

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido
6 ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
8 Judge Raul Pangalangan
9 Sentencing Hearing
10 Monday, 12 December 2016
11 (The sentencing hearing starts in open session at 9 a.m.)
12 THE COURT USHER: [9:00:35] All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: Thank you very much. I would like to welcome
15 everyone in the courtroom. I see a new face. I think you are Mr Karnavas, is this
16 correct? You will introduce yourself or be introduced by Mr Powles.
17 Will the court officer please call the case.
18 THE COURT OFFICER: [9:01:19] Situation in the Central African Republic in the
19 case of The Prosecutor versus Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
20 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, case
21 number ICC-01/05-01/13.
22 PRESIDING JUDGE SCHMITT: Thank you.
23 Counsel, would you please introduce yourself for the record. We start with the
24 Prosecution. Mr Vanderpuye, please.
25 MR VANDERPUYE: Good morning, Mr President, your Honours. Good morning

1 everyone. Today the Prosecution is represented by Olivia Struyven seated to my
2 right, Sylvie Vidinha seated to my left, behind her Sylvie Wakchom, next to her in the
3 middle Ester Kosova, and to her right Nema Milaninia.

4 Good morning, your Honours, I'm Kweku Vanderpuye.

5 PRESIDING JUDGE SCHMITT: Thank you.

6 And now counsel in a sequence to be decided amongst themselves.

7 MR KARNAVAS: [9:02:14] Good morning, Mr President. Good morning your
8 Honours. I'm Michael Karnavas along with Steven Powles, Lueka Grogan and
9 Rosalie Mbengue. We represent Maître Kilolo.

10 PRESIDING JUDGE SCHMITT: Thank you.

11 Mr Taku, please.

12 MR TAKU: Good morning, your Honours. My name is Charles Taku. With me
13 today is my legal assistant, Mr Tharcisse Gatarama. Mr Arido himself is here today,
14 your Honours. Thank you so much.

15 PRESIDING JUDGE SCHMITT: Mr Gosnell.

16 MR GOSNELL: Mr President, good morning, your Honours. And good morning
17 to everyone in and around the courtroom. Christopher Gosnell for Mr Mangenda,
18 who is present today, assisted by Nikki Sethi. Thank you very much.

19 PRESIDING JUDGE SCHMITT: Thank you.

20 Mr Kilenda.

21 MR KILENDA: (Interpretation) Good morning, Mr President. Good morning,
22 your Honours. Maria-Adriana Manolescu, case manager, legal assistant Bokolombe
23 and myself, counsel for Mr Babala, who is here present.

24 PRESIDING JUDGE SCHMITT: Mrs Taylor.

25 MS TAYLOR: Good morning, Mr President, your Honours. On behalf of

1 Mr Jean-Pierre Bemba today there is myself, Melinda Taylor, Mr
2 Ines Pierre de la Brière, Ms Sarah Codde and Ms Stephanie Schilder. Thank you
3 very much.

4 PRESIDING JUDGE SCHMITT: Thank you very much.

5 And we have a video link, and at the other end of the video link I see also what I
6 assume is a counsel, which could you please also introduce yourself for the record

7 MR KENKO: (Via video link)(Interpretation) Good morning, Mr President, your
8 Honours. Sylvain Kenko, counsel for the witness.

9 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Kenko.

10 I have to say a couple of sentences as an introduction so to speak to this hearing.

11 On 19 October 2016, this Chamber found Mr Jean-Pierre Bemba Gombo,

12 Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala

13 Wandu, and Mr Narcisse Arido guilty of offences against the administration of justice

14 pursuant to Article 70 of the Rome Statute. On the same day, the Chamber initiated

15 the sentencing proceedings and, in its decision 2025, dated 11 November 2016,

16 specified the general structure of this hearing.

17 Accordingly, we will first hear the testimony of Prosecution Witness 256. The

18 Prosecution has two hours for its examination. The Defence teams combined have a
19 period of four hours.

20 Afterwards the parties will present their oral submissions on sentencing. The

21 Prosecution has been allotted three hours in total and afterwards the Defence will

22 present their submissions for one and a half hours for each Defence team.

23 Preliminarily, the Chamber recalls that it set a final deadline of 23 November 2016 for

24 the formal submissions of any additional evidence, aside from witnesses, to be

25 considered for sentencing.

1 All parties submitted further materials by this deadline, as can be found in the
2 annexes to filings 2040, 2045, 2047, 2048, 2049, and 2054. For the last filing, only the
3 materials in annexes A to B were submitted.

4 The Chamber has also granted several requests to extend this deadline to submit
5 additional materials. These decisions can be found at document numbers 2042, 2072,
6 2076 and 2084.

7 The Chamber confirms that all the material which are the subject of the
8 aforementioned filings have been duly submitted to the Chamber and will be
9 considered when deliberating its sentencing determinations.

10 The Chamber notes also that the Arido Defence has informed the Chamber via email
11 that it wishes to make an oral application formally submitting an additional item.

12 This follows filing 2091, where the Arido Defence attempts to formally submit six
13 further items. Time is short for the present hearing and the Chamber is not going to
14 discuss such matters.

15 The Arido Defence, Mr Taku, you have to make this request to submit for an
16 additional item in writing by 4 o'clock tomorrow afternoon, Tuesday, 13 December,
17 please.

18 The other parties then have until Thursday, 15 December 2016 to respond to both this
19 request and request 2091.

20 In the meantime, and that is important for you, the Arido Defence may use these
21 items during this week's hearing. And all parties are to make their final sentencing
22 submissions while mindful of the pending status of these items. You may use it.

23 Further, the Chamber notes that in its submissions on the appropriate sentence, filing
24 2086, the Arido Defence requests, and I quote, "The right to respond to any issues
25 raised in the Prosecution's sentencing brief." The Chamber clarifies that the

1 appropriate moment to respond to the written submissions are the oral sentencing
2 submissions. No party will be provided with a further opportunity to make
3 additional submissions. Accordingly, the Chamber rejects this part of the Arido
4 Defence request.

5 The Chamber will now turn to the testimony of Witness 256. At the outset, the
6 Chamber recalls its previous determination in decision 2025, namely that this witness
7 may only be examined on the matters allegedly proving that Mr Arido attempted to
8 obstruct justice in this case. This is not a further opportunity to litigate the merits of
9 the present case or the Main Case. Parties will not be permitted to engage in any
10 re-litigation of the trial - the Chamber has already decided upon the merits of this case
11 in its judgment. Another point is the purpose of this testimony is also not to explore
12 or prepare further Article 70 investigations. The Chamber will keep strict limits on
13 the questioning of this witness to ensure that examination is focused only on matters
14 relevant for sentencing.

15 The Chamber considers it necessary that Rule 74 assurances are provided for the
16 testimony of this witness.

17 I would first like to hear Prosecution views on that shortly, of course. Do you think
18 we have to go into private session for that, Mr Vanderpuye?

19 MR VANDERPUYE: I'm sorry, Mr President, to go into private session for
20 discussion on the Rule 74 issue?

21 PRESIDING JUDGE SCHMITT: Yes.

22 MR VANDERPUYE: Yes, I think that would be a good idea. Thank you,
23 Mr President.

24 PRESIDING JUDGE SCHMITT: Then we go into private session, please.

25 (Private session at 9.09 a.m.)

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4 (Open session at 9.12 a.m.)

