

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF *THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO,
AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE
BABALA WANDU and NARCISSE ARIDO***

Public

Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Others

TABLE OF CONTENTS

I.	PROCEDURAL HISTORY	4
II.	JURISDICTION AND PRELIMINARY ISSUES	6
III.	APPLICABLE LAW AND ITS INTERPRETATION	10
IV.	FINDINGS OF THE CHAMBER	15
	A. Offences related to the alleged 14 false or forged documents	15
	B. Offences related to the 14 witnesses	19
	1. Preliminary Remarks.....	19
	2. Factual findings with regard to Mr Kilolo	20
	3. Factual findings with regard to Mr Mangenda.....	30
	4. Factual findings with regard to Mr Babala	33
	5. Factual findings with regard to Mr Arido	38
	6. Factual findings with regard to Mr Bemba	43
V.	OPERATIVE PART	47

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”), having been assigned the situation in the Central African Republic, hereby renders this decision pursuant to article 61(7)(a) and (b) of the Rome Statute (the “Statute”) on the charges of the Prosecutor against Jean-Pierre Bemba Gombo (“Mr Bemba”), Aimé Kilolo Musamba (“Mr Kilolo”), Jean-Jacques Mangenda Kabongo (“Mr Mangenda”), Fidèle Babala Wandu (“Mr Babala”) and Narcisse Arido (“Mr Arido”), collectively the “Suspects”.

I. PROCEDURAL HISTORY

1. On 20 November 2013, Single Judge Cuno Tarfusser, acting on behalf of the Chamber, issued a warrant of arrest (the “Warrant”) against the Suspects.
2. The issuance of the Warrant followed the granting of three Prosecutor’s requests for judicial assistance alleging the commission of offences against the administration of justice by the Suspects within the context of the trial proceedings pending before Trial Chamber III (“TCIII”) of the Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08, “Main Case”). In particular, on 29 July 2013 the Chamber had *inter alia* (i) authorised the Prosecutor to seize the relevant authorities of Belgium and of the Netherlands, with a view to collecting logs and recordings of telephone calls placed or received by two of the Suspects (Mr Kilolo and Mr Mangenda) and, (ii) in light of the potentially privileged nature of those telephone calls, appointed Independent Counsel tasked with reviewing such logs and listening to the recordings of the calls as made available by the relevant authorities, with a view to only transmitting those portions which might be of relevance for the purposes of the Prosecutor’s investigation; all of these activities were carried out by Independent Counsel under the supervision of the Dutch judicial authorities and of the *Bâtonnier* of The Hague.

3. On 23 November 2013, Mr Bemba was served with the Warrant in the detention centre of the Court while Mr Kilolo, Mr Mangenda and Mr Arido were arrested by the authorities of Belgium, the Netherlands and France, respectively. Mr Babala was arrested on 24 November 2013 by the authorities of the Democratic Republic of the Congo.

4. The initial appearance of Mr Bemba, Mr Kilolo, and Mr Babala took place on 27 November 2013 (the "Initial Appearance"); that of Mr Mangenda on 5 December 2013; and that of Mr Arido on 20 March 2014. At the Initial Appearance, the Single Judge decided that the confirmation of charges in the present case would take place on the basis of written submissions without a public hearing, as allowed by rule 165(3) of the Rules of Procedure and Evidence (the "Rules").

5. The calendar for the confirmation process was first set during the Initial Appearance and has since been amended three times. In particular, a postponement of about four months became unavoidable due to the time required by the Dutch authorities to make their own and Independent Counsel's final reports on the intercepted communications available to the Court.

6. On 30 June 2014, the Prosecutor submitted the Document Containing the Charges (the "DCC") together with the list of evidence. Between 15 and 17 July 2014, the Defence for Mr Bemba, Mr Kilolo, Mr Babala and Mr Arido submitted their list of evidence. On 30 July 2014, the parties lodged their written submissions *in lieu* of hearing.

7. On 21 August 2014, the Prosecutor responded to the submissions of the Defence and, on 11 September 2014, the Defence for the Suspects replied to the Prosecutor's response.

II. JURISDICTION AND PRELIMINARY ISSUES

8. The Chamber is satisfied, pursuant to article 70(1) of the Statute in conjunction with rule 162 of the Rules, that the present case falls within the jurisdiction of the Court.

9. The Suspects have raised a series of procedural objections in relation to discrete aspects of the pre-trial proceedings, as follows: (i) the propriety of the Single Judge's request to the Presidency to lift immunities of counsel; (ii) the lifting of said immunities; (iii) the unlawful character of interception of privileged and non-privileged communications; (iv) the appointment and role of Independent Counsel; (v) the means and time available to the Defence, including legal aid; (vi) the legality of the Warrant; (vii) the organisation of the confirmation process; (viii) the rejection of the request to call *viva voce* witnesses; and (ix) the deficiency of the DCC insofar as it is unspecific or appears to contain charges additional to those in the Warrant. Some of these issues are also advanced with a view to achieving a stay of proceedings.

10. The Chamber notes that most of the above issues have already been raised in the course of these proceedings, some of them before different organs of the Court, and decided upon by the Single Judge, the Registrar and the Presidency, as the case may be. The Chamber is of the view that it cannot review previous decisions issued by the Single Judge or by other organs of the Court. Accordingly, the Chamber will only address those challenges which have not yet been decided and only to the extent that they are instrumental to the Chamber's decision under article 61(7) of the Statute.

11. The only issues satisfying this twofold requirement are the following: (i) the claim related to the insufficient time to prepare ("First Issue"); (ii) the inadmissibility of evidence ("Second Issue"); (iii) the challenge to the evidence

concerning witnesses D-2 and D-3 (“Third Issue”); (iv) the allegation that an additional charge, not included in the DCC, was introduced in the Prosecutor’s final submissions *in lieu* of hearing (“Fourth Issue”); (v) the admissibility of the item of evidence CAR-D21-0004-0709 (“Fifth Issue”); and (vi) the request that the Prosecutor be barred from relying on 13 documents, which were provided in French translation on 30 July 2014 (“Sixth Issue”).

12. As regards the First Issue, that no adequate time was given to the Defence for Mr Mangenda to prepare, the Chamber notes that no postponement request was submitted to that effect, and accordingly, it cannot be claimed that the Defence for Mr Mangenda had no adequate time to prepare for the confirmation proceedings.

13. As regards the Second Issue, the Defence for Mr Bemba, Mr Kilolo, Mr Mangenda and Mr Arido argue that the evidence consisting of intercepted phone communications involving either Mr Kilolo or Mr Mangenda, or both, collected prior to the lifting of their immunities by the Presidency of the Court was illegal and, therefore, inadmissible. They also argue that any evidence resulting from the activities carried out by Independent Counsel is illegal and, therefore, inadmissible, as the appointment was unlawful in the first place.

14. The Chamber recalls that it is not obliged, as a matter of principle, to undertake an assessment of the admissibility of each piece of evidence in accordance with article 69(4) of the Statute, save for the application of article 69(7) of the Statute.¹ Recalling the relevant previous decisions of the Single Judge and the Presidency, the Chamber finds that the interception of the telephone communications and the appointment of Independent Counsel were not

¹ Pre-Trial Chamber II, “[Decision on Admissibility of Evidence and Other Procedural Matters](#)”, 8 June 2014, ICC-01/04-02/06-308, para. 25.

unlawful. Consequently, it does not consider that the evidence obtained as a result of the interception has been “obtained by means of a violation of [the] Statute or internationally recognized human rights” within the meaning of article 69(7) of the Statute. Therefore, the Chamber will take this evidence into account if it considers it to be relevant and of sufficient probative value.²

15. As regards the Third Issue, the Defence for Mr Arido requests that the Chamber does not rely on the evidence pertaining to witnesses D-2 and D-3, due to “procedural irregularities surrounding their interviews” and the lack of probative value of their evidence.

16. The Chamber is mindful of its responsibility to determine, upon proper examination of the evidence, its relevance and probative value, including that pertaining to witnesses D-2 and D-3. In so doing, the Chamber is guided to take “great care in finding that a witness is or is not credible”.³ Having assessed Mr Arido’s submissions, the Chamber is not persuaded that it cannot rely on the statements of D-2 and D-3.

17. As regards the Fourth Issue, the Defence for Mr Kilolo and for Mr Arido argue that, in her submissions *in lieu* of hearing dated 30 July 2014, the Prosecutor, introduced, next to the charge of “corruptly influencing”, the charge of “interfering” within the meaning of article 70(1)(c) of the Statute. In so doing, the Defence submits that the Prosecutor impermissibly added a new charge, since this form of conduct is not contained in the DCC.

² Pre-Trial Chamber II, “[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)”, 15 June 2009, ICC-01/05-01/08-424, paras 41 and 42; Pre-Trial Chamber II, “[Decision on Admissibility of Evidence and Other Procedural Matters](#)”, 8 June 2014, ICC-01/04-02/06-308, para. 25.

³ Appeals Chamber, “[Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’](#)”, 30 May 2012, ICC-01/04-01/10-514, para. 48.

18. The Chamber will only decide on the charges as they have been presented in the DCC and, therefore, the Chamber will confine its analysis to the charge of “corruptly influencing” a witness.

19. The Fifth Issue pertains to the fact that, on 22 August 2014, the Defence for Mr Kilolo requested to be allowed to rely (as it does, in its final submissions) on the item of evidence CAR-D21-0004-0709, in spite of it not having been included in its list of evidence. The Defence for Mr Kilolo does not provide any reasons for its failure to include the document in its list of evidence.

20. The Chamber notes rules 121(6) and 165 of the Rules stipulating that, if the suspect intends to present evidence under article 61(6) of the Statute, he shall do so by providing a list of evidence no later than 15 days before the date of the written submissions. Accordingly, the Chamber shall not rely on any document disclosed after this deadline for the purposes of the present decision.

21. As regards the Sixth Issue, submitted by the Defence for Mr Babala and for Mr Arido, the Chamber notes that all of the 13 documents had been duly included in the Prosecutor’s list of evidence. Furthermore, as many as ten of these documents consist of call logs (consisting to a large extent of digits) and chain-of-custody documents. As such, “translation” of these documents cannot be said to be critical to the Defence’s ability to challenge or otherwise rely on them. The three remaining documents are in English. Accordingly, the Chamber finds that no violation of rule 121(3) of the Rules in respect of the 13 documents has occurred and does not consider that the translation of the items concerned was necessary to meet the requirements of fairness.⁴

⁴ Article 67(1)(f) of the Statute.

22. Finally, the Defence for Mr Arido contends that the Prosecutor has not justified the selection of this suspect over others, considering that his conduct is less serious in comparison. It is argued that 'gravity' and 'interests of justice' considerations should also guide the Prosecutor in article 70 proceedings and that those two elements are not met in the present case. As a result, the Defence for Mr Arido requests the Chamber to decline confirming the charges and terminate the proceedings.

23. The Chamber considers that the Defence argument is unfounded as rules 163(2) and 165(2) of the Rules make clear that 'gravity' and 'interests of justice' cannot be invoked in the context of article 70 proceedings. In the view of the Chamber, the Defence actually seeks a determination under article 61(7)(b) of the Statute. Such a determination can only be the result of the Chamber's analysis of the evidence. In this respect, it is worth recalling that the powers of the Chamber are confined to analysing the strength of the Prosecutor's evidence, while the selection of cases lies first within the powers of the Prosecutor. In light of the above, the Defence request is without merit, and therefore, it should be rejected.

III. APPLICABLE LAW AND ITS INTERPRETATION

24. The Chamber has been guided by articles 21, 25(3), 30, 61(7), 64, 67, 69 and 70(1)(a) to (c) of the Statute and rules 63, 64, 76, 121, and 162 to 165 of the Rules, as well as the evidentiary principles as interpreted in previous decisions of the Court.⁵

⁵ See, for example, Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, paras 45-62; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-02/11-382-Red, paras 66-92; Appeals Chamber, "[Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'](#)", 30 May 2012, ICC-01/04-01/10-514, paras 39-48.

25. The Chamber renders its determination under the applicable standard at this stage of the proceedings, as set out in article 61(7) of the Statute, on whether there is sufficient evidence to establish substantial grounds to believe that the Suspects committed each of the offences as charged, consistent with the jurisprudence of the Court. To meet this evidentiary threshold,⁶ the Chamber must be “thoroughly satisfied that the [Prosecutor’s] allegations are sufficiently strong to commit [the person] for trial”.⁷ Pre-Trial Chambers have consistently held that to meet the evidentiary burden of “substantial grounds to believe” the Prosecutor must “offer concrete and tangible proof demonstrating a clear line of reasoning underpinning [the] specific allegations”.⁸ All findings of the Chamber in the present decision are made on the basis of the statutory standard applicable at this stage of the proceedings and are based on an assessment of the evidence relied upon by the Prosecutor and the Defence, as included in their respective lists of evidence pursuant to rule 121(3) and (6) of the Rules, taking into account the written submissions filed *in lieu* of hearing and the responses thereto.

