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TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

PUBLIC REDACTED VERSION – with confidential annexes

Defence Application Seeking a Permanent Stay of the Proceedings

Source: Defence team for Mr Thomas Lubanga

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

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SUBJECT-MATTER OF THE APPLICATION

1. This application seeks a permanent stay of the proceedings against the Accused and his immediate release.
2. In law, the application is essentially based on the abuse of process doctrine, which the Chamber has recognised as an integral part of the general principles of applicable law.
3. In fact, this application argues that extremely serious prejudice to the integrity of the judicial process, to fair trial and to the independence of the Court has irretrievably vitiated the proceedings against the Accused, thereby rendering a fair trial impossible.

SUBMISSIONS

I –APPLICABLE LAW

1 – THE PRINCIPLE OF STAYING IRRETRIEVABLY VITIATED PROCEEDINGS

5. The foundation of the present application is the general principle that proceedings which are irretrievably vitiated by serious breaches of the fundamental principles of justice or the norms of a fair trial must be discontinued.
6. At common law, this principle is based on the concept of “abuse of process”. “Abuse of process” occurs where it is impossible to guarantee the accused a fair trial, or where the integrity of the judicial process is irretrievably vitiated by such serious prejudice that to continue the proceedings would offend the fundamental principles of justice.
7. While a finding of flagrant and intentional misconduct by the Office of the Prosecutor is a consideration when assessing the seriousness of prejudice to

the integrity of the judicial process and in the choice of remedy to be afforded thereto, it is not a necessary precondition for abuse of process.¹

8. The doctrine has found application at the ICTY and ICTR.
9. In its decision of 3 November 1999, the ICTR Appeals Chamber accepted that the doctrine “may be relied on in two distinct situations: (1) where delay has made a fair trial for the accused impossible; and (2) where in the circumstances of a particular case, proceeding with the trial of the accused would contravene the court’s sense of justice, due to pretrial impropriety or misconduct”.² Basing its decision on these principles, the Court dismissed the indictment against the appellant and ordered his immediate release.
10. In so doing, the ICTR Appeals Chamber clearly accepted that the doctrine of abuse of process belongs to the corpus of applicable law before international criminal courts and tribunals.³ That the decision was reviewed on purely factual grounds does not call into question the legal basis for the incorporation of these principles into the applicable law by international criminal courts and tribunals.
11. This doctrine has been invoked on numerous occasions before the ICTR and ICTY, which have so far not disputed the legal basis for its applicability to the cases before them.⁴
12. It follows that the doctrine of abuse of process is indisputably one of the general principles of law applicable to proceedings before international courts and tribunals.

¹ *R. v. O’Connor*, [1995] 4 R.C.S. 411, para. 79. See also *R. v. Keyowski*, [1988] 1 R.C.S. 657, paras. 5-6.

² *Jean Bosco Barayagawiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, para. 77.

³ Article 21(1)(c).

⁴ *Prosecutor v. Vojislav Šešelj*, *Decision on oral request of the accused for abuse of process*, Case No. IT-03-67-T, 10 February 2010; *Prosecutor v. Radovan Karadžić*, *Decision on motion to dismiss for abuse of process*, Case No. IT-95-5/18-PT, 12 May 2009.

13. In the instant case, the Appeals Chamber has previously ruled on the applicability of these principles to proceedings before the International Criminal Court (ICC).⁵
14. Although “[t]he conclusion to which the Appeals Chamber [was] driven is that the Statute does not provide for stay of proceedings for abuse of process as such”,⁶ that Chamber did endorse the essence of the doctrine and point out that it is part of the protection of the rights of the Accused, which the Statute safeguards.⁷ As noted by Judge Pikis: “to the extent it [the abuse of process doctrine] aims to stem breaches of fundamental principles of justice, it is endorsed by the Statute as a means of protecting the individual from violations of his/her fundamental rights and in order to ensure a fair trial that earmarks the parameters of the administration of justice.”⁸
15. The Appeals Chamber thus holds that:

Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial. In those circumstances, the interest of the world community to put persons accused of the most heinous crimes against humanity on trial, great as it is, is outweighed by the need to sustain the efficacy of the judicial process as the potent agent of justice.

In such an event, the Appeals Chamber is of the view that the process must be stopped.⁹

16. Hence, although the doctrine of abuse of process “as such” is not provided for by the Statute, it is clear that the Appeals Chamber considers the essential elements of that doctrine as forming part of the applicable law upon which the bench may draw. It was on the basis of those elements that the Appeals

⁵ ICC-01/04-01/06-772, paras. 26-39.

⁶ *Idem*, para. 35.

⁷ *Ibidem*, para. 36.

⁸ *Ibidem*, para. 39.

⁹ *Ibidem*, paras. 37-39.

Chamber, upholding Trial Chamber I's decision, acknowledged that the bench of the International Criminal Court was empowered to discontinue irretrievably vitiated proceedings before a final determination of the case.

17. It follows that the Chamber is justified in considering the facts set out below in light of those essential principles.

2 – PROVISIONS OF THE STATUTE AND THE RULES OF PROCEDURE AND EVIDENCE

18. The present application further relies on article 64, which vests the Trial Chamber with the most wide-ranging powers to ensure a fair trial, article 54(1), which sets forth the essential duties of the Prosecutor, article 67(1) enumerating the fundamental rights of the accused, article 67(2) and rule 77 setting out the Prosecutor's disclosure obligations, and article 70 granting the Chamber jurisdiction over evidence-related offences.

3 – BURDEN AND STANDARD OF PROOF

19. As held by Trial Chamber III in its decision of 24 June 2010, in matters of abuse of process, the standard of proof applying to the facts for which evidence must be supplied by the Defence is the "civil standard of proof", based on the concept of "balance of probabilities".¹⁰

II – PREJUDICE TO THE INTEGRITY OF THE JUDICIAL PROCESS AND VIOLATIONS OF THE NORMS OF A FAIR TRIAL

20. The Chamber will find that the Prosecutor bears responsibility for serious and irretrievable prejudice to the judicial process of seeking and establishing the truth, the extreme seriousness of which precludes a fair trial.
21. Firstly, the Prosecutor is responsible for the fact that some of the persons who acted for him – presented as "intermediaries" – knowingly elicited and took

¹⁰ ICC-01/05-01/08-802, paras. 201-204.

part in the preparation of false statements aimed at securing the Accused's conviction. The Prosecutor's responsibility in that regard is aggravated by his knowledge that the persons who were acting for him were concomitantly acting on behalf of the Congolese authorities, victims participating in the trial, or private organisations organising the victims' representation before the Chamber.

22. Secondly, the Prosecutor is responsible for having arranged for manifestly mendacious or erroneous testimony to be given before the Chamber without first conducting the necessary investigations to ascertain its reliability. Such blatant negligence in the performance of his investigative duties led to the introduction of erroneous or mendacious evidence, and, of itself, constitutes serious and irremediable prejudice to the norms of a fair trial.
23. Thirdly, prior or subsequent to that testimony being given, the Prosecutor is responsible for having deliberately concealed information or evidence that could seriously undermine the credibility of the testimony or cast serious doubts over his intermediaries' conduct towards witnesses. Generally, the Prosecutor is responsible for deliberately refusing to take account of information likely to lend credence to suspicions of subornation and false evidence, and for failing to provide this information to the Court. Such deceitful conduct was also evident in public statements in which the Prosecutor displayed a bias against the Accused incompatible with his duties.
24. Thus, the Prosecutor is directly responsible for serious failure to discharge his statutory duties, irremediably vitiating the judicial process of seeking and establishing the truth, and making a fair trial impossible.
25. This situation has been further exacerbated by the fact that as part of a concerted operation led by a Congolese political figure ("Victim" a/0270/07),

participating victims have usurped the identity of third persons and have in their turn perjured themselves before the Chamber.

26. The following observations are intended to set out in detail these numerous instances of prejudice to the administration of justice.

1 – PERSONS ACTING FOR THE PROSECUTOR TOOK PART IN THE PREPARATION OF FALSE EVIDENCE AND OTHER MANIPULATION OF EVIDENCE

27. The Office of the Prosecutor has emphasised on numerous occasions that persons acting on its behalf, termed intermediaries, have played a decisive role in its investigations, as regards identifying witnesses, putting them in contact with the investigators, and assessing the risk to them.

28. The observations below demonstrate that the four intermediaries who were most frequently used by the Office of the Prosecutor in this case are culpable of acts of subornation for which the Office of the Prosecutor incurs responsibility.

1.1 Intermediary [REDACTED] (DRC-OTP-WWWW-0316, hereinafter W-0316)

1.1.1 W-0316 has acted for the Office of the Prosecutor

29. [REDACTED], W-0316 was “[REDACTED]” in the Office of the Prosecutor as a contractor.¹¹ However, evidence was brought to show that W-0316 started to work with the Office of the Prosecutor as early as April 2005 and, after the end of the contract, continued working into 2008,¹² in return for payment.¹³

¹¹ EVD-OTP-00604; EVD-D01-00358; EVD-OTP-00605 and T-327-CONF-FRA-ET, p. 23, lines 4-9.

¹² EVD-OTP-00599; EVD-OTP-00600; DRC-OTP-0222-0434*; DRC-OTP-0231-0323*; EVD-D01-00380; EVD-OTP-00599; EVD-D01-00684; EVD-D01-00353; EVD-D01-00728 and EVD-OTP-00602; EVD-D01-00353; EVD-OTP-00611; T-327-CONF-FRA-ET, p. 22 *et seq.* and T-328-CONF-FRA-ET, p. 12, lines 1-5 pertaining to EVD-OTP-00604.

¹³ EVD-D01-00353; EVD-OTP-00611; EVD-D01-00354; EVD-D01-00682; EVD-D01-00362; EVD-D01-00364; EVD-D01-00308; EVD-D01-00365 to EVD-D01-00368; EVD-D01-00725.

30. As confirmed by Mr Lavigne and Mr Sebire, who headed investigations between 2005 and 2007, W-0316 played a decisive role in the conduct of investigations¹⁴ by collecting information,¹⁵ performing analyses, identifying, contacting and locating witnesses,¹⁶ introducing witnesses to the Office of the Prosecutor,¹⁷ arranging travel,¹⁸ obtaining identification,¹⁹ and taking photographs.²⁰
31. Nicolas Sebire states that W-0316 identified and introduced to the Office of the Prosecutor individuals not known to the Office, whom he saw as potential witnesses.²¹ Such was the case, *inter alia*, for Witnesses W-0015 and D01-0016. These efforts to find potential witnesses demonstrate that W-0316 must have been informed of the objectives of the investigations of the Office of the Prosecutor, and that the Office considered him as one of its institutional agents who could be privy to confidential information.
32. W-0316 reported directly to those heading the investigations; the information he supplied was conveyed to the highest levels of the Office of the Prosecutor.²²
33. W-0316 therefore acted for the Office of the Prosecutor in its name, on its behalf and on its instructions.

¹⁴ Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 20, lines 21-22 and p. 63, lines 14-15. T-334-CONF-FRA-ET, p. 54, lines 5-6.

¹⁵ EVD-D01-00367; T-335-CONF-FRA-ET, p. 8, lines 10-12; T-334-CONF-FRA-ET, p. 16, lines 17-20 and p. 52, lines 3-5; Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 64, lines 2-11 and p. 71, lines 19-22.

¹⁶ EVD-D01-00411; EVD-D01-00355; EVD-D01-00356; EVD-D01-00308; EVD-D01-00364 and EVD-D01-00365. T-334-CONF-FRA-ET, p. 16, lines 17-22 and Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 65, lines 3-11.

¹⁷ DRC-D01-0003-5847.

¹⁸ EVD-D01-00684; EVD-D01-00357; EVD-D01-00758 and EVD-D01-00725.

¹⁹ EVD-D01-00682 and EVD-D01-00382.

²⁰ EVD-OTP-00600; EVD-OTP-00602 and EVD-D01-00361. T-334-CONF-FRA-ET, p. 63, lines 3-7.

²¹ T-334-CONF-FRA-ET, p. 59, lines 20-24.

²² Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 3, line 26 *et seq.*

1.1.2 There is evidence to show that Intermediary W-0316 encouraged witnesses to give false evidence and contributed to its preparation

34. Witnesses W-0015 and D01-0016 stated that W-0316 had encouraged them to make false statements to the Prosecutor and contributed to the preparation of the statements.

a. Witness D01-0016's evidence

- *Witness D01-0016 states that W-0316 encouraged him to make false statements to the investigators and took part in its preparation*

35. Witness D01-0016 reveals that W-0316 encouraged him to state mendaciously to Office of the Prosecutor investigators that he had been a soldier in the UPC army,²³ and had seen Thomas Lubanga enlist children into the UPC army²⁴ and young girls give birth while in the army.²⁵
36. Witness D01-0016 explains that he met Intermediary W-0316 in a bar in Bunia. Intermediary W-0316 explained that he was looking for “[INTEPRETATION] someone to say something about Mr Thomas Lubanga” to the investigators from the Office of the Prosecutor of the ICC.²⁶ He states that after several months of discussion, W-0316 introduced him to some investigators at the *Hellénique* restaurant in Bunia.²⁷ Following that meeting, W-0316 informed him that the same persons wanted to meet him in Kampala.²⁸
37. The witness did meet the investigators in Kampala from 30 September to 5 October 2005,²⁹ and subsequently in Bunia on 12 November 2005.³⁰

²³ T-256-CONF-FRA-CT, p. 14, lines 16-19.

²⁴ T-256-CONF-FRA-CT, p. 21, lines 12-13 and T-257-CONF-FRA-CT2, p. 3, lines 21-25.

²⁵ T-256-CONF-FRA-CT, p. 21, lines 20-22.

²⁶ T-256-CONF-ENG-CT, p. 9, line 20 and p. 11, lines 6-13.

²⁷ T-256-CONF-FRA-CT, p. 9, lines 6-7 and p. 22, lines 8-14.

²⁸ *Idem*, p. 25, lines 8-14.

²⁹ EVD-OTP-00533 to EVD-OTP-00551.

³⁰ EVD-OTP-00552.

38. D01-0016 states that W-0316 and he arrived two or three days before the meeting in Kampala and went over the subjects that they had discussed in Bunia when they were planning to lie.³¹
39. Witness D01-0016 states that the lie was prepared in advance by Intermediary W-0316.³² He explains that the latter would meet him in the hotel before every meeting with the investigators, in order to discuss the lie that they had planned,³³ and would meet him again in the evening to prepare the answers for the following day and for an update on the questions which had been put to him.³⁴
40. In this regard, Witness D01-0016 adds: “[TRANSLATION] There was a plan. While we were talking about all that, we wrote down names of members of the army who were in the rebellion, who were fighting. If I was asked questions about a battle which had taken place in such and such a village, I was to give any of the names of certain people who were in the army. That’s how we prepared.”³⁵ Furthermore, when interviewed by the investigators, D01-0016 used a notebook containing names of commanders associated with names of places and of battles.³⁶
41. D01-0016 states that Intermediary W-0316 offered him a drink, gave him a small amount of money in exchange for these lies,³⁷ and promised him that he would leave Bunia to go “[INTERPRETATION] to the white man’s land”.³⁸ On that point, Witness D01-0016 explains that W-0316 encouraged him to make

³¹ T-256-CONF-FRA-CT, p. 26, line 19 to p. 27, line 5.

³² *Idem*, p. 13, line 22 to p. 14, line 10.

³³ *Ibidem*, p. 27, lines 1-5.

³⁴ *Ibidem*, p. 27, lines 10-13. T-258-CONF-FRA-CT, p. 8, lines 12-13 and p. 12, lines 4-11.

³⁵ *Ibidem*, p. 16, lines 7-10.

³⁶ T-335-CONF-FRA-ET, p. 63, lines 24 *et seq.* Notebook, pages: EVD-D01-00387 to EVD-D01-00390. This notebook is mentioned during the interview EVD-OTP-00546, p. 1836, line 916 to p. 1839, line 1009.

³⁷ T-256-CONF-FRA-ET, p. 16, lines 18-23.

³⁸ T-256-CONF-ENG-ET, p. 16, lines 17-21.

mendacious allegations of threats for the purpose of benefitting from protective measures such as relocation.³⁹

42. D01-0016 states that to this end, W-0316 personally wrote a fake threatening letter on which the latter's fingerprint appears, and which D01-0016 gave to a person acting for the ICC in Bunia.⁴⁰ Despite objections from the Defence, the original document, given to the Office of the Prosecutor by D01-0016, and a copy of which was filed in the record, was not put before to the Chamber.⁴¹

– *An examination of the statements given by D01-0016 to the investigators in October and November 2005 confirms their artificial and mendacious character*

43. The topics suggested by W-0316 were covered by the witness: he describes himself as a UPC soldier, refers on several occasions to the presence of child soldiers under the age of 15 years and mentions that a young girl was present.⁴²
44. The manifest inconsistencies in these statements demonstrate their mendacious nature. Thus, for example, he gives three different accounts of the period when he allegedly joined the UPC;⁴³ despite describing himself as a UPC officer, he does not know the meaning of the acronym "UPC"⁴⁴ or the name of the group's armed wing;⁴⁵ he is unable to provide the name of his brigade⁴⁶ or the name of his commander⁴⁷ and claims to have been promoted

³⁹ T-257-CONF-FRA-CT2, p. 29, line 10 to p. 30, line 7.

⁴⁰ EVD-D01-00120 (translation EVD-OTP-0612); T-257-CONF-FRA-CT2, p. 31, line 18 *et seq.*; T-257-CONF-FRA-CT2, p. 35, lines 7-17.

⁴¹ T-332-CONF-FRA-ET, p. 40, lines 25 *et seq.*

⁴² EVD-OTP-00535, p. 1407, lines 43-49, p. 1430, line 788 to p. 1431, line 810, EVD-OTP-00540, p. 1614, lines 520-532 and EVD-OTP-00541, p. 1645, line 52.

⁴³ EVD-OTP-00535, p. 1409, lines 104-121, p. 1413, lines 235-239, p. 1418, lines 398-399, p. 16/1421, lines 500-508, p. 1422, lines 515-518, p. 1423, lines 566-573, p. 1424, lines 583-584.

⁴⁴ EVD-OTP-00535, p. 1407, lines 50-57.

⁴⁵ EVD-OTP-00537, p. 1492, lines 686-694.

⁴⁶ EVD-OTP-00544, p. 1817, lines 294 *et seq.*

⁴⁷ EVD-OTP-00545, p. 1793, line 756 to p. 1794, line 458.

to “[REDACTED]”⁴⁸ during a period (2002-2003) when, other than the generic title of “commander”, ranks were not conferred in the FPLC.⁴⁹

45. The statements Witness D01-0016 gave to the investigators in October and November 2005 therefore appear to be the result of W-0316’s contriving to suborn him.

- *Nicolas Sebire’s testimony confirms certain facts which lend credence to D01-0016’s evidence*

46. Contrary to W-0316’s assertion,⁵⁰ Nicolas Sebire confirms that D01-0016 was identified and introduced by W-0316, who described him as a former FPLC officer.⁵¹

47. He confirms that D01-0016 and W-0316 were in Kampala several days before the interviews started and stayed in the same hotel;⁵² he further states that W-0316 accompanied D01-0016 from their hotel to the place of the interview and back to the hotel daily.⁵³ These details confirm that it was physically possible for D01-0016 and W-0316 to prepare fraudulently for the interviews.

48. Nicolas Sebire confirms that D01-0016 used notes during the interview.⁵⁴

- *W-0316’s evidence is not likely to cast doubt on D01-0016’s evidence*

49. W-0316’s evidence as regards D01-0016 is plagued by such contradictions and implausibilities that it lends weight to D01-0016’s accusations against him.⁵⁵

⁴⁸ EVD-OTP-00543, p. 1723, line 773 to p. 1724, line 797 and EVD-OTP-00546, p. 1814, line 200 to p. 1815, line 231.

⁴⁹ W-0017: T-158-CONF-FRA-CT, p. 68, lines 23 *et seq.* and W-0055: T-176-CONF-FRA-CT, p. 40, lines 19-22 and p. 41, lines 6-11.

⁵⁰ T-328-CONF-FRA-ET, p. 19, line 16 to p. 20, line 3; T-332-CONF-FRA-ET, p. 32, line 16 to p. 34, line 7.

⁵¹ T-335-CONF-FRA-ET, p. 29, lines 11-28 and EVD-OTP-00629, para. 41.

⁵² *Idem*, p. 53, lines 3-10; EVD-D01-00114 and EVD-OTP-00629, para. 42.

⁵³ *Ibidem*, p. 31, lines 9-15.

⁵⁴ *Ibidem*, p. 65, lines 19-21; EVD-OTP-00546, p. 1836, line 916 to p. 1839, line 1002.

⁵⁵ He refused to admit to having introduced to the Office of the Prosecutor individuals of whose existence the Office was unaware (T-331-CONF-FRA, p. 39, lines 20-23 and p. 41, lines 6-10), contrary

50. For instance, W-0316 claims to have sought D01-0016 using information (a photograph of D01-0016) that the Office of the Prosecutor had already provided.⁵⁶ This claim is contradicted by Nicolas Sebire, who confirms that W-0316 informed him of D01-0016's existence.⁵⁷
51. Similarly, W-0316 claims to have had no contact with D01-0016 after the Kampala interviews.⁵⁸ This claim is contradicted by both D01-0016's evidence and internal documents of the Office of the Prosecutor.⁵⁹
52. W-0316 claims not to have been informed of problems concerning D01-0016's security⁶⁰ and denies having told the Office of the Prosecutor that a threatening letter had been found at Witness D01-0016's home.⁶¹ However, the Office of the Prosecutor itself states that on 11 January 2008, W-0316 told an investigator that D01-0016 had found a letter containing death threats on his doorstep.⁶²

to statements made by Mr Sebire and Mr Lavigne (Rule68Deposition-CONF-FRA-ET 17-11-2010, p. 62, lines 21-22 and T-334-CONF-FRA-ET, p. 59, lines 20-24). During his October 2009 interview with the Office of the Prosecutor, W-0316 claimed not to know W-0015 and D01-0016: EVD-D01-00372, p. 0486, line 1157 to p. 0487, line 1205, EVD-D01-00377, p. 0489, line 14 to p. 0499, line 349 and p. 0499, line 354 to p. 0512, line 806. He denied having introduced witnesses D01-0016, W-0015 and W-0038 to the Office of the Prosecutor (T-332-CONF-FRA-ET, p. 32, line 16 to p. 33, line 20 and p. 48, line 14 to p. 49, line 11; T-333-CONF-FRA-ET, p. 17, line 16 to p. 18, line 1), contrary to the evidence given by Mr Sebire and the witnesses themselves. (Nicolas Sebire: T-335-CONF-FRA-ET, p. 29, lines 13-17 and p. 77, line 25 to p. 78, line 27. D01-0016: T-256-CONF-FRA-CT, p. 9, lines 3 and 6-7. W-0015: T-264-CONF-FRA-CT3, p. 66, lines 10-11. W-0038: T-337-CONF-FRA-ET, p. 19, lines 18-21.) W-0316 stated that contacting and transporting witnesses were not part of his duties as [REDACTED] (T-331-CONF-FRA-ET, p. 7, lines 10 *et seq.*), which is contradicted by accounting records EVD-D01-00355 to EVD-D01-00357.

⁵⁶ T-332-CONF-FRA-ET, p. 33, lines 11-14 and p. 34, lines 16-25.

⁵⁷ T-335-CONF-FRA-ET, p. 29, lines 13-17.

⁵⁸ T-328-CONF-FRA-ET, p. 39, lines 24 *et seq.*

⁵⁹ EVD-D01-00308 and T-257-CONF-FRA-CT2, p. 22, line 16 to p. 23, line 7.

⁶⁰ T-329-CONF-FRA-ET, p. 16, lines 25 *et seq.* and T-332-CONF-FRA-ET, p. 37, lines 23-27.

⁶¹ T-332-CONF-FRA-ET, p. 38, lines 28 *et seq.*

⁶² DRC-OTP-0222-0434*, p. 3/7 and DRC-OTP-0233-0458*, No. 31.

53. All of this material demonstrates that W-0316 is culpable of acts of subornation in respect of D01-0016 for the purpose of supporting the charges against the Accused.

b. W-0015's testimony

– *W-0015's testimony*

54. When Witness W-0015 was called by the Office of the Prosecutor to appear before the Chamber in June 2009, he stated: “[TRANSLATION] I met the OTP’s intermediary who said this to me: you will have to change your name, you will have to change your identity. Don’t tell the true story of what happened to you; in other words, there was a story that they were telling to the witnesses. And I said they were crooks. Why do I call them crooks? Well, instead of letting me tell the true version of the story that happened to me and instead of letting me tell everything that I experienced, those people are inventing statements in order to manipulate the investigation”.⁶³ W-0015 added that the name of that intermediary was [REDACTED].⁶⁴
55. The witness’s testimony was then interrupted so that a further statement could be taken in which the witness explained that he had lied to the investigators at W-0316’s request.⁶⁵
56. During his second appearance before the Chamber from 17 to 22 March 2010, W-0015 stated that:
- He met W-0316 through D01-0016 in Kampala.⁶⁶ D01-0016’s evidence confirms this information.⁶⁷

⁶³ T-192-CONF-FRA-CT, p. 6, lines 5-14.

⁶⁴ *Idem*, p. 5, line 14.

⁶⁵ EVD-OTP-00553, para. 40 *et seq.*

⁶⁶ T-264-CONF-FRA-CT3, p. 60, lines 17-22.

⁶⁷ T-257-CONF-FRA-CT2, p. 8, lines 8-15.

- W-0316 introduced him to investigators from the Office of the Prosecutor, after having prevailed upon him to change his name⁶⁸ and asked him to reproduce a newspaper story about an arms and munitions deal.⁶⁹ W-0015 adds that Nicolas Sebire asked him to tell his story to MONUC, whose representatives immediately realised that that story was manifestly untrue.⁷⁰
- Intermediary W-0316 told the investigators that he lived in the countryside so that he could receive money to reimburse his travel costs, whereas he lived in the town where the interview was taking place.⁷¹
- W-0316 taught him an untrue story about his activities as a soldier in the UPC army that he had to reproduce to the Office of the Prosecutor;⁷² W-0316 gave him the general idea, on which he then had to expand.⁷³
- Prior to each interview with the investigators, he met W-0316 in the hotel in order to practise the lies that he was about tell.⁷⁴
- W-0316 encouraged him to conceal certain personal information, such as his identity,⁷⁵ his parents' identities,⁷⁶ his ethnic group,⁷⁷ his education,⁷⁸

⁶⁸ T-264-CONF-FRA-CT3, p. 63, lines 8-19.

