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Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

**Public Redacted Document
with
Confidential Annexes A-E**

**Public redacted version of "Prosecution's Closing Brief", 24 May 2016,
ICC-01/05-01/13-1905-Conf**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Mr Steven Sacha Powles

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Michael Gosnell

Mr Arthur Vercken De Vreuschmen

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Azama Shalie Rodoma

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Ms Beth Lyons

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section Others

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I. INTRODUCTION

1. Between the end of 2011 and 14 November 2013, Jean-Pierre **BEMBA GOMBO**, Aimé **KILOLO MUSAMBA**, Jean-Jacques **MANGENDA KABONGO**, Fidèle **BABALA WANDU**, and Narcisse **ARIDO** acted corruptly to influence witnesses, solicited their false evidence, and presented that evidence before the Court in violation of article 70(1)(a), (b), and (c) of the Rome Statute, as part of a common plan to defend **BEMBA** against charges of crimes against humanity and war crimes in *The Prosecutor v. Jean-Pierre Bemba Gombo* by means which included committing article 70 offences (“Overall Strategy”).

2. Collectively, the Accused violated article 70, committing 180 counts of offences against the administration of justice. The evidence underpinning those charges, argued in the Prosecution’s Pre-Trial Brief, during the trial phase, and crystallised here on the basis of the evidence adduced at trial, is unequivocal and establishes the Accused’s guilt beyond reasonable doubt.

3. That evidence includes the Accused’s own words, captured in wiretaps or intercepted conversations, in which they candidly discuss corruptly influencing witnesses through bribes and illicit coaching. It includes money transfer records showing illicit payments from the Accused or others implementing the Overall Strategy to witnesses shortly before their scheduled testimony. It includes CDRs from private telecommunications carriers showing lengthy and frequent communications between the Accused and witnesses, including when that contact was prohibited by the Court. It includes the testimonies and statements of witnesses complicit in the crimes committed pursuant to the Overall Strategy.

4. The evidence proves beyond reasonable doubt the significant role played by each Accused in implementing the Overall Strategy, resulting in the presentation of false evidence before the Court.

5. **BEMBA**, the ultimate beneficiary of the Overall Strategy, issued instructions to **KILOLO**, **MANGENDA**, and **BABALA** to execute the plan. **KILOLO**, **BEMBA**'s Lead Counsel, with **MANGENDA**'s assistance, bribed witnesses, scripted their evidence, and presented their false evidence in Court. **MANGENDA**, **BEMBA**'s Case Manager and a jurist himself, relayed the necessary instructions and information between **BEMBA** and **KILOLO** to execute the Overall Strategy and provided **KILOLO** the necessary and practical assistance to implement it. **BABALA**, the financier of the plan and **BEMBA**'s close confidant, ensured that the money for the Overall Strategy was made available to **KILOLO** and others involved in its implementation, including bribing witnesses, some of whom he paid himself. Finally, **ARIDO**, their man on the ground, recruited false witnesses in Cameroon to testify in **BEMBA**'s favour and acted corruptly to influence them.

6. The credible evidence in this case, taken as a whole, overwhelmingly establishes these facts and the Accused's guilt of the confirmed charges.

II. CONFIDENTIALITY

7. This filing and its annexes are classified as "*Confidential*" because they refer to evidence so designated. A "*Public Redacted*" version will be filed.

III. BACKGROUND OF THE CASE

8. The case against the Accused arises from their concerted acts, calculated to undermine the course of justice in the Main Case before TCIII. In that case, **BEMBA** was charged with crimes against humanity and war crimes for murder, rape and pillaging.¹ Trial began on 22 November 2010.² **BEMBA** called 34 witnesses in his

¹ ICC-01/05-01/08-3343, para.2.