26. This decision represents the result of the Chamber’s own assessment of the Prosecutor’s allegations in light of the entirety of the evidence presented by the parties, as referred to in the footnotes to the decision. The Defence arguments and challenges to the Prosecutor’s evidence have been considered throughout

⁶ For the threshold of “substantial grounds to believe”, see, for example, Appeals Chamber, “[Judgment on the appeal of the Prosecutor against the ‘Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir’](#)”, 3 February 2010, ICC-02/05-01/09-73, para. 30; Pre-Trial Chamber II, “[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)”, 23 January 2012, ICC-01/09-02/11-382-Red, para. 52.

⁷ Pre-Trial Chamber I, “[Decision on the confirmation of charges](#)”, 29 January 2007, ICC-01/04-01/06-803-tENG, para. 39.

⁸ See, for example, Pre-Trial Chamber II, “[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda](#)”, 9 June 2014, ICC-01/04-02/06-309, para. 9; Pre-Trial Chamber I, “[Decision on the confirmation of charges against Laurent Gbagbo](#)”, 12 June 2014, ICC-02/11-01/11-656-Red, para. 19.

this assessment. Where necessary, the Chamber provides a separate response to the arguments and challenges raised.

A. Article 70(1)(a)-(c) of the Statute

27. The Suspects are charged, as the case may be, with offences against the administration of justice as provided under articles 70(1)(a)-(c) of the Statute. The Chamber will proceed to succinctly outline its reading of those provisions, to the extent necessary.

28. With regard to the offence under article 70(1)(a) of the Statute, “giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth”, the Chamber considers that this offence is committed when a witness intentionally provides a Chamber with information that is false, or otherwise withholds information that is true. The obligation to tell the truth relates to any type of information that the witness provides or withholds while testifying under oath. Moreover, any third person may be prosecuted as an accessory under article 25(3)(b)-(d) of the Statute, provided that the witness’s testimony was objectively false. This applies irrespective of whether the Prosecutor has presented charges against the witness as a direct perpetrator of the offence pursuant to article 25(3)(a) of the Statute.

29. As for the offence of “presenting evidence that the party knows is false or forged”, under article 70(1)(b) of the Statute, the Chamber considers that the reference to “evidence” in this provision has to be construed so as to include all types of evidence, namely documents, material and tangible objects, as well as oral evidence. Such evidence is deemed to be “presented” when it is introduced in the proceedings, thereby being made available to the parties, the participants and the Chamber. As to the reference to a “party”, the Chamber considers that the expression only refers to those who have the right to present evidence to a

chamber in the course of proceedings before the Court. This obviously covers members of the Defence team and the accused. In addition, accessorial liability under article 25(3)(b)-(d) of the Statute may be incurred by any third person who does not have such capacity.

30. As regards article 70(1)(c) of the Statute, the provision proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the testimony to be given by a witness, inducing the witness to falsely testify or withhold information before the Court. As the use of the word “corruptly” suggests, the relevant conduct is aimed at contaminating the witness’s testimony. The Chamber takes the view that the offence of corruptly influencing a witness is constituted independently from whether the pursued impact or influence is actually achieved and must therefore be understood as a conduct crime, not a result crime.

B. Article 25(3) of the Statute

31. In paragraphs 110 *et seq.* of the DCC, read together with the annexed table, the Prosecutor charges the Suspects for their criminal liability as direct and/or indirect co-perpetrators under article 25(3)(a) of the Statute together with article 70(1)(b) and (c) of the Statute. Further the Prosecutor charges the Suspects in the alternative as accomplices under different modes of accessorial liability in accordance with article 25(3)(b)-(d) together with article 70(1)(b) and (c) of the Statute. The Prosecutor also charges the Suspects individually as accomplices under different modes of accessorial liability in accordance with article 25(3)(b)-(d) together with article 70(1)(a) of the Statute.

32. The Chamber recalls rule 163(1) of the Rules, according to which “the Statute and the Rules shall apply *mutatis mutandis* to the Court’s investigation, prosecution and punishment of offences defined in article 70”. This means that

article 25(3) of the Statute is equally applicable to the present case and, accordingly, the Chamber's assessment of the role of each suspect shall be governed by the interpretation of this provision. For the purposes of the present decision, the Chamber succinctly sets out its reading of the relevant law, to the extent necessary.

33. Co-perpetration within the meaning of article 25(3)(a) of the Statute requires two or more persons to agree to contribute to the commission of the offence and to act accordingly. Perpetration is subsumed under the mode of liability of co-perpetration.

34. With regard to the terms 'soliciting' and 'inducing' within the meaning of article 25(3)(b) of the Statute, the Chamber is of the view that they both characterize the situation whereby the perpetrator is prompted by another to commit the offence. In this respect, the Chamber finds it sufficient to recall its previous jurisprudence on 'inducing' and clarifies that the legal requirements are the same.⁹

35. In relation to the different forms of responsibility employed in article 25(3)(c) of the Statute, the Chamber considers that the elements of this mode of liability are met insofar as the accessory's contribution has an effect on the commission of the offence and is made with the purpose of facilitating such commission.

36. As will be explained below, the Chamber does not accept the Prosecutor's legal characterization of the facts concerning the role of the Suspects under article 25(3)(a) (indirect co-perpetration) and article 25(3)(d) of the Statute. As such the Chamber does not consider the modes of liability of "indirect co-

⁹ Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda](#)", 9 June 2014, ICC-01/04-02/06-309, para. 153.

perpetration” and the “contribution in any other way” as set out in article 25(3)(a) and (d) of the Statute respectively applicable to the present case. Accordingly, the Chamber refrains from setting out its understanding of the law regarding these modes of liability.

IV. FINDINGS OF THE CHAMBER

37. With regard to the Suspects in the present case, the Chamber recalls that Mr Bemba is accused of crimes against humanity and war crimes in the Main Case; Mr Kilolo was lead counsel for Mr Bemba in the Main Case; Mr Mangenda was the case manager of the Bemba Defence in the Main Case; Mr Babala is a politician and close associate of Mr Bemba; Mr Arido was listed as a witness in the Main Case and also acted as an intermediary for the Bemba Defence in the Main Case.

A. Offences related to the alleged 14 false or forged documents

38. The Prosecutor charges Mr Bemba, Mr Kilolo, Mr Mangenda and Mr Arido with having presented 14 false or forged documents during the trial proceedings in the Main Case. It is purported that Mr Kilolo included them in the list of evidence in the Main Case on 13 July 2012 and that the Defence for Mr Bemba in the Main Case has relied on them ever since, at least until 23 November 2013.

39. As submitted by the Defence for Mr Arido, two of the items listed by the Prosecutor as part of the 14 allegedly false or forged documents¹⁰ tendered by the Defence for Mr Bemba in the Main Case (the “Documents”) appear to be one and

¹⁰ CAR-D04-0003-0128; CAR-D04-0003-0129; CAR-D04-0003-0130; CAR-D04-0003-0131; CAR-D04-0003-0132; CAR-D04-0003-0133; CAR-D04-0003-0134; CAR-D04-0003-0135; CAR-D04-0003-0136; CAR-D04-0003-0137; CAR-D04-0003-0138; CAR-D04-0003-0139; CAR-D04-0003-0140; and CAR-D04-0003-0141.

the same document,¹¹ of which one copy is of a better quality. The Chamber notes that the documents concerned carry separate ID numbers and are admitted into evidence under a single EVD-T number in the Main Case.¹² Therefore, it will take all of the 14 documents into account for the purposes of this decision.

40. In his final submissions, Mr Kilolo stated that he had received the Documents from Mr Arido in Douala, Cameroon, on 21 February 2012.

41. The evidence before the Chamber shows that, on 1 May 2012, Mr Arido forwarded to Mr Kilolo an email to which seven of the Documents were attached as annexes; the same email, together with the annexes, had originally been sent to both Mr Arido and Mr Kilolo on 30 April 2012 by a third person.¹³ Mr Arido is also listed as the source of the documents in the metadata relating to the Documents' chain of custody in the Main Case. He is also referred to as the provider of documents in the course of an intercepted conversation held on 6 November 2013 between Mr Kilolo and Mr Mangenda (the "6 November 2013 Conversation").¹⁴

42. Doubts as to the authenticity of the Documents and of the signature appearing in them were raised by one of the apparent authors of some of the Documents while giving testimony in the Main Case¹⁵ and in a statement to the Prosecutor by another apparent author.¹⁶

¹¹ These items are CAR-D04-0003-0128 and CAR-D04-0003-0135.

¹² Trial Chamber III, "[Public Redacted Version of 'Decision on the admission into evidence of items deferred in the Chamber's previous decisions, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber' of 17 March 2014 \(ICC-01/05-01/08-3019-Conf\)](#)", 26 August 2014, ICC-01/05-01/08-3019-Red, paras 50 and 90(c).

¹³ CAR-OTP-0075-0259-R01.

¹⁴ CAR-OTP-0082-0924, at 0935, line 361.

¹⁵ Trial Chamber III, Transcript of Hearing, 18 November 2013, ICC-01/05-01/08-T-353-CONF-ENG. See also CAR-OTP-0069-0010, at 0027.

¹⁶ CAR-OTP-0069-0083.

43. The Chamber notes that the evidence also includes pieces that support the claim that the suspects concerned did not know of the falsity of the Documents and did not use them in bad faith within the context and for the purposes of the Main Case. The Chamber considers the following three pieces of evidence as particularly significant.

44. First, on 18 September 2012, Mr Kilolo sent Mr Arido an email message (the "18 September 2012 Email" or "Email"), transferring the Documents and requesting him to analyse them, with particular regard to the accuracy of some information contained in some of them.¹⁷

45. Second, during an intercepted telephone conversation held on 14 September 2013 (the "14 September 2013 Conversation"), Mr Kilolo shares with Mr Mangenda his intent to obtain access to the 2002-2003 archives of the armed forces of the Central African Republic (the "CAR"), with a view to determining "*comment les choses s'étaient passées*"; he also states that he started to think that "*les messages portés qu'on nous a donnés... c'était effectivement des faux*".¹⁸

46. Third, during the 6 November 2013 Conversation, Mr Kilolo tells Mr Mangenda, *inter alia*, that Mr Bemba intended to verify the Documents and, to this effect, had requested Mr Kilolo to work "*avec un graphologue*", with a view to assessing the differences, if any, with respect to similar documents referred to by the legal representative of victims in the Main Case.¹⁹ Furthermore, he states that he has requested an official response from the "*Etat-major de Centrafrique*" as to the authenticity of the Documents.²⁰ When Mr Mangenda voices the concern that the Trial Chamber might suspect them of misdealings aimed at creating the Documents, Mr Kilolo vehemently replies that "*non, c'est trop bas... on ne peut*

¹⁷ CAR-OTP-0075-0538 and CAR-OTP-0075-0539.

¹⁸ CAR-OTP-0080-1402, at 1403.

¹⁹ CAR-OTP-0082-0924 at 0926 -0927.

²⁰ CAR-OTP-0082-0924 at 0927.

même pas soupçonner des choses comme ça... on ne peut pas te soupçonner d'avoir fait faire un faux document officiel d'un Etat quand même... ce n'est même pas faisable. Il faut être fou pour aller faire faire un faux document d'un Etat, parce qu'on va t'attraper que c'est un faux".²¹

47. The Chamber is satisfied that the 6 November 2013 Conversation, read in light of the Email and of the 14 September 2013 Conversation, mirrors the fact that concerns had arisen among members of the Bemba Defence team about the risk that the authenticity of the Documents might be challenged in the Main Case by the Prosecutor (as indeed it was). The entire discussion between Mr Kilolo and Mr Mangenda appears to be aimed at identifying suitable alternative defence strategies which might be put in place, should this scenario materialise. At the same time, this discussion is also indicative of a concern on the part of the two suspects over the fact that the Documents might be forged or false.

48. In these circumstances, the Chamber finds that the evidence fails to show the requisite *mens rea* of Mr Bemba, Mr Kilolo and Mr Mangenda for the purposes of the offence of presenting forged documents within the meaning of article 70(1)(b) of the Statute, whether as principal perpetrators or accessories. For this reason, the Chamber does not deem it necessary to entertain the issue pertaining to the alleged falsity or veracity of the Documents.