5 THE COURT OFFICER: [9:12:28] We're in open session, your Honour.

6 PRESIDING JUDGE SCHMITT: Thank you very much.

7 Court officer, could you please bring the witness into the video-link location.

8 THE COURT OFFICER: (Via video link)(Interpretation) Yes, Mr President.

9 MR VANDERPUYE: Mr President, I'm sorry, I just wanted to be sure that the
10 protective measures are in place, yes? That's all. Thank you.

11 PRESIDING JUDGE SCHMITT: Thank you, Mr Vanderpuye, for reminding. You
12 never know.

13 (The witness enters the video-link room)

14 PRESIDING JUDGE SCHMITT: So we are sure, court officer, that the protective
15 measures are into place, yes?

16 THE COURT OFFICER: [9:13:26] Indeed, your Honour, the protective measures are
17 in place.

18 PRESIDING JUDGE SCHMITT: Yes, okay.

19 Mr Witness, good morning. You are going to testify before the International
20 Criminal Court. This Chamber has been established to try the case of the Prosecutor
21 against Mr Jean-Pierre Bemba Gombo and others. You are called to testify to assist
22 us for the purposes of sentencing.

23 Mr Witness, you should have a card in front of you with the solemn undertaking to
24 tell the truth. Could you please read out loud this card.

25 WITNESS: CAR-OTP-P-256

1 (The witness speaks French)

2 (The witness gives evidence via video link)

3 THE WITNESS: (Via video link)(Interpretation) I solemnly declare to speak the
4 truth, the whole truth and nothing but the truth.

5 PRESIDING JUDGE SCHMITT: Thank you. Mr Witness, you are now under oath.
6 You have already been informed about the importance to speak the truth.

7 Nevertheless, we have reason to reiterate to you that, as you have just promised, you
8 have to speak the truth and that it is an offence within the jurisdiction of this Court to
9 give false testimony.

10 We go into private session then, please.

11 (Private session at 9.14 a.m.)

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Sentencing Hearing
WITNESS: CAR-OTP-P-0256

(Private Session)

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20 (Open session at 9.17 a.m.)

21 THE COURT OFFICER: [9:17:44] We are in open session, your Honour.

22 PRESIDING JUDGE SCHMITT: Mr Witness, we have put measures into place that
23 shall protect you. I explained to you these protective measures. We ordered face
24 distortion, which means that no one outside the courtroom can see your face during
25 testimony on the screen.

1 The Chamber also decided to use a pseudonym. In accordance with that, we will all
2 refer to you only as "Mr Witness," as I have done in the recent minutes, to make sure
3 that the public does not know your name. When you answer questions that will not
4 give away who you are, we will do so in open session, which means that the public
5 can hear what is being said in the courtroom.

6 When you are asked to describe anything that relates specifically to you or you are
7 asked to mention facts that might reveal your identity, for example, any locations
8 where you live or persons close to you, we will do this in a private session.

9 Then there is no broadcast and no one outside the courtroom can hear your answer.

10 If ever anything gets said during open session which should have been said in private
11 session, we will do our best to protect this information. Your testimony will be
12 broadcast on a delay and we can and will remove any such remarks from the
13 broadcast which will be heard by the public and from the public transcript of the
14 proceedings.

15 Now a few practical matters you should have in mind when giving your testimony.

16 Everything we say here in the courtroom is written down and interpreted into
17 English and French. It is therefore important to speak clearly and to speak at a
18 moderate or rather slow pace. We want to make sure that your words can be well
19 understood by the interpreters and then of course by the rest of us.

20 Please speak into the microphone and only start speaking when the person asking
21 you the question has finished. To allow for the interpretation, everyone has to wait a
22 few seconds before starting to speak.

23 If you have any questions yourself, raise your hand so we know that you wish to say
24 something. We will then decide if we give you the opportunity to speak.

25 Have you understood all that?

1 THE WITNESS: (Via video link)(Interpretation) Yes, I have understood.

2 PRESIDING JUDGE SCHMITT: We will then start your testimony.

3 Mr Vanderpuye or whoever is going to question, the Prosecution has the floor.

4 MS STRUYVEN: Thank you, Mr President.

5 QUESTIONED BY MS STRUYVEN: (Interpretation)

6 Q. [9:20:50] Good morning, Mr Witness. We saw each other last Friday. My
7 name is Olivia Struyven. I will be putting questions to you on behalf of the Office of
8 the Prosecutor. Can you hear me?

9 A. [9:21:04] Yes, I can hear you.

10 Q. [9:21:06] First I would like to start by your identity. Can you tell us your full
11 names?

12 A. [9:21:22] My names are (Redacted)

13 PRESIDING JUDGE SCHMITT: Yes, so we should then go of course into private
14 session.

15 MS STRUYVEN: Excuse me.

16 PRESIDING JUDGE SCHMITT: It's no problem. But for everybody here in the
17 courtroom, we have established this when we had the hearings on the merits of the
18 case, that we are all aware of the fact and that we -- that counsel shall have sort of
19 awareness and shall tell the Chamber also when there is a problem. So we have to
20 go of course to answer this question into private session.

21 (Private session at 9.22 a.m.)

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5 (Open session at 9.32 a.m.)

6 THE COURT OFFICER: [9:33:01] We are in open session.

7 PRESIDING JUDGE SCHMITT: Please continue.

8 MS STRUYVEN: (Interpretation)

9 Q. [9:33:18] So, Mr Witness, we are now in open session. So we're going to have
10 to be careful not to mention your name or anything that might be identifying.

11 My next question to you is that at a given moment in time it was the Arido Defence
12 who requested that you testify in this case at hand; is that correct?

13 A. [9:33:40] Well, they called me. They asked me to -- they told me that I was a
14 witness.

15 Q. [9:33:50] Who called you?

16 A. [9:33:53] Well, it didn't start immediately, because I had received the visit of
17 some lawyers, first lawyers. And then the other lawyers, well, they gave the other
18 lawyers my number and then they called me.

19 Q. [9:34:11] And when you say "lawyers," do you remember the names of the
20 lawyers?

21 A. [9:34:21] Yes.

22 Q. [9:34:27] Could you please give us the names?

23 A. [9:34:32] Well, first of all, there was the interviews with Maître Mabanga and
24 secondly with Maître Powles and thirdly Arido's people also called me.

25 Q. [9:34:49] And with regard to the lawyers you mentioned last of all, do you recall

1 any names?

2 A. [9:35:02] Yes. There was Tharcisse and Maître Charles Taku, I believe.

3 Q. [9:35:12] And so, well, I'm going to be putting questions to you now with regard
4 to your contact with counsel for Arido; that is to say Tharcisse and Maître Taku.

5 After the first contact that you had with them, what did you discuss, if you recall?

6 A. [9:35:39] Well, we talked about the trial, I believe, with regard to Mr Arido, I
7 believe.

8 Q. [9:35:57] And at a given moment in time, did you meet?

9 A. [9:36:01] With whom?

10 Q. [9:36:03] With the counsel for Arido, that is to say Maître Tharcisse and Maître
11 Taku.

12 A. [9:36:12] Yes, indeed, indeed.

13 Q. [9:36:14] And during said meeting, what did you discuss?

14 A. [9:36:19] We talked about the trial in general, in general.

15 Q. [9:36:34] Did you talk about any specific points or -- well, what did you talk
16 about during that meeting?

17 A. [9:36:59] Well, as I said, they recorded it and we talked about certain points.
18 That's it.

19 Q. [9:37:09] I'll come back to that.

20 Could I please request the court officer to bring up a document on the screen,
21 document CAR-D24-0004-0092. And I would like to show to the witness the second
22 page thereof.

