
12 Honours, you listened patiently to the opening statement of Mr Arido. This  
13 statement is false, and with it, several other statements contained in the  
14 Prosecutor's brief.

15 The Arido Defence vehemently rejects this mischaracterization of the Arido  
16 Defence opening statement. The opening statement was clearly referring to  
17 defining the very limited scope of the charges against Mr Arido in the  
18 confirmation decision at paragraph 89 and restated by your Honours on  
19 29 September 2015. It is therefore, your Honours, incorrect to impute any  
20 other motives or interpretations of these opening statements. We  
21 vehemently, vehemently denied all the charges against Mr Arido.

22 Your Honours, the Arido Defence argues the Trial Chamber to construe this  
23 mischaracterization as a futile attempt to explain away the inability of the  
24 Prosecution to meet its evidentiary burden in each of the charges against  
25 Mr Arido. The Prosecution, your Honours, is picking and choosing to make

1 its case.

2 And this is very evident in paragraph 346, when the Prosecutor refers to an  
3 email exchange between Mr Arido and D2, relating to some political matters  
4 in Central African Republic long after, almost a year after the Douala  
5 encounter. And the Prosecutor attempts to bring it within the context of the  
6 Douala meeting to say that Mr Arido was advising witnesses not to discuss  
7 the case so as to conceal the alleged plan.

8 One thing that has come out through this trial, your Honours, is that the  
9 evidence on record indicate that there were two categories of refugees,  
10 Central African refugees in Cameroon. There were those refugees among  
11 the more than 280,000 Central African refugees in Cameroon who were  
12 displaced by the war after the hostilities to Cameroon to seek refuge, and  
13 they were promptly settled in refugee camps. There were others who, like  
14 D2 and D3, who themselves in their own words said that they were escaping  
15 from reprisal attacks by the new government that took place in Central  
16 Africa as a result of the war in 2002 to 2003.

17 And the question is why reprisal attacks? Why should they be targeted for  
18 attacks? Why should this new government pursue them to their country of  
19 refuge to target them for reprisal attacks? The answer lies in the emails  
20 communication which I will cite shortly and it lies also in their statements  
21 and the reasons that they provided both to the Prosecution, provided to  
22 Mr Arido and Mr Kilolo in their email communications why they were  
23 afraid, why they didn't have adequate protection in Cameroon.

24 They never said at any stage they feared for their life because of the  
25 testimony in the Bemba case. They said that they were afraid of attacks by

1 the force of Bemba and different participants in the conflict in Central Africa.  
2 It is our submission, your Honours, that D2 and D3 did not need to be  
3 coached nor to be recruited by Mr Arido. We will prove very soon from  
4 their own words that they knew (Redacted).  
5 (Redacted)  
6 (Redacted)  
7 (Redacted)  
8 (Redacted)  
9 (Redacted)  
10 (Redacted)  
11 (Redacted)  
12 (Redacted)  
13 (Redacted)  
14 (Redacted). Now, these peace talks was  
15 about what? Were peace talks to bring peace in Central African Republic as  
16 a result of that very war, the conflict from which he said he knew nothing,  
17 Mr Arido had to coach him, he had to take notes, dip them in tea in order to  
18 convince Mr Kilolo that they were old notes.  
19 Your Honours found when he came here that when he met Mr Kilolo, that he  
20 showed the note to Mr Kilolo, that he even, in the course of the interviews  
21 with Mr Kilolo, produced this note or read these notes in order to refresh his  
22 memory? The answer, your Honours, as obviously as day follows night, he  
23 didn't, and indeed, he met Mr Kilolo himself in the absence of Mr Arido.  
24 That's what he says.  
25 But if he dipped a note in tea to convince Mr Kilolo they were old notes, did

1 he convince him? Did he use this note for the purpose for which he said  
2 dipped them in tea? The answer clearly is no. And therefore there must  
3 have been another reason why he dipped these notes in tea: In order to  
4 convince the Prosecutor, to deceive the Prosecutor, mislead the Prosecutor  
5 that, indeed, his story of Mr Arido was credible, and that's why he said he  
6 recopied the note some months after.

7 Your Honours, the Prosecutor wisely advised this Honourable court to treat  
8 the testimony of witnesses with caution. He laid out many factors which  
9 the Court will consider in assessing their credibility. We'll come to that  
10 shortly, but what is important here, your Honours, is that through these  
11 witnesses and other evidence the Prosecutor did not meet the evidentiary  
12 threshold. The Prosecutor himself, your Honours, stated yesterday, and I  
13 will quote him shortly, but I'll quote him after qualifying my statement,  
14 introducing my statement this way, to conclude, as the Prosecutor attempts  
15 to do, that Mr Arido recruited these witnesses, he coached them and  
16 improperly influenced them, your Honours, and to urge your Honours to  
17 convict based on evidence in record, is a theory that rests on the very last  
18 assumption, Mr Arido -- the assumption is that the Prosecutor had to prove  
19 that Mr Arido was privy to the Defence, to the Bemba Defence case theory.  
20 Yet at that point in time Mr Arido had not even met Mr Kilolo physically,  
21 face to face, nor, I submit, the witnesses, and that is evidence on record. By  
22 what means had Mr Arido to know the case theory in Bemba?

23 The Prosecutor brought the call data that it could have and produced none  
24 within that period and gave no explanation about the inability to produce  
25 the call, telephone call records for the period in question. They did not even

1 attempt an explanation. They didn't merely withhold them in order not to  
2 provide exculpatory evidence in favour of Mr Arido. What happened to the  
3 call record within that period? It remains a mystery, your Honours. And  
4 we are not going to conjecture, we are not going to decide this case on  
5 conjecture.

6 But the important thing, your Honours, is this, the Prosecutor, in his own  
7 words yesterday said this, and I'll quote with your permission: "Arido had  
8 to know the theory of the Defence, of the Defence case inside out, backwards  
9 and forwards in order to be able to instruct these witnesses. He had to  
10 know what would help Bemba in Bemba's trial, Have to read the interview  
11 statements and note the details that's in them. The only one way Arido  
12 could have coached these witnesses and known what could work for the  
13 Defence and that is through Bemba's lawyer, otherwise the plans couldn't  
14 work. There would be inconsistencies. There would be guesswork  
15 involved, and simply would not fly." Page 27 and -- pages 27 and 28, the  
16 transcript of 31 May 2017. That was the Prosecutor's submission before  
17 your Honours.

18 Now, let's proceed to ask your Honours, having said so, did the Prosecutor  
19 at any stage of this case bring to your attention or call in evidence to show  
20 that Mr Arido knew about the Bemba trial strategy, knew about the evidence  
21 in Bemba's case, even knew about the content of the charges? The  
22 Prosecutor failed, your Honours, to do so. And therefore we urge the Court  
23 to hold the Prosecutor to this statement, hold the Prosecutor to this statement  
24 which we adopt in the Defence of Mr Arido to say that it is preposterous to  
25 say that Mr Arido will coach witnesses about a case whose case theory he

1 knew nothing about, and where there is no information, no evidence before  
2 the Honourable court to suggest the contrary.  
3 He had to be a magician, even a magician, even a magician would make  
4 some error in this particular case, and we know, your Honours, that with the  
5 protective measures in place, with the Court procedures, at least the Office of  
6 the Prosecutor has not complained, or the Defence, that Mr Arido broke into  
7 the Court system in order to know. Mr Arido knew Mr Bemba, Mr Babala,  
8 Mr Kilolo -- I mean Mr Bemba, Mr Mangenda only when he was detained  
9 here. You heard that evidence. He never knew them previously. And in  
10 the case of attempts of other ethnic affinity or some other public affinity is  
11 very, very far removed. He's a Central African and my colleague will  
12 inform you when she gets up to submit, he's the only Central African in the  
13 case. Why, we will prove why they brought him here in order to look for  
14 ways to convict him (Redacted), who was in the case long  
15 before Mr Kilolo and who had submitted a list of witnesses, these witnesses,  
16 to Mr Nkwebe, the first witness who will cite evidence, this witness who was  
17 known. He submitted that list, saying they were in his militia, and then  
18 other witnesses in 2010 to Mr Nkwebe. So he knows more about the case  
19 than even any other person who is in this Court. We will try to submit, in  
20 the absence of the explanation of the Prosecutor, why they would prefer to  
21 sacrifice him (Redacted). Mr Kokate must be a very  
22 important person to the system, rendering services to the system and we will  
23 demonstrate that when we come to that.  
24 Your Honours, the Prosecutor also suggested that Mr Arido, in order to  
25 conceal or mitigate his guilt made a misstatement to the French investigators