49. As regards Mr Arido, the Chamber notes that the Prosecutor has not submitted any piece of evidence that shows that he either provided the Documents, or was aware of there being doubts as to their authenticity. When interviewed by the French authorities upon his arrest, Mr Arido stated that he had not been in a position to reply to or otherwise satisfy Mr Kilolo's request to ascertain the authenticity of the Documents (as contained in the 18 September

²¹ CAR-OTP-0082-0924, at 0930.

2012 Email); he said he had received the Documents from the Defence for Mr Bemba.²²

50. In light of the above, the Chamber is not satisfied that with regard to the Documents the constitutive elements of the offence of presentation of evidence that the party knows to be false or forged under article 70(1)(b) of the Statute have been proven to the required evidentiary standard for Mr Bemba, Mr Kilolo, Mr Mangenda or Mr Arido. Accordingly, it declines to confirm the charges brought by the Prosecutor in connection with the Documents, as contained in count 43 relating to Mr Bemba, Mr Kilolo, Mr Mangenda and Mr Arido.

B. Offences related to the 14 witnesses

1. Preliminary Remarks

51. The Chamber does not accept the Prosecutor's view that the Suspects participated in a Common Plan as indirect co-perpetrators to defend Mr Bemba in the Main Case. Due to the specific nature of the offences in the present case, where some of the Suspects are directly involved in the commission of such offences, the Chamber is of the view that the mode of liability of co-perpetration, rather than *indirect* co-perpetration, captures their conduct more appropriately. Also, the Chamber does not find it necessary to consider the residual form of criminal liability under article 25(3)(d) of the Statute for the Suspects as their conduct is more appropriately captured under the modes of liability foreseen in article 25(3)(b)-(c) of the Statute.

52. Based on the evidence, the Chamber is of the view that the role of the Suspects in the purported overall strategy of defending Mr Bemba against the charges in the Main Case by means which included the commission of offences

²² CAR-OTP-0074-1065-R01, at 1068-1069.

against the administration of justice differs for each suspect. More specifically, while Mr Bemba, Mr Kilolo and Mr Mangenda played an essential role in the design and implementation of the overall strategy as referred to above, the involvement of Mr Babala and Mr Arido is more limited. In the Chamber's assessment, Mr Bemba, as the ultimate beneficiary, was the coordinator of the offences; Mr Kilolo, as lead counsel in the Main Case, was mainly in charge of the implementation of the overall strategy, while Mr Mangenda, as case manager, was liaising between Mr Kilolo and Mr Bemba. The individual contribution and involvement of the Suspects is set out in greater detail below for each suspect.

2. Factual findings with regard to Mr Kilolo

53. The evidence indicates that, between around the end of 2011 and 14 November 2013, the latter being the date of the last testimony rendered by one of the relevant witnesses (D-13),²³ Mr Kilolo regularly engaged in contacts with as many as 14 Defence witnesses in the Main Case, namely D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 (collectively, the "Witnesses"), in advance of and/or during their testimony. As specifically detailed in the following paragraphs, during these contacts, which took place either in person or by telephone, Mr Kilolo instructed some of the Witnesses as to the content of the answers which they should provide, as well as to the information which they should withhold in the course of their forthcoming testimonies before TCIII at the time. In the same period, Mr Kilolo made a series of money transfers of varying amounts to some of the Witnesses.

54. According to the evidence, Mr Kilolo met some of the Witnesses in the period between around February 2012 and around May 2013 in Douala and

²³ Trial Chamber III, Transcript of Hearing, 14 November 2013, ICC-01/05-01/08-T-352-CONF-ENG ET.

Yaoundé, Cameroon. More specifically, around February-March 2012, Mr Kilolo met D-2, D-3, D-4 and D-6, in Douala (the “Douala Meeting”).²⁴ On this occasion, each of them received separately EUR 50 from Mr Kilolo, as “*argent de poche*”.²⁵

55. In or around May 2013, Mr Kilolo met D-2, D-3, D-4 and D-6 in Yaoundé (the “Yaoundé Meeting”).²⁶ According to D-3, during this meeting Mr Kilolo read the statement that the witness had given to the Defence during the interview of February 2012 and translated it in his mother tongue (Lingala).²⁷ Furthermore, Mr Kilolo “*a commencé à ... dire ce qu’il faudrait répondre quand on va ... poser des questions*”.²⁸ He also instructed D-2 and D-3 about the topics to be addressed during their forthcoming testimonies before TCIII. More specifically, D-3 received instructions from Mr Kilolo as to the date when troops of the *Mouvement de Libération du Congo* (the “MLC”) entered Bangui, in CAR; the witness’s degree of involvement in the pillages and other criminal episodes that took place in Bangui; and the name of relevant officials associated with the *Forces Armées Centrafricaines* (the “FACA”).²⁹ According to D-2, on this occasion, Mr Kilolo gave “*des instructions qui ont canalisé [la] déposition*”³⁰ of the witness, including information about the logistics and the movements on the ground of the MLC.³¹ D-6 was briefed with regard to “*le nom de certaines personnalités importantes lors des événements*” that took place in CAR.³² Mr Kilolo also supplied D-2 and D-3 with

²⁴ CAR-OTP-0078-0184-R01, at 0190; CAR-OTP-0080-0494-R01 at 0500. See also CAR-OTP-0078-0198-R01 at 0201; CAR-OTP-0078-0218-R01 at 0223; CAR-OTP-0078-0248-R01 at 0255; CAR-OTP-0078-0264-R01 at 0274.

²⁵ CAR-OTP-0078-0236-R01, at 0245; CAR-OTP-0078-0184-R01, at 0192. See also CAR-OTP-0080-0069 at 0076.

²⁶ CAR-OTP-0080-0100-R01, at 0102; CAR-OTP-0078-0248-R01 at 0255.

²⁷ CAR-OTP-0078-0248, at 0255.

²⁸ CAR-OTP-0078-0198-R01, at 0202.

²⁹ CAR-OTP-0078-0248-R01 at 0261 and 0262.

³⁰ CAR-OTP-0080-0494-R01 at 0517 and 0518.

³¹ CAR-OTP-0080-0494-R01 at 0518.

³² CAR-OTP-0078-0248 at 0262.

EUR 250 each, allegedly in order to pay for their transportation expenses to and from the location of the meeting.³³ Further, D-2, D-3, D-4 and D-6 were provided with a new mobile phone and were advised by Mr Kilolo to buy a new SIM card to stay in contact with him after the Victims and Witnesses Unit (the “VWU”) would remove their personal phone during the time they testified before TCIII.³⁴

56. Other transfers to D-2 and D-3 were made by Mr Kilolo during the Yaoundé Meeting and in the period subsequent to it. More specifically, during the Yaoundé Meeting, Mr Kilolo gave D-2 CFA 500,000,³⁵ stating that *“ce n’est pas ... une corruption, mais c’est un cadeau de la part de Jean-Pierre Bemba ... parce que vous avez accepté de témoigner en sa faveur”*.³⁶ On 23 May 2013, Mr Kilolo also transferred USD 128.17 to D-2 via Western Union³⁷. D-3 received *“[quelque temps plus tard]”* around CFA 540,000 *“comme un encouragement pour ... aller témoigner”*.³⁸

57. Other transfers to the Witnesses were made by Mr Kilolo at different times before and/or after their testimonies. For example, according to D-3’s statement, at the Yaoundé meeting Mr Kilolo had promised to give CFA 600,000 to him as well as to the other witnesses present at that meeting.³⁹ On 21 October 2013, D-6 called Mr Kilolo to discuss about the transfer of CFA 500,000 which Mr Kilolo had promised him. Mr Kilolo told D-6 that *“[il] n’a[vait] pas les 500.000 disponibles”*;⁴⁰ however, since he was going to Brazzaville, he could try to go to Douala or Yaoundé to meet D-6 and *“tout le monde”* in order to hand CFA 100,000

³³ CAR-OTP-0078-0198-R01, at 0201; CAR-OTP-0078-0248-R01, at 0253. See also CAR-OTP-0080-0021, at 0039.

³⁴ CAR-OTP-0080-0100-R01, at 119-120; CAR-OTP-0080-0135, at 0146.

³⁵ CAR-OTP-0080-0135, at 0143.

³⁶ CAR-OTP-0080-0135, at 0142 and 0149.

³⁷ CAR-OTP-0074-0854, tab 18, row 7.

³⁸ CAR-OTP-0078-0248-R01, at 0257.

³⁹ CAR-OTP-0078-0248, at 0256.

⁴⁰ CAR-OTP-0082-0562, at 0563.

to each of these witnesses. Mr Kilolo suggested that D-6 inform D-4 of this plan, with a view to meeting them together on the same occasion.⁴¹ In response to D-6's query about how "*le Sénateur*" was going, Mr Kilolo stated that "*il est vraiment ... content de ... de tout ce qui a été fait parce qu'il sait que... quand il sortira, il doit vraiment compter sur vous et il doit aussi vous rencontrer chacun personnellement*".⁴²

58. As part of the repeated attempts of Mr Kilolo, between the end of 2011 and mid-2012,⁴³ to convince D-55 to testify falsely in favour of Mr Bemba, the witness travelled to Amsterdam on 5 June 2012⁴⁴ and was later reimbursed by Mr Kilolo.⁴⁵ On 14 June 2012, Kilolo transferred D-57 and D-64 the amount of USD 106.14 each.⁴⁶

59. The Chamber notes that the Defence for the five suspects all contend that the transfers made by Mr Kilolo in favour of the Witnesses constitute mere reimbursements of expenses incurred by them, with particular reference to travel expenses sustained in connection with their testimony. As such, it is argued, the payments fall within the domain of administrative reimbursement of expenses related to the conduct of the Defence investigation. The Chamber, however, notes that specific and detailed explanation is only provided for some of the transfers alleged by the Prosecutor and that these transfers⁴⁷ are a minority when

⁴¹ CAR-OTP-0082-0562, at 0568 and 0569.

⁴² CAR-OTP-0082-0562, at 0568.

⁴³ CAR-OTP-0074-0872-R01, at 0878.

⁴⁴ CAR-D21-0003-0036, at 0036-0038.

⁴⁵ CAR-OTP-0074-0872-R01, at 0878-0879. In Amsterdam, Mr Kilolo assured the witness that Mr Bemba "*le traiterait bien*" and asked D-55 to declare that a document of which he was co-author – in which crimes committed by the MLC in CAR were reported – was false and that the witness had prepared it with the sole purpose of substantiating his refugee status claim.

⁴⁶ CAR-OTP-0070-0007, tab 32 Mr Kilolo, row 23. CAR-OTP-0073-0273, tab 8, row 4; CAR-OTP-0074-1169, at 1174-1175. CAR-OTP-0070-0007, tab 08, row 22.

⁴⁷ For example, in respect of D-3 compare CAR-OTP-0078-0198, at 0201 and CAR-OTP-0078-0248 at 0253 to ICC-01/05-01/13-207-Conf-Anx, at 5; in respect of D-2, compare CAR-OTP-0080-0021 at 0039 to ICC-01/05-01/13-207-Conf-Anx, at 5.

compared to the amount of transfers for which no explanation is given. The Chamber also clarifies that it has taken into account the payments provided by the Court to the Bemba Defence in the Main Case in relation to the facilitation of the witnesses' testimonies.

60. The Witnesses testified before TCIII at different times between 17 October 2012 and 14 November 2013. The evidence shows that Mr Kilolo contacted by telephone a number of the Witnesses prior to their testimony and, in some cases, in violation of the cut-off date for contact between the calling party and the witnesses (usually set from a few days to several weeks before the scheduled testimony⁴⁸), contacting some of the Witnesses shortly in advance of their testimony, or even during the breaks between courtroom sessions, in order to instruct them on the answers to be provided in courtroom and/or to withhold certain information. Intercepted telephone conversations also show that Mr Kilolo was aware of, and explicitly stressed, the importance of talking to the witnesses one or two days before the scheduled testimony, in order to avoid them "forgetting" the information to state in the courtroom.⁴⁹

⁴⁸ The telephone logs show a 70-minute conversation between D-57 and Mr Kilolo on 15 October 2012 and phone contact for approximately 7 minutes on 16 October 2012 (CAR-OTP-0072-0082, rows 193, 220, 221); the VWU cut-off date was on 16 October 2012 (CAR-OTP-0078-0290, at 0292). They also show that Mr Kilolo, between May and September 2013, called D-15 several times (CAR-OTP-0072-0391, rows 43660, 43663, 45999, 46001, 46002, 46004, 46005; CAR-OTP-0072-0427, rows 56, 459, 643, 708, 709, 717); the VWU cut-off date was on 11 July 2013 (CAR-OTP-0078-0290, at 0297). Mr Kilolo contacted D-54 a number of times on 30 and 31 October 2013, the days of his testimony (CAR-OTP-0082-0866; CAR-OTP-0082-0877; CAR-OTP-0082-0655; CAR-OTP-0082-1087; CAR-OTP-0082-1109; CAR-OTP-0082-0659; CAR-OTP-0082-0866; CAR-OTP-0082-0903). Mr Kilolo spoke to D-64 on the phone for approximately 57 minutes on 16 October 2012 (CAR-OTP-0072-0082, rows 252, 259, 272); and approximately 4 minutes on 17 October 2012 (CAR-OTP-0072-0082, rows 280, 284); the VWU cut-off date was on 17 October 2012 (CAR-OTP-0078-0290, at 0292). Between May 2013 and the 29 August 2013, Mr Kilolo called D-29 at least seven times (CAR-OTP-0072-0082, rows 3821, 3822, 3881, 3882; CAR-OTP-0072-0391, rows 32087, 46999, 47005).