23 And for the Chamber, the Judges, it is at item number 9. And the page that I would
24 like to show to the witness is the page ending with 0093.

25 Now, Mr Witness, we're going to wait for the document to be brought up on the

1 screen.

2 THE COURT OFFICER: (Via video link)(Interpretation) The document is being
3 presented to the witness. CAR-D24-0004-0093 is the relevant page.

4 MS STRUYVEN: (Interpretation)

5 Q. [9:38:44] Yes, indeed, it is in English. But I'm going to be requesting that you
6 look at it. This is a document that was provided to us by the Defence, the Arido
7 Defence. And this document is supposed to summarise the testimony that you
8 provided in this case. Have you seen this document before?

9 A. [9:39:04] Before?

10 Q. [9:39:15] Has this document been shown to you before today?

11 A. [9:39:19] Yes, I believe so. But because it's in English, well, I don't have any
12 grasp of English.

13 Q. [9:39:24] There is no problem. We're going to help you. It is indeed the
14 document that when you talked about the salient points that you broached with the
15 Arido Defence, the document was shown to you during your interview with the
16 Office of the Prosecutor a few weeks ago; do you recall?

17 A. [9:39:43] Yes, yes.

18 Q. [9:39:44] Now, I'm not going to go through all of the points on the document,
19 but I'm going to be translating some points to you. And I'm going to ask you to
20 explain to us what or where this information contained in the document comes from,
21 all right?

22 A. [9:40:06] Very well.

23 Q. [9:40:07] Now, if you look at the document, after your name, the word
24 "background" is written and it is said, and I'm going to try and interpret it, it says that
25 you were one of the bodyguards of General Bombayaké, who is the general director

1 of the Presidential Guard, and that you were an adjutant. And then it goes on to say
2 that between 2003 and 2005 you underwent training in banking and finance in
3 Yokadouma. Subsequently it talks about the topics that you were to testify on in this
4 case. It talks about your military training. And a little further on it makes reference
5 to the fact that you allegedly attended the École militaire des Enfants de Troupe.

6 Now, my question to you is the following: Where did this information come from?

7 A. [9:41:18] Well, as I was saying, this is the information, the briefing that we had
8 on the occasion of the first trial with Narcisse to show -- this information was to be
9 shown to Mr Kilolo.

10 PRESIDING JUDGE SCHMITT: Just a moment. May I interrupt? We are not, as I
11 said, we are not going into the merits of the Main Case. What of course might
12 perhaps be of interest is if the witness decided or was told to or whatsoever to
13 continue a story, a testimony that he had already given. So please be aware of this
14 fact. We will not allow -- that we are not now going into the merits of the Main Case,
15 neither, as I said, into the merits of this case.

16 MS STRUYVEN: Yes, your Honour. Maybe just a small point of clarification.

17 Since this witness was presented by the Arido Defence, his expected testimony
18 if -- the veracity of the expected testimony, we submit, would actually define whether
19 or not he attempted to obstruct justice in this case.

20 So we're not going to go back to the background and the details of the substance, but
21 what we believe is important is to verify whether or not the Arido Defence intended
22 to present a witness they knew were going to present false testimony in this case, not
23 in the previous case, but again in this case.

24 PRESIDING JUDGE SCHMITT: May I just say something that comes to my mind in
25 that respect; that is that of course Defence counsel may defend under the assumption

1 that the accused is not guilty. You see what I mean? So it is absolutely in my
2 opinion, it is -- and in the opinion of the Chamber, the focus has to be on if there was
3 a sort of, so to speak, an order to or an incitement talking about to continue with a
4 certain story.

5 This might not be, might not be easy in detail to go through, but you should be aware
6 of that. We are not going to entertain now as I said the military background and so
7 on and so forth.

8 And furthermore, you have presented in your summary three, three issues that you
9 wanted to discuss. I have them correctly in mind: It's about a document, it's about
10 payments and I think it's about a security story. We would very much appreciate if
11 you would focus on these issues.

12 Mr Taku, yes, shortly, please.

13 MR TAKU: May it please your Honours. I think I should place on record that the
14 fundamental rights of Mr Arido to a fair trial should be respected by the Prosecutor.

15 This was a witness whom we withdrew. We dropped this witness for various
16 reasons. That was placed on record. Others wish we did not place on record.

17 Now this trial is about inquiring about the strategies that the Defence in the course of
18 evaluating whether a witness is appropriate to be brought here to trial now. It's not
19 the Defence on trial. And therefore the question asked should confine themselves to
20 your directive and about the issues they notified.

21 But to ask: What did the Defence do? What questions did Defence ask? Well,
22 your Honours, it would deprive Mr Arido or any other person, any other accused
23 coming before this Court to be able to have the right under the statute to interview
24 witnesses and make a determination whether to bring them here or not. So I think
25 my colleague should bear this in mind.

1 PRESIDING JUDGE SCHMITT: Mr Taku, I think you are also aware what the
2 Presiding Judge of this Chamber has said.

3 So please continue.

4 MS STRUYVEN: Thank you, Mr President.

5 Q. [9:45:37] (Interpretation) Mr Witness, you used the word "lie," "to lie." The
6 information on the point that we just jogged your memory with, was that information
7 true?

8 A. [9:45:51] No.

9 Q. [9:45:53] And according to you, did or was Mr Arido aware of the fact that this
10 information was true or not?

11 A. [9:46:01] Yes. He knew that it was -- well, he knew -- can you please repeat
12 your question?

13 Q. [9:46:13] You said that the information that has just been provided was not true.
14 According to you, did Mr Arido know that this information was false?

15 A. [9:46:23] Yes, yes, he did know.

16 Q. [9:46:28] Now, I would like to broach another few points on this document.

17 MR TAKU: Your Honours, I will object to that question and answer, because it goes
18 directly to the merit of the decision. You've already made a determination about
19 whether this information was true or false in the main judgment. We are here at the
20 sentencing phase and that question, your Honours, is highly prejudicial, an attempt,
21 perhaps because the Prosecutor did not bring that person to testify in the trial phase
22 of the case, they want to use this information to put some matter on record.

23 Perhaps they anticipate that this witness may be a point of contention for further
24 parts of the proceedings, and they're bringing this witness for that purpose only. If
25 not so, your Honour, I do not see how that question and answer does not violate your

1 findings, where you made the findings of guilt as to Mr Arido.

2 PRESIDING JUDGE SCHMITT: This objection is sustained. It's really about -- we
3 have to be clear we are at a certain point in time, meaning during our trial, meaning I
4 think we are talking about the question when -- how it came that the witness we have
5 here in front of us was named as a witness for the Defence. And we should also not
6 forget that it is about sentencing of Mr Arido. It is not about any actions of Defence
7 counsel as such, only if this could be related to Mr Arido. I said that in the
8 beginning, we are not talking about that. And insofar Mr Taku has a point here.

9 So as I said you have in your summary told us three issues. Why not focus on them?
10 Why not try to, whatever, if you can or not to work out something on these issues.
11 And as I have understood it, around these issues also your questioning a couple of
12 weeks ago circled. I have read it, so I think -- yes, but it's your turn.

13 MS STRUYVEN: (Interpretation)

14 Q. [9:48:55] So, Mr Witness, I'm going to bring you on to another point, another
15 point with regard to this document. And it's the very last point in this document
16 that says, it says with regard to your testimony that you were going to provide in this
17 case, you were supposed to say that you knew that (Redacted)
18 (Redacted) were soldiers from the CAR.