1 regarding the amount of money he received. Your Honour, the  
2 circumstances under which he was arrested, this was asked, we've written  
3 about in our submissions, but even Prosecutor witnesses refused that they  
4 received money for number one, anybody paid them, and they came here  
5 every morning they received from the Prosecutor, they were very reluctant  
6 or they did not even provide the details. They minimised the amounts until  
7 documents with proof were brought to confront them even by the Prosecutor  
8 himself and the Defence. You had that very, very credible, very strong  
9 condemnation by Mr Chris Gosnell about the amount they received from the  
10 Prosecutor. That's what they were about -- that's why they even accepted.  
11 But you know, your Honours, from the emails we will point to, and many of  
12 which are before the Court, that D2 and D3, everything around them was  
13 about money, topo, financial gain, they wanted to make money from every,  
14 from both sides in the case and although the confirming Judge said that  
15 Mr Arido attempted to exploit their precarious financial situation, your  
16 Honours, these were not witnesses that had any precarious financial  
17 situation. D2 himself testified, your Honours, that (Redacted)  
18 (Redacted)  
19 (Redacted)  
20 (Redacted)  
21 (Redacted)  
22 (Redacted)  
23 PRESIDING JUDGE SCHMITT: Mr Taku, you are now revealing information  
24 that should perhaps not be revealed. I would perhaps suggest that you omit  
25 this because I do not really want to go into private session, to be



1 honest.

2 MR TAKU: Your Honour --

3 PRESIDING JUDGE SCHMITT: So if you could and could be aware of the  
4 problem that could arise, so if you are vigilant, to put it this way, when you  
5 come to your further submissions on that, in that respect, I think we would  
6 appreciate that very much because I think it is preferable that we have the  
7 closing statements of everybody in open session. So please continue and  
8 have this in mind, please.

9 MR TAKU: Indeed, I have it in mind. That's why I didn't mention the  
10 location where he represented the president. I had wanted -- I didn't  
11 mention that.

12 I think I'm careful enough this attribute which he gave himself before here  
13 could be ascribed to just anyone, it will not lead to discover anyone. There  
14 are thousands of people in Africa as the expats or African descent in  
15 Yaoundé in Cameroon who are, who are themselves (Redacted).

16 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

17 MR VANDERPUYE: Thank you, Mr President. And I'm aware of your  
18 concern, but I think it is appropriate we go into private session just for a  
19 moment. I'm very sorry about this, but I think, I think my colleague's recent  
20 remarks are just not suitable for public broadcast.

21 PRESIDING JUDGE SCHMITT: Then we go shortly in private session.

22 (Private session at 2.21 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Open session at 2.24 p.m.)

24 THE COURT OFFICER: We are back in open session, Mr President.

25 PRESIDING JUDGE SCHMITT: So please proceed, Mr Taku.

1 MR TAKU: Well, your Honours, without being very specific, from the  
2 political connections of this individual, which he testified about, he was  
3 perhaps one of the most influential, one of the most powerful individuals  
4 within the refugee community in Cameroon. He wielded a lot of influence.  
5 When I get to read some of his answers, maybe although I will not disclose  
6 his identity, but just to be very, very cautious, I will check whether I could do  
7 that in closed session. But he was one of the most powerful individuals.  
8 He did not need to be coached. And I wonder whether at that point when  
9 they met in Douala he really intended to be relocated to any other country  
10 out of Africa.  
11 I think, your Honours, that his greatest ambition was to get back to his  
12 country and claim political power. You can see that in his emails. You can  
13 see when he's talking about, writing emails, clearly (Redacted).  
14 You can see trying to organise the community in order to seek political  
15 power. That was his greatest ambition at that point in time. This was  
16 through most of the emails apart from maybe at least one or two that he sent  
17 to Mr Kilolo that I will read when I get to that spot.  
18 Of course, I would just put, to be very cautious, his missionary activities, he  
19 managed to impress (Redacted)  
20 (Redacted)  
21 (Redacted)  
22 (Redacted)  
23 (Redacted). And you had the opportunity of watching his  
24 demeanour here. You had opportunity of listening to him. You had  
25 opportunity to see if he was someone who could be coached. It looked like

1 somebody who wanted to hold himself as an intellectual, as a leader. And I  
2 don't think there was a lot of coaching in the presence of someone who had  
3 organised a series of activities intended to reclaim political power back in his  
4 country.

5 With regard to D3, clearly from his own answers, D3 negates the charge.  
6 When I get there I will point your attention to references. He said, "Arido  
7 never told me to say that I'm a soldier, I'm a soldier, Central African soldier."  
8 And he said, "If Arido told me to say so and I will ask my matriculation  
9 number, military number, what will I say? No. That's why I will have to  
10 say I was a soldier in the particular militia." That was his own words.  
11 But consistently in the Prosecutor's submissions, he says that the government  
12 of Arido instructed this individual to say they were soldiers of the Central  
13 African army but the witness himself says no. In my own case, Arido did  
14 not instruct me to say so.

15 And the very witness - again I will point out the reference again soon - say in  
16 respects of D2, the idea of coaching in Douala didn't occur from the  
17 statement of this witness if you read his witness -- evidence, I think when we  
18 get to closed session, I don't want to stop for closed session, I will wait and  
19 draw your attention to that and read it out, so as not to disrupt the flow of  
20 my submissions. He said that, no, he has said that Arido said that, coached  
21 him to say in Douala that he was a sub-lieutenant. But this Witness said no,  
22 in Yaoundé, Arido introduced him as lieutenant, but in Douala, he himself,  
23 he himself told, introduced himself as an intelligence officer. And when he  
24 was asked, when Arido introduced you as a lieutenant, not sub-lieutenant as  
25 he claims, which he says, did he mention a mission? No, he did not

1 mention the specific army. Therefore, the submission of the Prosecutor  
2 either is selective or the Prosecutor did not pay attention to the answers that  
3 were given during cross-examination that contradict the Prosecution  
4 evidence.

5 Now, your Honours, D2, in a brief we pointed to the celebratory email where  
6 he said that (Redacted). That was on 24 March 2013,  
7 (Redacted).

8 Now, that was in an email he sent to Mr Arido and that was on 24 March.  
9 Now, when he sent this email even before he testified in June, therefore  
10 clearly at the time he went to testify what was on his mind was not the  
11 relocation, was not anything that Arido was said to have coached him, it was  
12 about going back home to reclaim a political position because according to  
13 him, (Redacted). So outside of  
14 the email that he sent to Mr Arido, that was his focus at that point in time,  
15 your Honours.

16 (Redacted). But  
17 suddenly after his testimony he changed focus and he sent an email that was  
18 a week after the testimony, CAR-OTP-0088-0509. I have read this email  
19 several times in my opening statement and also at trial. And he says:  
20 (Interpretation) "By the present, I am bringing to your attention that what is  
21 happening between Arido and myself risks leading to death."  
22 And he went further to say: (Interpretation) "In this regard and given the  
23 above, I ask you to seize the Court and ensure that we are relocated without  
24 conditions. Without conditions. I know the intentions of Arido, his ruses,  
25 and what he can do because he always writes to betray. If the Court and

1 you do nothing, don't regret it tomorrow and have no remorse, because in  
2 writing to you I think I can trust you. All this group of thugs don't  
3 recognize good acts. Furthermore, my wife wishes to confirm to you  
4 everything that I've said. Significantly, he says no, that (Redacted)  
5 (Redacted). They  
6 will not pardon us, given that D4 informed D7 has through inattention  
7 thrown oil on the fire and as I know them, they will use this information and  
8 their discontent at lamentably having failed and their plan of swindling has  
9 been thwarted."  
10 (Speaks English) He states in that email that clearly Arido did not want him  
11 to testify in the main case.  
12 And I think, your Honours, you will remember the only instance where he  
13 himself testified about was that before Arido left Cameroon to France, Arido  
14 met him at the post, the central post and told him, "I have left that case. I've  
15 left that case. My life has been placed in danger and they did nothing about  
16 it. I leave you, do whatever you want for yourself." And they were  
17 followed by another email, which is before the Court, long, at least a year,  
18 Your Honours, before he testified. And the question your Honour will ask  
19 again is that for an individual with a profile, with this profile, with this  
20 unprecedented degree of ambition and leadership, a claimant for leadership,  
21 Arido had left. If it were to be speculated, and we do not concede that, even  
22 if Arido told him, Arido had left. Now, one year after, your Honours, he  
23 goes to testify, can Arido be said to have coached this individual to testify  
24 falsely in the Bemba case under the circumstances? Your Honours will  
25 provide an answer to this in your deliberations.