⁶⁹ *Idem*, p. 62, line 23 to p. 64, line 5 and p. 67, lines 8-13.

⁷⁰ *Ibidem*, p. 66, lines 21 *et seq.* and p. 67, lines 14-20. Confirmed by Nicolas Sebire: T-335-CONF-FRA-ET, p. 83, lines 2-20.

⁷¹ T-264-CONF-FRA-CT3, p. 64, lines 20-24; T-265-CONF-Red-FRA-CT2, p. 9, line 19 *et seq.*; EVD-D01-00524. D01-0016 confirms that W-0015 lives with [REDACTED]; T-257-CONF-FRA-CT2, p. 8, lines 11-13.

⁷² T-264-CONF-FRA-CT3, p. 69, lines 13-19.

⁷³ *Idem*, p. 32, lines 10-12.

⁷⁴ *Ibidem*, p. 32, lines 6-9; T-265-CONF-Red-FRA-CT2, p. 13, lines 5-11.

⁷⁵ *Ibidem*, p. 63, lines 15-19 and p. 70, lines 10-11; T-265-CONF-Red-FRA-CT2, p. 22, lines 5-12 and p. 23, lines 23-25. The identity of [REDACTED] is confirmed by EVD-D01-00123 and by W-0015: T-265-CONF-Red-FRA-CT2, p. 27, lines 5-7.

⁷⁶ T-265-CONF-Red-FRA-CT2, p. 22, lines 8-12.

⁷⁷ *Idem*, p. 24, lines 16-20.

⁷⁸ T-264-CONF-FRA-CT3, p. 69, lines 17-19; T-265-CONF-FRA-CT2, p. 25, lines 17-19.

and the identities of the commanders he had come into contact with,⁷⁹ for the specific purpose of obstructing investigations into him and making any checks on him impossible.⁸⁰

- W-0316 encouraged him to tell the investigators that he had been a soldier in the UPC army.⁸¹
- Intermediary W-0316 threatened him on numerous occasions.⁸²
- W-0316 was present at his first meeting with the Office of the Prosecutor investigators⁸³ and, on that occasion, he allegedly exerted pressure on him when he refused to tell the story that they had prepared.⁸⁴
- Intermediary W-0316 had told him to claim that he could not read or that he had difficulties with his eyesight.⁸⁵
- W-0316 showed him a notebook containing the names and statements of certain persons.⁸⁶
- Under W-0316's influence, he falsely stated that his parents were dead for the purpose of, *inter alia*, deterring the Prosecutor from carrying out further investigations through them.⁸⁷
- Intermediary W-0316 encouraged him to lie to the investigators by claiming that his child was ill, in order to "[TRANSLATION] earn a bit of money".⁸⁸

⁷⁹ T-265-CONF-Red-FRA-CT2, p. 25, lines 6-16.

⁸⁰ *Idem*, p. 24, lines 1-3.

⁸¹ EVD-OTP-00553, para. 14 *et seq.*

⁸² T-264-CONF-FRA-CT3, p. 49, lines 13-23 and p. 70, lines 2-10.

⁸³ T-335-CONF-FRA-ET, p. 79, lines 12-19.

⁸⁴ T-264-CONF-FRA-CT3, pp. 62-64 and p. 67, lines 8-13.

⁸⁵ *Idem*, p. 26, lines 10-13; T-265-CONF-Red-FRA-CT2, p. 25, lines 20-25 and p. 26, lines 9-10.

⁸⁶ T-264-CONF-FRA-CT3, p. 68, line 3.

⁸⁷ EVD-OTP-00319, para. 10. See also T-265-CONF-Red-FRA-CT2, p. 22, lines 8-12 and p. 24, lines 1-3.

⁸⁸ T-264-CONF-FRA-CT3, p. 68, lines 21-24.

- W-0316 obtained an original State diploma for him under a false name to convince his interlocutors. He stated that he had in fact sat his exam in 2002-2003, but had failed. Therefore he had not been able to obtain his State diploma.⁸⁹
- *An examination of the statements given by W-0015 to the investigators in October and November 2005 and May 2006 confirms their artificial and mendacious character*

57. These statements, in which W-0015 claims to have been a soldier, consecutively in three different and rival armed groups, contain numerous implausibilities and contradictions which betray their mendaciousness. A brief and revealing sample follows:

- Witness W-0015 states that he does not know about the structure and organisation of the UPC army,⁹⁰ and yet claims to have served in it as [REDACTED], [REDACTED] and member of [REDACTED]'s close protection team.⁹¹ Similarly, he is incapable of answering the investigators' questions seeking to identify commanders referred to by code names.⁹²
- He states that he does not know the meaning of the acronym "FNI" and that he is unable to describe the organisation of the movement, yet claims to have been given responsibility for [REDACTED] by the FNI Chief of Staff himself, Mr Ngudjolo.⁹³
- He claims to have been promoted by "[REDACTED]" to the rank of [REDACTED],⁹⁴ whereas no ranks existed in the FPLC at the time.⁹⁵

⁸⁹ T-265-CONF-Red-FRA-CT2, p. 14, lines 3-8.

⁹⁰ EVD-OTP-00319, para. 170.

⁹¹ *Idem*, paras. 41, 89-94 and 97.

⁹² EVD-OTP-00320, paras. 23, 35-37 and 43.

⁹³ EVD-OTP-00319, paras. 10 and 149-150; EVD-OTP-00320, para. 17.

⁹⁴ EVD-OTP-00319, para. 97.

⁹⁵ *Supra*, footnote 49.

- *Nicolas Sebire's evidence confirms certain facts that lend credence to W-0015's evidence*

58. Nicolas Sebire confirms that:

- W-0015 was identified and introduced by W-0316, contrary to what W-0316 asserts.⁹⁶
- W-0316 was present at the first meeting in Kampala on 3 October 2005.⁹⁷
- He invited W-0015 to go to MONUC to pass on his purported information about arms dealing,⁹⁸ and that W-0316 accompanied him during this process.⁹⁹
- W-0316 played a role both at the Kampala meeting and in organising interviews held in Bunia between W-0015 and the investigators in November 2005.¹⁰⁰
- *W-0316's evidence is unlikely to cast doubt on W-0015's evidence*

59. W-0316 attempts to play down his knowledge of the witness and the role he played in relation to the witness.

60. Moreover, W-0316 claims that the Office of the Prosecutor told him to locate W-0015, having pointed him out in a photograph.¹⁰¹ This information is contradicted by evidence from both W-0015¹⁰² and Nicolas Sebire.¹⁰³

61. Lastly, he claims not to have participated in or attended a meeting between W-0015 and the Office of the Prosecutor investigators in Kampala in October

⁹⁶ EVD-OTP-00629, para. 47 and T-335-CONF-FRA-ET p. 81, lines 21-23.

⁹⁷ T-334-CONF-FRA-ET, p. 36, lines 13-15 and T-335-CONF-FRA-ET, p. 79, lines 12-19.

⁹⁸ T-335-CONF-FRA-ET, p. 83, lines 5-20.

⁹⁹ T-336-CONF-FRA-ET, p. 7, lines 28 *et seq.*

¹⁰⁰ *Idem*, p. 8, lines 22-28.

¹⁰¹ T-332-CONF-FRA-ET, p. 49, line 6 to p. 50, line 1.

¹⁰² Instead W-0015 states that he met W-0316 by chance: T-264-CONF-FRA-CT3, p. 60, lines 16-18.

¹⁰³ T-335-CONF-FRA-ET p. 81, lines 21-23 and EVD-OTP-00629, para. 47.

or November 2005¹⁰⁴ and claims to have met him in Bunia.¹⁰⁵ However, the role played by W-0316 in putting W-0015 in contact with the Office of the Prosecutor in Kampala is undeniable, as evidenced by the statements made by both Nicolas Sebire and W-0015.¹⁰⁶

c. W-0038's testimony

– *Witness W-0038's testimony is unlikely to contradict the evidence of D01-0016 and W-0015*

62. Witness W-0038, who only testified about his own relationship with W-0316, does not provide any relevant information on W-0316's relationship with or behaviour towards other witnesses.¹⁰⁷

63. It follows that his testimony can in no way contribute to rebutting or undermining the evidence of Witnesses W-0015 and D01-0016 in respect of W-0316.

– *"Rebuttal evidence" from W-0038 reveals glaring contradictions with W-0316's testimony*

64. Contradicting W-0316's testimony,¹⁰⁸ Witness W-0038 confirms that he was identified and introduced to the Office of the Prosecutor by W-0316 and a member of his staff,¹⁰⁹ as the Office of the Prosecutor has acknowledged.¹¹⁰

65. Witness W-0038 confirms that he discussed the substance of his evidence with W-0316.¹¹¹

¹⁰⁴ T-330-CONF-FRA-ET, p. 69, lines 14-19; T-332-CONF-FRA-ET, p. 51, lines 24 *et seq.* and p. 52, lines 21-26; EVD-OTP-00611.

¹⁰⁵ T-332-CONF-FRA-ET, p. 51, lines 6-10.

¹⁰⁶ EVD-OTP-00629, para. 47. See also T-334-CONF-FRA-ET, p. 33, lines 20-28; T-336-CONF-FRA-ET, p. 8, lines 9-28 and T-264-CONF-FRA-CT3, p. 63, lines 8-19.

¹⁰⁷ Defence observations, T-299-CONF-FRA-ET, p. 19, lines 5-12.

¹⁰⁸ T-333-CONF-FRA-ET, p. 17, lines 16 *et seq.*

¹⁰⁹ T-337-CONF-FRA-ET, p. 43, lines 18-22 and T-336-FRA-CONF-FRA-ET, p. 39, lines 13-27.

¹¹⁰ ICC-01/04-01/06-2473-Conf, para. 17.

¹¹¹ T-336-CONF-FRA-ET, p. 42, lines 5-19 and T-337-CONF-FRA-ET, p. 8, lines 9 *et seq.*

66. Witness W-0038 confirms that on numerous occasions, W-0316 was in a position to persuade him to make false statements to the investigators.¹¹²
67. W-0038 thus acknowledges having been in contact on numerous occasions with W-0316 and his two staff members, W-0183 and [REDACTED], [REDACTED].¹¹³
68. Lastly, like D01-0016, W-0038 used handwritten notes to prepare for his interview with the investigators.¹¹⁴
- These observations are not intended to set out in exhaustive detail the inaccuracies, inconsistencies or lies contained in W-0038's testimony. The Defence would nevertheless emphasise that W-0038 claims to have joined the UPC in 2001 and to have remained in it until 2005.¹¹⁵ He further states that he served as Chief Kahwa's bodyguard as of April 2002.¹¹⁶ Yet, these claims are contradicted by his school records which were produced at the hearing.¹¹⁷

¹¹² *Idem*, p. 44, lines 24 *et seq.*; T-337-CONF-FRA-ET, p. 34, lines 2-26; T-336, pp. 53-54; p. 51, lines 8-22; p. 60, lines 17-25, pp. 68-69; pp. 70-71; T-336-CONF-FRA-ET, p. 54, lines 6-22; p. 56, line 5 to p. 57, line 5; p. 60, lines 17-25, T-336-CONF-FRA-ET, p. 54, lines 25 *et seq.*; p. 66, lines 11 *et seq.*; p. 67, lines 28 *et seq.*; T-337-CONF-FRA-ET, p. 31, lines 10-27; T-337-CONF-FRA-ET, p. 35, lines 4-16; T-336-CONF-FRA-ET, p. 71, lines 6-7.

¹¹³ T-337-CONF-FRA-ET, p. 13, line 20 to p. 14, line 18; T-337-CONF-FRA-ET, p. 15, lines 21-23; T-337-CONF-FRA-ET, p. 15, lines 21-23; T-336-CONF-FRA-ET, p. 67, lines 19-20.

¹¹⁴ T-337-CONF-FRA-ET, p. 22, lines 28 *et seq.* and p. 24, lines 7-18 and EVD-D01-00395.

¹¹⁵ T-113-CONF-FRA-CT, p. 31, lines 5-12.

¹¹⁶ T-114-CONF-FRA-CT, p. 46, lines 10-17.

¹¹⁷ *Idem*, p. 50, line 23 to p. 51, line 12 and p. 52, lines 5-9 and EVD-D01-00048, p. 0033.

1.1.3 The Prosecutor was in possession of information demonstrating that the position held by, and the conduct of, Intermediary W-0316 were likely to cause serious prejudice to the integrity of the judicial process

a. The Prosecutor was aware of W-0316's duties in [REDACTED]

69. From the outset of the collaboration, the Prosecutor was informed that W-0316 held a position of responsibility within [REDACTED]¹¹⁸ and that he used [REDACTED] to assist him in the tasks assigned to him by the Office of the Prosecutor.¹¹⁹
70. W-0316 describes in precise detail the duties he performed at [REDACTED]¹²⁰ and the direct contacts he maintained with central government.¹²¹
71. Bernard Lavigne and Nicolas Sebire confirmed that they had not concerned themselves with that situation,¹²² neither by enquiring about the staff used by W-0316, nor by making contact with his superiors.¹²³

b. The Prosecutor was informed that W-0316 was passing false information to him

72. On numerous occasions between 2005 and 2008, the Prosecutor was informed that W-0316 was passing false information to him.
73. By way of example:

¹¹⁸ T-334-CONF-FRA-ET p. 16, lines 23-25. T-327, p. 11, lines 12-24, p. 12, lines 15-21 and p. 13, line 16 to p. 14, line 10; EVD-OTP-00598; EVD-OTP-00597 and EVD-OTP-00598.

¹¹⁹ They were W-0183, [REDACTED], and [REDACTED]: T-331-CONF-FRA-ET, p. 79, lines 10-13 and p. 82, lines 15-22; T-333-CONF-FRA-ET p. 15, lines 7-13 and p. 25, lines 12-14; See also Bernard Lavigne: Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 66, lines 9-28 and documents EVD-D01-00371; DRC-OTP-0234-0221* and EVD-D01-00371.

¹²⁰ T-327-CONF-FRA-ET, p. 11, lines 12-24, p. 12, lines 15-21 and p. 13, line 16 to p. 14, line 10. See EVD-OTP-00597 and EVD-OTP-00598.

¹²¹ T-327-CONF-FRA-ET, p. 13, lines 25-28 and p. 18, line 3 to p. 20, line 8; T-332-CONF-FRA-ET p. 52, lines 14-19.

¹²² Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 66, lines 14-28. T-335-CONF-FRA-ET, p. 15, lines 5-12.

¹²³ T-335-CONF-FRA-ET, p. 14, lines 20 *et seq.*

- Internal reports of the Office of the Prosecutor, conveyed to the highest levels of the Office, show that in early January 2006, Intermediary W-0316 had lied to investigators about the situation of three potential witnesses who had been introduced as former FNI child soldiers.¹²⁴ In one of those reports, the investigators note that one of the children introduced by W-0316 appeared to have been “coached”.¹²⁵ One of these three children (Witness W-0028) told Trial Chamber II that he had been encouraged to lie by W-0183,¹²⁶ who was acting as W-0316’s assistant in relation to his work as the Prosecutor’s intermediary.¹²⁷ However, as far back as 2006, rather than seeking to establish whether W-0316’s conduct had been reprehensible, senior Office of the Prosecutor staff preferred not to investigate but to continue to “[TRANSLATION] make progress”.¹²⁸
- In two e-mails to his superiors dated May 2006, Nicolas Sebire mentioned expenditure incurred by W-0316 which it was difficult to account for and the need to cross-check the information he had provided.¹²⁹
- In an investigator’s note dated 18 June 2010 reporting on events that had taken place between 2006 and 2009, the Prosecutor reveals that he

¹²⁴ T-331-CONF-FRA-ET, p. 31, line 20 to p. 32, line 18 and p. 34, lines 14-18. EVD-D01-00384; DRC-OTP-0230-0451 and EVD-D01-00383. W-0316 claims not to know W-0143 and not to recall the incident of the false allegations concerning the three FNI child soldiers who were purportedly questioned by Office 2, contrary to investigators’ reports on the subject. T-331-CONF-FRA-ET, p. 31, line 20 to p. 32, line 18 and p. 34, lines 14-18.

¹²⁵ EVD-D01-00384.

¹²⁶ ICC-01/04-01/07-T-221-CONF-FRA-CT, p. 21, lines 8-27, p. 31, lines 2-25 and p. 32, lines 20-23 (W-0316 is No. 12 and W-0183 is No. 14 in the list which is referred to).

¹²⁷ T-337-CONF-FRA-ET, p. 15, lines 21-23.

¹²⁸ Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 5, lines 17-22.

¹²⁹ EVD-D01-00391.

attaches very little credibility to the statements of Intermediary W-0316.¹³⁰

- When questioned by the Office of the Prosecutor in May 2008,¹³¹ Intermediary W-0316 admitted to having personally lied to the Office of the Prosecutor, and to having encouraged another individual to lie to Office of the Prosecutor investigators in order to obtain monies to discharge a personal debt.¹³²
- In October 2008, W-0316 informed the Prosecutor that his assistant (W-0183) had been murdered and that his killers were seeking him out.¹³³ When questioned on this matter in October 2009 and again in November 2010, W-0316 reiterated that claim.¹³⁴ However, that extremely serious claim is mendacious since, as the Prosecutor himself was able to observe, W-0183 was still alive.¹³⁵
- In May 2008, the Prosecutor decided not to refer W-0316 to the Victims and Witnesses Unit since the threats he had alleged were never proven and his family had provided different accounts of the same events.¹³⁶

74. The Office of the Prosecutor was therefore in possession of numerous specific pieces of information indicating that Intermediary W-0316 could be suspected of providing false information or eliciting false evidence. Yet, the Prosecutor continued to work with him at least until April 2008,¹³⁷ and took no initiative

¹³⁰ DRC-OTP-0230-0456*, p. 5.

¹³¹ EVD-D01-00370.

¹³² *Idem*, p. 4.

¹³³ DRC-OTP-0230-0456*.

¹³⁴ EVD-D01-00372, p. 0457; EVD-D01-00373; T-332-CONF-FRA-ET, p. 12, lines 23-28 and p. 13 to 16, line 21; T-331-CONF-FRA-ET, p. 79, lines 10-23.

¹³⁵ DRC-OTP-0230-0456*; DRC-OTP-0234-0221*; DRC-OTP-0233-0458*, No. 157. The Prosecutor confirmed before the Chamber that W-0183 is still alive: T-332-CONF-FRA-ET, p. 5, line 6 and p. 6, line 19.

¹³⁶ DRC-OTP-0230-0456*, p. 25 and DRC-OTP-0233-0458*, Nos. 81 and 82.

¹³⁷ EVD-D01-00368.

to ascertain the reliability of the evidence provided by W-0316, or to inform the Chamber of his concerns about him.

1.2 Intermediary [REDACTED] (W-0321)

1.2.1 W-0321 approached witnesses on the instructions and under the supervision of the Office of the Prosecutor

75. From the examination of W-0581 and Intermediary W-0321 and the internal documents of the Office of the Prosecutor, it has been possible to establish that between January and December 2007, Intermediary W-0321 regularly acted for the Office of the Prosecutor and on its instructions. This collaboration continued thereafter on an ad hoc basis.
76. The following missions in particular have been identified:
- In January or February 2007, the Office of the Prosecutor requested W-0321 to locate W-0157 and to set up a meeting with the investigators.¹³⁸ During this initial mission, W-0321 received direct telephone instructions from the investigator;¹³⁹
 - On 27 March 2007, W-0321 contacted the Office of the Prosecutor on his own initiative in order to report that W-0298 had come to his home and asked for protection;¹⁴⁰
 - In November 2007, the Office of the Prosecutor again contacted W-0321 with instructions to have him organise a meeting between several children and W-0581 in Bunia.¹⁴¹ In this connection, W-0321 was initially contacted

¹³⁸ W-0321: T-308-CONF-FRA-ET, p. 41, line 12 to p. 42, line 19; DRC-D01-0003-5847, p. 33; DRC-OTP-0233-0518, No. 1.

¹³⁹ W-0321: T-308-CONF-FRA-ET, p. 42, lines 11-16 and 19. See also: DRC-OTP-0233-0518, Nos. 1-2.

¹⁴⁰ DRC-OTP-0233-0518, No. 1. W-0321: T-320-CONF-FRA-ET, p. 30, lines 25-28.

¹⁴¹ W-0321: T-308-CONF-FRA-ET, p. 63, lines 20 *et seq.*

by telephone,¹⁴² and then was met in person by W-0581¹⁴³ who gave him his instructions;¹⁴⁴

- Between November and December 2007, the Office of the Prosecutor again called upon W-0321 to organise a second set of interviews in [REDACTED].¹⁴⁵ W-0321 confirms that the investigators contacted him whenever an interview with one of the children ended;¹⁴⁶
- Following the children's interviews with the investigator in [REDACTED], W-0321 was charged with handing over to them a sum of money to cover the costs of returning to their families;¹⁴⁷
- Following the interviews in [REDACTED], W-0321 was charged by the investigators of the Office of the Prosecutor with handing over mobile telephones to certain witnesses.¹⁴⁸
- In December 2007, at the request of the Office of the Prosecutor, W-0321 discussed with W-0297 arrangements for W-0297's accommodation.¹⁴⁹ Subsequently, in January 2008, on the instructions of the investigators, W-0321 accompanied [REDACTED] and [REDACTED] to [REDACTED] Airport;¹⁵⁰
- In January 2008, the investigators contacted W-0321 about W-0213.¹⁵¹

¹⁴² W-0581: T-300-CONF-FRA-ET, p. 24, lines 6-11. See also: *Idem*, p. 24, lines 13-16.

¹⁴³ W-0321: T-308-CONF-FRA-ET, p. 61, line 21 and Witness W-0581: T-300-CONF-FRA-ET, p. 23, lines 7 and 9-10.

¹⁴⁴ W-0321: T-308-CONF-FRA-ET, p. 63, lines 20 *et seq.* and p. 61, lines 24 *et seq.*

¹⁴⁵ W-0321: T-309-CONF-FRA-ET, p. 2, lines 17 *et seq.*

¹⁴⁶ *Table of contacts*, DRC-D01-0003-5847, No. 134. W-0321: T-309-CONF-FRA-ET, p. 19, lines 21-25 and p. 20, lines 2-3.

¹⁴⁷ W-0321: T-309-CONF-FRA-ET, p. 19, lines 21 to p. 20, line 3.

¹⁴⁸ W-0321: T-310-CONF-FRA-ET, p. 15, lines 21 *et seq.*

¹⁴⁹ *Table of contacts*, DRC-D01-0003-5847*, No. 134.

¹⁵⁰ *Idem*, No. 134 and W-0321: T-310-CONF-FRA-ET, pp. 30-31.

¹⁵¹ T-322-CONF-FRA-ET, p. 24, lines 13-24.

77. After these missions, W-0321 remained in direct contact with the Office of the Prosecutor, and in particular with the investigator [REDACTED].¹⁵²
78. This direct contact continued even after W-0321 was relocated in January 2008. In fact, W-0581 met W-0321 in [REDACTED] on at least two occasions in 2008,¹⁵³ and again in 2009.¹⁵⁴
79. Witness W-0581 states that W-0321 was remunerated in the same way as “[INTERPRETATION] [a]ll people who work as intermediaries for the OTP”.¹⁵⁵
80. The above information shows that for more than a year, W-0321 regularly acted on the instructions and under the supervision of the Office of the Prosecutor in connection with a significant number of potential witnesses, particularly Witnesses W-0157, W-0213, W-0294, W-0297 and W-0298. Although no written agreement appears to have been signed, there is no doubt as to his role as a person acting on behalf of the Office of the Prosecutor.

1.2.2 There is evidence to show that Intermediary W-0321 encouraged witnesses to give false evidence

a. Witnesses D01-0004, D01-0003, W-0297 and W-0298 provide evidence of acts of subornation by Intermediary W-0321

81. It emerges from the evidence of D01-0003 and D01-0004 that Intermediary W-0321 encouraged young boys from [REDACTED] to make false representations to investigators from the Office of the Prosecutor that they had been enlisted in the armed wing of the UPC. These children include Witnesses W-0213, W-0294, W-0297 and W-0298 who appeared before the Chamber as witnesses for the Prosecution. Moreover, even though their statements

¹⁵² W-0321: T-320-CONF-FRA-ET, p. 43, lines 18-20.

¹⁵³ *Table of contacts*, DRC-D01-0003-5847*, No. 134. W-0581: T-302-CONF-FRA-CT, p. 6, lines 8-12 and p. 7, lines 2-11.

¹⁵⁴ *Table of contacts*, DRC-D01-0003-5847*, No. 134.

¹⁵⁵ W-0581: T-302-CONF-ENG-CT, p. 11, line 23 to p. 12, line 9.

differed on this subject, Witnesses W-0297 and W-0298 also revealed that they had been encouraged to lie about certain aspects of their accounts.

– *Analysis of the statements of Witness Claude Ndjango (D01-0004)*

82. Witness D01-0004 states that he met W-0321 in Bunia in 2008, in [REDACTED], while he was waiting with other youngsters to go to [REDACTED].¹⁵⁶ He says that W-0321 asked him, along with other children, to state falsely to the Office of the Prosecutor that he had been enlisted in the UPC army, even though these children had never been child soldiers.¹⁵⁷
83. He maintains that W-0321 promised them assistance, training and money.¹⁵⁸ Furthermore, W-0321 encouraged them to lie about their names,¹⁵⁹ their home village,¹⁶⁰ and their age.¹⁶¹
84. D01-0004 states, for his part, that he introduced himself under the false identity of Jacques Byaruhanga (*phonetic*) at the request of W-0321.¹⁶²
85. D01-0004 states that W-0321 taught them the accounts that they were then to reproduce to the investigator over a period of several days.¹⁶³ He states that after having met W-0581 in Bunia in November 2007,¹⁶⁴ W-0321 kept the

¹⁵⁶ T-242-CONF-FRA-CT2, p. 6, lines 21 *et seq.*; T-245-CONF-FRA-CT, p. 13, lines 16-18.

¹⁵⁷ *Idem*, p. 25, lines 5-21.