19 Excuse me, your Honours. I think for the answer to this question we need to go into
20 closed session probably.

21 PRESIDING JUDGE SCHMITT: Yes, we go into closed session.

22 (Private session at 9.49 a.m.)

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- 21 (Upon resuming in open session at 11.16 a.m.)
- 22 THE COURT USHER: [11:16:16] All rise.
- 23 PRESIDING JUDGE SCHMITT: Any questions by the Defence teams to this
- 24 witness?
- 25 MR TAKU: Yes, yes, your Honours, we'll have some questions.

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1 PRESIDING JUDGE SCHMITT: Then you have the floor, Mr Taku.

2 MR TAKU: I was waiting for my colleague.

3 Can you bring the witness to the courtroom. I'm sorry, I'm applying --

4 PRESIDING JUDGE SCHMITT: Mr Taku, this is of course absolutely justified. I
5 also do not see the witness in the video location, link location. This would of course
6 help us largely if we had a witness there.

7 In the meantime, Mr Taku, again, like we always did this in the past, when you think
8 we should go into private session, you request for it or you tell us and then we
9 consider it.

10 MR TAKU: Yes, your Honour. There will be --

11 PRESIDING JUDGE SCHMITT: Do you think when we start can we stay in open
12 session?

13 MR TAKU: Since we will be making references to the transcript and the names of
14 other participants --

15 PRESIDING JUDGE SCHMITT: Yes.

16 MR TAKU: -- so I think we'll go -- we'll start from the private session first.

17 PRESIDING JUDGE SCHMITT: Yes.

18 MR TAKU: Then we'll see.

19 PRESIDING JUDGE SCHMITT: Then we go into private session.

20 (Private session at 11.18 a.m.)

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- 25 (Upon resuming in open session at 1.31 p.m.)

1 THE COURT USHER: [13:31:39] All rise.

2 PRESIDING JUDGE SCHMITT: Then I give the Prosecution the floor.

3 MR VANDERPUYE: Thank you very much, Mr President. Good afternoon to you,
4 your Honours. Good afternoon everyone.

5 We're joined this afternoon by two other members of the Prosecution, one is Adepeju
6 Adewoye seated in the back there and Meritxel Regue, sitting to my right.

7 Your Honours, before I get going I just wanted to mention a couple of things
8 preliminarily. First, the Prosecution will not use the very generous three hours that
9 the Chamber has allotted us for our oral submissions. Given our extensive written
10 submissions which address most of the salient issues before the Chamber, we expect
11 that we can complete our presentation within an hour or so.

12 Having carefully evaluated the written sentencing submissions of the respective
13 Defence teams, and given that many of our arguments, many of the arguments that
14 are raised there are anticipated and dealt with in our own written submissions, we do
15 not consider that they require a substantial amount of time to address. And as the
16 testimony adduced through Witness P-256 we just saw is relatively confined to
17 discrete issues, including Mr Arido's knowledge or awareness that the witness was
18 slated to give false testimony in this case or whether he was aware that forged
19 documents provided by the witness to his Defence contained false information, which
20 his Defence then presented and used in his presence in this case and tendered it
21 before this Court, I don't consider we require much time to deal with that either.

22 Second, we won't repeat the detailed arguments that are set out extensively in our
23 written submissions; however, I do want to outline some of the bases for our specific
24 sentencing recommendations.

25 Third, it's not clear yet how the Chamber may decide to handle the eventuality that

1 the Defence may raise matters in their oral submissions for the first time. But I
2 would submit that if that happens, that the Prosecution be afforded at least an
3 opportunity to request a chance to address those specific issues, but we'll cross that
4 bridge when we get there.

5 In the circumstances of this case, your Honours, the Prosecution recommends that the
6 convicted persons be sentenced for their respective multiple crimes pursuant to
7 Article 70(3) and 78(3) and Rules 145, 146 and 166, taking into consideration the
8 aggravating circumstances set out in our written submissions and in the absence of
9 any compelling mitigation which, we'll address later as follows.

10 For Mr Bemba, the Prosecution recommends a joint sentence of 8 years plus a fine
11 reflecting his culpability for the 42 counts of offences against the administration of
12 justice under Article 070(1)(a), (1)(b), and (1)(c) of which he was convicted.

13 For Mr Kilolo the same, a joint sentence of 8 years plus a fine reflecting his culpability
14 for the 42 counts of offences against the administration of justice in violation of Article
15 70(1)(a), (1)(b) and (1)(c) of which he was convicted.

16 For Mangenda to a joint sentence of 7 years plus a fine reflecting his culpability for
17 the 37 counts of offences against the administration of justice in violation of Article
18 70(1)(a), (1)(b) and (1)(c) of which he was convicted.

19 For Mr Babala, a joint sentence of 3 years plus a fine reflecting his culpability for the
20 two counts of offences under Article 70(1)(c) of which he was convicted.

21 And for Mr Arido to a joint sentence of 5 years plus a fine reflecting his culpability for
22 4 counts of offences against the administration of justice in violation of Article 70(1)(c)
23 of which he was convicted.

24 The Prosecution considers that this recommendation is fully consistent with the
25 general principle that a sentence be proportionate to the gravity of the offences

1 committed and that it fully reflect the convicted person's degree of culpability.

2 This case, like no case before it, involves a multitude of offences, discrete criminal
3 incursions carried out over a period that extends more than a year and involves
4 numerous witnesses, 14 of which the Prosecution selected as charged incidents in this
5 case and more than 14 of which the evidence at trial, indeed the findings of the
6 Chamber establishes could have been brought as charged incidents in their own right
7 in this case.

8 The recommended sentence is fully reflective of the seriousness of the offences to
9 which the Chamber referred when delivering its judgment back in October, given that
10 the prescribed conduct goes to the very heart of the Court's function, its duty and its
11 mandate concerning the adjudication of core crimes under Article 5 of the Statute.

12 It's further consistent with the appropriate treatment of multiple crimes provided for
13 in the statute exclusively under Article 78(3). The scope of Article 78(3)'s application
14 to multiple Article 70 offences is addressed in detail in the Prosecution's written
15 submission at paragraphs 141 through 147. And the Chamber has already found
16 that it applies in such context at decision number 2026, paragraph 16.

17 However, to the extent that there may be questions the Chamber has or issues that the
18 Defence may raise responsively, we are prepared to address these as well with the
19 Chamber's leave.

20 I want to say a couple words about the case, which I think is important. At the
21 outset of the trial the Prosecution made clear that this case was about these five
22 individuals. It was about their choices, their actions and their responsibility for the
23 offences against the administration of justice at this Court with which they were
24 charged, about the conduct which perverted the course of justice and which
25 threatened to upend the Court's ability to carry out its mandate in Bemba's trial for

1 war crimes and crimes against humanity. It's about the conduct which threatens to
2 deny justice to the more than 5,000 victims of those serious crimes, murders, rapes
3 and pillaging, by misleading the Chamber, Trial Chamber III, by interfering with its
4 ability to fairly assess the evidence before it, which is its core function in adjudicating
5 a trial.

6 The case was not, nor has it ever been, about the Defence bar or Defence counsel
7 generally appearing before this Court. That's a point which the Chamber itself was
8 keen to point out when rendering its Article 74 decision in October.