1 But again, he says in this email that in addition to finding him, in addition  
2 Arido had found him, that Arido did not want him to testify and present  
3 Arido, instead of the 10 million, instead of the promise, promise of  
4 relocation, he now provided that Arido is an immediate danger to him and  
5 that he should consider, the lawyers should consider asking the ICC to  
6 relocate him to some other location because his life was probably in danger  
7 in the hands of Arido, and a number of military officials in his home.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted).

15 But here he presents him alongside Arido and other people, people who  
16 were a threat to his life on the basis of which he was seeking relocation.

17 Now, if relocation was offered to him as one of -- as incentive to testify, why  
18 not just tell counsel if it was done pursuant to another strategy and the  
19 counsel to whom was complaining was part of the overall strategy.

20 Why, why present a member, an alleged member of that plan as immediate  
21 cause of danger to him alongside military officials in his country? And why  
22 would these officials, in an independent neighbouring country want to come  
23 to another country in the subregion that they have good relations to harm  
24 someone who has sought protection in their country from reprisal, from  
25 reprisals that he himself says in his own emails? Why, your Honours? His

1 statement here. Why? There must be a reason. He must have been  
2 identified. He was an identified enemy to them. They knew him. And  
3 that's why that would happen.

4 And I do not want to go into other issues that they raised against Arido here.  
5 They are not good for public consumption. I really hesitate, your Honours,  
6 that you read and you see the degree of hatred coupled with evidence of one  
7 of the witnesses who testified against Mr Arido. This when you put all of  
8 them in context.

9 The problem, your Honours, here is that the question of the mens rea of  
10 Mr Arido, which my colleagues talk which was not proved. What was the  
11 state of mind of this witness? What was the state of mind? Well, it can be  
12 inferred from his own statements and from this email.

13 Now, your Honours, on the 28 October 2013, email CAR-D24-0002-0739 to  
14 learned counsel, Mr Kilolo, he again writes, and again this time he put  
15 himself in the heart of the conflict. With your permission, your Honours, let  
16 me read this out. (Interpretation) (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)



1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Now, your Honours, the problem is this: If the Defence of Mr Arido criticise  
10 the Prosecution for not investigating further the status of this witness, so that  
11 you can have a complete picture of the people who come before here to  
12 testify, does that constitute, your Honours, as proud, or reckless and  
13 irresponsible, unfounded accusation of misconduct and impropriety  
14 against -- by the Defence as the Prosecutor alleged yesterday. The answer,  
15 your Honours, is no, it doesn't. It has been fair that if someone came before  
16 the Prosecutor either in this proceedings, it might not just be for this case,  
17 and provide information or evidence that might lead them not only to make  
18 a decision about his credibility and the integrity of the case which was linked  
19 to the commission of the crimes that comes before -- within the jurisdiction of  
20 this Court, it's in the interest of the Prosecutor to look at it. Maybe he could  
21 be a witness again. Maybe he could be an accused. Maybe we do not  
22 know.

23 And we'll say, your Honours, that -- loss of life at that borders, the instability  
24 in the subregion caused by these forces, that he put himself right at the heart  
25 of these different forces. (Redacted)

1 (Redacted)

2 (Redacted).

3 Now, it's not suggesting Mr Arido is the one who coached him to know  
4 about these individuals, these warlords. And in an answer to the question  
5 asked by the court, by the Honourable president, you remember, your  
6 Honours, about the commanding battalion, he volunteered two things: The  
7 individual who was leading, that the individual was named, I think, D52.  
8 He volunteered that he knew him. He knew his military status. He also  
9 knew that he was one of the persons involved in the war, and he went  
10 further to say he volunteered for that, that during the war individuals  
11 constituted the rebel groups and each -- and people gave themselves titles.  
12 He personally used the word "colonel" and it was accepted. And if you look  
13 at the Bemba main case, the Legal Representative of Victims took him  
14 through some vigorous cross-examination about how he came about the title.  
15 And from the militia group which he said he was, because he never said he  
16 was a soldier of FACA. He said he was in this particular militia group, he  
17 said in that militia group before he was co-opted to join the army as  
18 intelligence officer, he took up that rank, he explained. In the notes, the  
19 alleged notes of Mr Arido, he never said all this. They provided  
20 information about all this that later on came in Arido's emails, in the email  
21 from Mr Kilolo and the information that you have here.

22 Your Honours, now, your Honours, let me move quickly to the credibility of  
23 witnesses. The Prosecutor --

24 PRESIDING JUDGE SCHMITT: Mr Taku, but please be mindful of the  
25 problem that redactions could pose. So in the end, as I said, we would really

1 see it only as a measure of last resort to go into private session.

2 MR TAKU: Yes, your Honour, I will, I will.

3 PRESIDING JUDGE SCHMITT: Just to tell you this before you go to another  
4 point again.

5 MR TAKU: When I'm reading the testimony which is on record, I will tell  
6 you that that testimony was given in a closed session. I will read their  
7 testimony, and I will apply for brief, very brief closed session just to read.

8 PRESIDING JUDGE SCHMITT: Then we go into closed session.

9 MR TAKU: Not now, your Honour, I'm not yet there. I'm not yet there.

10 PRESIDING JUDGE SCHMITT: Okay. But you will, you will announce it  
11 when you think we should go into closed session, please.

12 MR TAKU: Yes, your Honours.

13 Yes, your Honours. At paragraphs 30 to 34 of the Prosecutor's brief, the  
14 Prosecutor invited your Honours to find the witnesses that testified in this  
15 case to be credible, irrespective of the limited use agreement, irrespective of  
16 their accomplice status, that the Prosecutor laid down a number of factors  
17 that you consider. I don't want to go through them one by one because of  
18 the time available to me. But, your Honours, I will submit respectfully that  
19 looking at those factors and looking at the evidence and considering the  
20 demeanour of the witnesses, we submit that these witnesses were not  
21 credible, not reliable. They provided materially inconsistent evidence,  
22 contradictory and inconsistent. And some of the witnesses provided  
23 internally inconsistent evidence. And the Prosecutor made no attempt to  
24 explain these contradictions, inconsistencies, internal inconsistencies, no  
25 explanation.

1 And therefore, your Honours, but more importantly, your Honour, is the fact  
2 that at paragraphs 58, 71, 125, 127, 128, 129, 135, 136, 138, 139, 140, 141, the  
3 Prosecutor makes these submissions of credibility of these witnesses. At  
4 paragraph 59 -- page 59 paragraphs 127 and 129, the Prosecutor submitted  
5 that, and I quote, "Arido coached the prospective witnesses to testify falsely  
6 to the events as ostensible FACA soldiers in Central African Republic  
7 between October 2003 and -- 2002 and 2003." And at paragraph 344, it says,  
8 "Despite knowing that all four witnesses were not Central African military  
9 soldiers and had no prior military experience, Arido instructed them to  
10 pretend to be Central African Republic military figures in testifying before  
11 the Court."  
12 The Arido Defence submits respectfully, your Honours that this was not  
13 proof beyond a reasonable doubt. We adopt Arido's submissions to  
14 respond to this, I adopt what I've said previously that Arido did not come to  
15 testify, although Arido was an expert, Mr Kilolo himself said so, Mr Babala  
16 said so, everybody said so. And email exhibits state that clearly. Mr Arido  
17 was a meticulous, very meticulous in keeping accounts about what he did.  
18 He did not know there would be any case, there would be any interception,  
19 but it was reasonable that from, left preparatory about what he spent, for  
20 purposes of accountability in the first place, all reasonable lawyers would do.  
21 I don't see how any lawyer would do differently, even the Prosecutor would  
22 not do different. He kept very detailed accounts. In those accounts are  
23 receipts, there is nothing to suggest that Mr Arido received any amount in  
24 order to corrupt witnesses.  
25 By the Prosecutor's narrative, it would appear as if Mr Arido did not play

1 any role but just to recruit witnesses and coach them.