¹⁵⁸ *Ibidem*, p. 8, lines 7-22, p. 20, lines 20-24; T-245-CONF-FRA-CT, p. 15, lines 6-9. D01-0004 states that W-0321 asked them to say that they were child soldiers because “[TRANSLATION] he had not yet found any child soldiers”. T-242-CONF-FRA-CT2, p. 7, lines 22-24.

¹⁵⁹ T-245-CONF-FRA-CT, p. 15, lines 10-17.

¹⁶⁰ W-0321 asked the children not to say that they were from [REDACTED]. T-242-CONF-FRA-CT2, p. 8, lines 1-6. This information is corroborated by D01-0003: T-240-CONF-FRA-CT2, p. 9, lines 2-4.

¹⁶¹ T-242-CONF-FRA-CT2, p. 26, lines 8-9.

¹⁶² T-245-CONF-FRA-CT, p. 15, lines 10-17.

¹⁶³ D01-0004 states that W-0321 “trained” them to lie at his home. *Idem*, p. 15, lines 18-21.

¹⁶⁴ T-240-CONF-FRA-CT2 p. 36, lines 23 *et seq.* W-0581: T-301-CONF-FRA-ET, p. 3, lines 10-13 and DRC-OTP-0231-0337*.

money provided by W-0581 which was intended to pay his travelling expenses.¹⁶⁵

86. He explains that W-0321 would gather the children together at his home before they met with the representative of the Office of the Prosecutor (W-0581) in Bunia.¹⁶⁶
87. D01-0004 states that he refused to testify against Thomas Lubanga, but that other children [REDACTED], namely [REDACTED] and [REDACTED], agreed to give evidence even though they had never been soldiers.¹⁶⁷
88. The witness further states that he travelled with a false student card provided by the Office of the Prosecutor which contained inaccurate information concerning his name, his age and his home village.¹⁶⁸
89. The reliability of these statements cannot be seriously challenged:
 - It is not disputed that D01-0004 was one of the potential witnesses whom W-0581 met in Bunia, and with whom the investigators met in [REDACTED];¹⁶⁹
 - His evidence is accurate and detailed; some of his explanations, which could be deemed to be unfavourable to the Accused or other Defence witnesses, highlight the impartiality of his evidence.¹⁷⁰

¹⁶⁵ T-242-CONF-FRA-CT2, p. 9, lines 14-16.

¹⁶⁶ *Idem*, p. 8, lines 19-25; T-245-CONF-FRA-CT, p. 15, lines 22-24 and p. 30, lines 25 *et seq.*

¹⁶⁷ T-242-CONF-FRA-CT2, p. 14, lines 8-16.

¹⁶⁸ T-245-CONF-FRA-CT, p. 68, lines 14-18. EVD-D01-00294.

¹⁶⁹ EVD-D01-00335, para. 10; EVD-D01-00320; W-0581: T-301-CONF-FRA-CT, p. 39, lines 6-12, p. 40, lines 13 *et seq.* and p. 46, lines 21 *et seq.*

¹⁷⁰ T-243-CONF-FR-CT3 p. 24, lines 5-7; T-242-CONF-FR-CT2 p. 16, lines 13-18.

– *Analysis of the statements of Witness Joseph Maki (D01-0003)*

90. Witness D01-0003 describes himself as [REDACTED]; this statement is corroborated by [REDACTED] and by various internal documents of the Office of the Prosecutor.¹⁷¹
91. D01-0003 states that W-0321 came to “recruit” children found at [REDACTED],¹⁷² telling them that an NGO was going to help them study to be mechanics¹⁷³ and that if they agreed to say that they had been child soldiers, they would be given money.¹⁷⁴
92. D01-0003 states that he accompanied [REDACTED],¹⁷⁵ [REDACTED], to [REDACTED] to meet the investigators from the Office of the Prosecutor¹⁷⁶ and falsely claimed, at the request of W-0321,¹⁷⁷ to be [REDACTED].¹⁷⁸ W-0321 asked him to use the name [REDACTED].¹⁷⁹ He states that he used different names to sign several documents intended for the Office of the Prosecutor.¹⁸⁰
93. D01-0003 states that W-0321 encouraged him and [REDACTED] to claim falsely [REDACTED]¹⁸¹ and that his mother had been killed during the war [REDACTED].¹⁸² He adds that W-0321 encouraged the children to lie about their home village.¹⁸³

¹⁷¹ T-285-CONF-FRA-CT, p. 16, lines 14-15; EVD-OTP-00526.

¹⁷² T-239-CONF-FRA-CT2, p. 24, lines 14-23.

¹⁷³ *Idem*, p. 25, lines 3-7.

¹⁷⁴ *Ibidem*, p. 37, lines 12-14 and p. 28, lines 7-11.

¹⁷⁵ *Ibidem*, p. 13, lines 12-21.

¹⁷⁶ *Ibidem*, p. 37, line 20 to p. 38, line 25.

¹⁷⁷ *Ibidem*, p. 34, lines 2-14.

¹⁷⁸ *Ibidem*, p. 28, lines 2-15.

¹⁷⁹ *Ibidem*, p. 58, lines 2-8.

¹⁸⁰ T-240-CONF-FRA-CT2, p. 5, lines 1-25 and p. 6, lines 7-14.

¹⁸¹ T-239-CONF-FRA-CT2, p. 34, lines 12-14.

¹⁸² *Idem*, p. 34, lines 23-24.

¹⁸³ T-240-CONF-FRA-CT2, p. 9, lines 2-4.

94. Finally, D01-0003 and D01-0004 stated that in order to be relocated, they had been encouraged by W-0321 to claim falsely that D01-0003 had been questioned by members of the UPC.¹⁸⁴ D01-0003 then accompanied [REDACTED] when [REDACTED] was relocated there.¹⁸⁵

95. This evidence confirms that W-0321 suborned the potential witnesses with whom he was in contact.

96. In particular:

- it corroborates the evidence of D01-0004 concerning the time and place at which W-0321 had approached the children;
- it describes W-0321's actions in relation to the families of those children;
- it confirms that [REDACTED] was never a child soldier and describes in detail the process of subornation to which he was subjected.

– *Analysis of the statements of [REDACTED] (W-0297)*

97. This witness was introduced to the Office of the Prosecutor by W-0321.

98. In his evidence, W-0297 maintained that he had been a child soldier in the UPC and denied having been encouraged to lie by W-0321.

99. However, in earlier statements taken by the Defence, he stated: “[TRANSLATION] He [W-0321] told me that when I went before the judges, where Papa Thomas had been arrested, I was to say that I had been forcibly recruited.”¹⁸⁶

¹⁸⁴ D01-0003: T-240-CONF-FRA-CT, p. 52, lines 5 to 24 and T-241-CONF-FRA-CT, p. 2, lines 13 *et seq.*
D01-0004: T-242-CONF-FRA-CT2, p. 31, lines 19-22.

¹⁸⁵ T-239-CONF-FRA-CT2, p. 42, lines 13 *et seq.*

¹⁸⁶ T-288-CONF-FRA-ET, p. 24, lines 2-9.

100. He also stated, on that occasion, that according to W-0321: “[TRANSLATION] [...] if we testify against Thomas, if he is found guilty, we will be given money.”¹⁸⁷

101. Although Witness W-0297 goes back on these statements when giving evidence before the Chamber, his explanations as to why he changed his account are completely devoid of credibility.¹⁸⁸

– *Analysis of the statements of [REDACTED] (W-0298)*

102. This witness was introduced to the Office of the Prosecutor by W-0321.

103. On 28 January 2009, on his first appearance before the Chamber, after having consulted his counsel,¹⁸⁹ W-0298 stated that he had been encouraged to lie and that he had been taught a story for three and a half years.¹⁹⁰ Witness W-0298 then stated, contradicting his statement taken by the investigators, that he had never been to a training camp.¹⁹¹ His evidence was then interrupted at the request of the Prosecutor.¹⁹²

104. When he resumed his evidence two weeks later, the witness contradicted his testimony.¹⁹³

¹⁸⁷ W-0297: T-289-CONF-FRA-ET, p. 4, lines 1 to p. 6, line 1 (excerpt EVD-D01-00191, p. 0126-0127).

¹⁸⁸ The witness explains that he lied to the Defence counsel because he had been afraid: T-288-CONF-FRA-ET, p. 24, lines 17 *et seq.* and p. 26, lines 12 *et seq.* This explanation cannot be valid since the witness was not afraid to tell the Defence that he had been a child soldier: T-288-CONF-FRA-ET, p. 27, line 10 to p. 29, line 24.

¹⁸⁹ Following this confidential consultation, just before the witness gave his evidence, Mr Walley told the Chamber “[TRANSLATION]I can confirm that the witness is ready to give his evidence. It has taken some time but only because I wanted to be fully confident of the integrity of the evidence to be given”, T-110-CONF-FRA-CT, p. 38, lines 11-13.

¹⁹⁰ T-110-CONF-FRA-CT, pp. 39-40.

¹⁹¹ *Idem*, p. 40, lines 8-10.

¹⁹² *Ibidem*, p. 42, lines 17-20.

¹⁹³ T-123-CONF-FRA-CT and T-124-CONF-FRA-CT.

105. However, the evidence gathered against W-0321 since then, in addition to the manifestly mendacious nature of the final statements of W-0298,¹⁹⁴ lend a high degree of credibility to his initial statements.

b. The evidence of W-0321 highlights the fraudulent nature of his activities

– Selection of the children introduced to W-0581 in November 2007

106. The huge differences between the list of children sent to W-0581¹⁹⁵ by his superiors, the list of children given to W-0581 by W-0321 at their first meeting, and the list of children actually screened reveal that the children introduced to W-0581 were in fact selected by W-0321 himself.¹⁹⁶ Indeed, eight of the 11 children whom W-0581 had met in November 2007 did not appear on the list sent to W-0581 by his superiors.¹⁹⁷

107. The answers given by W-0321 to the questions raised by the differences between these lists are manifestly inconsistent and mendacious, and reveal his discomfiture when faced with revelation of his trickery.¹⁹⁸

¹⁹⁴ *Infra*, paras. 116-121.

¹⁹⁵ EVD-D01-00314 and EVD-D01-00315. W-0581 confirms that this was the list sent to him: T-317-CONF-FRA-ET, p. 12, lines 2-3. He states that he received instructions to contact W-0321, who was to bring the children to him in Bunia so that he could screen them. W-0581 further indicates that W-0321 had in his possession a list of children that he was to introduce to him: T-300-CONF-FRA ET, p. 25, lines 19 *et seq.*

¹⁹⁶ W-0321 claims to have introduced to W-0581 all the children and only the children appearing on the list that W-0031 had sent to him (T-320-CONF-FRA-ET, p. 57, lines 11-21 and T-321-CONF-FRA-ET, p. 19, lines 19-27). W-0321 contradicts himself in this regard after having been shown EVD-D01-00328. He states that W-0581 did not meet five of the children appearing on the initial list because they were working and all came from [REDACTED] (T-321-CONF-FRA-ET, p. 26, lines 15-27). W-0581 informed his superiors of these differences and they instructed him to proceed with the screening of the children introduced by W-0321 after having checked with W-0321 that they were under the age of 15 in 2002 and that they had been soldiers in the UPC (EVD-D01-00317): T-317-CONF-FRA-ET, p. 12, lines 6-21.

¹⁹⁷ EVD-D01-00328, comparative table based on the following lists: EVD-D01-00315 and EVD-D01-00316.

¹⁹⁸ T-321-CONF-FRA-ET, p. 24, lines 2 *et seq.* and T-323-CONF-FRA-ET, p. 16, lines 20 *et seq.*

– *The residence of the children selected by W-0321*

108. W-0321 claims that the children introduced to W-0581 were not in [REDACTED],¹⁹⁹ and that he had gone to find them on the [REDACTED], [REDACTED] and [REDACTED] roads.²⁰⁰ These statements are manifestly mendacious:

- Although he claims to know the children very well and to have undertaken their reintegration and “monitoring”, W-0321 is unable to provide accurate information as to where they live;²⁰¹ the cross-examination revealed numerous inconsistencies as regards the journeys that W-0321 claims to have made.²⁰² Likewise, he is incapable of giving accurate information on the names of the children, their ages, or the names of their parents.²⁰³
- W-0213,²⁰⁴ W-0297²⁰⁵ and D01-0004²⁰⁶ confirm that they were living in [REDACTED] in November 2007; this is also confirmed by [REDACTED] (D01-0002²⁰⁷ and D01-0003²⁰⁸); the evidence given by W-

¹⁹⁹ T-308-CONF-FRA-ET, p. 55, lines 24 *et seq.*

²⁰⁰ *Idem*, p. 56, lines 6-15.

²⁰¹ W-0321: T-322-CONF-FRA-ET, p. 9, lines 27 *et seq.* and p. 13, lines 4 *et seq.* (On W-0294); T-322-CONF-FRA-ET, p. 16, lines 16-25 and p. 19, lines 20 *et seq.* (On W-0213); T-322-CONF-FRA-ET, p. 28, lines 10-26 (On W-0297).

²⁰² EVD-D01-00344, T-321-CONF-FRA-ET, p. 57, lines 14-17; EVD-D01-00345, EVD-D01-00332, T-321-CONF-FRA-ET, p. 58, lines 1 *et seq.*; T-321-CONF-FRA-ET, p. 62, line 9 to p. 64, line 4. EVD-D01-00333 (T-321-CONF-FRA-ET, p. 11, lines 11 *et seq.*) and EVD-D01-00334 (T-321-CONF-FRA-ET, p. 12, lines 2 *et seq.*).

²⁰³ He no longer remembers the full names of W-0297, W-0157, W-0298, W-0294 and W-0213. W-0321: T-322-CONF-FRA-ET, p. 26, lines 19-21; p. 37, lines 18-21 (On W-0297); T-308-CONF-FRA-ET, p. 42, lines 20-21 (On W-0157); T-310-CONF-FRA-ET, p. 36, lines 11-25 (W-0298); T-309-CONF-FRA-ET, p. 21, lines 17-21 and p. 23, lines 4-5 (On W-0294); T-309-CONF-FRA-ET, p. 24, lines 12-15 (On W-0213).

²⁰⁴ T-133-CONF-FRA-CT, p. 29, lines 4-11; p. 48, lines 19-22; p. 43, lines 17-24.

²⁰⁵ W-0297 affirms that W-0321 came to his home to ask him if he wanted to go to [REDACTED]. (T-287-CONF-FRA-CT, p. 34, lines 2-5), T-285-CONF-FRA-CT, p. 8, lines 9-10; T-291-CONF-FRA-ET, p. 9, lines 22 *et seq.*

²⁰⁶ T-242-CONF-FRA-CT2, p. 7, lines 6-7.

²⁰⁷ According to [REDACTED] of W-0213, the latter lived [REDACTED], at which time W-0213 went to live [REDACTED]. [REDACTED] confirmed that, like them, [REDACTED] lived in [REDACTED], in

0321 himself²⁰⁹ clearly demonstrates that all these children, or the vast majority of them, were living in [REDACTED] and, more particularly, in [REDACTED].

– *The preparation of false evidence*

109. The examination of W-0321 reveals that he had numerous opportunities to prepare false statements with each of the witnesses concerned.²¹⁰
110. But more than anything else, his examination reveals that he is attempting to conceal the fact that he used to meet with the children all together at his home before introducing them one by one to W-0581. These preparatory meetings, during which false accounts were suggested, are confirmed by D01-0004.²¹¹ Witness W-0297 himself states that he was one of five children waiting to meet W-0581; the others were [REDACTED], [REDACTED], [REDACTED], and [REDACTED].²¹² W-0321's discomfiture when faced with this fact is highlighted by the contradictory or inconsistent nature of his various assertions regarding the alleged meeting places arranged with the children prior to the interviews.²¹³

[REDACTED]: T-236-CONF-FRA-ET, p. 52, lines 23 *et seq.*; T-237-CONF-FRA-CT, p. 15, lines 17-21 and T-237-CONF-FRA-CT, p. 16, lines 4-11.

²⁰⁸ T-240-CONF-FRA-CT2, p. 13, lines 12-20 and T-239-CONF-FRA-CT2, pp. 41-42. As regards the other children recruited by W-0321, D01-0003 confirms that W-0321 recruited approximately eight or nine children from [REDACTED]. T-239-CONF-FRA-CT2, p. 53, lines 22 *et seq.* and p. 35, lines 15-17.

²⁰⁹ W-0321 states that W-0297 and W-0213 moved to [REDACTED] at the end of November, beginning of December 2007. T-322-CONF-FRA-ET, p. 24, lines 4-9. He states that he met W-0297 in [REDACTED], when the latter was [REDACTED], to discuss the trip to [REDACTED] with him and he states that he went with him "[TRANSLATION] to their house, there where he lived in [REDACTED]". EVD-D01-00348, p. 0105; T-322-CONF-FRA-ET, p. 36, lines 8 *et seq.* W-0321 confirms that W-0294 was studying in [REDACTED]. T-322-CONF-FRA-ET, p. 10, lines 5-14 and p. 28, lines 17-26.

²¹⁰ T-308-CONF-FRA-ET, p. 56, lines 18-22, p. 57, lines 11 *et seq.*, p. 59, lines 12-24, p. 66, lines 6 *et seq.*

²¹¹ T-242-CONF-FR-CT2, p. 8, lines 19-25; T-245-CONF-FRA-CT, pp. 30-31.

²¹² T-287-CONF-FRA-CT, p. 33, lines 20-21.

²¹³ W-0321 gives two contradictory versions: the children were waiting all together at the [REDACTED] for the meeting with [REDACTED]; or, the children were waiting at different locations in the town of [REDACTED]. See T-321-CONF-FRA-ET, p. 33, line 1 to p. 51, line 17, and more particularly p. 50, lines 13 *et seq.*

– *Tampering with the identities of the children and their parents*

111. The examination of W-0321 shows that he encouraged Witness D01-0004 to identify himself using the false identity of Jacques Byaruhanga. The inconsistency of his statements in this regard serves only to emphasise their mendaciousness. His statements²¹⁴ are, moreover, contradicted by internal documents²¹⁵ of the Office of the Prosecutor which establish that Witness D01-0004 introduced himself to W-0581 as Jacques Byaruhanga.
112. W-0321's explanation that certain children changed their names or added more names to their names when they met W-0581²¹⁶ does not explain why he continues to present D01-0004 and Jacques Byharuhanga as two separate individuals whereas they are quite clearly the same person.²¹⁷ In fact, the sole purpose of these mendacious statements is to conceal his fraudulent activities.
113. Furthermore, W-0321 encouraged individuals to claim falsely that they were the parents of the children screened by W-0581 and sent to [REDACTED].²¹⁸ So, although W-0321 confirms that D01-0003 is not [REDACTED],²¹⁹ W-0581 states that W-0321 introduced D01-0003 to him as [REDACTED].²²⁰

c. The witnesses introduced to the Office of the Prosecutor by W-0321 have all made manifestly mendacious statements

114. All the witnesses introduced by W-0321 to the Office of the Prosecutor have made manifestly mendacious statements concerning their alleged military activities in the armed wing of the UPC as child soldiers under the age of 15 years.

²¹⁴ T-323-CONF-FRA-ET, pp. 14-17 and T-324-CONF-FRA-ET pp. 2-7.

²¹⁵ EVD-D01-00335, para. 10 and EVD-D01-00320.

²¹⁶ T-321-CONF-FRA-ET, p. 25, lines 20 *et seq.*

²¹⁷ T-245-CONF-FRA-CT, p. 15, lines 10-17; T-324-CONF-FRA-ET, p. 8, lines 8 *et seq.*

²¹⁸ D01-0003: T-239-CONF-FRA-CT2, p. 28, lines 17-18.

²¹⁹ T-310-CONF-FRA-ET, p. 4, lines 22 *et seq.*

²²⁰ T-301-CONF-FRA-CT, p. 32, lines 7-12.

115. In order to safeguard their false evidence, W-0321 encouraged these witnesses to lie about their identity, place and date of birth, place of residence, the identity of their parents, the death of one or more of their parents, and their schooling.

– *The testimony of [REDACTED] (W-0298)*

116. Witness W-0298 claims that he was enlisted by UPC soldiers as he was on his way home from school;²²¹ taken to Bule camp where he underwent training,²²² then taken to Largu camp;²²³ he claims that he took part in fighting in Bule and Fataki;²²⁴ and that he left the army with his father in Largu and resumed his schooling in Bunia.²²⁵ He then maintains that he was seized by the UPC in Centrale, taken to Centrale camp and then to Mabanga camp,²²⁶ and that he finally located his father in Nizi, and his father took him to Centrale.²²⁷

117. These statements are contradicted by the evidence of D01-0015, [REDACTED],²²⁸ who confirms that he did not engage in military activity.²²⁹

118. Furthermore, the glaring contradictions and improbabilities in the evidence of W-0298, and the obvious contradictions between the evidence of W-0298 and W-0299, demonstrate the mendaciousness of their statements concerning the

²²¹ T-123-CONF-FRA-CT, p. 4, lines 18-25.

²²² *Idem*, p. 5, lines 4-8.

²²³ *Ibidem*, p. 12, lines 8-14.

²²⁴ *Ibidem*, p. 15, lines 6-19 and p. 16, lines 20 *et seq.*

²²⁵ *Ibidem*, p. 17, line 19 to p. 18, line 6.

²²⁶ *Ibidem*, p. 18, lines 12 to p. 19 line 23.

²²⁷ *Ibidem*, p. 20, lines 4-7.

²²⁸ W-0299 confirms that between 1992 and 2005, W-0298 was living with him [REDACTED], [REDACTED], [REDACTED] is therefore in a position to testify to the activities of W-0298 throughout that period: EVD-D01-00768, p. 0272, lines 909-922 and EVD-D01-00771, p. 0337, lines 88-93. Confirmed by Witness W-0298: T-124-CONF-FRA-CT, p. 21, lines 14-18.

²²⁹ D01-0015: T-278-CONF-FRA-CT, p. 15, lines 10-12 and T-279-CONF-FRA-ET, p. 18, line 2.

death of his mother,²³⁰ his alleged enlistment²³¹ and his participation in hostilities.²³²

119. For example, W-0299, the father of W-0298, stated in his evidence that his son was born on [REDACTED] 1991.²³³ Yet, both W-0298 and W-0299 have already stated that W-0298 was born on [REDACTED] 1989.²³⁴ In fact, W-0321 and a Registry representative confirm that on 16 May 2007, W-0298 himself, in their presence, gave his date of birth as [REDACTED] 1989.²³⁵ The date of [REDACTED] 1989 is confirmed by various school records.²³⁶
120. In addition, the documentary evidence contradicts the assertions of the witness concerning his schooling and his statements as to when he was enlisted.²³⁷
121. Contrary to the claims made by W-0321,²³⁸ W-0299 and W-0298 state that W-0298 was taken on by [REDACTED] while he was living with his family and

²³⁰ W-0298 states that his mother is deceased: T-124-CONF-FRA-CT, p. 43, lines 17 *et seq.* However, [REDACTED], T-273-CONF-FRA-CT, p. 12, lines 4-9 and p. 13, lines 8-11. W-0299 confirms that [REDACTED] of the mother of W-0298, T-119-CONF-FRA-CT, p. 23, line 19 to p. 24, line 21. W-0299 confirms that [REDACTED], T-119-CONF-FRA-CT, p. 28, lines 21-24 and p. 27, lines 2-7; T-122-CONF-FRA-CT, p. 17, lines 13 *et seq.*

²³¹ W-0299: T-119-CONF-FRA-CT, p. 7, lines 13 *et seq.*

²³² In particular, W-0299 contradicts the testimony of W-0298 as to the alleged periods of enlistment. According to him, W-0298 left school for [REDACTED] to join the UPC. EVD-D01-00769, p. 0295, line 270. This statement contradicts W-0298 as to the length of time he spent at [REDACTED] camp. T-124-CONF-FRA-CT, p. 25, lines 4-7.

²³³ T-117-CONF-FRA-CT, p. 6, lines 9-13. The birth certificate mentioned by the father has never been disclosed to the Defence.

²³⁴ W-0299 states that his son was born in 1989: EVD-D01-00768, p. 0270, line 849 and W-0298: EVD-D01-00340.

²³⁵ T-320-CONF-FRA-ET, p. 41, lines 1 *et seq.* and ICC-01/04-01/06-2251-Conf-Anx1.

²³⁶ EVD-D01-00155, p. 3185, No. 8; EVD-D01-0043; EVD-D01-00156, p. 3806, line 6368; EVD-D01-00038; EVD-D01-00042.

²³⁷ School records show that W-0298 completed the 5th year of primary school in [REDACTED]: EVD-D01-00049; EVD-D01-00155, p. 3185, no. 8; EVD-D01-0043; EVD-D01-00156, p. 3806, line 6368; EVD-D01-00038; EVD-D01-00042; EVD-D01-00162, p. 4325, line 15; EVD-D01-00159, p. 4263, line 10; EVD-D01-00160, p. 4293, line 10; EVD-D01-00161, p. 4315, line 15; EVD-D01-00163, p. 4356, line 32. However, W-0298 states that he was abducted [REDACTED] while he was in the 5th year of primary school. T-123-CONF-FRA-CT, p. 48, lines 1-16. Moreover, these documents show that he obtained his certificate of primary education in [REDACTED], contrary to the statement he made before the Chamber: T-124-CONF-FRA-CT, p. 10, line 2.

after he had heard on the radio that the NGOs were looking for children to demobilise.²³⁹

– *The evidence of [REDACTED] (W-0297)*

122. Witness W-0297 claims to have reached the age [REDACTED] 2010,²⁴⁰ to have been born in [REDACTED], and to have lived in [REDACTED]²⁴¹ until hostilities forced him to move with his family to [REDACTED], in [REDACTED].²⁴² He further claims to have been enlisted by UPC soldiers on three occasions.²⁴³
123. However, the evidence given by [REDACTED] (D01-0003), and [REDACTED] (D01-0004), in addition to the documentary evidence, shows that W-0297 has lived in [REDACTED] since birth²⁴⁴ and that he was not a soldier in the armed wing of the UPC.²⁴⁵ The documentary evidence further establishes that he was aged more than 15 years in 2002.²⁴⁶

²³⁸ T-310-CONF-FRA-ET, p. 39, lines 2-10. W-0321 states that the child came out of the bush, that he was dirty and sick. He states that he found his family for family reintegration. However, W-0298 states that he was at home when he decided to demobilise. T-123-CONF-FRA-CT, p. 20, lines 10-19 and p. 42, lines 16-22.

