

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  
6 Arido - ICC-01/05-01/13  
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and Judge Raul  
8 Pangalangan  
9 Delivery of Decision  
10 Monday, 17 September 2018  
11 (The hearing starts in open session at 2.59 p.m.)  
12 THE COURT USHER: [14:59:57] All rise.  
13 The International Criminal Court is now in session.  
14 Please be seated.  
15 PRESIDING JUDGE SCHMITT: [15:00:20] Good afternoon, everyone. Could the  
16 court officer please call the case.  
17 THE COURT OFFICER: [15:00:33] Good afternoon, Mr President, your Honours.  
18 The situation in the Central African Republic in the case of The Prosecutor versus  
19 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,  
20 Fidèle Babala Wandu and Narcisse Arido, case reference ICC-01/05-01/13. And for  
21 the record, we're in open session, your Honour.  
22 PRESIDING JUDGE SCHMITT: Thank you very much.  
23 I call for the appearances of the parties. First, for the Prosecution, Mr Vanderpuye.  
24 MR VANDERPUYE: [15:01:05] Good afternoon, Mr President, your Honours.  
25 Today, the Office of the Prosecutor is represented by Olivia Struyven, to my left; to

1 her left, Nema Milaninia; in the second row behind me, Meritxell Regue Blasi and  
2 Priyadarshini Narayanan; and in the last row, Sylvie Vidinha and Sylvie Wakchom.  
3 I'm Kweku Vanderpuye, good afternoon again.

4 PRESIDING JUDGE SCHMITT: [15:01:30] Thank you very much.

5 And now for the Defence teams. I start with the Defence for Mr Bemba. Ms Taylor,  
6 please.

7 MS TAYLOR: [15:01:38] Good afternoon, Mr President, your Honours. My name is  
8 Melinda Taylor, I'm appearing today on behalf of Mr Bemba and I'm appearing with  
9 Ms Mylène Dimitri and Ms Ines Pierre de la Brière. Thank you.

10 PRESIDING JUDGE SCHMITT: [15:01:50] Thank you very much.

11 And the Defence for Mr Kilolo, Mr Karnavas.

12 MR KARNAVAS: [15:01:53] Good afternoon, your Honours. Good afternoon to  
13 everyone in and around the courtroom. Michael Karnavas with Anastasiia  
14 Tatarenko for Mr Kilolo.

15 PRESIDING JUDGE SCHMITT: [15:02:04] Thank you.

16 And finally, for the Defence of Mr Mangenda, Mr Gosnell.

17 MR GOSNELL: [15:02:07] Thank you, Mr President, good afternoon, your Honours.  
18 Christopher Gosnell for Mr Mangenda, this afternoon assisted by Nikki Sethi.  
19 Thank you.

20 PRESIDING JUDGE SCHMITT: [15:02:15] Thank you very much.

21 By way of background, on 19 October 2016, the five accused in this case were found  
22 guilty of offences against the administration of justice. These offences were related  
23 to intentionally corruptly influencing witnesses and soliciting, inducing or assisting  
24 the false testimonies of 14 Defence witnesses in the other case against Mr Bemba at  
25 the ICC. On 22 March 2017, this Chamber delivered the sentences in the present

1 case.

2 On 8 March 2018, the Appeals Chamber issued its judgments on the convictions and  
3 sentences. The Appeals Chamber upheld all convictions entered under Articles  
4 70(1)(a) and (c) of the Statute, that means soliciting, inducing or assisting false  
5 testimony and corruptly influencing witnesses and reversed the convictions entered  
6 under Article 70(1)(b) of the Statute, that means presenting false or forged testimony.  
7 For Mr Babala and Mr Arido, the Appeals Chamber confirmed their sentences, this  
8 means that their convictions and sentences are both final.

9 For Mr Bemba, Mr Kilolo and Mr Mangenda, the Appeals Chamber reversed and  
10 remanded their sentences to this Chamber for a new determination, and this is why  
11 we are here today in the courtroom.

12 Today, the Chamber issues its resentencing decision for Mr Bemba, Mr Kilolo and  
13 Mr Mangenda. The remarks today are just a summary of the Chamber's decision.  
14 The written decision alone is authoritative.