2 He disregarded these many emails about expert report and his expert report  
3 was found here, he completely ignored this. He ignored the role of D52  
4 whom I said was in this case before any other one, he has submitted a list of  
5 these witnesses, witnesses in the Central African subregion who were in  
6 battle. We cited the email in our Arido Defence brief. So he knew the more  
7 he submitted a list to former counsel, even before Mr Kilolo came up on this  
8 case, and therefore the Prosecutor had this, the Prosecutor had the possibility  
9 of investigating this. He did not investigate. He did not even attempt to  
10 investigate.

11 Now, the Prosecutor is in this case even urging your Honours to do the  
12 impossible, as he himself said, to sit in judgment over protocols that were  
13 put in place by the Bemba Trial Chamber, to look at violations of those  
14 protocols. They were not followed. I'm asking you to sit in judgment in  
15 spite of the fact on 29 September 2015, we've clearly defined the limit of this  
16 case, that you're not going to substitute yourself to sit in judgment. You  
17 again proceeded to warn, to caution that the Prosecutor had not made any  
18 attempt even, made no attempt to bring this case before the Bemba trial to  
19 avoid overlap. You defined the case as a very limited case. But here, your  
20 Honours, about the different theories, the two theories, competing theories  
21 the Prosecutor developed which we treat as a matter of notice, Arido was an  
22 agent of Mr Kilolo, in the overall strategy, Arido was agent to D52 in the  
23 overall strategy. Now in this brief today, they choose one. They've  
24 completely abandoned agent to Kilolo and choose that of D52. But what is  
25 really, really troubling is the fact that they laid out a case, they presented a

1 case against D52 at this stage, merely put Mr Arido adjunct and ask the  
2 Court to convict Mr Arido for his actions.  
3 For example, they state clearly that Arido looked for witnesses, prospective  
4 witnesses on the orders of D52. Now, who can answer that allegation here?  
5 Why, who can answer for D52, what he allegedly did to Arido, who apart  
6 from D52 himself, your Honours?  
7 Who? He's the only one, your Honours, who can answer. As I will explain  
8 elsewhere when I get to D52, he's the elephant in this courtroom. He's the  
9 missing piece of the puzzle. Without him the puzzle is not complete, the  
10 puzzle just is not complete. Without him you cannot make significant  
11 findings with regard to the way the case has turned out in the Prosecutor's  
12 brief. It is impossible.  
13 And the Prosecutor explained --  
14 PRESIDING JUDGE SCHMITT: May I just shortly address that Mr Babala  
15 wished to be excused for a couple of minutes and I think we should allow  
16 that. Yes, this is okay. Please proceed, Mr Taku.  
17 MR TAKU: And I heard that the Prosecutor said they could not reach, they  
18 could not find him, but you know, your Honours, that the Prosecutor had  
19 these call datas, these telephone call datas with the phone number of D52  
20 which they presented at trial. They posed a question about him. They  
21 could issue a warrant. Others were brought here by warrant. They lay out  
22 the information. He could approach, they did approach him. It is not -- of  
23 course, you know Mr Arido makes a good way attempt to bring him here, to  
24 bring him here in the interests of justice. Your Honours know exactly what  
25 transpired. But we'll come to that.

1 Now, your Honours, about Arido, we submit, your Honour, that the  
2 Prosecutor cannot invite you to find that limited immunity or deal was a  
3 factor for a witness to testify truthfully. It is not in saying so that is a factor.  
4 The Prosecutor has to prove that.

5 And I think the Prosecutor did not prove because together with other factors  
6 and one of the factors, your Honours, I do not know. I think, I think your  
7 Honours I can ask for a very brief, a very brief closed session. Members of  
8 the public will bear me out. I will come back soon.

9 PRESIDING JUDGE SCHMITT: We go into private session then. I think  
10 this is meant by it, go shortly to private session then.

11 (Private session at 2.59 p.m.)

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18 (Open session at 3.05 p.m.)

19 THE COURT OFFICER: We are back in open session, Mr President.

20 MR TAKU: Now, what is significant here, your Honours, is that the

21 Prosecutor did not disclose this to the Defence. It was information that

22 ought to be disclosed about the contact with the Defence. They didn't

23 disclose then. They will not disclose now.

24 There yet, your Honours, this case is about the type of conduct arising from

25 what the witness said in this circumstance. And the witness himself said,

1 Mr Kilolo mentioned that in his brief, he himself said that he misled the  
2 authorities of the country where he is giving them two different names. So  
3 in the course of this case we didn't know which of the names to verify his  
4 military status, which of the names that he carried about. If you could come  
5 to mislead a country where he's seeking something and he provides false  
6 information that he also provided here, your Honours, then it is, it is cause  
7 for your Honours to question his credibility. He cannot be a  
8 conduct -- cannot be a factor of credibility. On the contrary, your Honours,  
9 it is a factor that you consider in making a determination about his  
10 credibility.

11 Now, your Honours, let me move to -- about the answer he gave about the  
12 matriculation, I'll only give the reference, your Honour, to closed session.

13 There is at page 64 of the trial transcript of 22 October 2015, ICC-01/05-01/13  
14 T26, he was, the question was asked at page 64, line 15 -- 16, if Arido asked  
15 him to say that he was a soldier of the Central African forces, he said no.  
16 Because if he had said that they would ask him about his military  
17 matriculation number, which he didn't have.

18 Now, let's start first: How did he know about military matriculation  
19 number? How did he know about Thuraya which he mentioned  
20 somewhere in these proceedings?

21 So your Honours, from his own answer, from this answer, the allegation they  
22 allege, the Prosecutor, that he trained them to say that there was Central  
23 African forces is vigorously denied by the witness' own answer.

24 And again, I do not -- the witness -- the other transcripts where, where he  
25 said that D2 introduced himself as intelligence officer, your Honours, in

1 order not to go to closed session is at page, pages 58 and 59. No. Page 50  
2 and 59, is where he was identified, captured and tortured, of the same  
3 transcript.  
4 And at page 62 of the same transcript, he gave information which was, he  
5 volunteered information about the war. He had knowledge about the war  
6 in 2002 and 2003. At page 62, line 20, he says, "As you are aware, during  
7 that period in 2002 and 2003, there was any conflict involving the Yakoma  
8 people and any group of Patassé."  
9 Now, these are people who initially were blank. They knew nothing about  
10 the war, they were never present. And this was not information was -- he  
11 didn't say that he was coached to say this. But he volunteered this  
12 information, your Honours, to explain he knew exactly what the conflict was  
13 about.  
14 And about the alleged coaching of D2 in that location in Cameroon, your  
15 Honours, you have information from the then director of public security for  
16 Cameroon who is now the inspector general for the police, has been  
17 promoted, that he went to that location and did not find any evidence.  
18 In Cameroon, like every country in the world, and indeed, the Prosecutor  
19 produced some information relating to the fact that Mr Kilolo and Bob  
20 resided in different hotels in Douala. And everybody getting located, I  
21 mean lodging in a hotel, there would be information. The purpose of that  
22 information is for the security forces to control the movement of persons in a  
23 very volatile subregion, to know who was where, without interfering with  
24 the liberty of individuals. But the director of public security, you know,  
25 Cameroon has cooperated in this case, so either for the Prosecutor or for the

1 Defence, and the director went there himself to verify and found that there  
2 was no location that Mr Arido or anyone on the dates mentioned lodged in  
3 the hotel.