⁴⁹ CAR-OTP-0080-0245, at 0248, where Mr Kilolo tells Mr Mangenda "*Tu vois vraiment, le problème que ... que j'ai toujours dit au Client, de faire encore LA COULEUR. Un ou deux jours avant que la personne passe, pourquoi? Parce que les gens oublient ... tu vois?*".

61. In one instance, Mr Kilolo also instructed D-3 to refuse to meet representatives of the Office of the Prosecutor, should he be requested to do so.⁵⁰

62. Mr Kilolo instructed some of the Witnesses about the answers to be given on a number of substantive topics which might be related to the merits of the charges against Mr Bemba in the Main Case. These included: (i) the witnesses' understanding of the chain of command within the MLC;⁵¹ (ii) the role of Mr Bemba as a military commander with effective military authority, as opposed to a mere political leader;⁵² (iii) the date of arrival of the MLC and of Mr Bemba himself to the territory of the CAR;⁵³ (iv) Mr Bemba's knowledge of crimes committed by the MLC; (v) the language spoken by the MLC troops on the ground;⁵⁴ and (vi) the witnesses' views on who was bearing responsibility for

⁵⁰ CAR-OTP-0078-0198-R01, at 0203.

⁵¹ In respect of D-15 see for example CAR-OTP-0079-0030, at 0032-0034, where Mr Kilolo provides D-15 with the name and respective functions of some senior officials of the MLC.

⁵² Mr Kilolo addressed D-54 as follows: *"Alors, ils vont revenir à toi demain, ils vont te demander, mais, toi tu dis que BEMBA était civil, mais toi tu ne sais pas qu'il y a eu une cérémonie au cours de laquelle on lui avait donné le grade de général de division, tu veux le nier, c'est comme ça qu'ils reviendront à toi demain"* (CAR-OTP-0082-0866, at 0871). Mr Kilolo further tells D-54 that he should state that the grade of *"général de division"* given to Mr Bemba was *"symbolique"*, *"Honoris Causa"* and *"pas effectif"* (CAR-OTP-0082-0866, at 0871). See elsewhere CAR-OTP-0082-1109, at 1127-1128.

⁵³ In respect of Mr Bemba's alleged date of arrival in Bangui, D-54 specifies that *"il n'y a pas une date fixe, mais c'était juste vers ... fin novembre et début décembre. Je pense c'est ça"* (CAR-OTP-0082-0877, at 0886). Mr Kilolo intercedes and states: *"Non, non, non, BEMBA est venu le ... début novembre, parce que quand BEMBA est venu vous n'aviez pas encore soumis votre rapport, il est venu vers le 7, le 8 novembre ... nous mettrons que BEMBA est arrivé le 7"* (CAR-OTP-0082-0877, at 0886). See also CAR-OTP-0082-1087, at 1094).

⁵⁴ In respect of D-15 see CAR-OTP-0079-0030, at 0043-0044, where Mr Kilolo suggests that D-15 answer any such questions after showing some hesitation about his knowledge of the language spoken by the MLC. In a conversation with D-54, Mr Kilolo states that *"[...] si tu dis lingala, ils établiront le lien"* and that *"[l']essentiel comme tu dis [...] le swahili est la langue principale qu'ils parlaient. C'est la chose la plus importante que nous retiendrons"* (CAR-OTP-0082-1109, at 1134). While D-54 is listening, Mr Kilolo continues: *"Bon. Je ne sais pas ce que nous pouvons faire à ce niveau. Pour moi, tu feras apparaître les autres ... comme étant les gens de MUSTAPHA, tu diras ceci « Non, la plupart parlait le swahili, parmi ceux qui ont traversé; parce que le plus grand nombre était de la Brigade de MUSTAPHA, il venait de l'est. Ils parlaient souvent le swahili. Un petit groupe parlait lingala"* (CAR-OTP-0082-1109, at 1133). Similar coaching was experienced by witness D-26, see CAR-OTP-0077-1356; CAR-OTP-0077-1359.

the crimes committed in relevant locations and their knowledge of crimes perpetrated by the MLC.⁵⁵ The evidence also shows that, in two instances, he informed D-15 and D-54 about the questions which would be asked by the Prosecutor and the legal representative of victims.⁵⁶

63. Furthermore, Mr Kilolo instructed D-15, D-26, D-54 and D-55 to deny any recent contact or interaction with the Defence, as well as any transfer or reimbursement received by Mr Bemba or anyone on his behalf in connection with their status as Defence witnesses.⁵⁷

64. This Chamber is obviously not in a position to assess the reliability and truthfulness of the Witnesses' testimony on issues pertaining to the merits of the Main Case. Nevertheless, there is evidence that the Witnesses falsely testified before TCIII in respect of the following issues: (i) their previous contacts with the Defence;⁵⁸ (ii) their meetings with other prospective witnesses;⁵⁹ (iii) their acquaintance with some of the Suspects, or other persons associated with them;⁶⁰ (iv) the fact that promises had been made to them in exchange for their

⁵⁵ Mr Kilolo instructed D-54 to deny his knowledge of crimes committed by the MLC (CAR-OTP-0082-0877, at 0899) and to attribute the commission of crimes in CAR to "*les éléments de BOZIZE, surtout les Tchadiens*" (CAR-OTP-0082-1087, at 1098). See also in respect of D-26 CAR-OTP-0077-1356; CAR-OTP-0077-1359.

⁵⁶ For D-54, see CAR-OTP-0082-1109; for D-15, see CAR-OTP-0077-1407.

⁵⁷ See for example the case of D-26 (CAR-OTP-0077-1359); D-54 (CAR-OTP-0082-0866, at 0869, lines 45-48; CAR-OTP-0082-0877, at 0899); D-55 (CAR-OTP-0074-0872-R01, at 0880); D-15 (CAR-OTP-0079-0148, at 0152).

⁵⁸ (D-6) Trial Chamber III, Transcript of Hearing, 24 June 2013, ICC-01/05-01/08-T-329-CONF-ENG ET, pp. 21-22; (D-54) Trial Chamber III, Transcript of Hearing, 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, p. 43, line 10 to p. 44, line 12; (D-55) Trial Chamber III, Transcript of Hearing, 29 October 2012, ICC-01/05-01/08-T-264-CONF-ENG ET, at 66, lines 17-20; (D-29) Trial Chamber III, Transcript of Hearing, 29 August 2013, ICC-01/05-01/08-T-339-CONF-FRA ET, p. 38.

⁵⁹ (D-6) Trial Chamber III, Transcript of Hearing, 24 June 2013, ICC-01/05-01/08-T-329-CONF-ENG ET p. 16.

⁶⁰ (D-4) Trial Chamber III, Transcript of Hearing, 19 June 2013, ICC-01/05-01/08-T-326-CONF-FRA, p. 72, lines 21-25; (D-3) Trial Chamber III, Transcript of Hearing, 25 June 2013, ICC-01/05-01/08-T-330-CONF-ENG ET, pp. 20-21; (D-2) Trial Chamber III, Transcript of Hearing, 13 June 2013, ICC-01/05-01/08-T-322-CONF-ENG ET, p. 7, lines 22-23, p. 11, lines 1-25, p. 12, line 10.

testimony;⁶¹ (v) the fact that they had received reimbursements or transfers by Mr Bemba or on his behalf, regardless of their purpose;⁶² and (vi) other substantive issues related to the charges against Mr Bemba in the Main Case, such as the witnesses' membership of certain groups or entities, the structure of these groups or entities, their movements on the ground, and names of officials.⁶³

65. Intercepted phone conversations also show that, with witnesses D-54 and D-26, Mr Kilolo did not linger on questions and topics for which he assumed the witnesses would know the answer.⁶⁴

66. In addition, the evidence shows that Mr Kilolo was keenly aware of the need to ensure that the information that the Witnesses were instructed either to provide or withhold accorded with the evidence given by other Defence witnesses, with a view to ensuring the overall consistency of the Defence case.⁶⁵

67. In this respect, the Chamber notes that a conversation held between Mr Kilolo and Mr Mangenda on 29 August 2013 is particularly significant to contextualize the conduct committed by Mr Kilolo at the time relevant to the

⁶¹ (D-2) Trial Chamber III, Transcript of Hearing, 13 June 2013, ICC-01/05-01/08-T-322-CONF-ENG ET, p. 26, lines 24, 25.

⁶² (D-3) Trial Chamber III, Transcript of Hearing, 25 June 2013, ICC-01/05-01/08-T-330-CONF-ENG ET, pp. 21-22; (D-2) Trial Chamber III, Transcript of Hearing, 13 June 2013, ICC-01/05-01/08-T-322-CONF-ENG ET, p. 26, lines 19-23; (D-25) Trial Chamber III, Transcript of Hearing, 27 August 2013, ICC-01/05-01/08-T-337-CONF-ENG ET, p. 40, lines 3-20; (D-55) Trial Chamber III, Transcript of Hearing, 30 October 2012, ICC-01/05-01/08-T-265-CONF-ENG ET, p. 15, lines 1-12; (D-23) Trial Chamber III, Transcript of Hearing, 22 August 2013, ICC-01/05-01/08-T-334-Conf, p. 17, lines 23-25; (D-64) Trial Chamber III, Transcript of Hearing, 23 October 2012, ICC-01/05-01/08-T-260-CONF-FRA ET, pp. 6-7; (D-57) Trial Chamber III, Transcript of Hearing, 19 October 2012, ICC-01/05-01/08-T-258, p. 3, line 6.

⁶³ (D-2) Trial Chamber III, Transcript of Hearing, 12 June 2013, ICC-01/05-01/08-T-321-CONF-ENG, p. 10, lines 1-9, 22-23; (D-3) Trial Chamber III, Transcript of Hearing, 18 June 2013, ICC-01/05-01/08-T-325-CONF-ENG, p. 10.

⁶⁴ See for example the case of D-54 CAR-OTP-0082-0877, at 0887-0888; CAR-OTP-0082-1109, at 1126 (*"Ils te demanderont maintenant: «Savez-vous quelle réputation avait le MLC en CENTRAFRIQUE ?» Bon ... euh ... bon de ce côté-là, je crois que toi-même tu sauras la réponse"*); at 1135-1137.

⁶⁵ D-54, CAR-OTP-0082-0877, at 0888.

charges. The two suspects discuss the testimony of D-29 and observe that, unlike other Defence witnesses, D-29 did not abide to what he had been instructed to state, this resulting in a poor testimony from the defence point of view.⁶⁶ They also note that co-counsel Peter Haynes (“Mr Haynes”) must be “*content*” that at least one witness stated the truth and underline the importance of talking at length with the witnesses on the evening before their testimony.⁶⁷

68. Furthermore, the Chamber considers of relevance the evidence emanating from those phone conversations in which Mr Kilolo and other suspects discuss the necessity to keep the rest of the Bemba Defence team, in particular Mr Haynes, unaware of the commission of the offences charged.⁶⁸ For example, on 19 October 2013, 11 days before the scheduled testimony of D-54, Mr Kilolo and Mr Mangenda discuss the amount of money yet to be paid to that witness and observe that “*il faut que... son histoire ... nos blancs ne l’entendent plus*”, where “*blancs*” refers to the members of the Defence team in the Main Case other than the Suspects.⁶⁹

69. Finally, the Chamber notes that, in conversations held between 11 and 17 October 2013, Mr Kilolo and Mr Mangenda discuss the consequences of a possible investigation under article 70 of the Statute and the measures that they could take to prevent such an investigation from being opened or proceedings from being started, including by way of paying those witnesses who might possibly have talked to representatives of the Office of the Prosecutor.⁷⁰ More specifically, on 17 October 2013 Mr Kilolo and Mr Mangenda discuss the

⁶⁶ CAR-OTP-0080-0245, at 0247-0248.