²³⁹ W-0298: T-123-CONF-FRA-CT, p. 20, lines 10-12 and pp. 41-42. W-0299: T-122-CONF-FRA-CT, p. 19, lines 24 *et seq.*

²⁴⁰ T-285-CONF-FRA-CT, p. 7, line 17.

²⁴¹ *Idem*, p. 8, line 1.

²⁴² *Ibidem*, p. 8, lines 8-12.

²⁴³ *Ibidem*, p. 43, lines 14 *et seq.*; T-286-CONF-FRA-CT, p. 6, lines 19-24, p. 13, lines 23-24 and p. 14, lines 14-17.

²⁴⁴ W-0297 states that he was born in [REDACTED]. However, D01-0003 states that Witness W-0297 was born in [REDACTED] and that he has lived in [REDACTED] since birth. T-239-CONF-FRA-CT2, pp. 15-16. This statement is corroborated by the school records which indicate that he was a student in [REDACTED] between [REDACTED] and [REDACTED]. EVD-D01-00144, EVD-D01-00145, EVD-D01-00146 and EVD-D01-00147, see Annex Table I. The registration records of [REDACTED] show that in [REDACTED], W-0297 was living in [REDACTED]: EVD-D01-00145, p. 3396, No. [REDACTED], where it is indicated that [REDACTED]. This record corroborates the fact that W-0321 encouraged the children to lie about their home village.

²⁴⁵ D01-0003 confirms that W-0297 was never a child soldier, nor were any of the other children approached by W-0321 in [REDACTED], including D01-0004 and W-0213. T-239-CONF-FRA-CT2, pp. 53-54. Confirmed by D01-0004: T-242-CONF-FRA-CT2, p. 14, lines 8-16.

²⁴⁶ EVD-D01-00145, p. 3935, No. [REDACTED]. It is stated that [REDACTED].

124. The mendaciousness of the statements made by W-0297 is confirmed by the glaring contradictions between the various statements of the witness, concerning both the death of his mother²⁴⁷ and of his brother,²⁴⁸ the circumstances of his alleged abduction by UPC soldiers,²⁴⁹ his alleged military activities within the armed wing of the UPC,²⁵⁰ and his demobilisation by W-0321.²⁵¹
125. As regards the circumstances of his alleged demobilisation, it is worth noting that the evidence of W-0297 and that of W-0321 is completely different and contradictory.²⁵²

²⁴⁷ Contradictions established by the Defence cross-examination: 1) When he learned of his mother's death. T-290-CONF-FRA-ET, p. 22, lines 11-21 and EVD-OTP-00563, par. 20; and 2) The name of his mother who had allegedly died and the fact that she was still alive; in his statement of May 2010, he stated that his mother, who was called [REDACTED], was still alive and living in [REDACTED]. He further stated that he did not know [REDACTED] (EVD-D01-00150, pp. 0064-0065, lines 412 *et seq.*), to whom he referred in his evidence as his stepmother. T-290-CONF-FRA-ET, p. 17, lines 3-5; this information is contradicted by the statement of witness [REDACTED] (T-239-CONF-FRA-CT2, pp. 13-14) and by the Screening note of Witness W-0297, taken by W-0581 in Bunia, which indicates that the witness's mother died in [REDACTED] and was called [REDACTED] (EVD-D01-00296). W-0581: T-302-CONF-FRA-ET, pp. 4-5, lines 13 *et seq.*

²⁴⁸ Contradiction concerning the name of the brother who died during the attack on [REDACTED]: T-286-CONF-FRA-ET, p. 8, line 11 ([REDACTED]) and T-290-CONF-FRA-ET, p. 12, lines 5-15 ([REDACTED]).

²⁴⁹ For example, as regards the date of the alleged abduction: T-285-CONF-FRA-CT, p. 45, lines 13-14 and T-290-CONF-FRA-ET, p. 10, lines 13 *et seq.*

²⁵⁰ Contradictions established by cross-examination by the Defence: 1) The circumstances of his alleged abduction. T-290-CONF-FRA-ET, p. 3, line 15 to p. 4, line 17; 2) The camp to which it is alleged he was taken for training. EVD-D01-00148, p. 0080, lines 258-284 and T-290-CONF-FRA-ET, p. 5, lines 4 *et seq.*; 3) The name of his commander at the time when he claims to have decided to leave the army (Kisembo or Bosco): T-291-CONF-FRA-ET, p. 7, lines 7-13 and 21-25; T-287-CONF-FRA-CT, p. 6, lines 3-13; when he was supposedly abducted: T-285-CONF-FRA-CT, p. 45, lines 13-14 contrary to EVD-OTP-00563, para. 11. See T-290-CONF-FRA-ET, p. 11, lines 6-19.

²⁵¹ W-0297 makes contradictory statements as to the identity of his commanding officer when he met W-0321 (T-291-CONF-FRA-ET, p. 7, lines 7-25; T-287-CONF-FRA-CT, p. 6, lines 3-13). There is another contradiction concerning the person who gave him permission to leave the camp. T-291-CONF-FRA-ET, p. 11, lines 5 *et seq.* and p. 13, lines 1-8 and EVD-D01-00152, p. 0300, lines 315 *et seq.*

²⁵² W-0297 claims to have met W-0321 in 2002, while he was still in the UPC, [REDACTED]. T-287-CONF-FRA-CT, p. 2, lines 18-24 and p. 4, line 22; he claims that W-0321 was at that time [REDACTED] and was distributing food. *Idem*, p. 3, lines 1-2. W-0297 states that he saw W-0321 again on several occasions when he was in the army. *Ibidem*, p. 5, lines 6 *et seq.* During those meetings, W-0321 had allegedly tried to persuade him to leave the army. *Ibidem*, p. 13, lines 4 *et seq.* However, W-0321 states that he saw W-0297 for the first time at [REDACTED] T-322-CONF-FRA-ET, p. 27, line 12.

126. Furthermore, the documentary evidence and the evidence of D01-0003 contradict the witness's statements in relation to his schooling.²⁵³

– *The evidence of [REDACTED] (W-0213)*

127. Witness W-0213 states that he was born on [REDACTED] 1991 in [REDACTED].²⁵⁴ He claims: to have been abducted on three occasions by UPC soldiers,²⁵⁵ always on the way home from school; to have been trained in the Lopa²⁵⁶ and Bule²⁵⁷ camps; to have taken part in the battle against Ugandan troops in Bunia;²⁵⁸ to have been assigned to the residence of Thomas Lubanga for security duty;²⁵⁹ and to have transited through the centres run by [REDACTED], [REDACTED] and [REDACTED] when he was demobilised.²⁶⁰

128. These statements are manifestly mendacious on basic points:

129. The documentary and testimonial evidence contradicts the evidence of W-0213 as regards his age, his schooling and his enlistment into an armed group:

- An investigator's note dated 23 May 2008 mentions a telephone conversation between an investigator and the witness's mother, who states that her son was born on [REDACTED] 1989.²⁶¹

²⁵³ D01-0003 states that W-0297 attended school in [REDACTED]. T-239-CONF-FRA-CT2, p. 16, lines 4-5. The documentary evidence confirms this since it indicates that [REDACTED], came to [REDACTED] from [REDACTED]. EVD-D01-00144, p. 3315, No. [REDACTED] and EVD-D01-00145, p. 3935, No. [REDACTED]. Moreover, the name [REDACTED] appears on [REDACTED], the 3rd year of primary school. EVD-D01-00146, No. [REDACTED]. For the year 2000-2001, 3rd year of primary school, his name appears under the heading "[REDACTED]" on the honour roll. EVD-D01-00147, p. 3255. (See table in Annex I).

²⁵⁴ T-132-CONF-FRA-CT, p. 6, lines 9 and 22.

²⁵⁵ *Idem*, p. 10, line 9.

²⁵⁶ *Ibidem*, p. 10, lines 13-16.

²⁵⁷ *Ibidem*, p. 25, lines 24-25.

²⁵⁸ *Ibidem*, p. 48, lines 17-20.

²⁵⁹ *Ibidem*, p. 46, lines 1-4.

²⁶⁰ T-133-CONF-FRA-CT, p. 31, lines 4-7.

²⁶¹ DRC-OTP-0194-0252*.

- The register of [REDACTED] school [REDACTED] indicates that [REDACTED] was born in [REDACTED] in 1989.²⁶²
- The statements of witness W-0213 in relation to his school attendance²⁶³ are contradicted firstly by the evidence of [REDACTED], who provides accurate details of the actual school attendance of W-0213,²⁶⁴ and secondly by D01-0029, who states that there is [REDACTED] school in [REDACTED],²⁶⁵ and finally, by the register of [REDACTED] school in [REDACTED].²⁶⁶
- Witness D01-0002, [REDACTED], confirms that W-0213 has never belonged to an armed group²⁶⁷ and that at no time did he leave [REDACTED].²⁶⁸ This statement is also corroborated by witness [REDACTED].²⁶⁹

130. Finally, the evidence of W-0213 is full of glaring contradictions and implausibilities, revealed by the Defence's cross-examination, concerning both

²⁶² EVD-D01-00054, p. 0140, No. [REDACTED], for 2002-2003. The witness recognises the entries "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]". The entry "2002-2003" appears on p. 0131. W-0213 also acknowledges use of the name "[REDACTED]". T-133-CONF-FRA-CT, p. 17, lines 7-19.

²⁶³ T-132-CONF-FRA-CT, p. 7, lines 2-10 and p. 52, line 9.

²⁶⁴ D01-0002 indicates that W-0213 commenced his primary education in [REDACTED]. That school was later transferred to [REDACTED]. They then went to [REDACTED], and some time later, they enrolled him in [REDACTED] primary school until [REDACTED]. In [REDACTED], he attended [REDACTED] school, for [REDACTED], in the 6th year of primary school. T-236-CONF-FRA-ET, p. 34, lines 12-23.

²⁶⁵ D01-0029 has held various positions in the field of education, including 13 years as schools co-ordinator. T-293-CONF-FRA-CT, [REDACTED].

²⁶⁶ The register indicates that [REDACTED], born in [REDACTED] in 1989, was enrolled in [REDACTED] at this school in 2002-2003. (EVD-D01-00054, p. 0140, No. [REDACTED], for the year 2001-2002.

²⁶⁷ T-236-CONF-FRA-ET, p. 46, lines 4-10.

²⁶⁸ T-236-CONF-FRA-ET, p. 52, lines 24 *et seq.*; p. 34, lines 5-8 and p. 37, lines 12-21.

²⁶⁹ [REDACTED] states that he knows W-0213, since he [REDACTED]. T-239-CONF-FRA-CT2, p. 56, lines 20 *et seq.* He states that W-0213 was not a child soldier. T-239-CONF-FRA-CT2, p. 53, lines 15 *et seq.*

the circumstances of his enlistment²⁷⁰ and his alleged activities within the armed wing of the UPC.²⁷¹

– *Evidence of [REDACTED] (W-0294)*

131. Witness W-0294 claims that he was born on [REDACTED] 1991 in [REDACTED].²⁷² He claims that he followed Commander Pepe of the APC to Rwabisengo in Uganda;²⁷³ that while there, he was responsible for the training of recruits;²⁷⁴ that he then moved to Mandro to undergo training;²⁷⁵ fled Mandro, and joined Commander [REDACTED] as part of his bodyguard²⁷⁶ until his death;²⁷⁷ he then took part in various battles²⁷⁸ and guarded the residence of Thomas Lubanga;²⁷⁹ he left the UPC after the battle of Bunia²⁸⁰ and joined PUSIC²⁸¹ before being demobilised.²⁸²

132. These statements are manifestly mendacious. In fact, the documentary evidence shows that W-0294 lied about his date of birth:

²⁷⁰ The witness contradicts himself as regards when he was first enlisted, on the way to or returning from school: T-132-CONF-FRA-CT, p. 10, lines 10-17 and T-133-CONF-FRA-CT, p. 65, lines 17-19). As to the alleged duration of W-0213's first period in the UPC army: T-133-CONF-FRA CT, p. 70, lines 4 *et seq.* it must be noted that at one point, the witness states that he is [TRANSLATION] "*forgetting*" and asks to re-read his statement during the break: T-132-CONF-FRA-CT, p. 17, lines 22 *et seq.* W-0213 contradicts himself as regards the time spent at [REDACTED] camp before he was imprisoned. T-134-CONF-FRA-CT, pp. 43-44, lines 4 *et seq.*

²⁷¹ W-0213 gives contradictory information regarding his period at Bule camp. First he claims that he stayed there three months, then six months and finally states that he does not remember how long he spent at Bule. T-132-CONF-FRA-CT, p. 9, lines 12-13; T-134-CONF-FRA, p. 26, line 11; T-134-CONF-FRA, p. 41, line 21; T-134-CONF-FRA, p. 25, line 9. He contradicts himself as to whether he knows Mr. Rafiki and Chief Kahwa: T-134-CONF-FRA-CT, p. 48, lines 4-24. Contradiction as regards returning [REDACTED] before fighting against the Ugandans: T-134-CONF-FRA-CT, pp. 52-53, lines 12 *et seq.*

²⁷² T-150-CONF-FRA-CT, p. 44, line 21 and p. 45, line 7.

²⁷³ *Idem*, p. 61, line 14 to p. 65, line 25.

²⁷⁴ *Ibidem*, p. 66, lines 8-13.

²⁷⁵ *Ibidem*, p. 70, lines 16 *et seq.*

²⁷⁶ *Ibidem*, p. 85, lines 11-12.

²⁷⁷ T-151-CONF-FRA-CT, p. 27, lines 16 *et seq.*

²⁷⁸ *Idem*, p. 26, lines 12-19, p. 21, lines 19 *et seq.*

²⁷⁹ T-151-CONF-FRA-CT, p. 33, lines 2-21.

²⁸⁰ *Idem*, p. 36, line 25 to p. 38, line 9.

²⁸¹ *Ibidem*, p. 38, lines 18 *et seq.*

²⁸² *Ibidem*, p. 41, lines 23 *et seq.*

- The voting card issued on [REDACTED] 2005 and the extract of the register of the Independent Electoral Commission (IEC) give the date as being [REDACTED] 1987.²⁸³
- The certificate of family reunification indicates that in July 2004, W-0294 was 16 years old.²⁸⁴
- The attestation in lieu of a primary school leaving certificate indicates that the witness was born in [REDACTED] 1988.²⁸⁵
- The register of [REDACTED] school for the year 2000 mentions a [REDACTED], born in [REDACTED] on [REDACTED] 1988.²⁸⁶ Moreover, this document contradicts the evidence of W-0294 as regards his school attendance.²⁸⁷

133. Clearly, W-0294 has embellished upon the military career of his brother, [REDACTED], to concoct a mendacious account of fictitious military activities.²⁸⁸

134. In fact, [REDACTED] is the [REDACTED].²⁸⁹ He joined the army in 1997.²⁹⁰ He worked with [REDACTED] from 1999 until his death in 2002, first in the RCD,

²⁸³ EVD-D01-00764 and DRC-OTP-0231-0277*. The date of [REDACTED] 2005 appears on the IEC extract.

²⁸⁴ EVD-D01-00069.

²⁸⁵ EVD-D01-00071. W-0294 admits that this is his certificate, in his name, from the year in which he was enrolled at that school and that this was the percentage he obtained: T-151-CONF-FRA-CT, p. 85, lines 5-16; T-151-CONF-FRA-CT, p. 87, lines 2-13.

²⁸⁶ EVD-D01-00072, p. 2, No. [REDACTED]. T-151-CONF-FRA-CT, p. 85, line 17 to p. 87, line 13. The document mentions that [REDACTED], completed his 6th year of school in [REDACTED]. However, the witness states that he completed his 6th year in [REDACTED].

²⁸⁷ T-150-CONF-FRA-CT, p. 45, lines 12 *et seq.*

²⁸⁸ See the following contradictions/implausibilities: the witness states that he started school aged 4: T-151-CONF-FRA-CT, p. 81, lines 7-24, inconsistency as regards the death of Commander Pepe and Commander Claude: T-152-CONF-FRA-CT, p. 4, line 19 to p. 7, line 20; as regards having taken part in fighting against the French: T-152-CONF-FRA-CT, p. 28, lines 15 *et seq.*

²⁸⁹ T-251-CONF-FRA-CT, p. 15, line 17 and p. 16, line 14. [REDACTED] recognises [REDACTED] in the photograph EVD-D01-0111. [REDACTED]. T-151-CONF-FRA-CT, p. 70, lines 13 *et seq.*

²⁹⁰ T-251-CONF-FRA-CT, p. 16, lines 21 *et seq.*

then the APC, the MLC, and finally the UPC.²⁹¹ He states that he received military training [REDACTED] and acted as a trainer at the [REDACTED] camp.²⁹² [REDACTED] remained in the UPC until 6 March 2003, when he joined the FAPC.²⁹³

135. D01-0026 confirms that W-0294 was never a soldier and that he never worked for [REDACTED].²⁹⁴ He states that throughout the time [REDACTED], W-0294 was with his family in [REDACTED].²⁹⁵ W-0294 admits that [REDACTED] was the superior of [REDACTED] in the APC.²⁹⁶
136. Witness D01-0026 highlights the mendaciousness of the deception employed by Witness W-0294²⁹⁷ in a bid to give credence to his account.²⁹⁸
137. The manifestly mendacious nature of the evidence of all the witnesses introduced by W-0321 to the Office of the Prosecutor corroborates the specific and consistent allegations made against him by D01-0003 and D01-0004, that he encouraged them to lie, firstly about their alleged military activities in the armed wing of the UPC, and secondly about the basic details of their civil status, where they were from and their schooling, so as to hinder any verification.

d. The senior staff of the Office of the Prosecutor knew or should have known that using the services of W-0321 would seriously affect the reliability of the evidence collected

²⁹¹ *Idem*, p. 31, lines 1-11. T-252-CONF-FRA-CT, p. 11, lines 16-20 and p. 10, lines 16-19.

²⁹² *Ibidem*, p. 30, lines 12-18.

²⁹³ *Ibidem*, p. 32, lines 15-21.

²⁹⁴ *Ibidem*, p. 34, lines 8-17.

²⁹⁵ *Ibidem*, p. 33, line 25 to p. 34, line 6.

²⁹⁶ *Ibidem*, p. 80, lines 2-3.

²⁹⁷ W-0294: T-150-CONF-FRA-CT, p. 67, lines 19-24 and p. 69, lines 12-22.

²⁹⁸ See the explanations given by D01-0026 as to the photograph used by W-0294: T-251-CONF-FRA-CT, p. 26, lines 4 *et seq.* and EVD-OTP-00390.

138. Several circumstances should automatically have led the Office of the Prosecutor to stop using the services of W-0321 and to carry out a painstaking review of the evidence obtained through this intermediary.

– *Intermediary W-0321 acted for participating victims while also working with the Office of the Prosecutor*

139. Prior to and during his collaboration with the Office of the Prosecutor, W-0321 acted as an intermediary for the organisation [REDACTED],²⁹⁹ one of whose objectives is to organise victims' participation and representation in the proceedings against Thomas Lubanga.

140. Witness W-0157 met [REDACTED] representatives several times before being introduced to the Office of the Prosecutor by W-0321.³⁰⁰ W-0321 also confirmed that he introduced W-0299 to [REDACTED], specifically to Mr Franck Mulenda and Mr Luc Walley, ³⁰¹ before that witness was introduced to the Office of the Prosecutor and selected as a prosecution witness. W-0321 has confirmed that he introduced W-0298 to [REDACTED].³⁰² During a meeting in Bunia with the VPRS section of the Registry, he assisted W-0298 with his application to participate in proceedings.³⁰³

141. However, the obligations of impartiality, fairness and independence incumbent upon the Office of the Prosecutor would have precluded it from recruiting persons to act on its behalf, such as W-0321, from among the intermediaries who usually work on behalf of participating victims³⁰⁴ and, *a fortiori*, entirely disqualified such a person from continuing to work on behalf

²⁹⁹ T-308-CONF-FRA-ET, p. 30, line 21 *et seq.* and p. 31, lines 10-16.

³⁰⁰ *Idem*, p. 44, lines 9-15.

³⁰¹ T-320-CONF-FRA-ET, p. 35, lines 3-21.

³⁰² *Idem*, p. 30, line 16 *et seq.*

³⁰³ EVD-D01-00340. See also T-320-CONF-FRA-ET, p. 29, line 8 *et seq.*

³⁰⁴ ICC-01/04-01/06-462-tEN.

of these participating victims while he was collaborating with the Office of the Prosecutor.

142. Above all else, the fact that W-0321 was acting on behalf of participating victims, who naturally have an interest in the conviction of the Accused, should automatically have alerted the Office of the Prosecutor to the serious risk of biased and inappropriate behaviour by W-0321 towards the potential witnesses contacted.

- *In November 2007 and again in January 2008, the Office of the Prosecutor noted the manifestly fraudulent behaviour of W-0321*

143. On 16 November 2007, W-0581 noted that the list of children given to him by W-0321 for screening, which he claimed to have put together on the instructions of W-0031, was different from the list of children that it was understood W-0321 would provide to the Office of the Prosecutor.³⁰⁵
144. Senior staff of the Office of the Prosecutor were informed of this major discrepancy, for which W-0321 has provided no convincing explanation.³⁰⁶
145. On 4 March 2008, W-0581 noted that a potential witness he had screened in November 2008³⁰⁷ and whom the investigators [REDACTED] and [REDACTED] met in [REDACTED] in December 2007 as Jacques Byharuhanga, was in fact Claude Ndjango (Witness D01-0004). This discrepancy was brought to the attention of senior staff of the Office of the Prosecutor.³⁰⁸

³⁰⁵ EVD-D01-00316. See the comparative document illustrating the fact that the list presented by W-0321 does not contain any of the names of the children that it was understood would be provided to the investigator. EVD-D01-00328.

³⁰⁶ EVD-D01-00317 and T-301-CONF-FRA-CT, p. 68, lines 24 *et seq.*

³⁰⁷ EVD-D01-00320: Witness D01-0004's Screening note in which the names of his parents are mentioned.

³⁰⁸ EVD-D01-00335, para. 10.

146. The interviews of W-0581 and W-0321 (and indirectly, the interview of [REDACTED], who attested to the identity of Claude Ndjango), highlight the mendaciousness of W-0321's statements, corroborate the evidence of D01-0004 and clearly demonstrate that W-0321 was behind Witness D01-0004's use of a false identity.³⁰⁹
147. Noting, in January 2008, that a potential witness had been introduced to it under a false identity by Intermediary W-0321, the Office of the Prosecutor could no longer be unaware that he was guilty of serious evidence tampering or, at the very least, that there were extremely serious suspicions about him.
148. The Office of the Prosecutor should therefore have carried out immediate and thorough investigations into the actions of W-0321 and conducted a painstaking review of the evidence obtained through this intermediary. Nothing of the kind was done.

1.3 Intermediary [REDACTED] (W-0143)

149. The following observations demonstrate that W-0143, as a person acting on behalf of the Office of the Prosecutor, was guilty of suborning Prosecution witnesses, and that the Prosecutor had sufficient information to suspect him of such behaviour.

1.3.1 W-0143 acted on behalf of the Prosecutor

150. It is not disputed that W-0143 was employed by the Office of the Prosecutor under regularly renewed contracts from 1 June 2005 to 2010.³¹⁰ Once these

³⁰⁹ *Supra*, paras. 82-89.

³¹⁰ DRC-OTP-0233-0406*; No. 202. DRC-OTP-0234-0327*; DRC-OTP-0234-0325*; DRC-OTP-0231-0504*; DRC-OTP-0231-0511*; DRC-OTP-0231-0522*; DRC-OTP-0231-0530*.

contracts had ended, W-0143 indicated that he was leading an NGO called [REDACTED], [REDACTED].³¹¹

151. It is established³¹² that W-0143 introduced 24 witnesses to the Office of the Prosecutor, of whom five are Prosecution witnesses,³¹³ and had contact with at least 14 other witnesses.³¹⁴ He was in contact with Intermediaries W-0031, W-0145, W-0316 and W-0321, among others.³¹⁵ On behalf of the Office of the Prosecutor, W-0143 organised travel and transport for witnesses,³¹⁶ and obtained identification papers.³¹⁷ W-0143 also communicated with the guardians of some witnesses to secure their consent for X-rays to be taken,³¹⁸ helped some of the victims to write their applications for participation,³¹⁹ and personally enquired about the safety and health of the witnesses.³²⁰
152. W-0143 maintained regular and direct contact with the investigators from the Office of the Prosecutor and their superiors,³²¹ and acted according to their instructions and under their control.³²²

³¹¹ DRC-OTP-0231-0504* and DRC-OTP-0231-0511*.

³¹² *Table of contacts*, DRC-D01-0003-5847, No. 134.

³¹³ W-0007, W-0008, W-0010, W-0011 and W-0031. W-0143 also introduced Prosecution Witnesses W-0006 and W-0009, who were withdrawn.

³¹⁴ W-0028, W-0030, W-0145, W-0177, W-0178, W-0183, W-0213, W-0243, W-0286, W-0297, W-0316, W-0321, W-0343 and Intermediary W-0022.

³¹⁵ T-324-CONF-FRA-ET, p. 24, line 21 *et seq.*

³¹⁶ DRC-OTP-0216-0238*; DRC-OTP-0191-0176*; DRC-OTP-0216-0090*; DRC-OTP-0216-0116*; DRC-OTP-0216-0228*; DRC-OTP-0211-0138*; DRC-OTP-0211-0139*; DRC-OTP-0209-0019*; DRC-OTP-0208-0116*; DRC-OTP-0205-0396*; DRC-OTP-0172-0119*; DRC-OTP-0191-0176*; DRC-OTP-0196-0678*; DRC-OTP-0196-0617* and DRC-OTP-0209-0199*.

³¹⁷ W-0143 arranged for W-0297's and D01-0004's pupil identity cards to be made. T-302-CONF-FRA-CT, p. 55, lines 10 *et seq.* W-0143 also provided the attestations of birth for Witnesses W-0007 (DRC-OTP-0132-0013*), W-0008 (EVD-D01-00055), W-0010 (DRC-OTP-0132-0012*) and W-0011 (EVD-D01-00059); DRC-OTP-0216-0213*.

³¹⁸ DRC-OTP-0191-0119*.