4 But in any case, about the object of the alleged coaching in the transcripts of  
5 22 October 2015, which I've cited, D3 again contradicts the Prosecutor's  
6 submissions about the alleged introducing the individual as sub-lieutenant,  
7 in fact, he said the introduction was done in Yaoundé. He said lieutenant.  
8 And the Prosecutor press and press and press and he never said he was in  
9 Douala. But in Douala, the individual himself introduced himself as  
10 intelligence officer. That goes with that.

11 Now, your Honour, I have to navigate this very carefully. I don't want to go  
12 to closed session again. But 14 October 2015, transcript of  
13 CAR-01/05-01/13-T20 14 October 2015 at page 48, lines 12 and 14. D2  
14 himself volunteered that he represented some significant personality in the  
15 particular location contradicting his own testimony that he was in another  
16 location as a director. But when asked, the important thing asked him, you  
17 represented the individual in what capacity, he said he is not answering the  
18 question. He said, "I will not answer the question."

19 And your Honours will draw all the inferences against a finding of  
20 credibility of this witness because he's an individual on oath allowed or  
21 assessed -- into his file, into his immigration file. And thereafter he  
22 withdrew, of course. D3 did the same on oath. But once he was not on  
23 oath he withdrew. That was ex facie before your Honours.

24 So this is as much a case about the evidence laid that your own findings of  
25 facts on watching the witnesses, the demeanour of the witnesses who came

1 here to testify.

2 Now, your Honours, let me move quickly to Mr -- I don't know how to call  
3 this individual, but I think the question was asked, his name was asked. I  
4 think I should be able to put the question as much as possible. I will  
5 restrain myself so much, but I will say one or two important things about it.  
6 Mr Kokate, we sought to call him to testify in this case, your Honour,  
7 because we believe that in the search for truth, Mr Kokate had to be here.  
8 Mr Arido was not afraid of anything. He wasn't afraid of this individual  
9 coming to testify. And the reason is clear, your Honours, Mr Arido had  
10 been presented to the world and to the Central African community as a  
11 génocidaire. They misinterpreted his participation in the Bemba case as an  
12 expert where he wrote an expert report. And in Central African they  
13 believed he committed a crime, involved in some form of criminality. Of  
14 course he fought to clear his name, he testified to clear his name.  
15 But your Honours, this individual, as you will see more in the Prosecution  
16 brief, is the missing piece of the puzzle.

17 I'm surprised how the Prosecutor would invite you to make finding of guilty  
18 against anyone, any of the accused when the Prosecutor neither investigated  
19 this individual as a suspect - of course, whether he will indict him or not is  
20 another thing - or make any attempt to bring him here. We understand,  
21 your Honour, the Prosecutor has their own strategy. Maybe that in the end  
22 he will play the same role he played in this case in other cases, potential  
23 cases. No one knows. We're not going to speculate about that. But the  
24 fact he's not here your Honours is a fact of impunity in a country where the  
25 Prosecutor purports to be fighting impunity. And to leave this significant

1 individual looking at the roles he placed as a minister, as a military man and  
2 the role he played in this case as the oldest member of the Defence team in  
3 this particular case, that every piece of information leads to him. To make  
4 that he remains a missing piece of the puzzle, your Honours, is regrettable.  
5 But your Honours, I ask for one thing only, your Honours should not permit  
6 this attempt to make Mr Arido the scapegoat, the sacrificial lamb for crimes  
7 which the Prosecutor clearly lays out against this individual, Mr Kokate, in  
8 their final submissions. Thank you, your Honours. And I will leave the  
9 floor to my colleague, Beth Lyons.

10 MS LYONS: Thank you. Thank you. One moment, your Honour.  
11 Thank you, your Honours, and thank you, Chief Taku, for the floor.  
12 I've entered this courtroom for the last few months, and I never really  
13 listened to when the case was called. Today, I listened. The court officer  
14 said, "situation in Central African Republic." I should have known this. I  
15 should have listened. I was busy fixing my papers when I used to come  
16 here. But it's about Central African Republic.  
17 Yet, as my colleague has pointed out, there is only one Central African  
18 Republic citizen in this courtroom in the dock, it's our client, Mr Arido: He  
19 is the very first and the only Central African citizen to date to be prosecuted  
20 in this Court.  
21 For almost two decades now, since 2007, the OTP has pursued investigations  
22 into events in Central African Republic. Yet the fruits, if we can call it that,  
23 the proceedings that have resulted in this courtroom involve only one  
24 person, our client, who was an expert in the Bemba main case.  
25 When we started our case, Chief Taku made an opening statement and

1 referred to Mr Arido as an accidental defendant. I heard these words this  
2 morning also from Mr Babala. So he's the second accidental defendant.  
3 But a person who is perhaps in the wrong place at the wrong time, who got  
4 caught up in the OTP's web.  
5 We can't explain why he's here. It's up to the OTP to tell us, but more  
6 importantly, to tell you, the judges, and to present proof beyond a reasonable  
7 doubt of its allegations.  
8 The OTP repeatedly has referred to an anonymous tip, which set the wheels  
9 in motion, so to speak, for this Prosecution of the whole case, including of  
10 my client.  
11 Admittedly we, the Defence for Arido, failed to obtain unredacted version of  
12 the anonymous tip emails that were finally disclosed. Nevertheless, one  
13 thing was very clear from those emails: A, there is not a mention of  
14 Mr Arido, his name is not there; and there is a mention of Mr K, who appears  
15 to be either subject or object of the Prosecution's investigations.  
16 We're concerned because the Prosecution, during its presentation, as well as  
17 its conduct during the Defence case has done nothing in our view to dispel  
18 the notion that Mr Arido is anything but an accidental defendant. Again,  
19 we say it's up to them to explain to the client based on their obligation to  
20 notice to all of us, but particularly to explain to the citizens of CAR and the  
21 international community. These days with the mega communications,  
22 everybody watches, everybody pays attention, everybody is listening  
23 because this Court has a critical role to play.  
24 Secondly, along the same vein, the OTP has failed to explain, certainly to  
25 Mr Arido and as I listened to today perhaps also to Mr Babala, why it has

1 failed to pursue investigations and prosecutions based on internationally  
2 recognized principles of law and respect for human rights. I don't want to  
3 go into closed session. I don't want to go into any details. The Court is  
4 aware of Mr Arido's position of threats to his security, to his family, the  
5 involvement, he's alleged, of the Court and its failure to respond in a timely  
6 manner to this. And at this moment I will leave it at that.

7 But the bottom line is for Mr Arido, for anyone similarly situated, the issue  
8 before all of us is why the silence from the OTP, particularly why the silence  
9 from this institution.

10 Now, most people in the room are probably more familiar with the pleadings  
11 in this case. I'm relatively new to the case, so I just want to highlight a few  
12 things that the team thinks is important, a few things the team thinks are  
13 important in terms of your consideration and your deliberations. First of  
14 all, perhaps it's the obvious, there are two missing witnesses in this case, the  
15 confirmation decision confirmed allegations against Mr Arido for offences  
16 under Article 70 for four people. There was D2, whom you've heard about,  
17 D3 whom you've heard about, D4, who has been mentioned by the  
18 Prosecution a little bit in its opening and in its brief, D6. But this Court only  
19 heard evidence from two of them, D2 and D3.

20 The other two were not produced by the Prosecution. The Prosecution has a  
21 duty to prove each and every element of the offences and modes of liability  
22 charged in respect to all of the allegations. So 50 per cent are knocked out.  
23 They just weren't here.

24 Now, is there good reason for this? I obviously can't speak for the  
25 Prosecution. But from my perspective and the Defence perspective, they



1 were available. The Prosecution certainly knew how to contact them  
2 because the Prosecution in fact had interviewed D4 as late as 21 February,  
3 eight days before this trial started its Defence case presentations and they  
4 certainly knew how important these witnesses were.

5 Based simply on this issue, as a matter of law, the Arido Defence  
6 propose -- has asked for the remedy that the allegations in respect to  
7 witnesses D4 and D6 as to Mr Arido, that the allegations against him in  
8 respect to these witnesses be dismissed. The evidence was available. It  
9 wasn't produced. The burden isn't met. End of story.