⁶⁷ D-29, CAR-OTP-0080-0245, at 0252.

⁶⁸ CAR-OTP-0080-0238, at 0243; CAR-OTP-0082-1349, at 1352.

⁶⁹ CAR-OTP-0082-1349, at 1352.

⁷⁰ CAR-OTP-0080-0309; CAR-OTP-0079-1762; CAR-OTP-0082-1326.

concerns expressed by Mr Bemba in respect of the likelihood that an article 70 investigation be pursued.⁷¹ The conversation deserves being reported in full:

Mr Mangenda : “[...] *je voyais aussi sa crainte. Parce qu’il commençait maintenant à me dire bon imaginons le pire cas, et s’ils arrivaient là bon s’ils suivent cette procédure-là jusqu’à la fin, mais qu’est-ce qui adviendrait si on écarte maintenant tous nos témoins. J’ai informé en disant que ça donne le boulevard à ces gens-là de faire ce qu’ils veulent ... Parce que moi je suis venu pour lui dire mais non il s’est fait un grand travail, on ne peut pas s’accorder le luxe de dire que non bon laissons-le seulement comme tel, que nous prenions ce risque et ensuite que l’on s’efforce de tout faire pour le préserver.*

[...]

Mr Kilolo : “[...] *il faut que nous cherchions maintenant un document signé par eux [i.e., some of the Witnesses] que ... Tout ce que nous avons dit est vrai mais qu’il n’y ait que eux trois, pas d’autres*”.⁷²

70. The Chamber also wishes to address one argument in particular, raised by Mr Kilolo. The Defence for Mr Kilolo contends that his conduct constituted a “non-illicit refreshing” of previous declarations made by the Witnesses to the Defence team.

71. The Chamber considers, however, that the previous declarations mentioned by Mr Kilolo cover a minor part of topics and issues when compared to the detailed and vast set of instructions and directives given by Mr Kilolo to the Witnesses. Thus, the Chamber is not convinced of the arguments of the Defence in this regard.

⁷¹ CAR-OTP-0082-1326, at 1341-1342.

⁷² CAR-OTP-0082-1326, at 1343.

72. Based on the evidence, the Chamber considers that Mr Kilolo, being the lead counsel in the Main Case, bears criminal responsibility as a co-perpetrator under article 25(3)(a) of the Statute for intentionally corruptly influencing the Witnesses as set out in article 70(1)(c) of the Statute and intentionally presenting false evidence as set out in article 70(1)(b) of the Statute, with regard to the Witnesses. He is also criminally responsible as an accessory under article 25(3)(b) for soliciting or inducing false testimony of the Witnesses in accordance with article 70(1)(a) of the Statute.

3. Factual findings with regard to Mr Mangenda

73. The evidence available to the Chamber indicates that, throughout the period relevant to the charges, Mr Mangenda was fully aware of the existence of contact between Mr Kilolo and the Witnesses, as well as of Mr Kilolo's corrupt influence on the content of their testimonies.⁷³ He was likewise aware of the practice of instructing the Witnesses to deny that they had met, or otherwise been in contact with, members of Mr Bemba's Defence team before the Witnesses were handed over to the VWU and he insisted with Mr Kilolo that this practice be always complied with.⁷⁴ Mr Bemba requested⁷⁵ Mr Mangenda to relay to Mr Kilolo his instructions as to the content which a particular testimony should have,⁷⁶ and Mr Kilolo relied on Mr Mangenda to have messages transmitted to Mr Bemba.⁷⁷ Upon Mr Kilolo's request,⁷⁸ Mr Mangenda reported to him about

⁷³ CAR-OTP-0079-0122, at 0127 (Mr Mangenda to Mr Kilolo, speaking about the testimony of one witness: "*il lui a donné les memes réponses en suivant les mêmes voies comme tu l'avais indiqué*"); CAR-OTP-0080-0254, at 0257-0258.

⁷⁴ CAR-OTP-0080-0238, at 0240 ("*la seule logique est que nous ne sommes rencontrés qu'au moment de faire le handover, c'est tout*").

⁷⁵ CAR-OTP-0079-0131, at 0138 (Mr Mangenda: "*Voilà c'est un peu ça en gros ce qu'il m'avait demandé de... transmettre*").

⁷⁶ CAR-OTP-0079-0131, at 0134 (Mr Mangenda: "*Il insiste vraiment, qu'il ne faut pas qu'il oublie cela*").

⁷⁷ CAR-OTP-0080-0245, at 0250; CAR-OTP-0080-0238, at 0241.

the testimonies which took place while Mr Kilolo was on mission⁷⁹ and about Mr Bemba's satisfaction as to how the testimonies were going.⁸⁰ In one instance, he promptly informed Mr Kilolo about the changing of schedule for a particular witness;⁸¹ on the basis of this information, Mr Kilolo told Mr Mangenda that he would call that witness "*assez rapidement*", with a view to suggesting to the witness concerned that he request taking the stand the following morning.⁸² He transmitted to Mr Kilolo the questions submitted by the legal representative of victims, so that Mr Kilolo could forward them to D-15.⁸³ He discussed with Mr Kilolo the specific content of testimonies,⁸⁴ made specific and concrete proposals as to strategies which might be pursued in the Main Case, such as contacting Prosecutor's witnesses "*que nous allons rallier à notre camp*",⁸⁵ and even persuaded Mr Kilolo not to call back one witness (whose testimony was considered as not having been favourable to the Bemba Defence) before the completion of the testimony in order to persuade him to rectify the statements initially given.⁸⁶ He also discussed with Mr Kilolo money transfers made (or yet to be made) to a "*monsieur qui doit venir*".⁸⁷ The timetable of witness testimonies before TCIII in the Main Case suggests that this "*monsieur qui doit venir*" is D-54. Mr Mangenda was cautious not to discuss sensitive issues on the phone with

⁷⁸ CAR-OTP-0079-0131, at 0139 (Mr Kilolo to Mr Mangenda: "...tu vois pour moi le problème très important, est que tu me fasses toujours les rapports de gens qui sont en train de passer. Pourquoi ? Parce que tu vois comme moi je suis en train de faire les couleurs...").

⁷⁹ CAR-OTP-0079-0122, at 0124; CAR-OTP-0079-0114, at 0116; CAR-OTP-0080-0245, at 0247; CAR-OTP-0080-0228, at 0231 (Mr Kilolo: "*Mais ma question est maintenant de savoir si la personne a suivi les enseignements*"; Mr Mangenda: "*Ah ... oui, oui, il a bien suivi, il a bien suivi*").

⁸⁰ CAR-OTP-0079-0122, at 0126; CAR-OTP-0079-0114, at 0118.

⁸¹ CAR-OTP-0079-0122, at 0124.

⁸² CAR-OTP-0079-0122, at 0129.

⁸³ CAR-OTP-0079-1754, at 1756.

⁸⁴ CAR-OTP-0077-1383, at 1384-1387; CAR-OTP-0079-1737, at 1739-1743.

⁸⁵ CAR-OTP-0082-1140, at 1144.

⁸⁶ CAR-OTP-0080-0245, at 0252.

⁸⁷ CAR-OTP-0082-1349, at 1352.

Mr Bemba, given the non-privileged nature of his line of communication with the latter, and of the need to discuss such things in person.⁸⁸ He also actively advised Mr Kilolo as to the best way to deceive Mr Bemba into believing that they needed more money with a view to satisfying requests purportedly coming from “neglected” witnesses, a deception which had been devised by Mr Kilolo and Mr Mangenda as a strategy to enrich themselves.⁸⁹

74. The evidence in the statements of D-3 and D-2 shows that Mr Mangenda was present at the Yaoundé Meeting, and specifically when Mr Kilolo explicitly instructed D-3, D-2, D-4 and D-6 on the content of their testimony.⁹⁰ Furthermore, according to D-3, during this meeting Mr Mangenda handed over to all of the witnesses who were present cell phones to be used once their own phones would be collected by the VWU before their testimony.⁹¹

75. In light of the foregoing, the Chamber considers that Mr Mangenda, as the liaison person between Mr Bemba and Mr Kilolo, coordinated with them about the money transfers made or to be made to the Witnesses and discussed with Mr Bemba and Mr Kilolo the instructions to be given to the Witnesses in advance of their testimony. Several of Mr Mangenda’s conversations with Mr Kilolo show that Mr Mangenda pursued his role in the overall strategy to defend Mr Bemba in the Main Case together with Mr Kilolo and Mr Bemba, including through the commission of offences against the administration of justice. He was fully aware of the conduct of Mr Bemba and Mr Kilolo towards the commission of the charged offences,⁹² the professional risks they were taking⁹³ and the possible legal

⁸⁸ CAR-OTP-0082-1140, at 1145.

⁸⁹ CAR-OTP-0079-1762, at 1781-1782.

⁹⁰ CAR-OTP-0078-0248-R01, at 0254; CAR-OTP-0078-0198-R01, at 0202 (“... *en présence de Jean-Jacques, il a commencé à me dire ce qu’il faudrait répondre quand on va me poser des questions*”); CAR-OTP-0080-0100-R01, at 0106.

⁹¹ CAR-OTP-0078-0264-R01, at 0268; CAR-OTP-0078-0198-R01, at 0200-0201.

⁹² CAR-OTP-0082-1326, at 1341; CAR-OTP-0074-0926, at 0966 and 0968.

consequences which might arise in the event that an investigation pursuant to article 70 of the Statute were to be launched by the Prosecutor.⁹⁴

76. Based on the evidence available, the Chamber considers that Mr Mangenda, being the liaison person between Mr Bemba and Mr Kilolo, bears criminal responsibility as a co-perpetrator under article 25(3)(a) of the Statute for intentionally corruptly influencing the Witnesses as set out in article 70(1)(c) of the Statute and intentionally presenting false evidence as set out in article 70(1)(b) of the Statute with regard to the Witnesses. In the alternative, the Chamber considers that Mr Mangenda bears criminal responsibility as an accessory under article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the offences of corruptly influencing the Witnesses in accordance with article 70(1)(c) of the Statute and presenting false evidence as set out in article 70(1)(b) of the Statute with regard to the Witnesses. Moreover, he bears criminal responsibility as an accessory under article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the offence by the Witnesses of giving false testimony in accordance with article 70(1)(a) of the Statute.

4. Factual findings with regard to Mr Babala

77. The evidence before the Chamber shows that Mr Babala personally transferred money to some of the Witnesses. More specifically, he transferred USD 665 to D-57's wife on 16 October 2012,⁹⁵ just before D-57 travelled to The Hague to give testimony in the Main Case, and he called him to confirm that he

⁹³ CAR-OTP-0082-1326, at 1341 (Mr Mangenda: "*Parce que en réalité, en réalité les gens ont vraiment risqué, aussi ils... leur travail, se mettre en danger pas comme un jeu*").

⁹⁴ CAR-OTP-0080-1138, at 1152 (Mr Mangenda: "*notre gars [Bemba], il faut qu'il comprenne que c'est à prendre ou à laisser. ... laisse que lui-même comprenne la gravité de cela même par rapport à lui-même*").

⁹⁵ CAR-OTP-0073-0274, tab 31, row 14; CAR-OTP-0077-0088, at 0104 and 0110.

had sent him the money⁹⁶ under his own name.⁹⁷ On 17 October 2012, Robert Nginamau, Mr Babala's chauffeur, transferred USD 700 to D-64's daughter.⁹⁸

78. A third transfer to D-29, appearing as a witness in the Main Case (in the amount of USD 649.43⁹⁹) is associated by the Prosecutor to Mr Babala. However, this transfer was made by a Jean Paul Mokula, with whom Mr Babala denies being associated. The Chamber is not satisfied that Mokula's appearance among the addresses of a collective email on Congolese political issues¹⁰⁰ makes it possible to attribute this transfer to Mr Babala. Hence, this transfer cannot be relied upon to support the charges.

79. Recordings and transcribed translations of intercepted phone communications show that, throughout the period relevant to the charges, Mr Bemba and Mr Babala conversed on a regular basis (in some instances, more than once a day¹⁰¹) on the non-privileged line of the Court's detention centre. In many of these conversations, there is recurrent reference to other suspects of the present case, as well as to transfers of various amounts of money that were made (or that had to be made) to their benefit, in most instances in connection with the use of specific expressions, or "codes".¹⁰²

80. Money which Mr Babala had transferred, or was requested to transfer, on Mr Bemba's behalf, was referred to as "*kilo[s]*"¹⁰³, "*petits*"¹⁰⁴ or "*grands*";¹⁰⁵ the

⁹⁶ CAR-OTP-0077-0088, at 0110-0111.