³¹⁹ EVD-D01-00207; EVD-D01-00211; EVD-D01-00218 and EVD-D01-00221.

³²⁰ DRC-OTP-0209-0207*; DRC-OTP-0211-0137*; DRC-OTP-0211-0142*; DRC-OTP-0211-0146*; DRC-OTP-0209-0086*.

³²¹ Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 18, lines 28 *et seq.*, line 4; DRC-OTP-0233-0406*; DRC-OTP-0209-0081*; DRC-OTP-0216-0144* and EVD-D01-00776.

³²² DRC-OTP-0233-0406*, Nos. 5, 7, 56 and 108.

153. W-0143 was informed of the Office of the Prosecutor's investigation objectives in order to provide the investigators with the sort of information they sought. Bernard Lavigne also stated that the Office of the Prosecutor's investigation objectives were developed on the basis of information provided by W-0143.³²³

a. The witnesses with whom he was in contact have all made manifestly mendacious statements

154. Witnesses W-0007, W-0008, W-0010 and W-0011 were introduced to the Office of the Prosecutor by W-0143, and all were introduced as former child soldiers. W-0143 also introduced to the Office of the Prosecutor the witnesses and participating victims W-0006 and W-0009, whose written statements were selected by the Pre-Trial Chamber for the confirmation of the charges.

155. Testimonial and documentary evidence presented at trial demonstrates that these witnesses have all made manifestly mendacious statements.

– Analysis of the evidence given by Witnesses [REDACTED] (W-0007) and [REDACTED] (W-0008)

156. When he met with the Office of the Prosecutor in 2005, W-0007 stated that he was born on [REDACTED] 1991 and that his name was [REDACTED].³²⁴

157. However, W-0008 stated for the first time during his testimony that he was also called [REDACTED],³²⁵ and was born on [REDACTED] 1987 in [REDACTED].³²⁶ He said that his parents were [REDACTED] and [REDACTED].³²⁷ He also claimed that he was abducted by UPC/RP soldiers in early 2003 as he was returning from school in [REDACTED];³²⁸ that he was in

³²³ Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 23, lines 2 *et seq.*

³²⁴ EVD-D01-00219.

³²⁵ T-148-CONF-FRA-CT, p. 16, line 25.

³²⁶ *Idem*, p. 17, line 23.

³²⁷ *Ibidem*, p. 17, lines 4-7.

³²⁸ *Ibidem*, p. 19, line 21 to p. 21, line 12.

the [REDACTED] of secondary school and 15 years old at the time;³²⁹ that he was taken to a training centre in Irumu³³⁰ where he stayed for three months,³³¹ then to a camp in Mandro³³² where he stayed for two or three months;³³³ that he was assigned as bodyguard for Commander [REDACTED] in [REDACTED]; and that he took part in the fighting in Bunia, Bogoro and Lipri.³³⁴

158. Testimonial³³⁵ and documentary³³⁶ evidence shows that Witness W-0007 made false statements to the Office of the Prosecutor in 2005 about his date of birth. Furthermore, the date of birth and the name written on the attestation of birth obtained by Intermediary W-0143 were contradicted by W-0007 himself.³³⁷
159. These statements contain glaring contradictions and implausibilities, revealed during the Defence's cross-examination, regarding both the circumstances of his recruitment³³⁸ and his alleged military activities within the armed wing of the UPC.³³⁹

³²⁹ *Ibidem*, p. 23, lines 6-20.

³³⁰ *Ibidem*, p. 28, lines 14-17.

³³¹ *Ibidem*, p. 50, lines 5-6.

³³² *Ibidem*, p. 28, lines 16-20 and p. 53, lines 1-3.

³³³ *Ibidem*, p. 55, lines 13-16.

³³⁴ *Ibidem*, p. 2, lines 12-19 and p. 10, line 2.

³³⁵ EVD-D01-00219 and T-148-CONF-FRA-CT, p. 16, lines 22 *et seq.*

³³⁶ DRC-OTP-0132-0013* and DRC-D01-0003-5522*.

³³⁷ DRC-OTP-0132-0013*.

³³⁸ W-0007 claims that Thomas Lubanga and Chief Kahwa came to the camp in Irumu at the end of their training, around March 2003. He also claims that he was present in the camp in Mandro in 2003 while Chief Kahwa was in charge, although it is common knowledge that Chief Kahwa broke with the UPC at the end of 2002 (T-148-CONF-FRA-CT, p. 49, lines 16-23 and p. 50, line 5 to p. 52, line 13 and p. 57, lines 14-17 and T-149-CONF-FRA-CT, p. 86, lines 1-18).

³³⁹ W-0007 did not mention the battle of Dele to the investigators in 2005, although he stated in court that he was wounded there. T-150-CONF-FRA-CT, p. 10, lines 11 *et seq.* W-0007 provided two completely conflicting explanations in 2005 and at court as to why he went to Fataki in 2003. T-150, p. 12, line 20 to p. 13, line 9. W-0007 claimed that Commander Bagonza was present at the meetings that took place at the residence of the UPC Chief of Staff, although it is common knowledge that Commander Bagonza died in September or October 2002. T-150-CONF-FRA-CT, p. 15, lines 4 *et seq.*; T-149-CONF-FRA-CT p. 92, lines 8-24; T-149-CONF-FRA-CT p. 93, lines 23 *et seq.* and p. 95, lines 1-12.

160. Witness W-0008 stated, during his testimony, that he was the cousin of Witness W-0007.³⁴⁰ He said that his name was [REDACTED], that he was born on [REDACTED] 1989 in [REDACTED], and that his parents were [REDACTED] and [REDACTED].³⁴¹ However, in 2005, he had told the Office of the Prosecutor that his name was [REDACTED], that he was born in [REDACTED] on [REDACTED] 1991, and that his father was [REDACTED] and his mother [REDACTED].³⁴² The information on the attestation of birth obtained by W-0143³⁴³ was thus contradicted by the witness himself.
161. Witness W-0008 claimed that he was forcibly enlisted at the beginning of 2003³⁴⁴ by UPC soldiers while he was attending school in [REDACTED];³⁴⁵ that he undertook military training for two weeks³⁴⁶ in a camp in Irumu;³⁴⁷ that he was assigned as bodyguard to [REDACTED];³⁴⁸ and that he participated in the fighting in Lipri and Barrière.³⁴⁹
162. These statements are tainted by glaring contradictions and implausibilities,³⁵⁰ revealed during the Defence's cross-examination, regarding the circumstances of his enlistment and his alleged activities in the armed wing of the UPC.³⁵¹

³⁴⁰ T-135-CONF-FRA-CT2, p. 5, lines 8-10.

³⁴¹ T-135-CONF-FRA-CT2, p. 4, lines 4-22. The witness claims also to use the names [REDACTED] and [REDACTED] (T-149-CONF-FRA-CT p. 48, lines 18-25).

³⁴² EVD-D01-00205, pp. 0064 and 0066.

³⁴³ Metadata of document EVD-D01-00055.

³⁴⁴ T-135-CONF-FRA-CT2, p. 10, lines 8-15.

³⁴⁵ *Idem*, p. 7, line 15 to p. 8, line 14.

³⁴⁶ *Ibidem*, p. 30, line 8.

³⁴⁷ *Ibidem*, p. 10, lines 4-7.

³⁴⁸ *Ibidem*, p. 23, line 18.

³⁴⁹ *Ibidem*, p. 25, lines 8-16.

³⁵⁰ Contradictions regarding a meeting held on the day of his alleged abduction, instead of his abduction by soldiers, the presence of his "cousin" W-0007, and regarding the form of transport used to travel to the camp in Irumu. T-137-CONF-FRA-CT, pp. 23-39 and pp. 43-44.

³⁵¹ W-0008 was unable to state clearly whether or not he had seen his cousin at the Irumu camp. T-137-CONF-FRA-CT, p. 58, lines 7-24; W-0008 attributed the name of [REDACTED] (*phon.*) to a recruit during his testimony and to a trainer in the additional information form in his application for participation. EVD-D01-00208, p. 2; T-137-CONF-FRA-CT, p. 64, line 15 to p. 66, line 25); W-0008 claimed to have been a soldier under the command of Chief Kahwa from January 2003, while it is public knowledge that Chief Kahwa broke with the UPC in late 2002. T-137-CONF-FRA, p. 70, lines 1-

Moreover, the witness was unable to provide details of the names of the members of his family, or of when he saw them for the last time.³⁵²

163. The school documents filed as evidence show that, contrary to what W-0007 and W-0008 have stated, they were not [REDACTED] during the 2001-2002 school year or at the beginning of the 2002-2003 school year; instead, they were both attending school in [REDACTED].³⁵³
164. Witnesses W-0007 and W-0008 were interviewed on 7 and 8 January 2010, after their testimonies before the Chamber.³⁵⁴ A great deal of information provided by Witnesses W-0007 and W-0008 and their parents, Witnesses W-0496 and W-0497,³⁵⁵ during their interviews demonstrates that the two witnesses deliberately lied before the Chamber³⁵⁶ about important matters such as their identities, the identities of their family members, and the contacts that they maintained with them:
- Witnesses W-0007 and W-0008 admitted to being biological brothers and to having lied about this during their testimony before the Chamber.³⁵⁷ This information was confirmed by Witnesses W-0496 and W-0497.³⁵⁸

15. In 2005, W-0008 neglected to inform the investigators that he had fought at Barrière. T-137-CONF-FRA-CT, p. 77, lines 2-24. The witness stated that he stayed in Mandro for one day, while in his written statement of 2005, it states that he stayed there for 2 months. T-138-CONF-FRA-CT, p. 5, line 9 to p. 6, line 13.

³⁵² T-137-CONF-FRA-CT, p. 13, lines 4-18 and p. 16, lines 6-16.

³⁵³ EVD-D01-00181, p. 4243, p. 2, point IA, No. 3 and IB, No. 2: W-0007 ([REDACTED]) and W-0008 ([REDACTED]) were in the 1st year of secondary school in 2001-2002 at the *Institut [REDACTED]*. EVD-D01-00182, p. 4231, *Institut [REDACTED] – Palmarès* [honour roll] 2002-2003: The names of the two witnesses appeared under “Classe [REDACTED], in Section V “dropped out” at points [REDACTED] [REDACTED] and EVD-D01-00183, p. 4574, Nos. [REDACTED] and [REDACTED].

³⁵⁴ W-0007: EVD-D01-00752; EVD-D01-00753 and EVD-D01-00754. W-0008: EVD-D01-00750 and EVD-D01-00751.

³⁵⁵ EVD-D01-00729 to EVD-D01-00741 and EDV-D01-00746 to EDV-D01-00749.

³⁵⁶ W-0007 also stated that he had deliberately lied to the investigators during his first meeting with them: EVD-D01-00752, p. 0623, lines 533-535.

³⁵⁷ W-0007: EVD-D01-00752, p. 0618, line 372. It should be noted that at the start of the interview, the witness denied that Witness W-0008 and he were brothers. EVD-D01-00752, p. 0618, lines 358-359. W-0008: EVD-D01-00750, p. 0380, lines 286-298. During their hearings before the Chamber, Witnesses W-

- Witnesses W-0007 and W-0008 stated that their mother's name is [REDACTED],³⁵⁹ contradicting their testimonies³⁶⁰ and the information recorded on documents concerning them which were admitted as evidence.³⁶¹
- Witnesses W-0008 and W-0007 stated that their father's name is [REDACTED].³⁶² These names differ from the names given by the witnesses during their testimonies³⁶³ and from the information on numerous prosecution documents,³⁶⁴ as well as from the names given by the mother of the witnesses.³⁶⁵
- W-0007 and W-0008 stated that they have brothers and sisters, and listed them accurately by their names,³⁶⁶ which they had refused to do when they testified.³⁶⁷

0007 and W-0008 said that they were cousins: W-0007: T-150-CONF-FRA-CT, p. 30, lines 4-14. W-0008: T-135-CONF-FRA-CT, p. 5, lines 5-11.

³⁵⁸ W-0496: EVD-D01-00733, p. 0061, lines 682-685. W-0497: EVD-D01-00729, p. 0135-0136, lines 853-902 and p. 0137 and 0138, lines 916-951.

³⁵⁹ W-0007: EVD-D01-00752, pp. 0621 and 0622, lines 468-498. W-0008: EVD-D01-00750, p. 0380, lines 299-313.

³⁶⁰ W-0008: T-135-CONF-FRA-CT, p. 4, lines 14-15. And yet, this name had been put to W-0008 by the Defence during cross-examination. At the time, he stated that he did not remember all the names of the members of his family: T-137-CONF-FRA-CT, p. 16, lines 13-16.

³⁶¹ Contrary to DRC-OTP-0132-0013*; EVD-D01-00221 p. 5 (concerning W-0007) and EVD-D01-00055; EVD-D01-00207, p. 5 and EVD-D01-00208, p. 3 (concerning W-0008).

³⁶² W-0008: EVD-D01-00750, p. 0381, lines 318-339 and W-0007: EVD-D01-00753, p. 0636, lines 146-157, p. 0637, line 188 and p. 0639, lines 254-259.

³⁶³ T-135-CONF-FRA-CT, p. 4, lines 12-15: Before the Chamber, W-0008 mentioned the names of [REDACTED] (father) and [REDACTED] (mother). During his testimony, W-0007 claimed that his father's name was [REDACTED]. T-149-CONF-FRA-CT, p. 53, line 5 and T-148-CONF-FRA-CT, p. 17, line 7. W-0007 stated that his biological father was called [REDACTED], but that he had grown up with his father's brother, [REDACTED]. See EVD-D01-00753, p. 0636, lines 146-157, p. 0637, line 188 and p. 0639, lines 254-259.

³⁶⁴ EVD-D01-00207, p. 5 and EVD-D01-00055.

³⁶⁵ EVD-D01-00729, p. 0139, lines 971-975.

³⁶⁶ W-0007: EVD-D01-00753, p. 0639, line 267, p. 0640, lines 281 *et seq.*; W-0008: EVD-D01-00750, p. 0383, lines 407 *et seq.*

³⁶⁷ W-0007 neglected to name several of his brothers and sisters. T-149-CONF-FRA-CT, p. 49, line 21 to p. 50, line 12. W-0008 stated during his testimony that he had forgotten the names of his brothers and sisters. T-137-CONF-FRA-CT, p. 13, lines 4-15.

- On reading their additional interviews, it emerges that there are numerous inconsistencies regarding the contact they had with their parents³⁶⁸ and their other family members³⁶⁹ after the war:
- Witness W-0007 stated that from the age of 11, he had lived with [REDACTED], whose house was in [REDACTED]. He added that he was then in the 4th year of primary school.³⁷⁰ This statement is contrary to what he stated during his testimony before the Chamber.³⁷¹
- Witness W-0497, mother of Witnesses W-0007 and W-0008, stated that the father of all of her children died when [REDACTED],³⁷² and that, at this time, Witnesses W-0007 and W-0008 had already been born.³⁷³ And yet, [REDACTED].³⁷⁴ The biological father of Witnesses W-0007, W-0008 [REDACTED] would therefore have died in around 1982, and Witnesses W-0007 and W-0008 would have been born before then.
- There are serious discrepancies between the evidence given by W-0007 and W-0008 and their parents' statements regarding the

³⁶⁸ W-0007: EVD-D01-00754, p. 0664, lines 336-338 and p. 0665 lines 350-353. This statement contradicts his testimony: T-149-CONF-FRA-CT, p. 42, lines 16-21; T-149-CONF-FRA-CT, p. 53, line 8. W-0008: EVD-D01-00751, p. 0416, lines 165-166 and EVD-D01-00750, p. 0382, lines 374-377. W-0008 did not provide a clear answer to the Defence's questions on this subject: T-137-CONF-FRA-CT, p. 14, line 11 to p. 16, line 15.

³⁶⁹ W-0008: EVD-D01-00751, p. 0414, lines 95 *et seq.* and p. 0415, lines 123-138. However, during his testimony, he stated that he had not met his brothers and sisters for a very long time and had not seen them after the battle, before entering the protection programme: T-137-CONF-FRA-CT, p. 13, lines 8 to 23.

³⁷⁰ EVD-D01-00753, pp. 0648-0649, lines 589-593 and p. 0637, line 188; EVD-D01-00754, pp. 0675-0676, lines 749-756.

³⁷¹ During his testimony before the Chamber, the witness stated that he was living with his parents at the time he was abducted. See, for example, T-149-CONF-FRA-CT, p. 56, lines 1-15.

³⁷² EVD-D01-00729, p. 0140, line 1026.

³⁷³ *Idem*, p. 0141, lines 1032-1061.

³⁷⁴ T-248-CONF-FRA-CT, p. 23, line 24.

places where W-0007 and W-0008 lived,³⁷⁵ and the location from which W-0008 claimed to have been abducted by soldiers from the UPC.³⁷⁶

- Witness W-0496, father of W-0007 and W-0008, stated that his children were in a camp near [REDACTED] and he saw them jogging at this location.³⁷⁷ At no point during their testimonies did Witnesses W-0007 or W-0008 mention either the village of [REDACTED] or having been in a camp near to [REDACTED].

165. Witness D01-0012, [REDACTED]. He confirmed their identities as being [REDACTED] and [REDACTED].³⁷⁸ D01-0012 stated that [REDACTED] name is [REDACTED] and [REDACTED] [REDACTED].³⁷⁹ He stated that he joined the UPC army three months before Bunia was captured and that he stayed there until the French arrived.³⁸⁰ He said that he had never been informed that [REDACTED] were allegedly soldiers, but maintained that the latter were not soldiers when he joined the UPC army, and that when he left the UPC, no one told him that [REDACTED] had been soldiers.³⁸¹

³⁷⁵ W-0497 stated that she and [REDACTED] ([REDACTED], W-0007 and W-0008) were in [REDACTED] when the first attack took place, and that they moved to [REDACTED]. EVD-D01-00730, p. 0179, lines 748-749. She stated that they stayed in the [REDACTED]. EVD-D01-00730, p. 0180, lines 757-770.

³⁷⁶ W-0497 stated that W-0007 and W-0008 were abducted when the family fled to Katoto. EVD-D01-00730, p. 0170, lines 421-462, and p. 0179, lines 718-719. However, W-0496 explained that during the war in [REDACTED], they fled to [REDACTED] and the children were scattered. In [REDACTED], W-0496 discovered that the children were in the army. EVD-D01-00734, p. 0108, lines 864-874. These statements contradict the testimonies of W-0007 and W-0008, who stated that they were abducted in [REDACTED]. W-0007: T-148-CONF-FRA-CT, p. 19, lines 21-24. W-0008: T-135-CONF-FRA-CT, p. 10, line 14. At no point in their testimonies did W-0007 or W-0008 mention the village of [REDACTED].

³⁷⁷ EVD-D01-00734, p. 0109, lines 902-913 and EVD-D01-00736, p. 0164, line 365.

³⁷⁸ T-248-CONF-FRA-CT, p. 27, lines 5-7 and 21.

³⁷⁹ *Idem*, p. 24, line 2 to p. 25, line 3.

³⁸⁰ *Ibidem*, p. 42, lines 9-23.

³⁸¹ *Ibidem*, p. 45, lines 18-24.

– *Analysis of the testimony of [REDACTED] (W-0010)*

166. Witness W-0010 claims to be called [REDACTED] and to have been born in [REDACTED] 1989 in [REDACTED], and that her father was [REDACTED] and her mother, [REDACTED].³⁸² She claims that she was forcibly enlisted in the armed wing of the UPC,³⁸³ trained for two weeks in Rwampara camp,³⁸⁴ was taken to Mandro camp after that,³⁸⁵ and was made one of [REDACTED]'s bodyguards.³⁸⁶
167. However, the testimonies of D01-0005 and D01-0006 and the documentary evidence show that W-0010 was instead enlisted into the APC³⁸⁷ and that she later joined the UPC when she was more than 15 years old.³⁸⁸ The mendaciousness of W-0010's statement regarding the circumstances in which she was enlisted is confirmed by the glaring contradictions between the different statements made by the witness about the circumstances of her alleged abduction by UCP soldiers³⁸⁹ and her alleged military activities within the armed wing of the UPC.³⁹⁰ With regard to W-0010's real age, it should be

³⁸² T-144-CONF-FRA-CT, p. 11, lines 7 *et seq.*

³⁸³ T-144-CONF-FRA-CT, p. 14, lines 7 *et seq.* and p. 35, lines 11 *et seq.*

³⁸⁴ T-144-CONF-FRA-CT, p. 14, lines 20-24 and p. 20, lines 23 *et seq.*

³⁸⁵ T-144-CONF-FRA-CT, p. 14, lines 23 *et seq.*

³⁸⁶ T-144-CONF-FRA-CT, p. 15, lines 9-12.

³⁸⁷ Excerpt from the document "Individual case story" based on an account by Witness W-0046 regarding W-0010, stating that W-0010 was forcibly enlisted by the APC (EVD-D01-00082). Witness D01-0005, [REDACTED] W-0010, confirmed that W-0010 was in the APC before joining the UPC (T-261-CONF-FRA-ET p. 17, lines 12-25); the testimony of D01-0006: T-254-CONF-FRA-CT, p. 46, line 20 to p. 47, line 10 and p. 49, line 4 to p. 51, line 14.

³⁸⁸ Excerpt from the document "Individual case story" by Witness W-0046 regarding W-0010 stating the year of birth as 1987 (EVD-D01-00082); W-0010's voting card, stating the date of birth as [REDACTED] 1986 (EVD-D01-00762), and record from electoral register. (DRC-OTP-0231-0275*); Witness D01-0005, [REDACTED] of W-0010, confirmed that she and W-0010 were of the same age (T-261-CONF-FRA-ET p. 18, lines 1-4); D01-0006 also confirmed this: T-254-CONF-FRA-CT, p. 63, lines 20-23 and p. 43, line 10.

³⁸⁹ On when she was enlisted (T-145-CONF-FRA-CT, p. 53, line 23 to p. 56, line 11). On where she was enlisted (T-145-CONF-FRA-CT, p. 57, line 12 to p. 58, line 13). On the fact that she was one of the first recruits in Rwampara camp (T-145-CONF-FRA-CT, p. 62, lines 6-14).

³⁹⁰ On the presence of Commander Pepe in the UPC, although it is public knowledge that he died while he was in the APC (T-145-CONF-FRA-CT, p. 63, line 4 to p. 64, line 11). On the circumstances in

emphasised that the only document produced by the Office of the Prosecutor, which was provided by W-0143, is challenged by W-0010 herself, thereby raising serious doubts as to the reliability, or indeed the authenticity, of this document.³⁹¹

168. Following her testimony before the Chamber on 5 and 6 March 2009,³⁹² Witness W-0010 was again interviewed by the Prosecutor. On this occasion, Witness W-0010 confirmed certain information introduced in evidence by Witnesses D01-0005 and D01-0006 for the Defence.³⁹³ Furthermore, contradicting her own testimony on this point,³⁹⁴ Witness W-0010 stated that [REDACTED] D01-0006,³⁹⁵ and also confirmed several other pieces of information D01-0006 had provided in the course of giving evidence.³⁹⁶

– *Analysis of the testimony of [REDACTED] (W-0011)*

169. Witness W-0011 states that he is called [REDACTED],³⁹⁷ son of [REDACTED] and [REDACTED],³⁹⁸ and that he was born on [REDACTED] 1992 in [REDACTED].³⁹⁹ He states that he went to school in [REDACTED], and to [REDACTED] in [REDACTED].⁴⁰⁰ He claims that he was enlisted⁴⁰¹ in the

which she was selected by Commander [REDACTED] to be his bodyguard (T-145-CONF-FRA-CT, p. 65, line 1 to p. 68, line 4). Her participation in the fighting, which is commonly known to have taken place in 2001 (T-145-CONF-FRA-CT, p. 79, lines 17-24).

³⁹¹ DRC-OTP-0132-0012*. EVD-D01-00218, p. 18. W-0010 : T-145-CONF-FRA-CT, p. 49, lines 17 *et seq.*

³⁹² T-144-CONF-FRA-CT and T-145-CONF-FRA-CT.

³⁹³ W-0010 confirmed that she knew D01-0005 and [REDACTED]. EVD-D01-00742, p. 0379, lines 127-143. This statement confirms D01-0005's testimony in this respect. T-261-CONF-FRA-CT, p. 20, lines 4-10. W-0010 also stated that D01-0005 was not part of an armed group, although she and D01-0005 were cared for by [REDACTED]. EVD-D01-00742, p. 0381, lines 200-218. This statement confirms D01-0005's testimony in this respect. T-261-CONF-FRA-CT, p. 26, lines 11-12.

³⁹⁴ T-145-CONF-FRA-CT, p. 76, lines 1-7.

³⁹⁵ EVD-D01-00743, p. 0396, line 224.

³⁹⁶ *Idem*, p. 0396-0397, lines 230-231, 242-247 and 282; EVD-D01-00743, p. 0396, line 242. See also D01-0006: T-254-CONF-FRA-ET, p. 49, line 9 and p. 52, lines 23 *et seq.*

³⁹⁷ T-138-CONF-FRA-CT, p. 52, line 17.

³⁹⁸ *Idem*, p. 52, line 23 to p. 53, line 6.

³⁹⁹ *Ibidem*, p. 54, line 10 and p. 53, line 23.

⁴⁰⁰ *Ibidem*, p. 54, lines 17-18.

⁴⁰¹ *Ibidem*, p. 58, lines 13-15.

armed wing of the UPC in July 2002 and that he remained there until July 2003.⁴⁰² He states that he underwent four months of training in Bule⁴⁰³ and took part in the battles at Lipri⁴⁰⁴ and Barrière.⁴⁰⁵

170. These statements contain glaring contradictions and implausibilities, revealed by the Defence's cross-examination, both in the information he gave about his civil status,⁴⁰⁶ school attendance,⁴⁰⁷ the circumstances of his enlistment,⁴⁰⁸ and his alleged military activities in the armed wing of the UPC.⁴⁰⁹

171. Furthermore, the testimony of D01-0024, who is a member of his family, together with documentary evidence, show that Witness W-0011 made false

⁴⁰² *Ibidem*, p. 58, lines 20-22.

⁴⁰³ *Ibidem*, p. 76, lines 18-20.

⁴⁰⁴ T-139-CONF-FRA-CT, p. 12, lines 10-21.

⁴⁰⁵ *Idem*, p. 7, lines 3-8.