10 Now, I want to raise a similar legal issue that really came up yesterday. In  
11 the oral arguments, the Prosecution talked about D7, D8 and D9. Now, they  
12 weren't produced either. I'm a little concerned because the Prosecution  
13 said, "The evidence proves that D7, D8 and D9 and others were among the  
14 spurious witnesses as assembled by Mr Arido. D7 and D9 testified in the  
15 main case and their testimonies are among the transcripts which the  
16 Chamber -- of which the Chamber has taken judicial notice."

17 This is in the English transcript, page 15.

18 First, the Prosecution refers to this whole grouping as prospective witnesses.  
19 However, later on, however, I'm not sure what the Prosecution wants you to  
20 do, if anything, with these transcripts.

21 But just in case they plan to ask you to somehow use this evidence to support  
22 the offences against my client, who is charged only with four witnesses, our  
23 position is we didn't get notice, it's acts not charged and we're asking that  
24 this Trial Chamber make no ruling as a matter of law in respect to these  
25 witnesses and our client, or the quote amorphous others, whoever the others

1 may be.

2 As everyone in the courtroom, wherever he or she is sitting, knows, the right  
3 to notice is sacrosanct. It's a right under the rights of the accused, Article 67,  
4 minimum guarantees. It mirrors the rights in all international courts, most  
5 national jurisdictions, regional international entities and international  
6 covenants such as ICCPR.

7 Now, someone may ask why make a big deal out of notice. It's first in all of  
8 these documents. Why? Because a person who is accused of a crime or  
9 offence has the right to be notified in detail of the specifics of that offence in a  
10 language he or she understands.

11 If not, the right to defend oneself, to present your Defence becomes a nullity.  
12 It becomes moot. If you don't know what you are charged with, how can  
13 you defend against it, whatever it is, the charges.

14 Now, now, whether I entered the case, I carefully read the confirmation of  
15 charges decision, and we're using that as the guidelines, the judicial decision  
16 which guides the charges against Mr Arido.

17 But when I listened to the Prosecution's opening statement yesterday and  
18 then reviewed some of the paragraphs in the closing brief as well as in some  
19 of the earlier pleadings, I'm hearing acting in concert, overall strategy, and  
20 I'm thinking my client was not charged with joint criminal enterprise.

21 That's what I'm hearing. I'm hearing joint criminal enterprise.

22 Now, admittedly I'm sensitive to this. I worked for too long at the ICTR,  
23 which is where joint criminal enterprise has a home in the Prosecution's  
24 strategy. But the bottom line is that's what I'm listening to. I looked at the  
25 COC again. I looked at the paragraph at the end which talks about the

1 charges which the Pre-Trial Chamber declined to confirm against my client,  
2 as well as the other clients here. They specifically, they specifically declined  
3 to, declined the charge which is proposed of an acting in concert, common  
4 action under 25(3)(d), acting in concert -- group of people acting in concert  
5 with a common purpose. That was the words, common purpose. I'm  
6 sorry, I'm using ICTR language here. But it's common purpose.  
7 There was no common purpose for any of them. My client, the other clients.  
8 But I'm listening to a common purpose theory. Something isn't right here.  
9 We did not get notice of a common purpose theory, because in fact this, the  
10 Court declined that. What it's doing in the case, I don't know.  
11 But it's at least is confusing, but I raise it so that the Court understands what  
12 we were defending against and how we understood the initial document, the  
13 COC.  
14 I also want to call your attention at this point to the famous paragraph 52,  
15 where the confirmation, the Pre-Trial Chamber confirms a number of the  
16 allegations used to support the, in the broadest general terms, this overall  
17 strategy to defend Bemba and engage in offences.  
18 In that paragraph, my client and Mr Babala are assigned a limited role based  
19 on the evidence available to the Pre-Trial Chamber. However, what's  
20 important is it is described as a purported overall strategy. In other words,  
21 the fact that that paragraph 52 is in the COC has nothing to do with the issue  
22 it was, is it proved beyond a reasonable doubt. They used, they the judges  
23 of the Pre-Trial Chamber used the word "purported."  
24 Now, I understand that and I listened and I read the Prosecution's opening  
25 statement, and I listened to yesterday about -- oral and the argument where

1 my client is described as the man on the ground of this overall strategy.  
2 Our position is he doesn't belong, obviously doesn't belong there, but that  
3 even that framing of his conduct doesn't belong with a COC that says there is  
4 no common purpose liability.  
5 I mean, that's our view in terms of that. So I don't know if we're litigating  
6 the same case that the Prosecution presented and summed up on yesterday,  
7 but I just wanted to raise that because that's our perspective on it.  
8 In addition, as the Court is aware, the confirmation decision rejected direct  
9 and indirect co-perpetration, which would be as modes of liability and they  
10 substituted direct perpetrator based on the information available to them.  
11 And I want to say this one last point on this. I'm concerned because I heard  
12 the Prosecution yesterday and in the brief there are references to an  
13 organisation. So now we're dealing with a charge where my client is  
14 allegedly associated with what has been described as a criminal organisation.  
15 There is no proof there was this criminal organisation exists. I'm not saying  
16 that at all. But I don't -- it is another charge, he's not being charged with  
17 membership in a criminal organisation. There is no criminal organisation.  
18 There is no proof. All we have are words that have been put together by the  
19 Prosecution about this overall strategy which extends out to an organisation.  
20 And I think this is dangerous because the Prosecution especially here, but  
21 every place, needs to be precise, and that precision, that specificity, what is  
22 demanded, those requirements for notice just are not there.  
23 I just want to spend another brief time, a little bit more on the issue of notice.  
24 My colleague talked about different theories of the case that were proposed  
25 by the Prosecution in its various documents that my client was both or an

1 agent of Maître Kilolo or an agent of this person named Kokate.  
2 It's not clear which theory they're pursuing. Notice demands that a  
3 defendant be given clarity about what he or she -- about what he or she is  
4 being charged with. That clarity isn't here. The Prosecution is supposed to  
5 know its case before it starts, not mold the evidence. This is a tenet that has  
6 come out of the ad hoc tribunals. I'm paraphrasing, but the idea is that the  
7 Prosecution knows, has a theory and pursues it. The Prosecution is not  
8 throwing darts at a board. This is a theory. Maybe it hits. This is another  
9 theory.  
10 That's not what notice is about, so that my client clearly is not given clear  
11 notice about what it is his role is, what it is he is supposed to do.  
12 Secondly, I noticed looking at the documents that the Prosecution theory has  
13 what we refer to as chameleon, chameleon aspects, with all due respect to  
14 chameleons, as animals that can change their appearance given their  
15 environment. And let me explain why. In its initial application for the  
16 warrant of arrest in 2013, the Prosecution presented its case against Mr Arido  
17 as a case of false documents. He provided false documents allegedly and  
18 these were allegedly provided to the Trial Chamber and that he received  
19 payments for doing this, so there was money for the false documents.  
20 Now as we know, the confirmation of charges decision rejected the false  
21 document theory.  
22 So what, so what has become of these payments? Initially in the warrant for  
23 arrest the Prosecution said that the monies were from individuals close to the  
24 Bemba team and it named Maître Kilolo, Mr Babala, Mr Njabu and also  
25 named somebody with the pseudonym D52, who is identified in the arrest

1 warrant request as the person or identified by the anonymous informant as a  
2 CAR citizen who paid bribes to other witnesses in exchange for false  
3 testimony.  
4 The monies totalled, if my arithmetic is correct 8451 -- \$8,451 American  
5 dollars, all right. Now, as I said earlier, the COC intervened. They said no  
6 false documents. We reject this, this charge presented by the Prosecution, so  
7 now the payments, these monies, they're still out there. The purpose has  
8 been transferred in our view now under the new theory of these were monies  
9 that were paid to Mr Arido for use in corrupting witnesses. Now, we've  
10 shown in our brief, and Chief Taku and others have talked about this, the  
11 payments were for a legitimate task which Mr Arido undertook at the  
12 request of the Bemba team to produce an expert report, and he was  
13 preparing to become an expert witness and go to The Hague.  
14 We have that documented, I'm not going to take time to go through that.  
15 But what I'm trying to point out is that the uses of the money, the money  
16 stays the same. It's still the same money on the table. The use of the  
17 money changes between that original request for the arrest warrant and the  
18 pleadings and the basis on which this case is here today.  
19 There was a second example of this, again, which is an example to show lack  
20 of notice, which has to do with the reasons the Prosecution has proffered for  
21 Mr Arido's flight to France.  
22 In the request for an arrest warrant, the Prosecution linked Mr Arido's failure  
23 to board the plane to The Hague to testify as conduct in response to the  
24 Prosecution and LRV disputing the authenticity of the documents he gave  
25 the Defence.