⁹⁷ CAR-OTP-0077-0088, at 0113.

⁹⁸ CAR-OTP-0070-0007, tab 34, rows 2-3.

⁹⁹ CAR-OTP-0074-0855, tab 28, row 2.

¹⁰⁰ CAR-OTP-0082-0683.

¹⁰¹ CAR-OTP-0074-0057; CAR-OTP-0074-0058; CAR-OTP-0074-0073; CAR-OTP-0074-0074; CAR-OTP-0074-0085; CAR-OTP-0074-0086; CAR-OTP-0074-0088; CAR-OTP-0074-0090.

¹⁰² CAR-OTP-0080-0466, at 0468.

¹⁰³ CAR-OTP-0077-1324, at 1328; CAR-OTP-0077-1084, at 1087.

¹⁰⁴ CAR-OTP-0077-1077, at 1079.

¹⁰⁵ CAR-OTP-0080-0466, at 0468.

expressions “*le collègue d’en haut*”,¹⁰⁶ “*collègue*” and “*enfant à ses côtés*” (which – in the Prosecutor’s submission and as explicitly acknowledged by the Defence for Mr Bemba – identify Mr Kilolo and Mr Mangenda respectively) are used to designate the beneficiaries of those transfers,¹⁰⁷ whereas other beneficiaries are mentioned by their name. In one instance, Mr Bemba explicitly admonishes Mr Babala on the importance of systematically using the codes, observing that he should “*bien parler de sorte que nous soyons les seuls à comprendre, parce que sinon ça ne sert à rien d’avoir des codes quoi*”.¹⁰⁸

81. Evidence is available for several transfers of money from Mr Babala to Mr Kilolo¹⁰⁹ and Mr Mangenda,¹¹⁰ as well as from Robert Nginamau, Mr Babala’s chauffeur, to both of them.¹¹¹ Mr Babala also transferred USD 4,744 to Mr Arido on 25 May 2012.¹¹²

¹⁰⁶ CAR-OTP-0077-1307 at 1309; CAR-OTP-0077-1050 at 1053-1054.

¹⁰⁷ See, in particular, the following: CAR-OTP-0077-1336, at 1338; CAR-OTP-0077-1316, at 1318 (Mr Babala: “*je demande la confirmation de 1,5 kg et 400 dollars pour le collègue d’en haut qui a dit c’est pour l’enfant qui se trouve à ses côtés*”); CAR-OTP-0077-1324, at 1328 (Mr Bemba: “*elle donnera 2 kg. 1 kg ira chez quelqu’un que 07, que le collègue d’en haut te dira et l’autre kilo chez le collègue d’en haut*”); CAR-OTP-0080-0481, at 0484; CAR-OTP-0080-0477 at 0479 (Mr Babala: “*chez l’enfant... c’est déjà fait*”); CAR-OTP-0077-1291, at 1295 (Mr Babala: “*il viendra avec tous les 10 kg. Donc dès qu’on a ça, la priorité c’est comme vous le savez quoi, le collègue d’en haut*”); CAR-OTP-0077-1344, at 1346; CAR-OTP-0080-0485, at 0488; CAR-OTP-0079-1727, at 1730: “*collègue d’en haut a été servi*”; CAR-OTP-0079-1712, at 1715 (Mr Bemba: “*Apprêtes encore trois pour le collègue d’en haut*”); CAR-OTP-0079-1709, at 1711 (Mr Babala: “*j’attends de whisky qu’il m’amène les trucs pour le collègue*”); CAR-OTP-0077-1311, at 1314 (Mr Bemba asks Mr Babala whether he has received a message from “*la petite soeur, il faudrait que tu la cherches pour 2 kg à envoyer à l’enfant de ce côté-ci pour les histoires que tu connais*”).

¹⁰⁸ CAR-OTP-0077-1035, at 1038.

¹⁰⁹ CAR-OTP-0070-0007, tab 32, rows 84, 98, 107, 124, 126, 130, 134, 137, 138; CAR-OTP-0073-0274, tab 31, row 5; CAR-OTP-0070-0004, tab 31, row 9; CAR-OTP-0074-0855, tab 40, rows 4, 29 and 30.

¹¹⁰ CAR-OTP-0073-0274, tab 38, row 3; tab 31, rows 4, 6 and 12; CAR-OTP-0070-0004, tab 31, rows 11 and 14 (row 17 is the same payment as in row 14).

¹¹¹ To Mr Kilolo: CAR-OTP-0070-0007, tab 32, row 120. To Mr Mangenda: CAR-OTP-0073-0274, tab 38, row 37.

¹¹² CAR-OTP-0070-0005, tab 1, row 78.

82. Mr Babala was also in direct contact with Mr Kilolo,¹¹³ sometimes upon direct instruction of Mr Bemba¹¹⁴ (or during phone conversations between Mr Kilolo and Mr Bemba¹¹⁵), with whom he arranged payments.¹¹⁶ On 17 October 2013, the two of them refer to the case of Walter Barasa before the Court and the fact that he is being targeted by a warrant of arrest “*tout simplement parce que ... il est soupçonné d’avoir fait pression sur des témoins*”. Mr Babala says he will transfer to Mr Kilolo about EUR 2,000 and notes with regret that they failed to ensure “*le service après-vente*”, which resulted in “them” (ie, the Witnesses) being vulnerable and therefore “*à la merci de ... tous les vautours*”.¹¹⁷ Mr Babala also encouraged Mr Kilolo to take care of “*le service après-vente*”, irrespective of Mr Bemba’s instructions: this is apparent in one conversation between the two held on 22 October 2013,¹¹⁸ where Mr Babala states that he is allowed to do so, also in light of the fact that “*en tant que financier, c’est moi qui prends des risques*”.¹¹⁹

83. In light of the above, the Chamber is satisfied that Mr Babala was assisting the other suspects in handling the financial aspects of the witness corruption alleged by the Prosecutor, pursuant to and in furtherance of Mr Bemba’s instructions. Accordingly, there is no need for the Chamber to take a position on the interpretation of the conversation held on 16 October 2013, when Mr Babala tells Mr Bemba that “*donner du sucre aux gens vous verrez que c’est*

¹¹³ CAR-OTP-0077-1063, at 1067 (Mr Babala: “*Le collègue d’en haut, je l’ai eu vers 18 heures à peu près*”).

¹¹⁴ CAR-OTP-0077-1081, at 1083 (Mr Bemba: “*Signalez le collègue d’en haut, tout de suite*”; Mr Babala: “*OK. Je vais le lui signaler tout de suite*”).

¹¹⁵ CAR-OTP-0080-1138, at 1204-1216; CAR-OTP-0082-0842, at 0852-0853; CAR-OTP-0082-0633, at 0635.

¹¹⁶ CAR-OTP-0080-1138, at 1203-1212; CAR-OTP-0082-0547, at 0559-0560.

¹¹⁷ CAR-OTP-0082-0542, at 0544-0545.

¹¹⁸ CAR-OTP-0082-0596, at 0598.

¹¹⁹ CAR-OTP-0082-0596, at 0599.

bien”,¹²⁰ for which contrasting readings are given by, respectively, the Prosecutor and Independent Counsel on the one hand, and the Bemba and the Babala Defence on the other. Both the Prosecutor and Independent Counsel read the statement as referring to the alleged practice of bribing witnesses. Mr Bemba and Mr Babala challenge this reading and submit that it refers to the passing of a Congolese politician and to the Congolese custom applying in that kind of circumstance. However, in light of the facts presented, determining the exact meaning of the conversation is not critical for the purposes of its determinations under article 61(7) of the Statute.

84. In light of the foregoing, the Chamber considers that Mr Babala knew about the steps taken for the commission of the charged offences, on the basis of the conversations held on a regular basis with Mr Bemba about the payments to be made to the Witnesses. Mr Babala intended to contribute to the charged offences and did so by transferring money, in some instances considerable amounts, throughout the period relevant to the charges, to Witnesses or Mr Arido, Mr Kilolo and Mr Mangenda. The Chamber considers of particular relevance the evidence indicating that Mr Babala himself transferred the non-negligible amount of USD 665 and 700 to D-57 and D-64, respectively.

85. Based on the evidence available, the Chamber considers that Mr Babala bears criminal responsibility as an accessory under article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the offences of corruptly influencing the Witnesses in accordance with article 70(1)(c) of the Statute and presenting false evidence as set out in article 70(1)(b) of the Statute with regard to the Witnesses. Moreover, he bears criminal responsibility as an accessory under article 25(3)(c) of the Statute for aiding, abetting or otherwise

¹²⁰ CAR-OTP-0077-1299, at 1301.

assisting in the commission of the offence by the Witnesses of giving false testimony in accordance with article 70(1)(a) of the Statute.

5. Factual findings with regard to Mr Arido

86. The evidence indicates that in 2012 Mr Arido was in contact with Mr Kilolo with a view to cooperating with the Defence team for Mr Bemba in the Main Case as an expert witness: more specifically, he was asked to provide advice on issues concerning military operations in CAR.¹²¹

87. During the same year, he received a number of money transfers from Mr Kilolo for the overall amount of USD 1,599.20, from Mr Babala for USD 4,744 and from Mr Babala's chauffeur Mr Nginamau for the overall amount of USD 1,364.¹²²

88. According to D-2 and D-3's statements to the Prosecutor, Mr Arido contacted D-2 and D-3 at the beginning of 2012.¹²³ He explained to them that he was recruiting members of the CAR armed forces (*"des militaires ... qui ont du moins vécu ou participé ... à ce qui s'était passé ... en République Centrafricaine"*¹²⁴) who would be willing to testify in favour of Mr Bemba; and that, if they would, they would have, he stated, *"une occasion pour nous faire un peu d'argent"*,¹²⁵ would be relocated in a safe place or be able to seek asylum.¹²⁶ He assured D-3 that even if they gave false testimony they would be assisted by a lawyer (*"ARIDO nous*

¹²¹ CAR-OTP-0075-0246; CAR-OTP-0075-0248; CAR-OTP-0075-0249; CAR-OTP-0075-0250; CAR-OTP-0075-0334; CAR-OTP-0075-0341.

¹²² CAR-OTP-0070-0005, tab 1, rows 72, 73, 74, 75, 77, 78, 80; Arido received the following amounts: USD 100 on 27 January 2012 from Mr Nginamau; USD 157,77 on 2 February 2012 from Mr Kilolo; USD 157.11 on 14 February 2012 from Mr Kilolo; USD 834.32 on 18 February 2012 from Mr Kilolo; USD 450 on 20 April 2012 from Mr Kilolo; USD 4,744 on 25 May 2012 from Mr Babala; USD 1,234 on 22 September 2012 from Mr Nginamau.

¹²³ CAR-OTP-0080-0021, at 0030; CAR-OTP-0078-0206-R01, at 0207.

¹²⁴ CAR-OTP-0080-0043, at 0051.

¹²⁵ CAR-OTP-0078-0184-R01, at 0189; CAR-OTP-0080-0043, at 0050.

¹²⁶ CAR-OTP-0078-0206-R01, at 0217; CAR-OTP-0080-0021, at 0030 and 0035.

*avait dit, entre autres, qu'une fois que nous ayons témoigné, nous aurons la possibilité de rester là-bas, parce que même si nous mentons dans notre déposition, nous serons assistés d'un avocat qui va nous défendre. Voilà").*¹²⁷

89. Notwithstanding the fact that D-3 and D-2 did not have any military experience,¹²⁸ Mr Arido maintained that this circumstance did not constitute an issue, since he could brief them on what to say to Mr Kilolo.¹²⁹ He accordingly instructed D-3 and D-2 to introduce themselves respectively as a “*caporal*”¹³⁰ and “*sous-lieutenant... qui supervis[ait] les éléments sur le terrain*”,¹³¹ “*un des éléments, un des jeunes du parti à l'époque... le MLPC étant au pouvoir à l'époque*”.¹³²

90. In or around February 2012, Mr Arido escorted D-2 and D-3 (together with other witnesses, including D-4 and D-6), to the Douala Meeting with Mr Kilolo.¹³³ The day before the meeting, Mr Arido reiterated to the prospective witnesses the promises he had made before; according to D-2's statement, he also said that they could ask up to 10 million CFA in exchange for their testimony.¹³⁴ On the same day, D2, D3, D4 and D6 were also instructed on what to say to Mr Kilolo, in particular as regards their military status and some events that took place in Bangui (“*pour pouvoir les raconter à Kilolo dès qu'il va arriver*”).¹³⁵ According to Mr Arido's statement to the French authorities, none of the

¹²⁷ CAR-OTP-0078-0218-R01, at 0234.