9 To the contrary, as we have said and I firmly reassert today, that this case was
10 pursued and brought underscores the importance of the Defence, who like other
11 participants in the proceedings before this Court operate within the context of its
12 broad mandate, and that mandate fundamentally is to do justice, justice in respect of
13 the crimes, of crimes of the most serious concern to the international community,
14 justice in respect of the victims of those crimes, justice in respect of ensuring the
15 fairness of the proceedings enshrined in the statutory framework concerning the
16 parties and participants before this Court, and of course justice to the Court itself to
17 protect its integrity, its credibility, its standing and its authority so that it can actually
18 fulfil its mandate now and in the long term.

19 The crimes of which this Chamber convicted Messrs Bemba, Kilolo, Mangenda,
20 Babala and Arido on 19 October of this year put all of this at serious risk. And while
21 one might suggest that the most immediate harm to the Court was averted in Bemba's
22 Main Case trial, because the ultimate goal of the common criminal plan to unlawfully
23 obtain his acquittal did not materialize, I would urge you to recall two things: One,
24 that Main Case is not final yet; and, two, beyond the Main Case, only time will tell
25 what long-term damage to the Court there may be.

1 Now, certainly given P-256's evidence about a forged document that was used and
2 tendered by Arido's Defence in this case which contained information that the
3 Chamber has already determined that Mr Arido himself believed to be false, that is
4 that D-4 was a soldier, that D-2 was a soldier, and that's at judgment paragraph 944,
5 the fact that such a document was used in this case ought to give one serious pause,
6 that this should happen during this case, the ICC's first Article 70 trial of all cases
7 certainly does not bode well.

8 The crimes of which these five individuals were convicted, unlike Article 5 crimes, go
9 to the heart of the Court itself as I said. It goes to the integrity of its processes, its
10 credibility and its standing as an institution, particularly an institution of last resort.

11 As this Chamber rightfully noted, "No legal system in the world can accept the
12 bribing of witnesses, the inducement of witnesses to lie or the illicit coaching of
13 witnesses, nor can the International Criminal Court." And the reason for that is
14 self-evident. Because of the conduct of these five individuals -- because the conduct
15 of these five individuals directly affects the Court's ability to adjudicate the core
16 crimes under the Statute, not in one situation, but several, not in one case, but many,
17 and in cases which involve hundreds or even thousands upon thousands of victims,
18 these offences have very far-reaching consequences, because they're crimes which
19 erode and undermine the Court, they impede its mandate and they corrode the
20 rendition of substantive justice.

21 Bear in mind that these crimes were committed and/or assisted by well-educated
22 individuals. Each one of these individuals is well-educated, lawyers and jurists
23 among them. Each was fully disposed to know and understand the criminality of
24 their conduct, but also the consequences not only to themselves but, importantly, the
25 harmfulness of their conduct to any court and any court's essential purpose and

1 especially this Court.

2 None of these individuals can look you in the eye and say truthfully that they did not
3 know that their conduct could undermine the Court's mandate, risk disenfranchising
4 thousands of victims in the Main Case or risk undermining the integrity of the
5 proceedings before Trial Chamber III.

6 In fact, the evidence referred to in our brief shows that the convicted persons, Kilolo
7 and Mangenda especially, were actually ridiculing the Court while they were
8 committing the offences.

9 Not one convicted person can say that they didn't know, that they didn't realise,
10 because that not only defies the overwhelming evidence by which their guilt was
11 proved in this case in accordance with Article 66(3) and the clear findings of the
12 Chamber, but again in their circumstances it runs well afoul of basic common sense.

13 As the Chamber's decision makes amply and repeatedly clear, the convicted persons
14 knew exactly what they were doing in respect of their involvement in the crimes and
15 the time has arrived for them to be held to account for their actions.

16 In fixing the appropriate sentence in relation to the convicted persons, the Chamber
17 should find and take account of aggravating circumstances concerning their conduct
18 in relation to the crimes. These are set out and detailed in our written submission in
19 paragraphs 45 through 95 and they include the fact that in committing their crimes,
20 Bemba and Babala abused their power and/or official capacity as leaders in the MLC
21 and/or the DRC, political powers; that Kilolo and Mangenda abused their positions of
22 trust as members of the Bemba Defence and in their professional capacities in
23 appearing before this Court; that Bemba and Kilolo abused the privileges afforded to
24 them due to their lawyer-client relationship in order to exploit it to commit these
25 crimes; and that Kilolo violated the Court's Code of Professional Conduct for counsel

1 by deceiving and knowingly misleading Trial Chamber III, I would add repeatedly.

2 One aggravating factor in particular is that all of the convicted persons attempted to

3 obstruct justice in this case. The efforts made by the convicted persons to obstruct

4 the investigation of the Article 70 offences in October 2013, which ran through

5 November 2013 this Chamber will recall, is an effort to obstruct justice in this case.

6 They conspired to buy the silence of potentially cooperative witnesses. That is an

7 aggravating factor.

8 As we noted in our closing submissions in June of this year, instead of owning up to

9 their conduct when news of the Article 70 investigation leaked, Bemba, Kilolo,

10 Mangenda and, yes, Mr Babala chose instead to cover it up, devising and working on

11 a plan to pay witnesses off to prevent their cooperation with the investigation to

12 protect their vested interest in committing these crimes, in an effort to conceal their

13 own criminal acts and in an effort to undermine the investigation and thwart the

14 eventual Prosecution of those charges.

15 Worse still, in November 2013, with knowledge of the ongoing Article 70

16 investigation, Mangenda and Kilolo discussed a plan to bring entirely fabricated

17 charges against the Office of the Prosecutor, the Prosecutor and members of her office,

18 including the senior trial attorney prosecuting the Main Case.

19 Their plan was to reach out to several Prosecution witnesses in the Main Case, and

20 according to Mangenda as many as 22 of them, and to get them to sign false

21 statements alleging that the Prosecution had paid them in order to initiate an

22 abuse-of-process claim against the Prosecution. That claim would be predicated on

23 the false assertion that the Prosecution had been corrupting and manipulating its

24 witnesses. You have that evidence before you already. And we would invite the

25 Chamber to have a close look at the following intercepts:

1 8 November 2013, 10.49, the ERN number is CAR-OTP-0080-1418. In that intercept
2 Kilolo and Mangenda discuss the plan that I just described.
3 10 November 2013, 1900 hours, 4 minutes. I think you have it on your screen now.
4 On mine it's kind of small. It's on evidence 2, I believe. In that intercept, 10
5 November 2013, the two describe the plan more explicitly. In that conversation
6 Mangenda mentions having consulted with Mr Bemba in order to obtain the money
7 for them to go and meet these witnesses who they're planning to turn.
8 And in response to Kilolo's concern that he, Mangenda, might have used the
9 non-privileged line in discussing the matter with Mr Bemba, reminding
10 Mr Mangenda, and I quote in French, (Interpretation) "The communication with him
11 is not confidential."
12 (Speaks English) Mangenda reassures Mr. Kilolo that he had actually gone to the
13 prison to have that conversation. He went to detention to have it.
14 And where finally they discuss the witness signing the false statements, they describe
15 it as follows: (Interpretation) "And we gave them quite a layer of colour."
16 (Speaks English) The Chamber's made findings with respect to the use of the term
17 "couleur" in this case. And from the context of that intercept, when you have the
18 whole thing in front of you, you can see very clearly what the plan is.
19 What we have here, what you just saw today, the evidence of 256 is evidence of
20 Mr Arido's attempt to obstruct justice in this case.
21 Now, having seen 256, I am sure that the Chamber will no doubt recall the caution
22 which we advised of at the beginning of this case concerning these types of witnesses.
23 Be assured that we have not lost sight of the fact that 256 lied in the Main Case, that
24 he lied during the course of his interviews with the Defence, the interview with Mr
25 Mabanga, the interview with Mr Taku, that he lied even when he met with the

1 Prosecution in February of this year. There are no illusions about that. But like all
2 such witnesses who are complicit in the crimes which were the subject matter of this
3 case, the Chamber has the unenviable position to be in to actually decipher what the
4 witness said, to read between the lines of what the witness said.