15 The Prosecution requests the Chamber to sentence the three convicted persons to the  
16 statutory maximum sentence of five years of imprisonment each and would  
17 additionally welcome a substantial fine.

18 Following Mr Bemba's acquittal in the Main Case, the Bemba Defence now requests, I  
19 quote, "a complete discharge following payment of a reasonable fine to the Trust  
20 Fund for Victims".

21 The Kilolo Defence requests the Chamber to refashion Mr Kilolo's sentence so as to  
22 keep his original sentence intact. This would entail a time-served imprisonment  
23 term of 11 months and a €30,000 fine.

24 The Mangenda Defence requests that Mr Mangenda's new sentence should be  
25 reduced to time served, noting that Mr Mangenda had been previously detained in

1 the present case for just over 11 months.

2 Today, the Chamber will first pronounce its new joint sentences and then summarise  
3 the basis for them.

4 The new sentences for Mr Mangenda, Mr Kilolo, and Mr Bemba are: For  
5 Mr Mangenda, the Chamber sentences him to a total of 11 months of imprisonment.  
6 After deduction of the time he previously spent in detention, the Chamber considers  
7 his sentence of imprisonment as served.

8 For Mr Kilolo, the Chamber sentences him to a total of 11 months of imprisonment.  
9 After deduction of the time he previously spent in detention, the Chamber considers  
10 his sentence of imprisonment as served. The Chamber further imposes a fine on  
11 Mr Kilolo of €30,000.

12 For Mr Bemba, the Chamber sentences him to a total of 12 months of imprisonment.  
13 After deduction of the time he previously spent in detention, the Chamber considers  
14 his sentence of imprisonment as served. The Chamber further imposes a fine on  
15 Mr Bemba of €300,000.

16 In reaching these sentences, the Chamber has reassessed all sentencing factors again.  
17 When the Chamber considered that its prior considerations remained accurate, it  
18 incorporated the reasoning from the prior sentencing decision. As the Chamber has  
19 said in the past, resentencing is not an opportunity to relitigate matters which have  
20 been definitively resolved by the Appeals Chamber judgment.

21 The Appeals Chamber judgment found errors only on limited points, particularly in  
22 relation to, first, the assessment of the nature of the false testimony going to so called  
23 non-merits issues; second, the justification for distinguishing principal from  
24 accessorial liability in this case; third, the Chamber's power to suspend sentences and  
25 fourth, entering convictions under Article 70(1)(b) of the Statute.

1 I will address all these points soon.

2 Before summarising its new considerations in light of these points, the Chamber  
3 preliminarily addresses certain Prosecution arguments in relation to the Main Case  
4 acquittal of Mr Bemba of 8 June 2018. The Prosecution submits that the corrupted  
5 and tainted evidence introduced by the convicted persons affected the Main Case  
6 appeal proceedings. The Prosecution argues that the acquittal evidences the damage  
7 caused by the conduct of the convicted persons and constitutes an aggravating  
8 circumstance.

9 The Chamber does not follow this argumentation. The Chamber recalls that this  
10 case has been clearly understood as independent from the Main Case. This means  
11 that none of the Chamber's evidentiary findings in this case were affected by the Main  
12 Case appeal judgment in any way. This also means that in order to evaluate to what  
13 extent the corrupted witnesses affected the merits of the Main Case, the Chamber  
14 would inevitably need to assess the Main Case record. Doing so would be  
15 tantamount to disregarding the Chamber's consistent directions in this case.  
16 Further, there is absolutely no indication that the Appeals Chamber majority in the  
17 Main Case relied upon the corrupted witnesses.