² ICC-01/05-01/08-3343, para.10.

defence³ – 14 comprise the confirmed charged incidents.⁴ Notwithstanding the criminal efforts that he, his Lead Counsel, Case Manager, and others made to undermine the trial, on 21 March 2016, **BEMBA** was convicted of the crimes charged.⁵

9. On 14 June 2012, two months before the *Bemba* Defence began calling witnesses, the Prosecution received an anonymous tip that four such witnesses would provide false testimony after receiving money from [REDACTED].⁶ The anonymous source indicated that the persons involved in this scheme included a “Congolese lawyer”, and that, *inter alia*, money was being transferred through WU.⁷ The Prosecution obtained other information that **BEMBA** had spoken to individuals on the phone, using **BABALA** and **KILOLO** to circumvent any DU monitoring.⁸

10. On this information, the Prosecution obtained records from WU and Express Union with the assistance of national authorities.⁹ **BABALA**’s CDRs were also collected to ascertain various telecommunication connections implicated in the Overall Strategy.¹⁰ On 8 May 2013, PTCII further ordered the Registry to provide to the Prosecution **BEMBA**’s DU call logs and recordings of his non-privileged calls.¹¹

11. Given the credible information that telecommunications were being used to further the suspected scheme, the Prosecution requested judicial authorisation to obtain wiretaps of **KILOLO** and **MANGENDA**.¹² It also proposed engaging an independent counsel to ensure the integrity of any potentially privileged information.¹³ On 29 July 2013, PTCII authorised that request, appointing an

³ ICC-01/05-01/08-3343, para.17.

⁴ ICC-01/05-01/13-749, pp.47-55.

⁵ On 21 March 2016, TCIII convicted **BEMBA** of these crimes: ICC-01/05-01/08-3343, para.752.

⁶ ICC-01/05-44-Conf-Red2, para.9.

⁷ ICC-01/05-44-Conf-Red2, para.10.

⁸ ICC-01/05-44-Conf-Red2, para.23.

⁹ ICC-01/05-01/13-597-Conf-AnxB, para.22; ICC-01/05-01/13-1013-Conf, para.47.

¹⁰ ICC-01/05-01/13-597-Conf-AnxB, para.23; CAR-OTP-0071-0503.

¹¹ ICC-01/05-46, p.8.

¹² ICC-01/05-51-Red, paras.3, 23-29.

¹³ ICC-01/05-51-Red, para.28.

Independent Counsel to review the resultant recordings to screen out privileged and irrelevant material.¹⁴ The Prosecution thus requested assistance from the Dutch authorities,¹⁵ who authorised **KILOLO**'s and **MANGENDA**'s wiretapping, having determined the supporting evidence legally sufficient under Dutch law.¹⁶

12. The resulting evidence revealed that the Accused executed a plan to defend **BEMBA** against charges in the Main Case by means that included the commission of offences against the administration of justice, violating article 70(1)(a), (b), and (c). On that evidence, on 20 November 2013, PTCII issued arrest warrants for the Accused.¹⁷ It subsequently confirmed 180 counts of offences against the administration of justice against the Accused on 11 November 2014.¹⁸

IV. EVALUATING THE EVIDENCE

A. OVERVIEW OF THE PROSECUTION'S EVIDENCE

13. The Prosecution's evidence is credible, reliable, and corroborated. It consists of both oral testimony and documentary evidence, arising from the uniqueness of this case.

14. The Prosecution's case-in-chief comprised 16 witnesses: those (P-0020, P-0198, P-0201, P-0214, P-0243, P-0245, P-0260, P-0261) who testified for **BEMBA** in the Main Case; recipients (P-0242, P-0264) and senders (P-0263, P-0270, P-0272) of money from the Accused to *Bemba* Defence witnesses; an OTP analyst (P-0433) who summarised the telecommunications contacts between the Accused and the *Bemba* Defence witnesses in the Main Case; the Director of Global Investigations at WU (P-0267); and an expert (P-0361) who explained the CDRs and interception process. Among the witnesses are those whose prior statements were introduced through rule 68: P-0264

¹⁴ ICC-01/05-52-Conf, paras.3-8. Also ICC-01/05-01/13-41-Red, p.6.

¹⁵ ICC-01/05-01/13-424-Anx1, p.4.