5 The Chamber has before it the Prosecution's motion to call this witness to begin with
6 and has at its disposal the statement that the witness gave during October of this year
7 when he was interviewed with the Prosecution. And the Chamber has the ability to
8 compare what he said then to what he says now and the reasons why his evidence
9 may have changed or may not have.

10 But one thing is for sure and that is P-256's evidence established that Arido fully
11 intended to present evidence from him which he would have known to be false as
12 well as documents provided by him which he would have known to have contained
13 false information.

14 That Arido believed that D4 and D2 were not soldiers is a finding of this Chamber as I
15 said before and that the liste des collectifs des officiers de libre, the document that you
16 saw that the witness testified about having forged and fabricated and manipulated
17 and inserted signatures on, that document contained that information, that is
18 information contrary to Mr Arido's own belief about the witness's status.

19 Mr Arido and his lawyers are parties to this proceeding, or, rather, he is and his
20 lawyers are by extension.

21 To present a document that one knows or believes to be false before a Chamber of this
22 Court is an offence. It is an aggravating circumstance by definition. That
23 document was used in court, open court by the Arido Defence team to discredit a
24 Prosecution witness, a witness who the Chamber's own evidence or the Chamber's
25 own findings established that Mr Arido believed not to be a soldier. And yet, his

1 lawyers used a document suggesting the exact opposite with this witness.

2 You heard the testimony of P-256 today when he said without any reservation, as he
3 has said before, that there is no question that Mr Arido knew that he was not a soldier,
4 that the information that he provided during the course of his interview or
5 discussions with the Defence were false in respect to his military training and so on
6 and so forth.

7 Now, we understand that the Chamber is reluctant to make findings on the question
8 of the truth or falseness, or falsity of such facts given its decision from I believe it was
9 29 September 2015 and the position it's taken in the case. However, the question
10 here is whether Mr Arido knew that that information was false. And if he knew that
11 information was false, the use of that information before this Court is an aggravating
12 circumstance.

13 Like I said, that something like this should occur in this trial demonstrates a flagrant
14 disregard for the integrity of this institution and all that it stands for. It is
15 undoubtedly an aggravating circumstance and one which the Chamber should take
16 serious account of.

17 Failing their ability to stop the investigation, failing their ability to carry out their plan
18 to get Prosecution witnesses to sign false statements, the Kilolo -- or, rather, Kilolo
19 and Mangenda set upon attacking the Court. In particular, Kilolo joined by
20 Mangenda chose to pursue the Pre-Trial Judge's professionalism, challenging his
21 decisions and claiming that they were made on the basis of their race.

22 You heard Mr Babala's closing remarks in this case yet again, more subtly though
23 challenging the Pre-Trial Judge's professionalism in his assessment of the evidence
24 which led to the issuance of the arrest warrant against him. I think he said, and I
25 don't have it exactly, that he was impressed with how the Pre-Trial Judge was able to

1 negotiate all of that information in such a short amount of time.

2 There are no mitigating circumstances before this Court. The Chamber's 19 October
3 decision is replete with concrete evidentiary grounds for each crime comprising the
4 multiple convictions that were rendered.

5 And it is readily discernible in the judgment that those convictions rest on an
6 overwhelming, on overwhelming evidence of guilt with respect to all five of the
7 convicted persons.

8 That evidence ranges from intercepts, to call logs, to financial records, to analytical
9 and expert witnesses, to fact witnesses, accomplices, documentary evidence,
10 detention centre recordings and logs and yes, even the unwitting admissions of some
11 of the convicted persons.

12 So at this stage with that force of evidence behind the facts as found by this Chamber
13 there is not much left for the convicted persons to argue. But, again, instead of
14 acknowledging their criminal acts and taking responsibility for them, their written
15 submissions set upon distorting the findings of the Chamber, minimising their roles
16 in the crimes regardless of the Chamber's findings, downplaying the damage or risk
17 to the Court as a result of their repeated criminal acts and, frankly, repackaging and
18 repainting their prior conduct to the point that it no longer bears any semblance to
19 reality.

20 The trouble of course is that their arguments are either belied by their own conduct or
21 are otherwise less than compelling and unpersuasive. And although they insist that
22 the mitigation of their sentences is warranted, their written submissions either fail to
23 provide any substantiation or disregard not only the evidence which refutes their
24 claims but the findings of the Chamber itself.

25 As the Prosecution's written submissions anticipated and addressed the vast majority

1 of these arguments, I would like only to point out just a few matters which emerge
2 from the Defence's written submissions and which I think highlight some of these
3 failures.

4 Notwithstanding the well-considered findings of the Chamber and its very clear
5 language when pronouncing judgment only two months ago "that preventing
6 offences against the administration of justice is of the utmost importance for the
7 functioning of the International Criminal Court," the convicted persons persist in their
8 failure to acknowledge the seriousness of their conduct or to take any responsibility
9 for their actions.

10 In Mr Kilolo's submission at paragraph 20, he points out, "There were no identifiable
11 victims in this case; thus, no victim was separately represented during the trial" and
12 "The offences for which Mr Kilolo has been convicted are not particularly cruel, nor
13 were their multiple victims." All of which is true. What his submission leaves out
14 is that, yes, true, Kilolo did not physically or psychologically harm anyone. Nobody
15 has alleged as much.

16 Yet, as an attorney privileged to appear before this Court and privileged to appear as
17 lead counsel representing a well-known accused in a serious case, as an officer of this
18 Court, Kilolo can hardly claim to have been unaware that his criminal conduct which
19 was proved in this case beyond a reasonable doubt placed at risk the only meaningful
20 recourse to justice for thousands of victims in the Main Case, that his conduct placed
21 at risk the ability of Trial Chamber III fairly to adjudicate the very serious charges
22 concerning those victims and that his conduct placed at risk the standing and
23 reputation of the Court itself.

24 Unsurprisingly, his written submissions admit nothing.

25 Mr Bemba's submission, paragraph 33, he says instructions given by Mr Bemba

1 concerning D-54's testimony "falls squarely within the scope of standard adversarial
2 witness preparation."

3 I don't think I need to comment on that. The Chamber will recall its findings with
4 respect to Mr Bemba's knowledge of the corrupt influence of D-54 and D-15 and
5 others. The Chamber found that Mr Bemba "knew about, approved of and directed
6 through Mr Mangenda Mr Kilolo's illicit coaching activities in relation to D-54,"
7 judgment paragraph 653.

8 Specifically that through Mangenda Bemba conveyed, quote, "concrete instructions as
9 to possible topics to be addressed in the manner in which the witness was expected to
10 testify" and that, quote, the "information was not merely a proposal on the part of
11 Mr Bemba but constituted specific instructions which the two co-perpetrators were
12 expected to follow." Judgment paragraph 811. That clearly is not at all within the
13 scope of standard adversarial witness preparation.