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

22 The Chamber will now address the errors that the Appeals Chamber judgment found  
23 one by one. First, as to the assessment of the nature of false testimony going to  
24 non-merits issues, the Chamber now considers that the independence of the cases  
25 warrants not giving weight to the fact that the false testimony went only to so-called

1 non-merits issues. The reasons are explained in the written decision.  
2 However, despite specifying that the false testimony went only to non-merits issues,  
3 the prior sentencing decision did otherwise give appropriate weight to the  
4 importance of the issues on which false testimony was given. These issues were  
5 determined to be, and I quote, "of crucial importance when assessing ... in particular,  
6 the credibility of witnesses".  
7 The Chamber also emphasised that these issues, and I quote again, "provide  
8 indispensable information and are deliberately put to witnesses with a view to testing  
9 their credibility". So this error has only a relatively small effect on the new sentences  
10 to be imposed.  
11 Second, as to the justification for distinguishing principal from accessorial liability in  
12 this case, the Chamber appreciates that the differences in principal and accessorial  
13 liability in this particular case do not lead to much of a distinction in the appropriate  
14 sentences to be imposed on Mr Bemba and Mr Kilolo. Mr Bemba and Mr Kilolo are  
15 responsible for both the Article 70(1)(a) and (c) soliciting, inducing or assisting false  
16 testimony and corruptly influencing witnesses on the basis of essentially the same  
17 acts and conducts.  
18 Mr Mangenda's situation is different. The Prosecution did not appeal this point in  
19 reference to Mr Mangenda. Even if the Chamber did extend the same considerations  
20 above to Mr Mangenda, Mr Mangenda is the only one of the three convicted persons  
21 who was not convicted under Article 70(1)(a) in respect of all 14 corrupted witnesses.  
22 Mr Mangenda was convicted in respect of only nine of these 14 witnesses, and the  
23 Chamber considers that this, together with all the other factors, still needs to be duly  
24 reflected in a lower Article 70(1)(a) sentence relative to his Article 70(1)(c) sentence.  
25 Third, as to the loss of the Chamber's power to suspend sentences, although the

1 suspension conditions imposed by the Chamber no longer carry any legal force with  
2 regard to Mr Kilolo and Mr Mangenda, they abided by all of them for about half the  
3 time period set out by the Chamber in the sentencing decision, 1.5 years out of the  
4 imposed three years. The Chamber considers their conduct while released on  
5 suspended sentences must be taken into account for their new sentences, making a  
6 time-served penalty, meaning imprisonment of about 11 months, more appropriate.  
7 This is consistent with the non-custodial penalty originally imposed by the Chamber.  
8 Mr Kilolo was given a 30-month joint sentence and Mr Mangenda a 24-month joint  
9 sentence. But the remaining terms of imprisonment beyond what had already been  
10 spent in detention were suspended. This meant that the additional time given in the  
11 sentencing decision served only as an incentive to prompt compliance with the  
12 conditions of the suspended sentences. Mr Kilolo and Mr Mangenda have met all  
13 the conditions of their suspended sentences to date, and there is no indication that  
14 they would not have continued to meet them.

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

23 Four, as to the loss of the Article 70(1)(b) convictions, meaning the presenting false or  
24 forged testimony, it is self-evident to the Chamber that the loss of the Article 70(1)(b)  
25 convictions should have some effect on their joint sentences. This is a direct

1 consequence of the application of Article 78(3) of the Rome Statute, first sentence,  
2 which provides that the Chamber shall pronounce a sentence for each crime and then  
3 a joint sentence.

4 In view of the fact that the offences in the present case were characterising essentially  
5 the same acts and conduct of the three convicted persons in three different ways,  
6 different ways under Article 70(1)(a), (b), and (c) of the Statute, the loss of one of the  
7 three convicted offences should not lead to anything approaching a proportional  
8 reduction in the sentences to be imposed. But the Chamber does consider that this  
9 loss must be taken into account.

10 I come to the final conclusions.

11 The Chamber considers that the combined effect of these considerations is that, when  
12 resentencing: First, Mr Bemba and Mr Kilolo have been given the same term of  
13 imprisonment under Article 70(1)(a) and (c) of the Statute; second, Mr Mangenda's  
14 Article 70(1)(a) sentence remains proportionally lower than his Article 70(1)(c)  
15 sentence; third, Mr Kilolo and Mr Mangenda have been given noncustodial penalties;  
16 and fourth, the individual sentences under Article 70(1)(b) are discarded entirely.