¹²⁸ CAR-OTP-0074-1065-R01, at 1066; CAR-OTP-0078-0206-R01, at 0213 and 0214; CAR-OTP-0080-0021, at 0031.

¹²⁹ CAR-OTP-0078-0206, at 0213-0214.

¹³⁰ CAR-OTP-0078-0218-R01, at 0225.

¹³¹ CAR-OTP-0080-0021, at 0031; CAR-OTP-0080-0043, at 0051.

¹³² CAR-OTP-0080-0043, at 0051.

¹³³ CAR-OTP-0078-0184-R01, at 0190; CAR-OTP-0080-0494-R01, at 0500; CAR-OTP-0078-0264-R01, at 0272-0273; CAR-OTP-0080-0021, at 0033-0034 and 0038.

¹³⁴ CAR-OTP-0080-0021, at 0035.

¹³⁵ CAR-OTP-0080-0043, at 0064-0065; CAR-OTP-0080-0494-R01, at 0506-0507; CAR-OTP-0078-0184, at 0190.

witnesses participating in this meeting was a member of the CAR armed forces.¹³⁶

91. In the context of the Douala Meeting, Mr Arido not only paid for their accommodation fees, but also handed to the prospective witnesses various amounts of money. More specifically, he gave to each witness CFA 10,000 (approximately EUR 15) “*pour manger*” (D-3 and D-2 stated that they signed a document acknowledging the handing over)¹³⁷ and CFA 10,000 (approximately EUR 15) to refund the travel expenses back home¹³⁸ (D-3 received this sum later, since he left immediately after having met Mr Kilolo¹³⁹). He also handed CFA 15,000 (approximately EUR 22) to D-2.¹⁴⁰

92. According to D-2’s statement, Mr Arido also instructed the prospective witnesses who participated in the Douala Meeting to lie to Mr Kilolo about the fact that they did not own a telephone and to ask him to provide them with one.¹⁴¹

93. The Chamber notes that Mr Arido received as many as four money transfers from Mr Kilolo, three of which occurred around the dates of the Douala Meeting (on 2, 14 and 18 February 2012), for the overall amount of USD 1,149.20.¹⁴²

94. During his video-link testimony in the Main Case, D-3 testified that he joined the CAR armed forces in 2002;¹⁴³ that he did not receive any type of payment from the Defence or anyone else acting on Mr Bemba’s behalf, or any

¹³⁶ CAR-OTP-0074-1065-R01, at 1066.

¹³⁷ CAR-OTP-0078-0184, at 0190; CAR-OTP-0080-0069, at 0084; CAR-OTP-0080-0021, at 0036.

¹³⁸ CAR-OTP-0080-0069, at 0077.

¹³⁹ CAR-OTP-0078-0184, at 0192.

¹⁴⁰ CAR-OTP-0080-0021, at 0033.

¹⁴¹ CAR-OTP-0080-0069, at 0073.

¹⁴² CAR-OTP-0070-0005, tab 1, rows 73-75.

¹⁴³ Trial Chamber III, Transcript of Hearing, 18 June 2013, ICC-01/05-01/08-T-325-CONF-ENG ET, p. 10.

reimbursement for travel expenses or food;¹⁴⁴ and that he did not know Mr Arido.¹⁴⁵ During his testimony, D-2 testified that he had been a member of the youth movement within the MLC with the role of intelligence officer and that he was a sub-lieutenant, assigned to the support battalion unit;¹⁴⁶ that during the meetings with the Defence for Mr Bemba he did not receive any form of compensation for expenses, including travel expenses, meals or other expenses;¹⁴⁷ that he was not promised any sort of benefit for taking part in the trial, or giving testimony¹⁴⁸ and that he did not know Mr Arido.¹⁴⁹ D-6 testified that he did not meet any other prospective witness in Cameroun.¹⁵⁰ D-4 testified that in October 2002 he was “in the USP forces” as “a chief sergeant”¹⁵¹ and that he did not know Mr Arido.¹⁵²

95. In light of the foregoing, the Chamber considers that Mr Arido’s involvement in the overall strategy to defend Mr Bemba in the Main Case was confined to recruiting and corruptly influencing witnesses D-2, D-3, D-4 and D-6, all of whom subsequently falsely testified in the Main Case. The Chamber considers that Mr Arido liaised between the abovementioned witnesses and

¹⁴⁴ Trial Chamber III, Transcript of Hearing, 25 June 2013, ICC-01/05-01/08-T-330-CONF-ENG ET, pp. 21-22.

¹⁴⁵ *Ibid.*, p. 21.

¹⁴⁶ Trial Chamber III, Transcript of Hearing, 12 June 2013, ICC-01/05-01/08-T-321-CONF-ENG ET, p. 10.

¹⁴⁷ Trial Chamber III, Transcript of Hearing, 13 June 2013, ICC-01/05-01/08-T-322-CONF-ENG ET, p. 26, lines 19-23, to p. 27, lines 1-9.

¹⁴⁸ *Ibid.*, p. 26, lines 24-25.

¹⁴⁹ *Ibid.*, p. 7, lines 22-23, p. 11, lines 1-25, p. 12, line 10.

¹⁵⁰ Trial Chamber III, Transcript of Hearing, 24 June 2013, ICC-01/05-01/08-T-329-CONF-ENG ET, p. 16.

¹⁵¹ Trial Chamber III, Transcript of Hearing, 18 June 2013, ICC-01/05-01/08-T-325bis-CONF-ENG ET, p. 8, *id.*, Transcript of Hearing, 18 June 2013, ICC-01/05-01/08-T-325-CONF-FRA, p. 55.

¹⁵² Trial Chamber III, Transcript of Hearing, 19 June 2013, ICC-01/05-01/08-T-326bis-CONF-ENG ET, pp. 28-29. The same number as the one used by Mr Arido for money transfers and appearing in an official document from Cameroon as Mr Arido’s had been given by D-4 to the VWU as a contact telephone number, see CAR-OTP-0072-0116; CAR-OTP-0077-0942, at 0943.

Mr Kilolo¹⁵³ and exploited the precarious personal situations of these witnesses (*"tu sais, mon frère, en ce moment, nous souffrons trop"*¹⁵⁴) with a view to leading them to falsely testify under the illusion that this would result in a better future for them.¹⁵⁵

96. Based on the evidence available, the Chamber considers that Mr Arido bears criminal responsibility as a perpetrator under article 25(3)(a) of the Statute for intentionally corruptly influencing D-2, D-3, D-4 and D-6 in accordance with article 70(1)(c) of the Statute, or, alternatively, as an accessory under 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the offence of corruptly influencing witnesses D-2, D-3, D-4 and D-6 in accordance with article 70(1)(c) of the Statute. With regard to the offence pursuant to article 70(1)(b) of the Statute, the Chamber recalls that Mr Arido cannot be considered as a "party" to the proceedings in the Main Case and, as a result, cannot incur responsibility as a perpetrator under article 25(3)(a) of the Statute. However, that does not exclude his criminal responsibility under 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the offence of presenting false evidence as set out in article 70(1)(b) of the Statute with regard to D-2, D-3, D-4 and D-6. Furthermore, he bears criminal responsibility as an accessory under 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the offence of D-2, D-3, D-4 and D-6 giving false testimony in accordance with article 70(1)(a) of the Statute.

¹⁵³ CAR-OTP-0080-0043, at 0058.

¹⁵⁴ CAR-OTP-0078-0184-R01, at 0189.

¹⁵⁵ CAR-OTP-0080-0021, at 0040 (*"Si jamais KILOLO vient, voyez comment on veut faire. C'est de votre vie, vous jouez comme vous devez faire, et surtout, pensez à ce que votre avenir dépend de ça."*).

6. Factual findings with regard to Mr Bemba

97. The role of Mr Bemba, being the ultimate beneficiary of the overall strategy to defend him in the Main Case, is one of overall planning and coordination in relation to all the activities concerning the corruption of the Witnesses and their ensuing false testimonies. This emerges clearly from the evidence, which also shows his direct personal involvement in the strategy's implementation.

98. The evidence before the Chamber indicates that, in three instances, Mr Bemba, through Mr Kilolo, used the privileged line set up at the Court's detention centre to communicate with three of the Witnesses (D-55, D-51 and D-19).

99. Witness D-55 declared to the authorities of his country of residence that, in the course of October 2012, Mr Kilolo had called him, telling him that Mr Bemba wanted to talk to him. He had then given the phone to a person, whom D-55 assumed was Mr Bemba himself, who expressed his gratitude that D-55 had accepted to come and testify at trial.¹⁵⁶ The call logs show that, on 5 October 2012, Mr Kilolo called D-55 and talked for 223 seconds; this call started about 15 minutes after the start of a call outgoing from Bemba's extension at the ICC detention centre to the telephone number of Mr Kilolo, which lasted for about 32 minutes.¹⁵⁷ D-55 also stated that Mr Kilolo had told him that his contact with Mr Bemba "*était quelque chose d'inhabituel et que cela ne devrait pas être révélé au public*".¹⁵⁸

¹⁵⁶ CAR-OTP-0074-0872-R01, at 0879-0880.

¹⁵⁷ CAR-OTP-0072-0391, rows 709-710 and CAR-OTP-0074-0065, row 681.

¹⁵⁸ CAR-OTP-0074-0872-R01, at 0880.

100. A similar pattern emerges from the evidence in respect of two other witnesses: D-51 and D-19. On 4 October 2012, at 15:24, Mr Bemba called Mr Kilolo and the call lasted for about 22 minutes;¹⁵⁹ two minutes earlier, Mr Kilolo had called Witness D-51 for a call which lasted for about 11 minutes.¹⁶⁰

101. On 13 January 2013, at 15:22, Mr Bemba called Mr Kilolo for a call which lasted for about 1 hour and 28 minutes;¹⁶¹ at 16:32, Mr Kilolo called Witness D-19 for about 17 minutes.¹⁶²

102. There is abundant evidence showing that, whilst by virtue of his detention Mr Bemba did not directly pay or coach the witnesses, he was at the origin of many of the acts committed by the other suspects and was systematically informed of the status of those acts and of their results. Mr Bemba discussed with Mr Kilolo the content of the testimonies¹⁶³ and gave specific instructions as to the content of the testimony to be given;¹⁶⁴ instructed Mr Babala to make transfers of money,¹⁶⁵ including to other suspects;¹⁶⁶ directed Mr Kilolo to liaise with Mr Babala in respect of transfers of money;¹⁶⁷ and raised the issue of the warrant of arrest against Walter Barasa in one conversation held with Mr Mangenda on 4 October 2013.¹⁶⁸

¹⁵⁹ CAR-OTP-0072-0391, row 357; CAR-OTP-0074-0065, row 678.

¹⁶⁰ CAR-OTP-0072-0391, row 356.

¹⁶¹ CAR-OTP-0074-0066, row 21.

¹⁶² CAR-OTP-0072-0391, row 16732.

¹⁶³ CAR-OTP-0079-1744, at 1746-1748 (Mr Bemba: *“ces trois trucs là, c’est bon, c’est bon, c’est bon”*).

¹⁶⁴ CAR-OTP-0079-0131, at 0134-0138.

¹⁶⁵ CAR-OTP-0077-1303, at 1305; CAR-OTP-0077-1299, at 1301.

¹⁶⁶ CAR-OTP-0079-1727, at 1731.

¹⁶⁷ CAR-OTP-0077-1081, at 1083 (Mr Bemba: *“Signalez le collègue d’en haut, tout de suite”*; Mr Babala: *“OK. Je vais lui signaler tout de suite”*); CAR-OTP-0080-1138, at 1204-1216; CAR-OTP-0082-0842, at 0852-0853.

¹⁶⁸ CAR-OTP-0080-0304, at 0307.