14 In Mr Babala's submission at paragraph 91, he states, and I quote, (Interpretation)
15 "The function of reparation is superfluous in view of the fact that the offences held
16 against Mr Babala are not in any way prejudicial."

17 (Speaks English) Yet, the Chamber found that Mr Babala assisted in corruptly
18 influencing Witness D-64 and D-57, who it also found testified falsely in the Main
19 Case, among other things, about the money that Mr Babala transferred knowing of its
20 corrupt purpose. That the witness's false testimony was procured and introduced
21 into the record of the trial at all before Trial Chamber III is alone evidence of prejudice.
22 It's prejudicial to the integrity of the proceedings before that Chamber and before this
23 Court, and it's prejudicial to the victim participants in those proceedings whose right
24 to a recourse to justice was threatened by that false evidence. That prejudice, those
25 risks would not have been beyond the ken of Mr Babala, who we noted previously is

1 a jurist himself. I think he got up and said as much during his closing submissions.

2 And the fact that the Trial Chamber, that Trial Chamber III was not duped by the

3 crimes that this Chamber has found that Mr Babala aided and abetted in their

4 commission cannot inhere to his credit nor should it as a mitigating circumstance.

5 In Mr Arido's submission he says at paragraph 2, "Mr Arido stands before you to be

6 sentenced on a single offence, not a crime." That's true, Article 70 refers to offences.

7 It also carries for a single offence a five-year sentence, fine, or and both.

8 The convicted persons have never cooperated in any appreciable measure with the

9 investigation or prosecution of the charged offences or with this Court for that matter,

10 and the arguments in their respective briefs to that effect strain credulity.

11 In Bemba's submission at paragraphs 82 to 84 he suggests that the withdrawal of his

12 reliance on 14 Defence witnesses that he called in the Main Case is evidence of his

13 cooperation and even undercuts the gravamen of his Article 70 convictions.

14 Now let's think about that for a second. He could have chosen not to call them at all.

15 But he called them, had them coached and then turned around and said, "I'm not

16 going to rely on them," as if he was doing the Chamber a favour.

17 That's not a mitigating circumstance. That's a shrewd tactical legal manoeuvre. If

18 his withdrawal of the witnesses, of reliance on the witnesses was intended as a

19 genuine act of cooperation motivated by a sense of doing the right thing, one should

20 ask why didn't this happen until 25 August 2014, a year almost since his arrest in the

21 case. And why did he fail to admit along with that his role in the crimes which led

22 to the withdrawal of his reliance on those witnesses to begin with?

23 The act, as I say, was not one of cooperation, it was not one motivated by doing the

24 right thing, but it was a tactical legal manoeuvre, one that he felt was justified in

25 preserving his position in the Main Case.

1 In Mangenda's brief he suggested his interview with the Prosecution demonstrates his
2 cooperation. I think even at some point he says that the fact that he went to trial
3 demonstrates his cooperation.

4 In his interview with the Prosecution he flatly denied his involvement in the crimes of
5 which he now stands convicted, which this Chamber found on the evidence of this
6 case was proved beyond a reasonable doubt, which this Chamber heard intercepts of
7 him in action. His statement to the Prosecution was not an act of cooperation. It
8 was an act of obstruction.

9 Here is a man who knew that he was on tape, having discussions that he had with
10 Mr Kilolo concerning the commission of the crimes which this Chamber found him
11 guilty of.

12 You know, there is a difference between asserting one's right to silence as a suspect
13 and saying nothing at all and affirmatively lying in the course of an investigation.

14 Mr Mangenda is in the latter category, and he cannot possibly assert that he was
15 cooperative in any significant respect in this case, to the contrary.

16 Mr Kilolo's submission, paragraphs 27 through 29, he fares no better. He describes
17 his positive behaviour as shown by his record of court attendance which was in any
18 case, as the Chamber is well aware, compelled.

19 His remarks ignore altogether his inflammatory and unsubstantiated attacks against
20 the integrity of the Court, particularly of the Single Judge of Pre-Trial Chamber II, and
21 the Office of the Prosecutor, which he had widely disseminated in a press release in
22 May 2014, and that's CAR-OTP-0094-2362, and is compounded by his later false
23 public assertions that the proceedings before this Court are effectively of a political
24 nature. That's CAR-OTP-0084-0403_R01. And these are discussed in our written
25 submissions at paragraphs 101 through 102.

1 This case and the scale of the crimes and the scope of these crimes against the
2 administration of justice is without any precedent in international courts. The
3 resultant sentences for similar conduct in other international tribunals simply don't
4 apply, they don't work, because we're not talking about the scale of crimes or the scale
5 of the scheme that was perpetrated in this case at all in those other tribunals.

6 The Defence submissions nevertheless attempt to do so understandably, but
7 unfortunately they fail accurately to reflect the circumstances of the cases to which
8 they refer. For instance, the Mangenda Defence attempts to compare Mangenda's
9 crimes to that of a case manager convicted of contempt before the ICTY who was
10 sentenced to one year of imprisonment.

11 I believe her name was Jelena Rašić. The comparison to Mr Mangenda however falls
12 short. His submissions failed to mention that Jelena Rašić, the accused in that case,
13 pleaded guilty to the charges and also expressed her genuine remorse for her conduct,
14 two significant facts that are lacking in the case of Mr Mangenda. Not only are they
15 lacking in the case of Mr Mangenda, in fact the opposite is fundamentally true.

16 She was convicted of five counts of contempt under the ICTY rules. Mr Mangenda
17 has 37 counts to his name in this case.

18 The circumstances that he faces are far from the circumstances that she faced and far
19 from the conduct that she demonstrated, which he has yet to demonstrate in this case.

20 Mr Bemba's submissions attempt to compare his circumstances to the Bangura case,
21 which was before the SCSL in terms of how Mr Bemba's time in detention should be
22 credited.

23 Now, while Mr Bemba argues that the accused in that case, Kamara and Kanu,
24 received credit in their sentences for contempt for time spent in detention which
25 overlapped with separate sentences that they were serving, there is no indication in

1 that case that in deducting the period of overlap, in that case two weeks or so, that
2 there was credit that was given to both cases that were pending.

3 In effect, there is no evidence that those cases revealed that the time that was -- that
4 the time that was imposed as a result of the sentence for contempt was to run
5 concurrent with the time that they -- with the time that they were serving sentences
6 on. In fact, in that case those two individuals sentenced to consecutive time with the
7 two-week overlap being credited for time that they had done in detention on the case
8 on which they were sentenced, on the contempt case itself.

9 I would refer the Chamber to the sentencing judgment in that case. It's case number
10 SCSL-2011-02-T. And in the verdict at pages 2323 -- I mean the sentencing, I'm sorry,
11 the sentencing minutes, pages 2323 through 2326 of the 11 October 2012 transcript.

12 Similarly, Bemba's submission concerning the Šešelj case is not correct for two reasons.

13 In Šešelj's case he was sentenced for contempt to run concurrently with a sentence for
14 a previous contempt conviction. And, indeed, that sentence was turned -- was
15 overturned on appeal, because in fact by the time he had been sentenced on the
16 second contempt proceeding he had already discharged the sentence on the first.
17 Therefore, the second sentence could not run concurrently with the first because the
18 first no longer existed. He had already discharged the time.