⁴⁰⁶ Concerning the identity of the witness and his parents, see T-139-CONF-FRA-CT, p. 61 lines 14-19 and p. 62 lines 1-2 and T-139-CONF-FRA-CT, p. 63, lines 4 *et seq.* The name [REDACTED], indicated on his attestation of birth (EVD-D01-00059), does not include the name [REDACTED] by which the witness identifies himself at the hearing (T-138-CONF-FRA-CT, p. 52, line 17), or the name [REDACTED] as mentioned on his certificate of demobilisation from an armed group (EVD-D01-00211, pp. 21/27, see T-139-CONF-FRA-CT, p. 52, lines 3 *et seq.*). On the date of birth, see EVD-D01-00210 and T-139-CONF-FRA-CT, p. 60, lines 3-24.

⁴⁰⁷ On the educational institution attended in the 1st year, see EVD-D01-00210, para. 14; and T-139-CONF-FRA-CT, p. 73, lines 15 *et seq.* On the school attended in the 3rd year, see T-138-CONF-FRA-CT, p. 54, lines 16-22 and T-139-CONF-FRA-CT, p. 76, line 22 to p. 77, lines 6-11; On the school year in which he was allegedly enlisted, see EVD-D01-00210, para. 14; T-138-CONF-FRA-CT, p. 56, lines 7-8; T-139-CONF-FRA-CT, p. 70, lines 20-21.

⁴⁰⁸ On the date of enlistment and the date of demobilisation from an armed group, see EVD-D01-00211, p. 11/27 (application for participation as a victim) and T-140-CONF-FRA-CT, p. 18, line 1 to p. 20, line 3; on the enlistment of his friend [REDACTED], see EVD-D01-00210, para. 21; T-140-CONF-FRA-CT, p. 7, lines 1-23; on the circumstances of his enlistment, see EVD-D01-00210, paras. 20-22 (witness statement) and T-140-CONF-FRA-CT, pp. 8-9. On the place of enlistment, see T-139-CONF-FRA-CT, p. 88, lines 20-23; EVD-D01-00210, para. 20 (witness statement); T-139-CONF-FRA-CT, p. 91, lines 24 *et seq.*

⁴⁰⁹ On the villages where he allegedly fought, see EVD-D01-00211, p. 12/27 (application for participation as a victim, reference to Bunia), T-140-CONF-FRA-CT, p. 56, lines 10-13; on the frequency of training, see T-140-CONF-FRA-CT, p. 35, line 9 to p. 37, line 7 and EVD-D01-00210, para. 27 (witness statement); on the first battle in which he took part, see EVD-D01-00210, para. 42 (witness statement) and T-140-CONF-FRA-CT, p. 43, lines 10-18; on the place of departure for Lipri: EVD-D01-00210, para. 41 (witness statement) and T-140-CONF-FRA-CT, p. 50, line 4 to p. 51, line 15.

statements to the Office of the Prosecutor concerning his civil status,⁴¹⁰ school attendance⁴¹¹ and enlistment in the UPC armed forces.⁴¹²

172. Moreover, the additional interview of Witness W-0011 contains numerous contradictions between his statements at the hearing and his additional statements:

- Witness W-0011 states that only his mother knows that he appeared as a witness before the Court.⁴¹³ This statement contradicts his testimony, during which he stated that his mother was dead.⁴¹⁴
- Contrary to what he said before the Chamber,⁴¹⁵ Witness W-0011 states that he does not remember if he had family in [REDACTED].⁴¹⁶ In addition, he makes various contradictory statements about his time in [REDACTED].⁴¹⁷
- In his additional statements, the witness changes his version of circumstances relating to his school attendance, the places where he resided and the relations with whom he resided.⁴¹⁸

⁴¹⁰ EVD-D01-00059; EVD-D01-00211, p. 3/27 and 21/27 and D01-0024: T-246-CONF-FRA-CT, p. 9, lines 1-2 (on the mother's name).

⁴¹¹ EVD-D01-00176 and EVD-D01-00177: the names [REDACTED] and [REDACTED], or any other similar name, do not appear in this register.

⁴¹² Witness D01-0024, T-248-CONF-FRA-CT, p. 9, lines 8-14.

⁴¹³ Transcript EVD-D01-00745, p. 0082, lines 1173-1175.

⁴¹⁴ T-139-CONF-FRA-CT, p. 37, lines 8-9.

⁴¹⁵ *Idem*, p. 71, lines 10-25.

⁴¹⁶ EVD-D01-00744, p. 0031, lines 584-586.

⁴¹⁷ EVD-D01-00744, p. 0042, line 959. In the additional interview, he first states that before the war he had never been to [REDACTED]. Then, he says that he lived there with his father and went to school there. EVD-D01-00744, p. 0043, lines 986 *et seq.* However, he stated before the Chamber that he lived in [REDACTED] with [REDACTED], his mother's sister. T-139-CONF-FRA-CT, p. 72, lines 2-8.

⁴¹⁸ EVD-D01-00744, pp. 0044 *et seq.* He stated before the Chamber that he lived in [REDACTED] with his maternal aunt [REDACTED]. T-139-CONF-FRA-CT, p. 72, lines 2-8. In his additional interview, W-0011 contradicts himself by saying that he lived with his parents until they separated, when he was [REDACTED], and then before the war, he lived with his grandmother from the age [REDACTED]. EVD-D01-00744, p. 0044, lines 1046-1051.

– *Analysis of the statements of [REDACTED] (W-0006) and [REDACTED] (W-0009)*

173. In its *Decision on the confirmation of charges*,⁴¹⁹ the Pre-Trial Chamber relies on the statements of Witnesses W-0006 and W-0009, noting their status as former child soldiers under the age of 15 years.⁴²⁰

174. However, the voting cards of these witnesses provide proof that they were aged 16 and 15 years respectively in 2002.⁴²¹

b. The Prosecutor had sufficient information to suspect W-0143 of acts of subornation and manipulation of evidence

– *W-0143 acted on behalf of participating victims*

175. The Office of the Prosecutor was aware that W-0143 was acting simultaneously on behalf of participating victims⁴²² who were assisted and represented by the Office of Public Counsel for Victims (OPCV).

176. W-0143 was involved in the applications for participation submitted by these victims in his capacity as the “person acting on behalf of the victim”, and is mentioned in the application forms as being the person who helped the victims to fill in the forms.

177. The comments made in relation to Intermediary W-0321 are germane to this situation.⁴²³ Moreover, his input as “person acting on behalf of the victim” suggests that he considers himself as being entitled to collect, on behalf of the victim, any benefits deriving from the victim’s participation in the proceedings.

⁴¹⁹ ICC-01/04-01/06-796-Conf-tEN.

⁴²⁰ *Idem*, footnotes 326 and 331.

⁴²¹ DRC-D01-0003-2485* and DRC-D01-0003-2483*.

⁴²² a/0047/06 (EVD-D01-00221), a/0048/06 (EVD-D01-00207), a/0050/06 (EVD-D01-00218) and a/0052/06 (EVD-D01-00211).

⁴²³ *Supra*, paras. 141-142.

178. Such a situation creates a clear risk of bias and should necessarily have impelled the Office of the Prosecutor to relinquish the services of W-0143 and exercise the utmost caution towards the evidence he gathered.

– *The Prosecutor possessed information that raised serious doubts about the impartiality and reliability of W-0143*

179. As far back as 2007, W-143 submitted claims for reimbursement which should have aroused suspicion about his reliability as an intermediary.⁴²⁴ Indeed, several of these claims were deemed excessive and unjustifiable by persons acting for the Office of the Prosecutor.⁴²⁵

180. On 23 February 2006, following an incident that occurred in early January 2006 involving three potential witnesses,⁴²⁶ the investigators submitted a report to the most senior officials of the Office of the Prosecutor in which they cast serious doubt on the credibility and reliability of Intermediaries W-0143 and W-0316.⁴²⁷

181. In 2008, W-0143 provided the Office of the Prosecutor with identity documents of highly dubious authenticity:

- Witness W-0279's attestation of birth was prepared on the basis of information provided to the civil registry services by W-0143 himself, without Witness W-0279 or either of his parents certifying the accuracy of that information.⁴²⁸
- W-0143 allegedly had a fake pupil identity card prepared for Witness D01-0004.⁴²⁹

⁴²⁴ DRC-OTP-0233-0168*, pp. 1-2.

⁴²⁵ DRC-OTP-0233-0168*, pp. 4 and 6; DRC-OTP-1019-0396* and DRC-OTP-1019-0398*.

⁴²⁶ *Supra*, footnote 73.

⁴²⁷ EVD-OTP-00641.

⁴²⁸ DRC-OTP-0233-0406, No. 119.

⁴²⁹ EVD-D01-00336; EVD-D01-00294.

- The attestations of birth of Witnesses W-0007,⁴³⁰ W-0008,⁴³¹ W-0010,⁴³² and W-0011,⁴³³ provided to the Office of the Prosecutor by W-0143, were all prepared on the same day by the same civil registry official and bear dates that do not match the dates of birth of these witnesses in the register of the IEC.⁴³⁴ The attestations of birth contain further obvious editorial errors⁴³⁵ casting serious doubt on the reliability of the information contained therein.

182. Lastly, the negotiations between W-0143 and the VWU concerning his relocation confirm W-0143's strong tendency to portray certain situations falsely, solely in order to protect his own personal and financial interests.⁴³⁶

183. W-0143 stated, for example, that he had a monthly income of \$2400 from [REDACTED], additional income from [REDACTED], and an income of \$1500 from [REDACTED].⁴³⁷ However, he has not provided any documentary proof considered trustworthy by the VWU.⁴³⁸ This information is inconsistent with the information provided in the document entitled 'Personal History Form', which indicates that [REDACTED] is W-0143's sole employer, and that he is paid on the basis of finished projects.⁴³⁹

⁴³⁰ DRC-OTP-0132-0013*.

⁴³¹ EVD-D01-00055.

⁴³² DRC-OTP-0132-0012*.

⁴³³ EVD-D01-00059.

⁴³⁴ W-0007: DRC-D01-0003-5522; W-0008: DRC-D01-0003-5524; W-0010: EVD-D01-00762. No extract from the IEC register is available for W-0011.

⁴³⁵ One of the items of information required by the civil registry official in order to prepare the attestation of birth is left blank in each of the aforementioned attestations.

⁴³⁶ ICC-01/04-01/06-2615-Conf-Anx2.

⁴³⁷ *Idem*, p. 2.

⁴³⁸ *Ibidem*, p. 3.

⁴³⁹ DRC-OTP-0232-0098*.

1.4 Intermediary W-0031

184. W-0031 acted as intermediary or had contact with Witnesses W-0007,⁴⁴⁰ W-0008,⁴⁴¹ W-0011,⁴⁴² W-0157,⁴⁴³ W-0293,⁴⁴⁴ W-0294,⁴⁴⁵ W-0298⁴⁴⁶ and W-0299.⁴⁴⁷ He was in contact with W-0143, who introduced him to the Office of the Prosecutor,⁴⁴⁸ and he instructed W-0321 both in his capacity as intermediary for the organisation [REDACTED] and in his capacity as intermediary for the Office of the Prosecutor.⁴⁴⁹

1.4.1 Intermediary W-0031 is acting for the Prosecutor

185. It is not disputed that W-0031 was recruited as an intermediary by the Office of the Prosecutor back in 2005 and that he continued to act as such at least until 2008.⁴⁵⁰

186. During their collaboration, the Office of the Prosecutor made payments to W-0031 which the Defence has estimated to be at least \$23,000.⁴⁵¹

187. It emerges from the accounting documents disclosed by the Office of the Prosecutor that W-0031 received a monthly allowance as from March 2007.⁴⁵²

⁴⁴⁰ T-150-CONF-FRA-CT, p. 31, lines 8-11; DRC-D01-0003-5847*, No. 23 and T-201-CONF-FRA-CT, p. 72 line 8;

⁴⁴¹ T-138-CONF-FRA-CT, p. 10, lines 25 *et seq.*; DRC-D01-0003-5847*, No. 23 and T-201-CONF-FRA-CT, p. 72 lines 18-23;

⁴⁴² T-142-CONF-FRA-CT, p. 11, lines 4-14; DRC-D01-0003-5847*, No. 23 and T-201-CONF-FRA-CT, p. 72 lines 25 *et seq.*

⁴⁴³ T-188-CONF-FRA, p. 70, lines 20-25; DRC-D01-0003-5847*, No. 23 and T-202-CONF-FRA-ET, p. 77 lines 11-15.

⁴⁴⁴ T-153-CONF-FRA-CT, p. 53, lines 14-22; DRC-D01-0003-5847*, No. 23.

⁴⁴⁵ T-202-CONF-FRA-ET, p. 77, lines 1-2; DRC-D01-0003-5847*, No. 23.

⁴⁴⁶ *Idem*, p. 74, lines 18 *et seq.*

⁴⁴⁷ DRC-D01-0003-5847*, No. 127.

⁴⁴⁸ *Idem*, No. 23.

⁴⁴⁹ T-308-CONF-FRA-ET, p. 30, lines 11 *et seq.*, p. 46, lines 12-15, p. 47, lines 24 *et seq.*, and p. 69, lines 19 *et seq.*

⁴⁵⁰ *Table of contacts*, DRC-D01-0003-5847*, No. 23; EVD-D01-00401 and EVD-D01-00576.

⁴⁵¹ The assessment was made on the basis of the documents disclosed on 3 March 2010 and must be revised upwards. See, for example, the *Rapport de remboursement* DRC-OTP-0227-0343* stating that W-0031 received [REDACTED]. DRC-OTP-0227-0346* and DRC-OTP-0227-0222*.

As of 12 March 2010, he was still receiving accommodation and subsistence allowances from the Office of the Prosecutor.⁴⁵³

188. These facts show that for a long time, W-0031 played a central role as intermediary.

1.4.2 The witnesses with whom he has had dealings all gave manifestly mendacious statements

189. Proof that the statements of those witnesses are mendacious has been set out in paragraphs 81 to 137 and 154 to 174.

190. The case of Witness W-0157 is particularly significant:

191. Witness W-0157 is the nephew of [REDACTED] (W-0267), [REDACTED].⁴⁵⁴ He was introduced to the Office of the Prosecutor by W-0031, a friend of W-0267,⁴⁵⁵ and was in contact with W-0321,⁴⁵⁶ who was an employee of W-0031 and W-0267.⁴⁵⁷ W-0267 was put in contact with the Office of the Prosecutor by W-0143.⁴⁵⁸

192. Witness W-0157 claims that he was born on [REDACTED] 1991 in [REDACTED],⁴⁵⁹ of [REDACTED] and [REDACTED].⁴⁶⁰ He claims that he was abducted by UPC soldiers as he returned home from school;⁴⁶¹ that he was taken to Mandro camp for military training;⁴⁶² that he spent time at

⁴⁵² EVD-D01-00547; EVD-D01-00529 and EVD-D01-00403.

⁴⁵³ DRC-OTP-0227-0343*.

⁴⁵⁴ *Table of contacts* DRC-D01-0003-5847*, No. 108.

⁴⁵⁵ *Idem*, No. 79.

⁴⁵⁶ W-0321: T-308-CONF-FRA-ET, p. 42, lines 10-19. W-0157 states that he has close links with W-0031: T-188-CONF-FRA-CT, p. 71, lines 4-10.

⁴⁵⁷ W-0321: T-308-CONF-FRA-ET, pp. 30 *et seq.* and p. 19, lines 15-16.

⁴⁵⁸ DRC-D01-0003-5847*, No. 108.

⁴⁵⁹ T-185-CONF-FRA-CT, p. 63, lines 19-19 and p. 64, line 8.

⁴⁶⁰ *Idem*, p. 63, lines 10-14.

⁴⁶¹ *Ibidem*, p. 69, lines 21 *et seq.*

⁴⁶² *Ibidem*, p. 81, line 13; T-186-CONF-FRA, p. 13, lines 18-20.

[REDACTED] camp,⁴⁶³ [REDACTED] and Rwampara;⁴⁶⁴ that he took part in the fighting in Nyakunde;⁴⁶⁵ and that he left the UPC and then joined the FNI.⁴⁶⁶

193. However, the testimonies of W-0031 and of [REDACTED] of W-0157 (D01-0025), in addition to the documentary evidence, show that W-0157 was not a soldier in the armed wing of the UPC.⁴⁶⁷ Moreover, the documentary evidence establishes that in 2002 and 2003, he was more than 15 years of age.⁴⁶⁸ The mendaciousness of W-0157's statements is confirmed by the glaring contradictions between the witness's various statements concerning his age,⁴⁶⁹ the circumstances of his alleged abduction by UPC soldiers,⁴⁷⁰ and his alleged military activities in the armed wing of the UPC.⁴⁷¹

⁴⁶³ T-186-CONF-FRA-CT, p. 38, lines 21 *et seq.*

⁴⁶⁴ T-187-CONF-FRA-CT, p. 6, lines 15-16.

⁴⁶⁵ *Idem*, p. 2, lines 22-23.

⁴⁶⁶ T-188-CONF-FRA-CT, p. 43, lines 5-7. The witness further states that he was already a member of the FNI a few months prior to 6 March 2003. T-188-CONF-FRA, pp. 44-46.

⁴⁶⁷ W-0031 indicates that W-0157 was a child of the FNI: T-202-CONF-FRA-ET, p. 77, lines 13-18; D01-0025 confirms that W-0157 fled Bunia in May 2003, and that he joined the FRPI in Geti. T-259-CONF-FRA-ET, p. 17, lines 25 *et seq.*

⁴⁶⁸ DRC-D01-0003-5522*; EVD-D01-00170, p. 0431, line 2579.

⁴⁶⁹ In response to the suggestion that his date of birth is [REDACTED] 1986 and not [REDACTED] 1991, the witness states that he does not know his date of birth. T-188-CONF-FRA-CT, p. 64, lines 4-5.

⁴⁷⁰ W-0157 states that he is in the 6th year of primary school, then in 1st year secondary when he is abducted. He also says that he did not attend school between 2000 and 2005, contradicting his earlier statements. See T-187-CONF-FRA-CT p. 30, line 12 to p. 31, line 5 and T-188-CONF-FRA-CT, p. 68, lines 4-9. Contradictions about the place of the alleged abduction, T-187-CONF-FRA-CT, pp. 29-30; about the time of abduction, which the witness is unable to give, T-187-CONF-FRA-CT, pp. 33-34; about the mode of transport used to travel to Bunia stadium, T-187-CONF-FRA-CT, pp. 37-39, lines 16 *et seq.*

⁴⁷¹ In his first interview, W-0157 did not mention to the investigators that he had been in the armed wing of the UPC, T-188-CONF-FRA-CT, p. 46, lines 16 *et seq.*; implausibility of the presence of Commander Pepe at Mandro camp in 2002 or 2003, T-188-CONF-FRA-CT, p. 8, lines 10-18; vagueness and contradictions relating to the alleged battle at Nyankunde, T-188-CONF-FRA-CT, pp. 19-20; about the period when he was in the armed wing of the UPC, T-188-CONF-FRA-CT, p. 46, lines 14-15 and p. 43, lines 5-23; vagueness about the period spent in [REDACTED], T-188-CONF-FRA-CT, pp. 29-30.

194. Moreover, the documentary evidence contradicts the witness's assertions about his education.⁴⁷²

195. The fact that W-0031 introduced to the Office of the Prosecutor this witness who made manifestly mendacious statements strongly corroborates the Defence's argument that he encouraged many potential witnesses to give false testimony.

1.4.3 The Prosecutor possessed information that raised serious doubts about the reliability of W-0031

196. As far back as 23 February 2006, the Office of the Prosecutor noted that W-0031's behaviour was raising serious doubts about his credibility and that collaboration with this intermediary should be suspended.⁴⁷³ This concern was conveyed to the members of the executive committee of the Office of the Prosecutor.⁴⁷⁴

197. The witness Bernard Lavigne explains why he mistrusted W-0031⁴⁷⁵ and gave little credit to his activities, whilst emphasising that W-0031 was insistent about playing a decisive role in the Office of the Prosecutor's investigations.⁴⁷⁶

198. This situation should automatically have led the Office of the Prosecutor to stop using W-0031's services and to verify thoroughly the evidence he gathered.

⁴⁷² W-0157 alleges that he was abducted by UPC soldiers at the time when he was finishing his 6th year of primary school, T-185-CONF-FRA-CT, p. 69, lines 11-13. However, EVD-D01-00258, p. 2, No. 49, indicates that he finished his 6th year of primary school in [REDACTED]. The Certificate Issue Register for 1991-2001 indicates that the witness sat his national exams in [REDACTED], EVD-D01-00169, p. 0506, No. 42; Certificate Register for [REDACTED] primary school, in which there is no mention of any pupil with the names of W-0157, EVD-D01-00168.

⁴⁷³ EVD-OTP-00641, p. 3.

⁴⁷⁴ Rule68Deposition-CONF-FRA-ET, 18-11-2010, pp. 12-14 and DRC-OTP-0233-0525*.

⁴⁷⁵ Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 12, lines 1-15.

⁴⁷⁶ *Idem*, p. 13, lines 11-19.

199. However, developments in the trial and the evidence disclosed to the Defence show that, far from adopting these elementary prudential measures, the Prosecutor has continued to collaborate actively with W-0031, even going so far as to call him to appear as a prosecution witness.

2 – PARTICIPATING VICTIMS CONNIVED TO GIVE FALSE TESTIMONY AND PUT PRESSURE ON A DEFENCE WITNESS

200. The hearings have provided evidence that at Victim a/0270/07's instigation, Victims a/0225/06 and a/0229/06 presented themselves under false identities and that all three victims made false statements before the Chamber.

2.1 Victims a/0225/06 and a/0229/06 usurped the identities of Witnesses D01-0032 and D01-0033

201. Victim a/0225/06 appeared in court as [REDACTED], born on [REDACTED] 1990 in [REDACTED],⁴⁷⁷ of [REDACTED] and [REDACTED].⁴⁷⁸ He alleged that in March 2003, while he was a pupil at the [REDACTED], he was enlisted by UPC soldiers.⁴⁷⁹

202. Victim a/0229/06 appeared in court as [REDACTED], born on [REDACTED] 1988 in [REDACTED],⁴⁸⁰ of [REDACTED] and [REDACTED].⁴⁸¹ He stated that in April 2003, while he was a pupil at [REDACTED], he was enlisted by UPC soldiers.⁴⁸²

203. However, it has been shown that in fact Victims a/0225/06 and a/0229/06 usurped the identities of Witnesses D01-0032 and D01-0033 at the instigation and under the control of Victim a/0270/07.

⁴⁷⁷ T-227-CONF-FRA-CT2, p. 64, lines 7-11.

⁴⁷⁸ *Idem*, p. 64, lines 13-14.

⁴⁷⁹ *Ibidem*, p. 65, lines 19 *et seq.*, p. 67, lines 11-17 and p. 70, lines 22-24.

⁴⁸⁰ T-230-CONF-FRA-CT, p. 40, lines 10-14.

⁴⁸¹ T-231-CONF-FRA-ET, p. 15, lines 1-5.

⁴⁸² T-230-CONF-FRA-CT, p. 41, lines 2-14.

204. This usurpation of identity accompanied by false statements is established by the following evidence:

2.1.1 Testimonies of D01-0032 and D01-0033

205. The testimonies of D01-0032 and D01-0033 show that Victim a/0270/07 allegedly encouraged pupils from [REDACTED] presented as former child soldiers to participate as victims in the proceedings before the ICC.⁴⁸³

206. To this end, they were allegedly told that their studies would be paid for, that schools and shops would be built,⁴⁸⁴ and that they would be issued with a “kit”.⁴⁸⁵ Victim a/0270/07 allegedly encouraged them to state untruthfully that their parents were dead,⁴⁸⁶ so that they would be given assistance more quickly.⁴⁸⁷

207. Witness D01-0033 states that he participated in a meeting with Victim a/0270/07 in the latter’s house, where they discussed the issue of the “kit” they were going to be given, and the Accused.⁴⁸⁸

208. Witnesses D01-0032 and D01-0034 indicate that they learned subsequently that they had been replaced by two individuals who passed themselves off as them in the proceedings before the ICC.⁴⁸⁹

⁴⁸³ T-275-CONF-FRA-ET, p. 12, lines 13-23 and T-276-CONF-FRA-ET, p. 44, lines 3-23.

⁴⁸⁴ *Idem*, p. 13, lines 11-18 and T-276-CONF-FRA-ET, p. 44, line 19 to p. 45, line 4.

⁴⁸⁵ T-276-CONF-FRA-ET, p. 44, lines 24 *et seq.*

⁴⁸⁶ D01-0033: T-276-CONF-FRA-ET, p. 45, lines 11-12. The “additional information received on an application for participation” indicates that the parents of a/0225/06 and a/0229/06 are deceased or have disappeared. EVD-D01-00283, pp. 9/13, 10/13 and 13/13 (a/0225/06); EVD-D01-00284, p. 2/12 (a/0229/06). Moreover, a/0225/06 and a/0229/06 stated that their parents were deceased: T-227-CONF-FRA-CT2, p. 64, line 16 (a/0225/06) and T-230-CONF-FRA-CT, p. 45 line 19 *et seq.* (a/0229/06).

⁴⁸⁷ T-275-CONF-FRA-ET, p. 13, lines 1-8 (a/0225/06) and T-276-CONF-FRA-ET, p. 45, lines 5-10 (a/0229/06).

⁴⁸⁸ T-276-CONF-FRA-ET, p. 45, lines 23 *et seq.*

⁴⁸⁹ T-275-CONF-FRA-ET, p. 14, lines 3-6 (D01-0032) and T-276-CONF-FRA-ET p. 44, lines 4-9 (D01-0033).

209. Victim a/0270/07 confirms that he helped [REDACTED] and [REDACTED] to fill in their application for participation as victims in the proceedings.⁴⁹⁰

2.1.2 The testimony of D01-0034

210. D01-0034 states that a/270/07 was in charge of recruiting minors who had been members of rebel groups. Although his son had never received military training⁴⁹¹ and had never been a soldier in an armed group,⁴⁹² in 2006 a/270/07 invited D01-0032 to come to his home⁴⁹³ so that he could present him as such.⁴⁹⁴ D01-0034 explained that a/270/07 is well aware that he is the father of D01-0032.⁴⁹⁵

211. Furthermore, he challenges the veracity of the information given in his son's attestation of birth and the existence of a family relationship between a/0270/07 and [REDACTED].⁴⁹⁶

2.1.3 The documents produced by the Defence confirm the usurpation of identity

212. The school records submitted by the Defence contradict the testimonies of Victim a/0225/06⁴⁹⁷ and Victim a/0229/06⁴⁹⁸ concerning their education, and corroborate the statements of Witnesses D01-0032 and D01-0033.