¹⁶ ICC-01/05-01/13-424-Anx1, p.9.

¹⁷ ICC-01/05-01/13-1-Red2-tENG, pp.16-17.

¹⁸ ICC-01/05-01/13-749, pp.47-55.

and P-0270 under rule 68(2)(b);¹⁹ P-0263 under rule 68(2)(c);²⁰ and P-0020, P-0214, P-0243, and P-0272 under rule 68(3).²¹

15. Eight of these witnesses, either admittedly or as shown through the evidence, testified falsely in the Main Case. However, that their testimony was untruthful then does not disqualify their evidence in this case. Rather, such witnesses, often at the heart of prosecutions for false testimony, perjury and the like, are not automatically discounted. And although this Chamber should approach their evidence cautiously, it must also weigh it fairly. Here, the witnesses presented at trial corroborate each other; and are also corroborated by authentic, credible, neutral and reliable documentary evidence, capturing the events and conversations as they occurred.

16. That evidence formally submitted before the Chamber,²² principally comprises of: (i) witness statements; (ii) intercepts; (iii) DU phone records and logs; (iv) CDRs from telecommunications carriers; (v) contemporaneous email communications and SMSs; and (vi) commercial money transfer agency records. As with the oral testimony, this evidence is authentic, accurate, reliable and corroborated.

17. As the Prosecution's Pre-Trial Brief and its argumentation throughout the trial phase foreshadowed, the evidence adduced at trial addressed below, overwhelmingly establishes the Accused's guilt. While it is not possible to recite all of the relevant evidence before the Chamber establishing the Accused's individual criminal responsibility, the Prosecution has assessed those matters it considers of major significance. However, should the Chamber find evidence not cited herein which supports the Prosecution's case, its omission should not be construed to suggest that the Prosecution considers that evidence less than compelling.

¹⁹ ICC-01/05-01/13-1478-Conf, paras.95-108.

²⁰ ICC-01/05-01/13-1481-Red, paras.14-23.

²¹ ICC-01/05-01/13-1478-Conf, paras.48-94.

²² ICC-01/05-01/13-1285, para.1, p.11; ICC-01/05-01/13-1480, para.1, p.4; ICC-01/05-01/13-1524, para.1, p.7; ICC-01/05-01/13-1858, paras.33-50, p.17.

B. GENERAL PRINCIPLES

18. As the Chamber has deferred its assessment of the admissibility of evidence to the deliberations stage under article 74(2),²³ it must now first assess the relevance, probative value, and potential prejudice of each item of evidence formally submitted.²⁴ In doing so, it must assess freely all the evidence submitted, and may, therefore, determine the relevance of a particular piece of evidence only after considering other items of evidence, and the totality of the evidence.²⁵

19. Likewise, the Chamber is obliged to search for and establish the truth.²⁶ To arrive at its decision, having first determined the admissibility of the evidence, the Chamber must apply a three-stage analysis.²⁷

1. *The first stage: assessing the credibility of the evidence*

20. *First*, the Chamber must assess the credibility of the relevant evidence. A piecemeal approach is not appropriate. Nor is assessing the evidence of each witness separately, “as if it existed in a hermetically sealed compartment.”²⁸ Individual items of evidence, such as the testimony of different witnesses or documents, must be analysed in light of the entire body of evidence.²⁹

21. The various pieces of evidence (witness testimony, WU records, CDRs, DU records and logs, and intercepts)—examined holistically—reveal a clear and consistent pattern of criminality: the Accused not only solicited false testimony, but provided illicit payments and gifts to witnesses and coached them on the content of their testimony in the Main Case. In particular:

²³ ICC-01/05-01/13-1285, para.9; ICC-01/05-01/13-1480, para.3; ICC-01/05-01/13-1524, para.3; ICC-01/05-01/13-1858, para.6.

²⁴ ICC-01/05-01/13-1285, para.9. *Also* art.64(9)(a).

²⁵ ICC-01/05-01/13-1285, para 10. *Also* rule 63(2).

²⁶ ICC-01/04-02/12-271-Corr, para.256.