1 So the documents played in theory one, a key role.  
2 Now we have theory two, which was advanced in the cross-examination of  
3 the Prosecution by one of our witnesses indicating that the reason that  
4 Mr Arido went to France was that he really wanted to pursue his own career.  
5 It was a personal opportunity. He had his own agenda.  
6 And as your Honours are well aware, we have presented evidence which I  
7 will not detail here that the reason that he ended up in France had to do with  
8 a situation that was appraised by Cameroonian authorities at a particular time  
9 in 2012, where he felt threatened based on his role and work in the Bemba  
10 case and felt exposed as a witness, received no response from the authorities  
11 at the ICC even to this date on this matter and ended up in France.  
12 In conclusion of this section, I want to say that I've, I've been able to identify  
13 multiple theories. Maybe someone can identify even more. I don't know.  
14 Two are enough because it's only supposed to be one, one theory. And the  
15 purpose is to illustrate that there was no clear notice given as to the theory of  
16 the case from the beginning until up to yesterday and including yesterday.  
17 Now, I would just like to talk briefly about a few elements of the offences.  
18 First under Article 70, one of the requirements for the offence under Article  
19 70(a) and (b) is that the offender, that there be, sorry, that there be a witness,  
20 the person be a witness, simple as that.  
21 This is fundamental. As my colleague pointed out, a witness is a person  
22 who, according to the protocol, is someone a party intends to call.  
23 Obviously that presumes a party has made a decision about X or Y being a  
24 witness. That party intends to call them and has somehow communicated  
25 that either to the Court for its list of witnesses or to the non-calling party if

1 the non-calling party wants to question or talk with the witness if the witness  
2 gives consent.

3 The time period of the events in question, we're really talking about the  
4 alleged Douala briefing 12 February. That's what we're talking about.

5 We're not talk being this no proof. We have go back to 2011, the start of this,  
6 this common plan of which we received no notice. We don't accept that.

7 We're looking at the COC. We're looking at February 2012. And based on  
8 that, it's our position that D2, D3, D4 and D6 were not witnesses within the  
9 meaning of the protocol. Certainly it was years later, I'm sorry, certainly it  
10 was after that that decisions were made perhaps about who to use as a  
11 witness and witness lists were submitted.

12 We listened to Maître Kilolo's presentation this morning. You know, he  
13 talked about how you interview a huge number of witnesses, a large  
14 number, then you cull and you pick.

15 And in fact, the Prosecution actually yesterday referred to what was going  
16 on in Douala in February 2012 as a "casting call," auditions for prospective  
17 witnesses.

18 That's a quote from page 26, 1, line 23.

19 What this means is that as a matter of law, our position is that 70, 70(a), and  
20 (b), and (c) should be dismissed because these were not witnesses. There  
21 was no proof beyond a reasonable doubt that they were, and in fact, the  
22 Prosecution seems to, in some paragraphs at least, in some pleadings agree  
23 with the Defence that these persons had prospective status and prospective  
24 is different than witness. We have to be very specific.

25 Now, on the question of false testimony, (a) and (b) of Article 70 require false



1 testimony. False testimony is the sine qua non of this case. Without it, the  
2 charges can't be upheld. It's our position the Prosecution has not proved  
3 beyond a reasonable doubt that there was false testimony. False testimony  
4 is a legal notion. It comes out of -- some of the jurisprudence comes out of  
5 the Simba appeals judgment where the Appellate Chamber held, "false  
6 testimony is a deliberate offence which requires willful intent on the part of  
7 the perpetrator to mislead the Judge and thus to cause harm."  
8 So you have to have an intent to mislead, which would cause harm.  
9 False testimony is not about credibility. It's not a credibility test. False  
10 testimony is not a reliability test. Credibility, reliability, whether something  
11 is inconsistent, all of these factors may be part of the issue, but legally you  
12 have to show intent to mislead the Judge. What do we have here? We  
13 have two witnesses, D2 and D3. Now, they admitted they lied about  
14 something or in the case of, I think, D2, everything, everything in the main  
15 case, and certainly they were examined over days by Prosecution, Defence,  
16 two lawyers for the victims. So they were well examined. They said a lot.  
17 They just simply said here though that they lied.  
18 But the Prosecution did not prove that they intended to mislead this Court.  
19 In fact, what did they say? As my colleague said earlier, D2 and D3 looked  
20 at this as a topo, as a way to make some money. What was their intent?  
21 They wanted to make some money. Maybe they wanted to -- they wanted  
22 to do something with the money. Who knows. But they wanted to make  
23 money. That was very clear.  
24 D3 waited until (Redacted) came to start to negotiate terms and conditions and  
25 to see if it were worth it for him to be involved in this. This was a business

1 deal. It had nothing to do with any intent to mislead the judges in -- the  
2 Bemba judges. It didn't even come up. And there was no evidence, no  
3 shred of evidence led by the Prosecution on this point.  
4 Now, sure there is something wrong with the picture, they said they lied.  
5 This is a perjury case. Something should have been done in our view. We  
6 said that in the beginning in our opening. But I think that, you know, that's  
7 a separate issue beyond the scope of this trial. But when witnesses say they  
8 lie, this usually investigation either by an amicus or by Prosecution or by  
9 Trial Chamber, and then there is a proceeding if, in fact, the findings are that  
10 the witness provided false testimony. That's a perjury case. But just if I can  
11 ask you to indulge me for a moment. Think about it, if there were a perjury  
12 case, these people shouldn't be sitting in the dock. It should be D2 and D3  
13 and I don't know who else. But it's at least D2 and D3. They're the persons  
14 that should be in the dock.

15 Let me say briefly a little bit about mens rea. The offence of 70(a) requires a  
16 double mens rea. It's the mens rea of Mr Arido allegedly for why would he  
17 intend to do this, and secondly, the underlying mens rea which I've just  
18 talked about of D2 and D3, of the false witnesses which does not exist.

19 I won't go into that again. But in terms of Mr Arido, note the Prosecution,  
20 which has the burden produced no evidence as to why Mr Arido, who was a  
21 successful businessman in CAR, who was a military expert, well educated,  
22 already had a legitimate activity dealing with his expertise, providing expert  
23 report to the Bemba team which required a fair amount of work, you know,  
24 assembling a team, getting the work done, producing a report, meeting with  
25 other experts, why, there was no reason why would he have any desire, any

1 intent, any reason to mislead the Court?

2 The question is not for us to answer. It's for the Prosecution to prove  
3 beyond a reasonable doubt, and they didn't.

4 Now, I want to say something, two or three brief points more. The one  
5 issue we briefed rather in much detail the violations to Mr Arido and his  
6 family, human rights violations and his civil and political rights violations.  
7 But I would like to repeat to the Court here and to those present again that  
8 the label of *génocidaire*, which happened in regard to a request made to a  
9 national state, because it was put on the paperwork of that national state,  
10 that Mr Arido was suspected of genocide, is indelible. It's a violation, and  
11 here we want to raise the Prosecution did nothing, absolutely nothing to  
12 correct this mistake.

13 This is a court or any court where these kinds of incidents should not be left  
14 to the wayside. The Prosecution has its own code of conduct. We all of us  
15 on both sides of the room have our ethics as lawyers. We're international  
16 lawyers. We know the materials. We know the rights. We've read the  
17 covenants. To do nothing in this situation is, to us, an extremely serious  
18 violation.

19 The result is that Mr Arido, because the paperwork in a national jurisdiction  
20 said, "subject matter: Genocide," and your Honours will understand we  
21 referred to the request before, he is marked and anyone associated with him,  
22 but particularly him, he is marked as a *génocidaire* in his own country, on  
23 the continent, throughout the international community. And this is not a  
24 mark that can simply be erased. You can't put whiteout on it. You can't  
25 blank it out. It can't be stamped out.