⁴⁹⁰ T-226-CONF-FRA-ET, p. 67, lines 14-20 and p. 61, lines 4-15.

⁴⁹¹ T-280-CONF-FRA-ET, p. 26, line 12.

⁴⁹² *Idem*, p. 26, line 15.

⁴⁹³ *Ibidem*, p. 22, lines 5 and 17.

⁴⁹⁴ T-280-CONF-FRA ET, p. 22, lines 7-10.

⁴⁹⁵ *Idem*, p. 25, line 25.

⁴⁹⁶ *Ibidem*, p. 30, lines 4-11 and p. 31, lines 22-24.

⁴⁹⁷ a/0225/06 asserts that the only schooling he received was at [REDACTED], where he was in 2003. T-228-CONF-FRA-CT, p. 38, lines 17-21. Two documents from [REDACTED] indicate however that [REDACTED] was registered at this school in 2003. EVD-D01-00289 and EVD-D01-00291. Another document indicates that [REDACTED] was enrolled at [REDACTED] school in 2000/2001. EVD-D01-00292.

⁴⁹⁸ a/0229/06's testimony about his education presents significant contradictions. He states before the Chamber that he attended the [REDACTED] where, in 2006, he was in the 3rd year of secondary school and that he did not attend school in 2006-2007. T-231-CONF-FRA-ET, p. 29, lines 2-7. The application for participation in the proceedings, prepared in 2006, indicates that he was in the 2nd year of secondary school. EVD-D01-00285, p. 4/17 and T-231-CONF-FRA-ET, p. 29, lines 17-23. His pupil

213. The voting card bearing the name of [REDACTED], born in [REDACTED] on [REDACTED] 1987, of [REDACTED] and [REDACTED], and bearing a photograph of Witness D01-0033, was tendered in evidence.⁴⁹⁹ All of the information on this card is consistent with the civil status information provided by Victim a/0229/06.
214. Conversely, the only documents claiming to prove the identity of Victims a/0225/06 and a/0229/06 were prepared at the request of Victim a/0270/07 and offer no guarantee of reliability:
- The birth certificates produced do not include photographs and were prepared in 2007.⁵⁰⁰ Some of the information contained in these documents is inconsistent with the information provided by Victims a/0225/06 and a/0229/06 in their application for participation.⁵⁰¹ Moreover, the birth certificate for a/0225/06 was obtained in July 2007, namely before the declaration confirming the family relationship between minor child and guardian, signed in November 2007, was obtained.⁵⁰² Furthermore, Victim a/0229/06 is unable to give details of the circumstances in which this document was obtained.⁵⁰³
 - The pupil identity cards⁵⁰⁴ were obtained under conditions which raise serious doubts about their reliability: a/0229/06 is unable to explain how he

identity card indicates however that he was in the 5th year in 2007. EVD-D01-00286, p. 3/12. The circumstances surrounding the manner in which this document was obtained are dubious. T-231-CONF-FRA-ET, p. 55, lines 22 *et seq.* Two school documents from the [REDACTED] show that a/0229/06 was in the 1st year during 2005-2006. EVD-D01-00287 and EVD-D01-00288.

⁴⁹⁹ EVD-D01-00100. The authenticity of this card is confirmed by DRC-D01-0003-5521*.

⁵⁰⁰ T-226-CONF-FRA-ET, p. 64, lines 22 *et seq.* and p. 65, lines 20-22; EVD-D01-00280 (a/0229/06) and EVD-D01-00279 (a/0225/06).

⁵⁰¹ For example, the names of the parents: EVD-D01-00285, p. 3/17 (a/0229/06) and mother's name: EVD-D01-00281, p. 3/17 (a/0225/06).

⁵⁰² EVD-V02-00008 and EVD-D01-00279.

⁵⁰³ T-234-CONF-FRA-ET, p. 5, lines 15-19.

⁵⁰⁴ EVD-D01-00132 (a/0225/06) and EVD-D01-00286 (a/0229/06) p. 3/12.

obtained the pupil identity card dated 2 July 2007,⁵⁰⁵ and states that he was not in the 5th year of secondary school in July 2007, contrary to the information appearing on the card.⁵⁰⁶

215. Furthermore, a/0270/07 appears to be unable to provide proof of his alleged status as guardian:

- There are contradictions concerning the date when he allegedly became the guardian of Victims a/0225/06 and a/0229/06.⁵⁰⁷ Moreover, a/0270/07 himself indicates clearly⁵⁰⁸ that he declared himself the guardian of Victims a/0225/06 and a/0229/06 only after regularisation of the forms used to apply for participation made available by the NGO [REDACTED].⁵⁰⁹
- Although he states that he is the guardian of Victims a/0225/06 and a/0229/06, he is unable to provide important information about them: the family relationship with a/0229/06⁵¹⁰ and with a/0225/06,⁵¹¹ the full name of the father of Victim a/0225/06,⁵¹² the circumstances surrounding the death of the father of Victim a/0225/06⁵¹³ and of the father of Victim a/0229/06,⁵¹⁴

⁵⁰⁵ T-231-CONF-FRA-ET, p. 56, lines 1-5. EVD-D01-D01-00286, p. 3/12. a/0229/06 cannot specify who helped him obtain the document. T-231-CONF-FRA-ET, p. 56, lines 15-19.

⁵⁰⁶ T-231-CONF-FRA-ET p. 56, lines 6-14.

⁵⁰⁷ T-227-CONF-FRA-CT2 p. 52, line 15 to p. 53, line 6. Concerning a/0225/06, see EVD-V02-00008; EVD-D01-00278 and EVD-D01-00283, p. 5/13. Concerning a/0229/06, see EVD-D01-00278 and EVD-D01-00286.

⁵⁰⁸ DRC-OTP-0230-0285;* DRC-OTP-0230-0289;* DRC-OTP-0230-0330;* DRC-OTP-0230-0368* and DRC-OTP-0230-0409*.

⁵⁰⁹ DRC-OTP-0230-0330*, p. 0353, lines 850-855. As confirmed by a/0270/07, the guardianship relating to a/0225/06 and a/0229/06 has not been recognised by means of an official document. T-226-CONF-FRA-ET, p. 74, lines 22 *et seq.*

⁵¹⁰ T-226-CONF-FRA-ET, p. 62, lines 2-23 and DRC-OTP-0230-0289*, p. 0307, line 626 to p. 0315, line 908.

⁵¹¹ T-226-CONF-FRA-ET, p. 62, lines 25 *et seq.* and DRC-OTP-0230-0330*, p. 0348, line 678 to p. 0352, line 827.

⁵¹² T-226-CONF-FRA-ET, p. 64, lines 11-19.

⁵¹³ *Idem*, p. 63, lines 25 *et seq.* At the Defence's suggestion that the father of a/0225/06 is alive and works in [REDACTED], a/0270/07 states that he is unaware of this fact. T-226-CONF-FRA-ET, p. 72, lines 3-9 and lines 19-21.

⁵¹⁴ T-226-CONF-FRA-ET, p. 73, lines 18-22.

the current situation of the mother of Victim a/0225/06⁵¹⁵ and that of the mother of Victim a/0229/06;⁵¹⁶ the names of the other members of a/0225/06's family⁵¹⁷ and educational details for Victims a/0225/06⁵¹⁸ and a/0229/06.⁵¹⁹

2.2 Victim a/0270/07 organised the calling of false witnesses before the Chamber and is culpable for false testimony

216. The testimonies of D01-0032 and D01-0033 show clearly that a/0270/07 deliberately arranged for Victims a/0225/06 and a/0229/06 to appear before the Chamber under false identities.

217. Furthermore, the hearings and the documents filed in the record establish clearly that "Victims" a/0270/07, a/0225/06 and a/0229/06 deliberately lied before the Chamber.

218. Objective elements demonstrate the mendaciousness of the allegations that [REDACTED] served as a base for UPC soldiers from [REDACTED] to [REDACTED] and that during this period, pupils were forcibly enlisted.⁵²⁰

219. Thus:

- The document "*situations finances 2002-2003, livre de caisse ; idem grand registre*"⁵²¹ shows that current expenditure was incurred on 6, 8 and 15 January 2003 and thus confirms that the establishment was operating as normal during this period;⁵²²

⁵¹⁵ T-227-CONF-FRA-ET, p. 53, lines 15-20 and T-226-CONF-FRA-ET p. 72, lines 22-24.

⁵¹⁶ T-226-CONF-FRA-ET, p. 74, lines 2-5 and lines 11-17.

⁵¹⁷ DRC-OTP-0230-0330*, p. 0358, lines 1029-1035.

⁵¹⁸ EVD-D01-00289; EVD-D01-00290 and EVD-D01-00291. T-226-CONF-FRA-ET, p. 77, lines 15-24; T-235-CONF-FRA-ET, p. 15, lines 9-14.

⁵¹⁹ T-226-CONF-FRA-ET p. 59, lines 9-15.

⁵²⁰ T-225-CONF-FRA-CT, p. 22, lines 23 *et seq.*, p. 26, line 1 to p. 29, line 9; T-226-CONF-FRA-ET, p. 14 lines 18-23 and p. 15, lines 8-10.

⁵²¹ EVD-D01-00271.

⁵²² T-226-CONF-FRA-ET, p. 20, lines 4-10.

- A report from a/270/07 notes that [REDACTED] was used by Jérôme Kakwavu's FAPC in 2004.⁵²³ There is no such report in [REDACTED] archives concerning the use of [REDACTED] by the UPC.⁵²⁴

220. Witness D01-0034, the father of Witness D01-0032, stated that a/270/07 sought to recruit child soldiers and that, in this regard, he called D01-0032 to his home in order to have his name registered.⁵²⁵ D01-0034 also indicated that he and a/270/07 know each other well and that a/270/07 knew that D01-0032 is his son.⁵²⁶ He added that his son was not a soldier,⁵²⁷ that his family did not have any family relationships with a/270/07,⁵²⁸ and that a/270/07 is definitely not his son's guardian.⁵²⁹

2.2.1 Pressure on Defence witnesses

221. In his testimony, D01-0035 confirms that Victim a/270/07 tried to obstruct the Defence investigations by seeking to intimidate him.⁵³⁰
222. He also states that during a trip to [REDACTED], Victim a/270/07 gathered the elders together in order to tell them that Witness D01-0035 had gone somewhere with a member of the defence team for Thomas Lubanga.⁵³¹
223. Witness D01-0032 asserts that the brother of Victim a/270/07 tried to contact him before he testified before the Chamber, *inter alia* by communicating with his aunt.⁵³²

⁵²³ EVD-D01-00277 and T-226-CONF-FRA-ET, p. 49, lines 7-24.

⁵²⁴ T-226-CONF-FRA-ET, p. 51, lines 17 *et seq.*

⁵²⁵ T-280-CONF-FRA-ET, p. 22, lines 3-17 and p. 23, lines 7-15.

⁵²⁶ *Idem*, p. 21, lines 16-24 and p. 25, lines 24-25.

⁵²⁷ *Ibidem*, p. 26, lines 9-15.

⁵²⁸ *Ibidem*, p. 30, line 9 and p. 31, lines 22-24.

⁵²⁹ T-281-CONF-FRA-ET, p. 12, lines 7-11.

⁵³⁰ D01-0035 indicates that the day after his meeting with the Defence resource person, [REDACTED] contacted him by telephone. He allegedly said, amongst other things, that it concerned a serious matter. D01-0035 was concerned by this conversation, and states that after the call he started to have some doubts. ([REDACTED]).

⁵³¹ T-283-CONF-FRA-ET, p. 16, line 19 to p. 17, line 5.

224. The statements made by Victim a/0270/07⁵³³ subsequent to his appearance before the Chamber show that he lied under oath about his acquaintance with Witness D01-0035 and about his contact with D01-0035 during the period prior to his appearance before the Chamber.⁵³⁴
225. He further indicates that he had telephone contact⁵³⁵ with Witness D01-0035 and that he had even met him at [REDACTED]⁵³⁶ in [REDACTED]. He mentions, moreover, that he contacted Witness D01-0035 [REDACTED].⁵³⁷ However, Victim a/0270/07 stated under oath that he had never contacted Witness D01-0035 in any way.⁵³⁸

2.2.2 These grave breaches of the rules of evidence are part of a concerted plan designed and executed by a political and administrative figure who is a member of a political organisation close to President Kabila

226. Since 2006, Victim a/0270/07 has been a [REDACTED],⁵³⁹ [REDACTED] [REDACTED].⁵⁴⁰
227. It is common knowledge that this political organisation has always supported President Kabila.
228. All of these actions are especially serious as they are part of a concerted operation led by a Congolese political figure ("Victim" a/0270/07),

⁵³² T-275-CONF-FRA-ET, p. 30, lines 6-12 and p. 31, line 4.

⁵³³ Meeting between a/0270/07 and the Prosecutor on 18 and 19 April 2010: DRC-OTP-0230-0285*, DRC-OTP-0230-0289*, DRC-OTP-0230-0330*, DRC-OTP-0230-0368* and DRC-OTP-0230-0409*.

⁵³⁴ DRC-OTP-0230-0409*, p. 0416, lines 231-251. a/0270/07 provides information about D01-0035 which confirms that he knows him. For example, a/0270/07 indicates that, [REDACTED], [REDACTED]. He further indicates that the village where he was born is [REDACTED]. DRC-OTP-0230-0330*, p. 0336, lines 239-240 and p. 0337, lines 264-267. He further indicates that he knows [REDACTED] and its origins. DRC-OTP-0230-0330*, p. 0358, line 1044 to p. 0359, line 1056. This information is inconsistent with what he stated before the Chamber. T-227-CONF-FRA, p. 40, lines 7-11.

⁵³⁵ a/0270/07 indicates that he had a telephone conversation [REDACTED]. DRC-OTP-0230-0330*, p. 0361, lines 1131-1154; p. 0362, lines 1180-1190.

⁵³⁶ DRC-OTP-0230-0330*, p. 0362, line 1191 to p. 0364, line 1235 and p. 0366, lines 1316-1318.

⁵³⁷ *Idem*, p. 0367, lines 1347-1353.

⁵³⁸ T-226-CONF-FRA-ET, p. 22, lines 12-17.

⁵³⁹ T-225-CONF-FRA-ET, p. 58, lines 1-15.

⁵⁴⁰ T-226-CONF-FRA-ET, p. 80, lines 3-9.

[REDACTED], who belongs to a political group which is hostile to that of the Accused and who actively supports President Kabila. Inevitably, public opinion will tend towards the view, whether correct or wrong, that the highest Congolese political authorities have sought to hijack the judicial process for political ends.

3 – THE PROSECUTOR KNOWINGLY PRESENTED MANIFESTLY MENDACIOUS OR ERRONEOUS EVIDENCE BEFORE THE CHAMBER, OR DID SO WITHOUT HAVING FIRST CONDUCTED THE NECESSARY INVESTIGATIONS TO ASCERTAIN ITS RELIABILITY

229. The prejudice caused to the Accused by the violations described above and, more generally, by the breach of the integrity of the judicial process, were made possible because the Prosecutor deliberately neglected to fulfil his obligations with regard to investigations.
230. In seeking to “establish the truth”,⁵⁴¹ the Prosecutor is obliged to investigate “incriminating and exonerating circumstances”⁵⁴² and must scrupulously ensure that the evidence he intends to submit at trial is reliable.
231. This obligation to investigate exonerating circumstances emphasises that the Prosecutor is not simply a party in the trial, but is vested with the mandate to act impartially in the search for truth on behalf of the Court and all of the parties and participants.⁵⁴³ It further reinforces the Prosecutor’s obligation of impartiality, already recalled by the ad hoc tribunals.⁵⁴⁴
232. One of the reasons underpinning this obligation is that the Defence is not afforded the same resources, authority, or institutional support as the Prosecutor to conduct its investigations. Given the scope and difficulty of the

⁵⁴¹ Article 54(1)(a) of the Statute.

⁵⁴² *Idem*.

⁵⁴³ See, *inter alia*: A. Cassese, p. Gaeta, J.R.W.D. Jones, “The Rome statute of the International Criminal Court: a commentary”, Oxford University Press, 2002, Vol. 2, pp. 1164-1165.

⁵⁴⁴ *Prosecutor v. Zoran Kupreškić et al.*, “Decision on Communications between the Parties and their Witnesses”, 21 September 1998, Case No. IT-95-16-T, p. 3.

necessary investigations, which are beyond the Defence's capabilities, this obligation to investigate exonerating circumstances effectively and impartially is an essential condition for a fair trial.

233. Under article 67(2), this obligation extends to searching for any evidence which "shows or tends to show the innocence of the accused or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence". More generally, this obligation refers to all evidence which, when examined, may help to resolve a factual issue in favour of the accused.⁵⁴⁵
234. The rights of the Defence, both during questioning of Prosecution witnesses and with regard to the presentation of exonerating evidence, can only be effectively and efficiently exercised if all of this evidence has been actively sought by the Prosecutor and disclosed to the Defence in good time.
235. In the instant case, the Prosecutor has seriously failed in his obligation to investigate "incriminating and exonerating circumstances", on the one hand, by deliberately neglecting to verify the identity and civil status of the witnesses called to appear and, on the other hand, by deliberately neglecting to ascertain the credibility of their statements.

3.1 Failure to conduct serious and sufficient investigations to verify the identity and civil status of witnesses called to appear

236. It is self-evident that the Office of the Prosecutor has a fundamental obligation to verify the identity and civil status of the witnesses whom it calls to appear.
237. In the present case, it was all the more necessary to verify the civil status details of witnesses said to be former child soldiers, as age is one of the essential elements of the crimes with which the Accused has been charged.

⁵⁴⁵ ICC-01/04-01/06-1311-Conf-Anx1, para. 94: "If the real possibility exists that this evidence may contribute to a resolution of material factual issues in the case in favour of the accused, he is to be provided with it, once protective measures, if relevant, have been implemented".

Instead, the Prosecutor eschewed the obvious investigative measures and chose to be satisfied with documents which lacked any guarantee of authenticity, supplied by “intermediaries” over whom he exercised no control.

3.1.1 Failure to conduct investigations through essential, accessible sources

238. In respect of testimonial evidence, the parents and family members were obviously one of the essential sources with whom the Office of the Prosecutor was duty-bound to verify the civil status of its witnesses, especially witnesses claiming to be minors.
239. Instead, with the exception of Witnesses W-0298,⁵⁴⁶ W-0294⁵⁴⁷ and W-0157,⁵⁴⁸ whose mother or father was interviewed, no statement was taken from the parents or close family members of witnesses allegedly abducted from their family at the age of between 10 and 14 years.⁵⁴⁹
240. In respect of documentary evidence, in addition to the documents the parents may have provided for their minor children, the Office of the Prosecutor had an obligation to verify the civil status of its witnesses by making enquiries

⁵⁴⁶ Whose father is Witness W-0299.

⁵⁴⁷ Whose mother is Witness W-0293. When the Prosecutor met the mother of W-0294 in November 2007, and during her examination before the Chamber, he did not put any questions to her concerning her son’s enlistment in or membership of an armed group. EVD-OTP-00392 and T-153-CONF-FRA-CT.

⁵⁴⁸ Whose mother is Witness W-0628, who did not come to testify before the Chamber.

⁵⁴⁹ Bernard Lavigne stated: “[...] [TRANSLATION] as for the five or six children where I was directly involved as a team leader, we never went to families as investigators to identify ourselves as such in order to interview those children or their relations. No investigator went into the field...into family homes to obtain any information of any kind.” Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 18, line 25 to p. 19, line 2.

He added: “[...] [TRANSLATION] But in any case, it was the same policy, the policy was the same for all witnesses. We did not have any direct contact with the family environment unless on an exceptional basis due to the circumstances. And I don’t have any memory of that for my part.” Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 20, lines 11-14. “.

He also stated: “[...] [TRANSLATION] Obviously, we did not try to contact the parents either, for their consent, if required, to interview the children.” Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 36, lines 15-17.

with institutions likely to hold official documents which were not suspected of having been drawn up artificially for the purposes of giving evidence.

241. Such institutions include the IEC, which is authorised to issue voting cards to persons having reached the age of majority (18 years), and schools, whose various registers state their pupils' full civil status and place of residence.
242. Yet, until the Defence itself used duplicate voting cards in 2010 to show that certain allegations were false, the Office of the Prosecutor had not made any enquiries with the IEC in order to verify whether voting cards had been issued on behalf of its witnesses.⁵⁵⁰
243. Likewise, the Office of the Prosecutor did not make any enquiries at the schools which the witnesses were allegedly attending at the time of their enlistment.⁵⁵¹

3.1.2 Use of documents which were submitted by intermediaries and lacked any guarantees of reliability

244. The investigators of the Office of the Prosecutor did not verify any information themselves; instead, they merely asked certain intermediaries to obtain birth certificates for certain witnesses.⁵⁵²
245. However, as set out above,⁵⁵³ those documents – some of which were challenged by the witnesses themselves⁵⁵⁴ – turned out to be suspected of being fraudulent.

⁵⁵⁰ Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 23, lines 17-28.

⁵⁵¹ Bernard Lavigne stated: "[TRANSLATION] [...] No, we never went to schools to ask the heads, 'Can you give us the school records of such and such children' so that we could verify whether it matched the average ages." Rule68DepositionCONF-FRA ET, 18-11-2010, p. 21, lines 10-13. And later: "[TRANSLATION] I do not recall having sought to verify whether the children who had told us that they had attended such and such a school had in fact attended school because I seem to recall that it was not necessarily the same schools." Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 22, lines 22-24.

⁵⁵² Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 22, line 25 to p. 23, line 13.

⁵⁵³ *Supra*, para. 181.

246. Similarly, Witness W-0015 stated that the investigators were satisfied with a false “State diploma” obtained by Intermediary W-0316 to attest the false identity under which he presented himself. Witness W-0583 confirms that that identity was not verified.⁵⁵⁵

247. These observations show that, by deliberately neglecting to satisfy himself of the identity and civil status of his witnesses, the Prosecutor made it possible for witnesses to appear under a false identity and deprived the Defence of the means with which to test their credibility.

3.2 Lack of a proper investigation into the credibility of allegations made by witnesses called to appear

248. The Office of the Prosecutor did not verify any of the allegations of its witnesses, and in particular of those claiming to have left their family environment at an early age in order to join armed militias.

249. Although all of the witnesses claiming to be former child soldiers allege that they were attending school at the time of their enlistment, no enquiries were made at the schools concerned in order to establish whether the children had in fact been registered there and whether their schooling was interrupted.⁵⁵⁶

250. Furthermore, the Defence has not received disclosure of any statements by the commanders, soldiers, pupils or friends the witnesses mentioned in the statements they gave to the investigators. It must be inferred that they were not contacted for verifications.

⁵⁵⁴ W-0010: T-145-CONF-FRA-CT, p. 50, lines 4-10; p. 49, lines 17-18 and p. 60, lines 5-13. DRC-OTP-0132-0012 and T-145-CONF-FRA-CT, p. 50, lines 8-10. W-0008: T-137-CONF-FRA-CT, p. 7, lines 19 *et seq.* W-0011: T-139-CONF-FRA-CT, p. 64, line 5.

⁵⁵⁵ T-336-CONF-FRA-ET, p. 10, lines 4-21

⁵⁵⁶ Except in the case of W-0157, the school documents gathered by the Prosecutor contradict the witness's statements.

251. Similarly, the Office of the Prosecutor did not approach the chiefs of *collectivités* of the alleged place of residence of the prosecution witnesses⁵⁵⁷ in order to verify whether any children living in the areas under their authority were enlisted or abducted by armed groups.

252. The cases of Witnesses W-0089 and W-0555 are perfect examples of how the Prosecutor has approached his investigation obligations since 2005.

3.2.1 Witness W-0089

253. Witness W-0089 claims that his name is [REDACTED] and that he was born on [REDACTED].⁵⁵⁸ He states that he attended primary school at the [REDACTED], and then secondary school at [REDACTED].⁵⁵⁹ He claims to have been forcibly enlisted into the armed wing of the UPC, where he allegedly trained recruits and worked as a bodyguard. He claims to have taken part in the fighting.

254. However, the Defence's enquiries with the family of W-0089 and the schools which he claims to have attended revealed this testimony to be blatantly mendacious.

255. The testimony of [REDACTED] (D01-0009)⁵⁶⁰ revealed that W-0089 never belonged to an armed group⁵⁶¹ and that he lied, amongst other things, about his identity⁵⁶² and his education.⁵⁶³ [REDACTED] (D01-0023) testified that he and W-0089 had lied about their identities and falsely stated to CONADER that they had belonged to armed groups so that they could receive the

⁵⁵⁷ Bernard Lavigne: Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 20, lines 15-20.

⁵⁵⁸ T-195-CONF-FRA-ET, p. 5, line 20 to p. 6, line 15.

⁵⁵⁹ *Idem*, p. 6, line 18 and p. 7, line 14.

⁵⁶⁰ W-0089 acknowledged that [REDACTED] on the basis of a photograph. T-196-CONF-FRA, p. 52, lines 10 *et seq.*

⁵⁶¹ T-270-CONF-FRA-ET, p. 36, lines 17-19.

⁵⁶² *Idem*, p. 45, lines 17-18.

⁵⁶³ T-270-CONF-FRA-ET, p. 31, lines 24-25.

assistance awarded to former militia members.⁵⁶⁴ Furthermore, W-0089 admitted during his testimony that he had lied about his age to CONADER so that he could receive the assistance it provided.⁵⁶⁵

3.2.2 Witness W-0555

256. It is possible to conclude by simply reading the statement of W-0555 that he had attended school normally,⁵⁶⁶ thereby rendering his allegation that he was in the army for more than one year completely implausible.
257. Had the Office of the Prosecutor made quick enquiries with his family and schools, it would have seen that, during the 2002-2003 academic year, W-0555 attended a school in [REDACTED] in [REDACTED], which makes it impossible for him to have been in an armed group in Bunia during the same period.⁵⁶⁷
258. In this instance, the only “investigation” which the Office of the Prosecutor carried out was to telephone W-0598, who confirmed during his testimony that he was unable to vouch for the truthfulness of W-0555’s allegations.⁵⁶⁸

⁵⁶⁴ T-266-CONF-FRA-CT, pp. 62-63, lines 19 *et seq.* W-0089 recognised [REDACTED], and admitted that he and D01-0023 had applied for funding for a motorbike taxi project for demobilised soldiers. DRC-OTP-0227-0275, p. 0295, lines 654-659.