²⁷ *Ntagerura* AJ, para.174.

²⁸ *Ntagerura* AJ, para.171; *Musema* AJ, para.134; *Tadić* Contempt AJ, para.92.

²⁹ *Ntagerura* AJ, para.174. *Also* ICC-01/04-01/06-3121-Red, para.22; ICC-01/04-01/06-2842, para.94; ICC-01/04-02/12-3-tENG, para.45; ICC-01/05-01/08-3343, para.225.

- the *witness testimony* and *intercepts* demonstrate the Accused's: (i) persuasion of witnesses to testify falsely; (ii) unauthorised contact with witnesses; (iii) illicit payments to witnesses; and (iv) coaching of witnesses' testimony;
- the *WU records* show the Accused's unjustified payments to witnesses used to corruptly influence and induce their false testimony;
- the *CDRs* demonstrate that the Accused remained in frequent, lengthy, and unsanctioned contact to coach witnesses;
- the *ICC detention call logs* show that **BEMBA's** privileged line was used in furthering the Overall Strategy.

22. As the diverse evidence demonstrates, the pattern of conduct is unmistakable.³⁰ Every witness comprising the charged incidents testified falsely in the Main Case on matters which risked revealing the Overall Strategy. These witnesses testified falsely on the Accused's insistence, about the scope and nature of their prior contacts with the Accused.³¹ Those illicitly paid or given gifts received these items prior to testifying (often shortly before), and, at the Accused's direction, testified falsely about them.³²

2. *The second stage: proof beyond reasonable doubt*

23. *Second*, once analysed in its totality, the Chamber should determine whether the relevant evidence establishes the alleged facts, notwithstanding the evidence upon which the Defence relies. At this stage, the Chamber should apply the standard of proof beyond reasonable doubt concerning facts comprising the elements of the crimes and forms of responsibility alleged, and facts indispensable for entering a

³⁰ Below, paras.35-42.

³¹ Below, paras.99, 118, 167, 169-170, 205, 207, 218, 236, 246, 256, 282.

³² Below, paras.175-177, 191, 196, 218, 236, 244, 266, 282.

conviction.³³ Further, the Appeals Chamber cautions, “the reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice.”³⁴ It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence or inconsistencies therein.³⁵

24. Applying this standard to the totality of the evidence makes clear that the Prosecution has proved its case. Neither the theories nor evidence advanced by the Defence disturb the coherence and weight of the overwhelming evidence of guilt beyond reasonable doubt. The Defence theories advanced are unsubstantiated, speculative, and fail to articulate any rational link to the evidence. For instance, despite repeated and unsubstantiated claims that the Prosecution’s reimbursement practices in the Main Case somehow influenced the Accused’s conduct, the Defence has failed to articulate, let alone adduce, any evidence establishing a link between the Prosecution’s legitimate provision for witness expenses and the Accused’s criminal conduct.³⁶ There is simply none in the record.

25. The facts underpinning the Prosecution’s case are proved through direct and circumstantial evidence. The Prosecution’s direct evidence—the intercepts, DU records, WU records, and emails—show through the Accused’s words and deeds that they intentionally acted corruptly to influence witnesses. This direct evidence speaks for itself and readily dispels the Defence’s attempts to introduce alternative narratives. Likewise, the Defence hypotheses do not affect the strength of the circumstantial evidence adduced.

³³ *Ntagerura* AJ, para.171 (emphasis added). Also ICC-01/05-01/08-3343, para.225; ICC-01/04-02/12-271-Corr, paras.124-125.

³⁴ ICC-01/04-02/12-271-Corr, para.109 (citing *Rutaganda* AJ, para.488).

³⁵ *Ibid.*

³⁶ ICC-01/05-01/13-1720-Conf, paras.4-8; ICC-01/05-01/13-1840-Conf, para.11; ICC-01/05-01/13-1751, para.11.