19 That is not found in Mr Bemba's submission.

20 In that case I would also refer the Chamber to the judgment IT-03-67-R77.3-A,
21 paragraphs 23 through 24.

22 Bemba's situation is similar to the Šešelj appeal in that having been sentenced in the
23 Main Case on 21 June 2016, that time which overlapped his detention on the Main
24 Case and on the Article 70 case was directed to the sentence that he received on the
25 Main Case. He received credit for the time that he served on that case, which

1 included time that he also served in detention pending this case. Fundamentally
2 what Bemba seeks is to have that period of time count twice. That period of time
3 should count both for the Main Case and yet again for this case. We don't believe
4 that he should have it both ways.

5 Strikingly, none of the convicted persons have shown any remorse for their conduct.
6 None has hardly accepted that they have done anything wrong, which is an essential
7 element of remorse. And while it's not known what shape the Defence's oral
8 submissions will take at this very late stage, the Court should not accept any claimed
9 remorse as genuine at all. It can't be. The evidence to the contrary is
10 overwhelming.

11 The sense of entitlement conveyed in terms of the sentences that the convicted
12 persons seek in their written submissions if at all confirms this. Their minimisation
13 of their roles and responsibility and conduct in respect of the crimes found by the
14 Chamber that they committed confirms this. The absence of any word or deed
15 showing their humility in respect of their conduct such as retracting the outrageous
16 and serious allegations made against the Court, the outrageous and serious
17 allegations of misconduct made against the Single Judge of Pre-Trial Chamber II, the
18 outrageous allegations made against the independent counsel that was appointed by
19 the Single Judge of Pre-Trial Chamber II, all of these things confirm it.

20 The accused point to their family circumstance as a mitigating circumstance. I
21 would suggest to the Chamber and I think we addressed this rather briefly in our
22 submissions that is not an unusual circumstance for convicted persons to have
23 families. It's not an unusual circumstance for the prospect of a custodial sentence to
24 have an impact on a family. These are particular consequences that are attendant to
25 the actions that they've engaged in, to the crimes of which they have been convicted.

1 And in this particular case, this is not something that was hardly foreseeable to the
2 accused in this case. Hardly.

3 We have lawyer, lawyer, jurist, jurist and a very seasoned and savvy politician. The
4 fact that there are consequences and potentially serious consequences in a potentially
5 serious custodial sentence hanging in the balance will have an impact on any family
6 and it will have an impact on the accused's families. But this alone does not make it
7 a mitigating circumstance.

8 The seriousness of the crimes of which Messrs Bemba, Kilolo, Mangenda, Babala and
9 Arido have been convicted beyond a reasonable doubt and in accordance with Article
10 66(3) and the circumstances of their involvement in the commission of those crimes in
11 particular, their knowing and intentional participation in crimes that are deleterious
12 to the very essence of this Court demand that the Chamber impose a sentence of
13 equally serious effectiveness.

14 At the end of the day, the sentence that you choose to impose on these accused will
15 underscore the seriousness with which this Court decides to treat crimes against itself
16 primarily and, of course, the effect of those crimes on its mandate to do justice in the
17 very serious cases before it and to come before it.

18 And while we cannot extend the principle of deterrence without regard to the
19 individual criminal responsibility of the accused, it has its role in the context of
20 punishment and in particular the punishment to be meted out in respect of this case.

21 This Court and this Chamber is very well aware of the potential consequences of
22 crimes on which it has rendered its decision -- of the crimes on which it has rendered
23 its decision, and the history of this Court as the Chamber is well aware and as all of us
24 I think are well aware is intertwined with witness interference. Hardly a case has
25 come through this court without allegations of serious witness interference, and some

1 of them have come through and ended up in the back door out because of witness
2 interference. Some didn't make it through the confirmation stage because of witness
3 interference. So the seriousness of the crimes that were engaged in by these accused
4 of which this Chamber has convicted them cannot be understated.

5 And although that history is entwined in just about every case including this one in
6 the past, it should not be a part of this Court's future.

7 So we commend this sentencing to the Chamber, knowing that you will exercise your
8 discretion as you should and you will balance all of the relevant interests to achieve a
9 fair and just result and to ensure that this Court can continue to carry out its mandate
10 as it should.

11 Mr President, your Honours, that concludes our sentencing submissions. If the
12 Chamber has any questions, I am more than disposed to answer them for you.

13 PRESIDING JUDGE SCHMITT: Thank you very much. We are all aware of the fact
14 that we are well ahead of scheduling. It would now be the turn of the Defence teams,
15 but the Chamber would not want to impose, so to speak, on any of the Defence teams
16 to start today.

17 So if a Defence team steps forward and wants to start today, I would also not have
18 anything against it, but otherwise we would adjourn and resume tomorrow at 9
19 o'clock.

20 MR TAKU: I have two applications, your Honours. First, with regard to the
21 application, the oral application made this morning, I discussed with the Prosecutor
22 and I found that it was in their binder. So I will not file a motion to introduce any
23 item again.

24 Secondly, with regard to the evidence of Witness P-256, I would very much be
25 grateful if the Registry makes the transcript available to us. We would like to cite the

1 transcript so that we make an accurate representation of the evidence we had, your
2 Honours. Thank you so much.

3 PRESIDING JUDGE SCHMITT: And to the more practical question, if a Defence
4 team wants to start today, and of course as a Chamber we are always interested in a
5 time frame that you could give us, you have seen that the Prosecution was much
6 shorter than the time that has been allotted to the Prosecution, have you any
7 estimates?

8 MR GOSNELL: Mr President, I can estimate that the submissions on behalf of
9 Mr Mangenda will probably not exceed one hour. Perhaps even less.

10 PRESIDING JUDGE SCHMITT: Any other Defence team to step forward, to be bold,
11 so to speak?

12 MR KILENDA: (Interpretation) I thank you, Mr President. We will both be
13 speaking for Mr Babala, that will be the legal assistant and myself. We believe that
14 we will be using the full quota of hours that you have granted us, but I do believe that
15 we will finish beforehand.

16 PRESIDING JUDGE SCHMITT: Mr Karnavas.

17 MR KARNAVAS: [14:25:18] Good afternoon, Mr President, your Honours. We
18 certainly will not be taking the entire time. Less is more as far as we're concerned.
19 So we'll abide by that.

20 PRESIDING JUDGE SCHMITT: Mr Taku.

21 MR TAKU: Yes, your Honours, we would have taken a shorter time, but there are
22 very profound legal issues we intend to address involving the evidence of this
23 witness in these proceedings and also the contents of it. So we'll take the full time.

24 PRESIDING JUDGE SCHMITT: Last one, Mrs Taylor.

25 MS TAYLOR: Thank you, Mr President. I don't envisage that I will go beyond the

1 one hour or much beyond it. But I'm also attentive to the need not to speak too
2 quickly. So I don't want to give a guarantee. Thank you.

3 PRESIDING JUDGE SCHMITT: And since none of the Defence team has expressed
4 its wish to start today, we will adjourn the hearing, resume I think at 9 o'clock
5 tomorrow I would say, because we have still extended hours, and it might be that it
6 will be sufficient. And of course I might also express the wish of the Chamber that
7 we do not have to cross a bridge, as Mr Vanderpuye has worded it at the beginning of
8 his statement, meaning that no completely new arguments will be brought forward
9 that would perhaps then have to be addressed afterwards by the Prosecution again.
10 The hearing is adjourned for today.
11 THE COURT USHER: [14:26:42] All rise.
12 (The hearing ends in open session at 2.26 p.m.)