17 More broadly speaking, the Chamber is not convinced that its original joint  
18 imprisonment sentences, properly understood, require substantial change following  
19 the Appeals Chamber judgment in this case. Many of the Chamber's new  
20 considerations cut in opposing directions and, to an extent, cancel each other out.  
21 This leads to a result akin to what was pronounced in the original sentencing  
22 decision.

23 As regards Mr Bemba's original 12-month joint sentence in particular, the Chamber  
24 notes that, following Mr Bemba's Main Case acquittal, the Bemba Defence requests  
25 that the Chamber only impose a reasonable fine with no imprisonment term. The



1 Chamber recalls its finding that the Main Case acquittal has no impact on the  
2 sentences to be imposed. It considers that it would not adequately reflect  
3 Mr Bemba's culpability for him to have no term of imprisonment declared against  
4 him.

5 Beyond the terms of imprisonment given to Mr Bemba and Mr Kilolo, the Chamber  
6 has concluded that the most appropriate way to reflect that they have been convicted  
7 for two distinct offences is through the use of fines. Given that Mr Bemba has  
8 considerably more means than Mr Kilolo, Mr Bemba's fine would need to be  
9 substantially higher in order to have an equivalent deterrent effect. For  
10 Mr Mangenda, the Chamber recalls the additional considerations unique to him  
11 which justify a lower sentence. Considering the combined effect of all these  
12 considerations warrants setting joint imprisonment only as high as his highest  
13 individual imprisonment term with no further penalty.

14 As a final consideration, the Chamber will address the Prosecution's submission that  
15 above and beyond the errors found by the Appeals Chamber, the sentences  
16 previously imposed, and now effectively re-imposed, are manifestly disproportionate.  
17 Determining sentences is not a natural science. For all the guidance provided by the  
18 statutory framework, it inevitably falls to the Judges to make a personal decision on  
19 what is a fair penalty by weighing all relevant factors. This explains why Trial  
20 Chambers have broad discretion in determining a sentence. In its newly determined  
21 sentences, the Chamber considers it immaterial that its conclusions result in certain  
22 terms of imprisonment being reduced following the Prosecution's successful appeal.  
23 What matters is setting appropriate and proportionate sentences under the  
24 circumstances and by this Chamber. The Appeals Chamber remanded the sentences  
25 for new determination and not to set a higher sentence per se.

1 One aspect should not be forgotten. The Chamber places special emphasis on the  
2 fact that the three convicted persons have been imprisoned for significant periods of  
3 time in the present case. The case has had significant effects on their professional  
4 reputations, financial circumstances, irrespective of any fines, and family  
5 circumstances. The Chamber sees a large deterrent effect in the very notion that  
6 persons working on an ICC Defence team could be arrested, put in detention for a  
7 significant period of time, and convicted for criminal conduct in the course of their  
8 work. Future accused persons can look at Mr Bemba's conviction as a cautionary  
9 example as to what consequences obstructing the course of justice can have.  
10 Mr Bemba's acquittal in the Main Case should have been the end to his exposure to  
11 the Court, yet he continues to have the specter of this institution hanging over him  
12 because of his obstruction of the administration of justice. Maximum prison  
13 sentences are not necessary for this case to matter.  
14 The Chamber considers that the penalties it imposes during resentencing are  
15 proportionate relative to the seriousness of the offences in this case and reflect all  
16 relevant factors set out previously, especially as regard mitigating factors. More  
17 broadly, the Chamber considers that the Prosecution fails to appreciate the full  
18 retributive and deterrent effect of what has already been done.  
19 This concludes the summary of the Chamber's decision. The Chamber wishes again  
20 to thank the parties for their contributions and quality of their work during this trial.  
21 The Chamber also wishes to thank all those in the Registry who made these  
22 proceedings possible. And the Chamber extends a particular thanks to those in the  
23 Language Services Section who have arranged for a simultaneous French translation  
24 of today's decision.  
25 The hearing is concluded.

- 1 THE COURT USHER: [15:22:47] All rise.
- 2 (The hearing ends in open session at 3.22 p.m.)