103. Mr Babala requested Mr Bemba's authorisation for transfers to be made¹⁶⁹ and told him about executed transfers.¹⁷⁰ Mr Kilolo informed Mr Bemba about the activities conducted with the Witnesses¹⁷¹ and the outcome of some of the testimonies,¹⁷² and submitted to him his recommendations as to the best way to achieve results;¹⁷³ he also relayed Mr Bemba's gratitude to D-15 following the completion of his testimony.¹⁷⁴ According to the evidence of D-2, Mr Kilolo had told him that the money he had given him in the amount of CFA 500,000 was a "gift" on behalf of Mr Bemba.¹⁷⁵

104. The transcribed telephone conversations between Mr Kilolo and Mr Mangenda likewise reveal that Mr Bemba instructed Mr Kilolo to contact witnesses;¹⁷⁶ that contacts with witnesses made by Mr Kilolo were relayed to Mr Bemba;¹⁷⁷ and that Mr Bemba gave Mr Kilolo specific instructions as to the maximum amounts of money which could be given.¹⁷⁸ They also show that Mr Kilolo's and Mr Mangenda's constant concern was to please Mr Bemba and to implement his instructions, making sure that he was and remained satisfied with their work.¹⁷⁹ On one occasion, they were dissatisfied with the testimony of a witness, to whom they had not managed to talk immediately before the testimony, and they worried that Mr Bemba might conclude that they had failed

¹⁶⁹ CAR-OTP-0077-1077, at 1079; CAR-OTP-0077-1084, at 1087 (Mr Babala: "*le collègue d'en haut ... m'a demandé de lui envoyer 1 kg. êtes-vous d'accord?*").

¹⁷⁰ CAR-OTP-0079-1727, at 1730; CAR-OTP-0077-1341, at 1343.

¹⁷¹ CAR-OTP-0080-1138, at 1243-1244; CAR-OTP-0082-0669, at 0671.

¹⁷² CAR-OTP-0080-0245, at 0252.

¹⁷³ CAR-OTP-0080-0245, at 0248.

¹⁷⁴ CAR-OTP-0077-1414, at 1415.

¹⁷⁵ CAR-OTP-0080-0135, at 0142.

¹⁷⁶ CAR-OTP-0079-1762, at 1764.

¹⁷⁷ CAR-OTP-0080-0238, at 0240.

¹⁷⁸ CAR-OTP-0082-0630, at 0632.

¹⁷⁹ CAR-OTP-0079-0122, at 0126.

to adequately prepare that witness.¹⁸⁰ In another instance, Mr Mangenda told Mr Kilolo that Mr Bemba was really pleased since he had realised that “*un travail appreciable de couleurs a été effectivement fait*”.¹⁸¹ On 16 October 2013, Mr Kilolo relayed to Mr Mangenda Mr Bemba’s concern that he may be suspected and charged with offences against the administration of justice.¹⁸²

105. In light of the foregoing, the Chamber considers that Mr Bemba, as the ultimate beneficiary of the strategy to defend him in the Main Case, was the overall planner and coordinator whose actions led to the commission of the charged offences. In turn, the evidence shows that Mr Kilolo and Mr Mangenda were making all efforts to implement the strategy devised by Mr Bemba with a view to pleasing and satisfying him as the client in the Main Case.

106. Based on the evidence, the Chamber considers that Mr Bemba, being the overall planner and coordinator of the offences charged, bears criminal responsibility as a co-perpetrator under article 25(3)(a) of the Statute for intentionally corruptly influencing the Witnesses as set out in article 70(1)(c) of the Statute and intentionally presenting false evidence as set out in article 70(1)(b) of the Statute, with regard to the Witnesses. In the alternative, he also bears criminal responsibility as an accessory under article 25(3)(b) of the Statute for soliciting the commission of the offences pursuant to articles 70(1)(b) and 70(1)(c) of the Statute. He is also criminally responsible as an accessory under article 25(3)(b) for soliciting false testimony of the Witnesses in accordance with article 70(1)(a) of the Statute.

¹⁸⁰ CAR-OTP-0080-0245, at 0250.

¹⁸¹ CAR-OTP-0079-0114, at 0118.

¹⁸² CAR-OTP-0079-1762, at 1766.

FOR THESE REASONS, THE CHAMBER HEREBY

a) Decides to commit Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu, and Narcisse Arido to a Trial Chamber for trial on the charges for offences against the administration of justice, all committed between end of 2011 and 14 November 2013 in various locations, including the Netherlands, Belgium, Sweden, Portugal, the Republic of the Congo, the Democratic Republic of the Congo and Cameroon, confirmed as follows:

(i) Mr Bemba, pursuant to article 70(1)(c) and article 25(3)(a) (co-perpetration) of the Statute committed, together with Mr Kilolo and Mr Mangenda, the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of planning and coordinating with the other suspects the perpetration of this offence (as included in counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, and 42 of the DCC);

in the alternative, pursuant to article 70(1)(c) and article 25(3)(b) of the Statute, **Mr Bemba** solicited the commission of the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of directing and coordinating with the other suspects the perpetration of this offence (as included in counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, and 42 of the DCC);

Mr Bemba, pursuant to article 70(1)(b) and article 25(3)(a) (co-perpetration) of the Statute committed, together with Mr Kilolo and Mr Mangenda, the offence of presenting false evidence with regard to witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29,

D-54, D-55, D-57 and D-64, by way of planning and coordinating with the other suspects the perpetration of this offence (as included in counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41 of the DCC);

in the alternative, pursuant to article 70(1)(b) and article 25(3)(b) of the Statute, **Mr Bemba** solicited the commission of the offence of presenting false evidence with regard to witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of directing and coordinating with the other suspects the perpetration of this offence (as included in counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41 of the DCC);

Mr Bemba, pursuant to article 70(1)(a) and article 25(3)(b) of the Statute, solicited the commission by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of directing and coordinating with the other suspects the perpetration of this offence (as included in counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, and 40 of the DCC).

- (ii) **Mr Kilolo**, pursuant to article 70(1)(c) and article 25(3)(a) (co-perpetration) of the Statute committed, together with Mr Bemba and Mr Mangenda, the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of instructing them, in person or by phone, to either provide false information or withhold true information during their testimony in Court and by either promoting,

encouraging or rewarding their testimony by way of transfers of money (as included in counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, and 42 of the DCC);

Mr Kilolo, pursuant to article 70(1)(b) and article 25(3)(a) (co-perpetration) of the Statute, committed, together with Mr Bemba and Mr Mangenda, the offence of presenting false oral evidence in the knowledge that it was false, by way of introducing the testimony of witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 in the proceedings before TCIII (as included in counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41 of the DCC);

Mr Kilolo, pursuant to article 70(1)(a) and article 25(3)(b) of the Statute, solicited or induced the commission by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of instructing, persuading or otherwise influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, including by way of transfers of money, to state false information or withhold true information before TCIII (as included in counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, and 40 of the DCC).

- (iii) **Mr Mangenda**, pursuant to article 70(1)(c) and article 25(3)(a) (co-perpetration) of the Statute, committed, together with Mr Bemba and Mr Kilolo, the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57

and D-64, by way of liaising between Mr Bemba and Mr Kilolo as well as discussing, coordinating with and advising Mr Kilolo both on money transfers to witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 and on the content of their testimony, by providing cell phones to witnesses and by actively participating in meetings where witnesses were illicitly coached (as included in counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, and 42 of the DCC);

in the alternative, pursuant to article 70(1)(c) and article 25(3)(c) of the Statute, **Mr Mangenda**, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 by way of liaising between Mr Bemba and Mr Kilolo as well as discussing, coordinating with and advising Mr Kilolo both on money transfers to witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 and on the content of their testimony, providing cell phones to witnesses and by actively participating in meetings where witnesses were illicitly coached (as included in counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, and 42 of the DCC); **Mr Mangenda**, pursuant to article 70(1)(b) and article 25(3)(a) (co-perpetration) of the Statute, committed, together with Mr Bemba and Mr Kilolo, the offence of presenting false oral evidence in the knowledge that it was false, by way of introducing the testimony of witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 in the proceedings before TCIII (as

included in counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41 of the DCC);

in the alternative, pursuant to article 70(1)(b) and article 25(3)(c) of the Statute, **Mr Mangenda**, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the offence of presenting false oral evidence by way of introducing the testimony of witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 in the proceedings before TCIII, by way of assisting as case manager the lead counsel in the Main Case in introducing the false evidence, regularly discussing with Mr Kilolo and Mr Bemba, advising and reporting to them about the false testimonies rendered by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 before TCIII (as included in counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41 of the DCC);

Mr Mangenda, pursuant to article 70(1)(a) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of actively participating in meetings where witnesses were illicitly coached, by providing cell phones to witnesses and by regularly discussing with Mr Kilolo and Mr Bemba, advising and reporting to them about the false testimonies rendered by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25,

D-26, D-29, D-54, D-55, D-57 and D-64 before TCIII (as included in counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, and 40 of the DCC).

- (iv) **Mr Babala**, pursuant to article 70(1)(c) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence aided, abetted or otherwise assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of managing and dispensing as necessary and appropriate to this effect the finances at Mr Bemba's disposal (as included in counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, and 42 of the DCC).

Mr Babala, pursuant to article 70(1)(b) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence aided, abetted or otherwise assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false evidence through witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of managing and dispensing as necessary and appropriate to this effect the finances at Mr Bemba's disposal (as included in counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41 of the DCC).

Mr Babala, pursuant to article 70(1)(a) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence aided, abetted or otherwise assisted in the commission by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of managing and dispensing as necessary and

appropriate to this effect the finances at Mr Bemba's disposal (as included in counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, and 40 of the DCC).

- (v) **Mr Arido**, pursuant to article 70(1)(c) and article 25(3)(a) (perpetration) of the Statute, committed the offence of corruptly influencing witnesses D-2, D-3, D-4 and D-6, by way of instructing them to either provide false information or withhold true information during their testimony in Court and encouraging their testimony with money transfers and the possibility of a relocation in Europe (as included in counts 12, 15, 18, and 42 of the DCC); in the alternative, pursuant to article 70(1)(c) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, **Mr Arido** aided, abetted or otherwise assisted the commission of the offence of corruptly influencing witnesses D-2, D-3, D-4 and D-6 by way of instructing them to falsely testify and encouraging their testimony with money transfers and the possibility of a relocation in Europe (as included in counts 12, 15, 18, and 42 of the DCC);
- Mr Arido**, pursuant to article 70(1)(b) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted the commission, by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false oral evidence by way of introducing the testimony of witnesses D-2, D-3, D-4 and D-6 in the proceedings before TCIII, by way of instructing witnesses D-2, D-3, D-4 and D-6 on the false information to provide in Court and introducing them to Mr Kilolo (as included in counts 11, 14, 17, and 41 of the DCC);

Mr Arido, pursuant to article 70(1)(a) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission by witnesses D-2, D-3, D-4 and D-6 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of recruiting witnesses D-2, D-3, D-4 and D-6, instructing, persuading or otherwise influencing them, including by way of transfers of money and the possibility of a relocation in Europe, to state false information or withhold true information before TCIII (as included in counts 10, 13, 16, and 40 of the DCC).

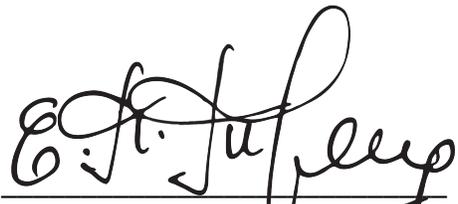
b) Declines to confirm the remainder of the charges in connection with the Witnesses, as follows:

- (i)** With regard to Mr Bemba, Mr Kilolo and Mr Mangenda, all charges presented in the DCC under article 25(3)(a) of the Statute (indirect co-perpetration) and article 25(3)(d) of the Statute (contributed in any other way);
- (ii)** With regard to Mr Babala, all charges presented in the DCC under article 25(3)(a) of the Statute (direct and indirect co-perpetration) and article 25(3)(d) of the Statute (contributed in any other way);
- (iii)** With regard to Mr Arido, all charges presented in the DCC as included in counts 1-9, and 19-39; moreover, the charges presented in the DCC as included in counts 10-18, and 40-42 under article 25(3)(a) of the Statute (direct and indirect co-perpetration) and article 25(3)(d) of the Statute (contribution in any other way); in

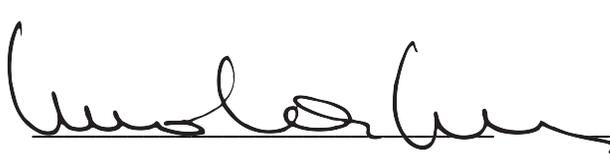
addition, the charges presented in the DCC as included in counts 10, 13, 16, and 40 under article 25(3)(b) of the Statute (soliciting);

- c) **Declines** to confirm the charges presented in the DCC in connection with the Documents (count 43 of the DCC for Mr Bemba, Mr Kilolo, Mr Mangenda and Mr Arido);
- d) **Rejects** the Defence requests to stay the proceedings.

Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Cuno Tarfusser

Judge Christine Van den Wyngaert

Dated this Tuesday, 11 November 2014

The Hague, The Netherlands