1 And the injury to Mr Arido, to his reputation, to his honour, to his family  
2 cannot be measured. And this is extremely serious. And we ask again that  
3 the Prosecution should respond, although not necessarily here, but respond  
4 to Mr Arido why they have done nothing, nothing to correct the paperwork,  
5 nothing to do this.

6 One of the five fundamentals of the code of conduct of the Office of the  
7 Prosecution is number four, respect for human rights and fundamental  
8 freedoms, principle of equality before the law, presumption of innocence,  
9 right to a fair trial.

10 He is presumed guilty now wherever he goes because of the génocidaire  
11 label. That is a reality.

12 Lastly, I want to talk about the French interviews, and I want -- the French  
13 interviews and -- one second -- and the Prosecution's brief. And I'm  
14 focusing now at the very end on paragraphs 346, 347, 348.

15 Before I start, I will give you my interpretation, my view. Obviously, the  
16 Trial Chamber will make its own judgment. But I strenuously urge  
17 everyone who has access to these documents to read them again, read the  
18 interpretation, read each and every footnote and make a decision about  
19 whether the Prosecution's conclusions are, in fact, based on the documents in  
20 front of you.

21 Paragraph 346, the Prosecution says that Mr Arido lied about a number of  
22 payments received from Mr Kilolo, that it was deliberate and it showed  
23 consciousness of guilt.

24 And they refer to his French interview in November 2013.

25 In that interview the OTP asks about 10 payments. That was their idea, fine.

1 Mr Arido discusses two payments. But he talks about "autre payment,"  
2 other payment, and he reserved his right to explain subsequently. So to  
3 conclude that he lied based on this and showed consciousness of guilt makes  
4 no sense. It's the opposite. He was open. He described the situation. He  
5 said I will explain. He answered the question.

6 In terms of -- in the second French interview, one second, sorry, the paper  
7 problem, your Honour, all right, but in any case, the second French interview  
8 on page 2, this is what the Prosecution refers to in paragraph 347. May I  
9 have a moment, please? I just want to get the interviews. One minute, one  
10 second, thanks.

11 PRESIDING JUDGE SCHMITT: You get a moment but you are of course  
12 mindful of the allotted time.

13 MS LYONS: Yes. I'm right at the end. I promise, promise, promise.

14 Found them. Thank you. Okay. Sorry. My nightmare comes true here.  
15 I can't find the paper.

16 All right. On the second French interview, paragraph 347, it alleges that  
17 Mr Arido first said that he knew some persons and that he didn't know  
18 them.

19 And I would ask your Honours to take a look at the second French interview  
20 in February where he, and I'm going to read in French what he actually says  
21 about this person, do you know, and I won't name the person, and he says:  
22 (Interpretation) "I was in the RCA community of refugees." (Speaks  
23 English) And it's on page 6 of the second French interview.

24 And then he talks also on page, on 17 January, the second French interview,  
25 he talks about a person concerning another person, the same person. He

1 says the question is: Who is he?

2 He says: (Interpretation) "He was a former soldier whom I knew, although  
3 I did not know him personally." (Speaks English) I know him as an  
4 ancient -- former military, but I don't know him personally.

5 But the real, this is not to conclude that he doesn't -- he's saying he knows  
6 somebody when he don't know somebody. He says he doesn't know him  
7 personally.

8 What I really want to take a look at is on the November interview, second  
9 page, last four lines from the bottom, and that's the paragraph where the  
10 Prosecution said that, in this statement, claimed that Kilolo introduced him  
11 to the very witnesses that the evidence clearly shows he assembled allegedly  
12 in Douala to meet Kilolo.

13 Now, if you look at the language here, what it says in French, it's very clear,  
14 there were no witnesses that Mr Arido met with Mr Kilolo. It is true if you  
15 look at the interview that Mr Kilolo had a Dictaphone machine with some  
16 témoignage, testimony on it. And that is what he asked Mr Arido to listen to  
17 after Mr Arido and he talked about the expert report.

18 What it says in French is (Interpretation) "The testimonies were recorded on  
19 a Dictaphone. I did not know many of the witnesses and so on and so forth.  
20 They were introduced to me by Maître Kilolo." (Speaks English) The "ils",  
21 i-l-s, the antecedent to "They were shown to me," doesn't mean the witnesses  
22 were shown to him. That's what the Prosecution would like you to believe,  
23 that these were the witnesses assembled.

24 The témoignages, the testimonials on the Dictaphone is the antecedent to "ils."  
25 I invite the Chamber to take a look at this, it's on page 2 of the November

1 interview, the last 7 or so lines from the bottom.

2 And now, I will come to our conclusion, your Honour, thank you.

3 We know that this is a test case for the Prosecution. We read the strategic  
4 plan for 2016 to 2018. It's part of the testing out of the, "alternative forms of  
5 evidence," the non-witness evidence and to see how it works. This case the  
6 Article 70 CAR case at paragraph 148 of that document is specifically named.  
7 So we know that's part of what this case is about.

8 But it's our view that this is also a test case for the CAR and the ICC's  
9 relationship to the CAR and the continent. As I said earlier Mr Arido is the  
10 first CAR citizen to be tried and this case will set important legal precedents  
11 for jurisprudence and for guidelines as to how the continent will relate to the  
12 ICC.

13 We are here because we believe that the success for the fight against  
14 impunity for the core crimes the ICC covers and for human rights is  
15 important. That's why we're here. That's why we do this work.

16 But we also believe that it's too important to be derailed by, in our view,  
17 legally frivolous Prosecution based on the faulty investigations in the case of  
18 Mr Arido.

19 And I use these terms guardedly, and with reserve. What I mean is the  
20 Prosecution has essentially criminalised Mr Arido's legitimate role in the  
21 Bemba case. That's why he is here today.

22 Others in the room better than I can answer the question of what message  
23 this sends. But as a counsel on the case, I want to conclude the Prosecution  
24 in our view has failed to meet its legal burden to prove each and every  
25 element of the offences and modes of liability charged, and for this reason

1 ask that Mr Arido, our client, be acquitted.

2 And lastly, on behalf of the team since I was the last person to speak, I want

3 to speak on my behalf and Chief Taku, my friend and colleague. We want

4 to convey our appreciation to the Trial Chamber for your work in this case.

5 It's been a privilege for us to appear before you. It has been a privilege to

6 work with our colleagues on both sides of the aisle and appreciate the

7 remarks that have been made.

8 We also want especially to thank all the members of our team whose work

9 and commitment continues to contribute to the Defence of Mr Arido.

10 And of course, Mr Arido, it's been a pleasure to be your counsel. I

11 personally came to your case very late and I sincerely appreciate your

12 confidence in my representation of you in this case. Thank you.

13 PRESIDING JUDGE SCHMITT: Thank you very much.

14 This concludes the closing statements of the parties. But allow me before

15 we leave this courtroom a few concluding remarks.

16 The Chamber is aware that, throughout the proceedings, it has set a tight

17 schedule and has continuously prompted the expeditiousness and

18 speediness of the trial. This included that issues regularly were discussed

19 on the spot and orally at the time they arose here in the courtroom or in the

20 building in Voorburg. The Chamber wishes to thank the parties for their

21 hard work and industry to comply with the deadlines set by the Chamber

22 throughout the trial, and it also wishes to thank the parties for their highly

23 skillful professionalism in addressing matters spontaneously and

24 meaningfully during the courtroom sessions.

25 The Chamber wishes also to thank everybody in the Registry who did all



1 what was possible in their power to enable the flawless and smooth running  
2 of the trial and showed great diligence in supporting the Chamber.  
3 Another thank you goes to the interpreters who showed both great patience  
4 and indulgence with far too quick speaking persons in the courtroom that  
5 appeared amongst counsel and appeared amongst the Bench too, and also  
6 for the flexibility when it was necessary. And a final thank you, especially  
7 today, goes to let me address it this way, to the redaction team. I think they  
8 know why. So this concludes the hearing.  
9 THE COURT USHER: All rise.  
10 (The hearing ends in open session at 4.06 p.m.)