⁵⁶⁵ T-196-CONF-FRA-ET, p. 63, lines 21-24.

⁵⁶⁶ W-0555 stated that he commenced his 3rd year of secondary school in September 2001; that he commenced his 5th year of secondary school in 2004; and that he completed his 6th year of secondary school in 2005, when he obtained his baccalauréat. This means that W-0555’s studies were uninterrupted from 2001-2002 to 2004-2005 (DRC-OTP-0228-0023*, para. 8). This makes it hard to believe that he was in an armed group from February or March 2002 (para. 13) to June or July 2003 (para. 30).

⁵⁶⁷ School documents from [REDACTED] for the 2002-2003 academic year: DRC-D01-0003-5548*.

⁵⁶⁸ After abandoning the idea of calling W-0555 to testify, the Prosecutor sought, and was granted, leave to call W-0598 to testify instead of W-0555. However, W-0598 clearly stated that he did not know W-0555 until 2004 (Rule68Deposition-CONF-FRA-ET, 01-12-2010, p. 12, line 5), and that he did not verify any information concerning W-0555, including information about his family (Rule68Deposition-CONF-FRA-ET, 01-12-2010, p. 25, lines 21-25), school attendance (Rule68Deposition-CONF-FRA-ET, 01-12-2010, p. 26, lines 2-9), or whether he had actually been a child soldier (Rule68Deposition-CONF-FRA-ET, 01-12-2010, p. 17, lines 5-12 and p. 18, lines 10-11). Furthermore, W-0598 stated that he was not best placed to discuss about any threats W-0555 might have received during [REDACTED] in

259. Such failure to investigate properly led the Office of the Prosecutor to present before the Chamber testimonies which were manifestly mendacious, while depriving the Defence of the means to cross-examine them properly, except where the Defence itself managed by chance to gather the information and documents required for its case.

3.3 There is no compelling justification for the lack of proper investigations

260. Witnesses W-0582 and W-0583 maintained that the Office of the Prosecutor refrained from investigating on two grounds: (1) the security situation restricted investigators' movements beyond a very limited security perimeter within the town of Bunia;⁵⁶⁹ and (2) any investigation in the field in relation to a particular witness necessarily presented a risk to that witness.⁵⁷⁰

261. None of these explanations can absolve the Office of the Prosecutor from its investigation obligations. Although the safety of individuals must be taken into consideration, such concern cannot release the Office of the Prosecutor from its statutory responsibilities in respect of investigations, nor can it diminish the burden of proof incumbent upon it.

262. In any event, whatever the reasons, the failure to investigate exonerating circumstances makes the trial unfair to the Accused, by exposing him to false testimonies and depriving him of the means with which to counter them.

[REDACTED], since he was in [REDACTED] at that time (Rule68Deposition-CONF-FRA-ET, 01-12-2010, p. 43, lines 2-5).

⁵⁶⁹ Nicolas Sebire: T-334-CONF-FRA-ET, p. 14, lines 19-23, et p. 43, lines 27-28; Bernard Lavigne: Rule68Deposition-CONF-FRA-ET, 16-11-2010, p. 37, lines 4-6.

⁵⁷⁰ Bernard Lavigne: Rule68Deposition-CONF-FRA-ET, 18-11-2010, p. 36, lines 2-24.

4 – THE PROSECUTOR DELIBERATELY OMITTED TO DISCLOSE ESSENTIAL INFORMATION OR EVIDENCE TO THE DEFENCE IN A TIMELY MANNER AND/OR TO TRANSMIT IT TO THE CHAMBER

4.1 The Office of the Prosecutor's improperly restrictive view of its disclosure obligations gives good reason to fear that exculpatory evidence has not been disclosed to the Defence

263. The Accused's right to receive disclosure of potentially exculpatory evidence is absolute and constitutes a major prerequisite for a fair trial.⁵⁷¹ The Chamber has ruled that the Prosecution is under an obligation to disclose potentially exculpatory material as soon as is practicable throughout the trial period, as is required by article 67(2) of the Statute,⁵⁷² as well as any rule 77 evidence, that is, any and all evidence that is material to the preparation of the defence,⁵⁷³ be it internal communication within the Office of the Prosecutor, investigator's notes, or any other type of documents.⁵⁷⁴ The Prosecutor must expeditiously fulfil his disclosure obligations throughout the trial.⁵⁷⁵
264. On 8 April 2008, the Chamber stated that the Accused has an absolute entitlement to receive all potentially exculpatory evidence, even if the weight of certain evidence may be undermined by other evidence.⁵⁷⁶
265. However, the Prosecutor clearly indicated that he does not consider himself under an obligation to disclose evidence which would diminish the credibility of a witness if as a result of the totality of evidence in his possession he considers the witness credible.⁵⁷⁷ The Office of the Prosecutor is thereby arrogating the right to deprive the Defence of the opportunity of considering certain exculpatory evidence if, when considered in light of other evidence, it

⁵⁷¹ ICC-01/04-01/06-1311-Conf-Anx1, para. 94; ICC-01/04-01/06-1401, para. 77.

⁵⁷² ICC-01/04-01/06-1019, para. 28.

⁵⁷³ ICC-01/04-01/06-1433, paras. 2, 77, 79 et 81.

⁵⁷⁴ T-334-CONF-FRA-ET, p. 73, lines 8-19.

⁵⁷⁵ ICC-01/04-01/06-2624, para. 20.

⁵⁷⁶ ICC-01/04-01/06-1311-Conf-Anx1, para. 94.

⁵⁷⁷ ICC-01/04-01/06-2625-Conf, paras. 26-27.

does not appear to the Prosecution that the exculpatory material would affect the credibility of its evidence.

266. This reasoning is patently erroneous. The fact that the Office of the Prosecutor may have formed a positive opinion about the credibility of its witnesses does not absolve it from its duty to disclose to the Defence all evidence of such a nature as to call into question the credibility of its witnesses.

267. To take such a view at this advanced stage in the proceedings, arouses legitimate suspicion that the Office of the Prosecutor has deliberately omitted to disclose significant exculpatory evidence to the Defence.

4.2 The Office of the Prosecutor deliberately delayed disclosure of evidence which is material to the preparation of the Defence

268. The Chamber has had cause to state on a number of occasions that delayed disclosure by the Office of the Prosecutor has resulted in considerable delays in the case.⁵⁷⁸

269. The Defence has constantly had to contend with unjustifiably delayed disclosures. On 5 February 2010 and 9 March 2010, the Defence provided to the Chamber a summary of disclosures for the period from 30 October 2009 to 5 February 2010, setting out the reasons for which it considered such disclosures to be late and the resultant prejudice to the Accused.⁵⁷⁹

⁵⁷⁸ T-99-FRA-ET, p. 4, lines 9-25, T-104-FRA ET, p. 12, lines 2-16 and T-239-CONF-FRA CT2, p. 6, lines 2-18.

⁵⁷⁹ E-mails (and attachments) from the Defence to the Chamber on 5 February 2010 at 16:27 and 9 March 2010 at 15:57. Since February 2010, the Defence has received disclosure of a considerable number of documents which, in the Defence's view, should have been disclosed much earlier by the Office of the Prosecutor. Given the volume of such disclosures, the Defence cannot prepare an exhaustive list; however, it is submitting some illustrative examples to the Chamber.

4.2.1 Deliberate delays in the disclosure of evidence likely to affect the credibility of Prosecution witnesses

270. Two significant examples illustrate the Office of the Prosecutor's conduct in this respect:

a. Witness W-0157

271. On 4 November 2009, the Office of the Prosecutor obtained the originals of school records⁵⁸⁰ for W-0157 of such a nature as to show that the witness was aged more than 15 years during the period when he falsely claimed to have been enlisted in the UPC. Although those documents directly affect the credibility of the witness on a crucial point, the Office of the Prosecutor waited until 8 March 2010 before disclosing them to the Defence.

b. Witness W-0581

272. Witness W-0581 testified before the Chamber for the first time from 14 to 17 June 2010. On 11 June 2010, the Defence requested the Prosecutor to disclose the list of individuals who were to be screened in November 2007, which was sent by Intermediary W-0321 to Witness W-0581. The Prosecutor responded to the Defence that such lists had not been sent in written form.⁵⁸¹

273. On 29 June 2010, following the information provided by Witness W-0581 during his testimony, the Defence repeated its request for disclosure, which was carried out on 30 June 2010⁵⁸² – that is, after the witness had testified. The disclosure revealed that Witness W-0581 had improperly understated the fact that the different lists of children to be met were completely inconsistent,⁵⁸³ which is a crucial element in weighing the honesty of Intermediary W-0321.

⁵⁸⁰ *Inter alia*, EVD-D01-00169.

⁵⁸¹ Defence e-mail on 11 June 2010 at 15:22, and response from the Prosecutor on 11 June 2010 at 18:53 (DRC-D01-0003-5884).

⁵⁸² Defence e-mail on 29 June 2010 at 12:17, and response from the Prosecutor on 30 June 2010 at 09:04.

⁵⁸³ See paras. 106-107 and 143-148 in relation to this incident.

4.2.2 Deliberate delays in the disclosure of evidence likely to cast doubt upon the honesty of intermediaries

a. Intermediary W-0316

274. On 16 June 2009, Witness W-0316's honesty was seriously called into question by Witness W-0015.⁵⁸⁴ The Defence had been clearly stating since January 2010 that the issue of the honesty of the Prosecutor's intermediaries, and in particular of W-0316, constituted one of its principal lines of defence.
275. However, a large number of evidentiary materials of such a nature as to call into question the credibility and honesty of W-0316 were not disclosed to the Defence until June 2010; some were not disclosed until November 2010; and one piece of evidence was not even disclosed until after W-0316 had testified.
276. The evidentiary materials listed in Annex II are examples of the late disclosure of evidence of such a nature as to call into question the conduct of W-0316. Those materials include a table of disclosure in relation to W-0316, which shows that the Office of the Prosecutor considered that there was a risk that W-0316 would sell information⁵⁸⁵ and feared that W-0316 would retaliate if the Office of the Prosecutor did not heed his requests for financial assistance.⁵⁸⁶

b. Intermediary W-0031

277. Witness W-0031, whose status as an intermediary was later revealed by the Office of the Prosecutor, testified before the Court from 24 June to 3 July 2009.
278. Then on 1 November 2010, that is, nearly a year and a half after his testimony, the Office of the Prosecutor disclosed to the Defence a memorandum dated

⁵⁸⁴ T-192-CONF-FRA-CT, p. 5, line 11 to p. 6, line 14.

⁵⁸⁵ DRC-OTP-0233-0458, No. 145.

⁵⁸⁶ *Idem*, No. 160.

23 February 2006 showing that, at that time, W-0031's conduct was causing the Office of the Prosecutor to doubt his reliability.⁵⁸⁷

4.2.3 Deliberate delays in the disclosure of manifestly exculpatory evidence

279. On 20 October 2010, the Defence received disclosure of notes on an interview between the Office of the Prosecutor and [REDACTED] on 13 September 2006.⁵⁸⁸ This person introduced himself as having been Mr Thomas Lubanga's [REDACTED] throughout the period covered by the charges (para. 30). He stated, amongst other things, that he never saw any child soldiers under the age of 15 years in the UPC (para. 67) and that Mr Thomas Lubanga was against recruiting child soldiers (para. 68).
280. No explanation was advanced as to why this quite obviously exculpatory witness statement was not disclosed until more than four years after it was taken by the Office of the Prosecutor.
281. These delays in disclosure, for which no justification has been provided, have deprived the Defence of the opportunity to conduct investigations in relation to significant materials and to examine witnesses properly during their testimony before the Court.

– Failure to report that certain witness evidence was mendacious or inaccurate

282. Over and above his disclosure obligation under article 67(2), the Prosecutor is duty-bound to inform the Chamber, parties and participants if evidence tendered at trial on his motion is false as soon as he becomes aware of the fact.
283. Although this obligation is not stated explicitly in the texts governing proceedings before the ICC, it is indisputably part of the internationally

⁵⁸⁷ EVD-OTP-00641, p. 3.

⁵⁸⁸ EVD-D01-00773.

recognised principles of professional ethics applicable to prosecutors.⁵⁸⁹ Any breach of this obligation is universally regarded as being contrary to the most elementary requirements of justice.

284. In the instant case, the Prosecutor called before the Chamber witnesses of whose mendacity he could not have been unaware and, after several witnesses had been examined, deliberately omitted to inform the Chamber that certain fundamental elements of their statements were false.

285. By way of example:

- The documents provided to the Defence by the Office of the Prosecutor clearly indicate that Intermediary W-0316 introduced a number of witnesses to the Prosecution,⁵⁹⁰ thus contradicting what W-0316 stated during his testimony to the effect that he merely contacted witnesses who were already known to the Office of the Prosecutor.⁵⁹¹ However, the Office of the Prosecutor did not see fit to inform the Chamber that the information given by W-0316 on this point was false.
- On 23 October 2008, W-0316 told the Office of the Prosecutor that Intermediary W-0183 had been killed.⁵⁹² On 5 November 2008, W-0316 provided the Office of the Prosecutor with further details about the circumstances of W-0183's death.⁵⁹³ On 3 July 2009, the Office of the Prosecutor learned that this information was false and that W-0183

⁵⁸⁹ *Standards Of Professional Conduct: Prosecution Counsel*, Prosecutor's Regulation No. 2 (1999), rule 2(e); *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*, adopted on 23 April 1999, point 4.2 d); See also: *Draft Code of Professional Conduct for Prosecutors of the International Criminal Court*, article 7(5) and 7(6) (not yet adopted).

⁵⁹⁰ DRC-D01-0003-5847*.

⁵⁹¹ T-331-CONF-FRA-ET, p. 39, lines 20-23.

⁵⁹² DRC-OTP-0233-0458*, No. 122.

⁵⁹³ *Idem*, No. 126.

was still alive.⁵⁹⁴ The Office of the Prosecutor interviewed W-0183 on 1 December 2009 and from 3 to 7 November 2010. During his testimony before the Court, W-0316 restated that W-0183 had been killed.⁵⁹⁵ The Office of the Prosecutor should properly have confirmed the fact that W-0183 was alive, rather than implying that this point might be debatable. It was only upon the Chamber's insistence that the Office of the Prosecutor was obliged to admit that there was a sound factual basis to the Defence's questions.⁵⁹⁶

- The same applies in the case of Witness W-0157,⁵⁹⁷ who presented himself in the proceedings as a former child soldier who was under the age of 15 years when he was enlisted, and was expected to testify in the same capacity in *Katanga/Ngudjolo*. The Defence challenged W-0157's status as a child soldier by relying on school records, amongst others. The Office of the Prosecutor subsequently decided against calling W-0157 as a former child soldier in *Katanga/Ngudjolo*, but neglected to so inform the Defence and Trial Chamber I.

5 – THE PROSECUTOR SERIOUSLY BREACHED HIS OBLIGATIONS OF FAIRNESS AND IMPARTIALITY

286. It is clear that the Prosecutor is bound by his duties of impartiality and fairness towards the Accused.⁵⁹⁸

287. In this case, in addition to the conduct exposed above, throughout the proceedings the Prosecutor has incessantly and publicly displayed a bias against the Accused which is incompatible with his functions.

⁵⁹⁴ *Ibidem*, No. 157.

⁵⁹⁵ T-331-CON-FRA-ET, p. 78, line 24 to p. 85, line 23.

⁵⁹⁶ T-332-CONF-FRA-ET, p. 4, line 12 to p. 7, line 13.

⁵⁹⁷ The Defence refers the Chamber to this point in its filing ICC-01/04-01/06-2416-Conf, and the Prosecutor's filing ICC-01/04-01/06-2393.

⁵⁹⁸ ICC-01/04-01/06-2433, para. 40.

288. This bias was patently obvious in public statements in which grossly erroneous or blatantly intemperate claims were made.

5.1 Interview by Ms Le Fraper du Hellen

289. In its decision on the interview with Ms Le Fraper du Hellen dated 12 May 2010, the Chamber rightly noted the particularly unacceptable nature of the Office of the Prosecutor's conduct.

5.2 Book by Mr Gil Courtemanche

290. On 3 November 2009, *Éditions du Boréal* of Quebec published a novel with the title "*Le monde, le lézard et moi*" ["The World, the Lizard and Me"], written by Mr Gil Courtemanche. A shorter version of the book was published in France on 19 August 2010 by *Éditions Denoël*.

291. There can be no doubt that this book is a fictional adaptation of the present case, clearly referring to the Accused under a barely altered name.

292. Mr Thomas Lubanga (presented by the name "Kabanga") is depicted as being manifestly guilty of a number of atrocious crimes, including those being tried by the Chamber,⁵⁹⁹ and the Chamber's decisions are portrayed in a manner that affords the reader a flawed understanding of the trial.⁶⁰⁰

293. In fact, Mr Gil Courtemanche worked as a consultant for the Office of the Prosecutor from April 2008 to November 2009,⁶⁰¹ during which time the book was prepared, written and published.

294. The author stated that, as part of his functions, he assisted the Prosecutor by, *inter alia*, conducting outreach activities for the people of the DRC, drafting

⁵⁹⁹ For example, DRC-D01-0003-5693, p. 5720, p. 5722 and p. 5728.

⁶⁰⁰ For example, *idem*, p. 5728.

⁶⁰¹ *Idem*, p. 5782.

speeches for the Prosecutor, and advising on information to be disseminated.⁶⁰²

295. Mr Courtemanche stated that he was invited by Mr Luis Moreno Ocampo to write a book on the *Lubanga* trial.⁶⁰³
296. There is no doubt that the Prosecutor was informed of the content of the book prior to its publication and gave his consent.
297. By authorising one of his staff to publish a book – even a work of fiction – including content which is inconsistent with the impartiality obligations of the Office of the Prosecutor, the Prosecutor signally failed to comply with his statutory obligations and attempted to exert influence over the ongoing judicial process by gravely inappropriate means.

III – IMPACT ON THE ONGOING TRIAL

1 – THE ENTIRE JUDICIAL PROCESS OF SEEKING AND ESTABLISHING THE TRUTH IS IRREMEDIABLY VITIATED

1.1 Gravity of the offence against the judicial process

298. Evidence has been brought to show that the Office of the Prosecutor participated in the preparation of false witness statements aiming to secure the Accused's conviction and that a large number of witnesses deliberately gave false testimony before the Chamber.
299. Although he had sufficient information to alert him to the gravity of these acts, at no point did the Prosecutor take the necessary and reasonable

⁶⁰² http://www.radio-canada.ca/Medianet/2009/CBF/ChristianeCharette200911031008_1.aspx.

⁶⁰³ See the interview given by Gil Courtemanche to Christiane Charette on 3 November 2009 on Radio Canada [7:14-7:34], http://www.radio-canada.ca/Medianet/2009/CBF/ChristianeCharette200911031008_1.aspx.

measures to investigate them in a timely manner, to take disciplinary action against the perpetrators, and to inform the Court. On the contrary, the Prosecutor stubbornly endeavoured against all the evidence to challenge the fact that this evidence tampering took place and refused to remedy it.

300. The Prosecutor is thus responsible – both as a result of the actions of those individuals acting on his instructions and under his control, and of his own culpable failure to take action – for extremely serious offences against the judicial process of searching for the truth, thereby making it impossible for the judges to establish the necessary factual basis in order to rule on the merits of the charges against the Accused.
301. These offences are extremely prejudicial to the very essence of the judicial process. They breach not only the fundamental rights of the Accused, but also the right of the international community as a whole, and in particular the populations directly affected, to see the law establish the full and accurate substance of the facts and determine those responsible for them.
302. Whatever the extent of the evidence affected by the conduct exposed in this application, the exceptional gravity of such a situation amounts to an abuse of process of such a nature as to warrant a permanent stay of the proceedings.

1.2 Extent of the offence against the judicial process

303. None of the testimonies or documents put forward by the Prosecutor is of such a nature as to establish the guilt of the Accused. On the contrary, it has been shown that the charges against him are essentially the result of evidence tampering, suggesting the fraudulent involvement of authorities or organisations outside of the Court.

304. The inevitable consequence of the proven fraudulent acts, their organised and repeated nature, the positions held by those who perpetrated them, and the large volume of witness evidence directly affected is that serious doubt has been cast on the truthfulness of all of the Prosecutor's witnesses who have given evidence at trial.
305. Thus the subornation of which evidence has been advanced affects the credibility not only of the statements of those witnesses identified as having been subjected to such influence, but also, by extension, of all of the evidence presented by the Prosecutor in support of his charges.
306. Moreover, the Office of the Prosecutor's serious breaches of its obligation to investigate both incriminating and exonerating circumstances necessarily taint the entirety of the evidence brought at trial, since the consequence of such breaches has been to deprive the Defence of the means to challenge the credibility of that evidence.
307. This situation makes it impossible for the Chamber to place sufficient trust, "beyond reasonable doubt", in any of the evidence presented by the Prosecutor.
308. It follows that the proceedings are already doomed to failure and that the Chamber should thus order their immediate termination.
309. Over and beyond the conviction of the judges, the offences against the integrity of the judicial process have irreversibly projected an image of the trial which is inconsistent with the fundamental principles of justice. There is no longer any hope of complying with the adage "not only must justice be done; it must also be seen to be done".

2 – IMPOSSIBILITY OF A FAIR TRIAL

2.1 The Accused has not had a fair trial

310. A fair trial is possible only if the Prosecutor fulfils his investigation and disclosure obligations faithfully, impartially and in full. Otherwise, it is impossible for the Accused to conduct his defence properly, and the principle of “equality of arms”, a *sine qua non* of procedural fairness, will not have been respected.
311. As shown above, by dint of his failure to fulfil his investigation and disclosure obligations, the Prosecutor has deprived the Accused of the material with which he should have been provided in order to prepare and conduct his defence.
312. Consequently, the Defence has itself had to conduct large-scale investigations which should have been conducted by the Office of the Prosecutor. Although the Defence was able, with great difficulty, to conduct some of these investigations, it was unable to undertake all of the necessary investigations into exonerating circumstances which the Prosecutor had failed to conduct in time.
313. It follows that the Accused has not had a fair trial.

2.2 A fair trial is no longer possible

314. Nothing can remedy the prejudice caused by the fact that the Accused has had to contend with all of the evidence presented by the Prosecutor under conditions that are manifestly unfair.

315. As the Chamber has had cause to note on several occasions,⁶⁰⁴ the trial has already been subject to considerable delays infringing the right of the Accused to be tried without undue delay. Continuing the trial in an attempt to remedy the violations it has experienced would only add to the prejudice already suffered by the Accused as a result of such delays – which prejudice alone would be sufficient grounds for a decision to terminate the proceedings.⁶⁰⁵
316. It follows that, since the Accused has been unable to benefit from the result of timely investigations by the Prosecutor, it must be considered that a fair trial is not possible.
317. Furthermore, through his blatantly unfair public statements, the Prosecutor has signally failed to honour his obligations under the Statute and has shown that he is unable to prosecute the Accused in accordance with the requirements of a fair trial.

3 – VIOLATION OF THE INDEPENDENCE OF THE COURT

318. The Office of the Prosecutor seriously jeopardised its independence by assigning essential investigation missions to an [REDACTED] and individuals who were employed concurrently by organisations involved in assisting victims and representing them before the Court. In both cases, key missions were thus entrusted to individuals who, for various reasons, may have an interest in the Accused being convicted.

⁶⁰⁴ *Supra*, footnote 578. *Inter alia*: T-99-FRA-ET, p. 4, lines 9-25, T-104-FRA ET, p. 12, lines 2-16 et T-239-CONF-FRA CT2, p. 6, lines 2-18.

⁶⁰⁵ It is an established precedent in Canada that proceedings may be terminated as a result of unreasonable delays. See, for example, *R. v. Morin*, [1992] 1 R.C.S. 771, p. 51. See also *R. v. Askov*, [1990] 2 R.C.S. 1199; *R. v. Godin*, 2009 CSC 26 [2009] 2 R.C.S. 3.

319. In particular, by entrusting essential investigation missions [REDACTED] acting, moreover, on the instructions [REDACTED],⁶⁰⁶ the Prosecutor ran the risk from the outset that his investigations would be subject to abuse and fraud to benefit political figures and groups supporting the Accused's conviction.
320. It is not immaterial that the Accused was one of President Kabila's main political opponents, and that his arrest and transfer to the International Criminal Court were initiated by the President.
321. These circumstances lend credence to the theory that the Office of the Prosecutor was, knowingly or unknowingly, an instrument of authorities outside of the Court who were involved in actions designed to abuse the judicial process for purposes other than justice.
322. In any event, the fact alone that, via these "intermediaries", the Congolese State and its organisations played a direct and crucial part in the investigations carried out under the responsibility of the Prosecutor is likely to have a profound effect on public perception of the independence of the International Criminal Court.

IN LIGHT OF THE FOREGOING,

323. Given the grave and irremediable nature of the offences against the integrity of the judicial process and the violations of the independence of the Court, and given that it is impossible to guarantee the Accused a fair trial, a permanent stay of the proceedings against the Accused should necessarily ensue.

⁶⁰⁶ [REDACTED]; W-0316 disclosed some information directly to the Government, without informing his direct supervisor (T-330-CONF-FRA-ET, p. 42, line 20 to p. 43, line 28); W-0316 stated several times that he was at all times loyal to his government (T-327-CONF-FRA ET p. 13, line 23 to p. 14, line 10, p. 38, lines 14-26).

324. Continuing the trial would only compound the prejudice suffered by the Accused and would offer no hope of a remedy.
325. It follows that only a permanent stay of the proceedings is consistent with the principles of fairness, integrity and independence which form the foundation of the International Criminal Court's authority. Given the violations which have come to light, only such a decision would uphold in the eyes of the public the International Criminal Court's image of integrity and independence.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I:

TO ORDER a permanent stay of the proceedings against Mr Thomas Lubanga;

TO ORDER Mr Thomas Lubanga's immediate release.

[signed]

Ms Catherine Mabilie, Counsel

Dated this 10 December 2010,
At The Hague, The Netherlands