26. Nothing in the Court's statutory framework prevents the Chamber from relying on circumstantial evidence.³⁷ When available evidence gives rise to only one reasonable conclusion, that particular conclusion is considered established beyond reasonable doubt.³⁸ However, not every underlying fact needs to be separately proved beyond reasonable doubt³⁹ to sustain a conviction.

27. Here, the Defence suggestions of "other reasonable inferences" even if plausible—and they are not—do not raise reasonable doubt. For instance, the Defence's efforts to establish purported "logistical issues" facing the Defence in the Main Case, including asserting their state of finances, presumably to explain away the charged conduct, are clearly irrelevant to it. These assertions show no link to the Accused's conduct.⁴⁰ Even if that were the case, such arguments do not advance "other reasonable inferences", but speculation. The Defence's mere argumentation does not attenuate the Prosecution's overwhelming trial evidence.

3. *The third stage: the elements of the crime and mode of liability*

28. *Third*, and finally, the Chamber must decide whether the elements of the charged crimes and the forms of responsibility are proved.⁴¹ The Prosecution's previous submissions on the elements of the crimes and the modes of liability,⁴² taken together with the credible evidence adduced at trial, compel the Accused's convictions for the crimes under the modes of liability as charged.

³⁷ ICC-01/05-01/08-3343, para.239.

³⁸ *Ibid.*

³⁹ ICC-01/04-01/06-3121-Red, para.22.

⁴⁰ ICC-01/05-01/13-1751, paras.5-8.

⁴¹ *Ntagerura* AJ, para.174.

⁴² ICC-01/05-01/13-1110-Conf, paras.220-265. *Generally* ICC-01/05-01/13-1024.

C. Specific Categories of Evidence

1. *Testimony of witnesses who testified in the Main Case*

a) Evaluating witness testimony: general principles

29. To determine the weight of testimony, the Chamber should assess both its credibility and reliability.⁴³ Having the opportunity to observe many witnesses, the Chamber may properly consider their demeanor. Further, in evaluating inconsistencies within and/or among witnesses' testimonies,⁴⁴ the Chamber need not consider such evidence tainted or unreliable due to minor inconsistencies. Instead, the Chamber may freely consider such testimony reliable, having resolved the inconsistencies. Moreover, because witnesses may be accurate on some issues, and less accurate on others, the Chamber may accept those parts of a witness' account while disregarding other portions of it, and considering the impact on the witness' overall reliability.⁴⁵

b) Accomplice evidence

30. The evidence of the eight Main Case witnesses who appeared as Prosecution witnesses before this Chamber may be viewed as accomplice testimony.⁴⁶ Although it should be viewed with caution, nothing prohibits the Chamber from relying on accomplice testimony.⁴⁷ It can be relied upon⁴⁸ especially where an accomplice is thoroughly cross-examined.⁴⁹ However, a Chamber's caution in this respect does not require the corroboration of accomplice testimony. Indeed, the Chamber "may

⁴³ ICC-01/04-01/06-3121-Red, para.239. Also ICC-01/04-01/06-2842, paras.102, 106; ICC-01/04-02/12-3-tENG, paras.51, 53; ICC-01/04-01/07-3436-tENG, paras.85, 87; ICC-01/05-01/08-3343, paras.229-230.

⁴⁴ ICC-01/04-01/06-3121-Red, paras.23-24; ICC-01/04-02/12-271-Corr, para.23.

⁴⁵ ICC-01/04-01/06-2842, para.104; ICC-01/04-02/12-3-tENG, para.50; ICC-01/04-01/07-3436-tENG, para.84; ICC-01/05-01/08-3343, para.231.

⁴⁶ *Brima* AJ, para.127. There is no requirement that a witness must have been charged with a specific offence to qualify as an accomplice. Also *Niyitegeka* AJ, para.98.

⁴⁷ *E.g. Nchamihigo* AJ, paras.42-43.

⁴⁸ *Nchamihigo* AJ, paras.42, 48.

⁴⁹ *Niyitegeka* AJ, para.98.

convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution.”⁵⁰ A Chamber may appropriately approach accomplice evidence by considering whether: (i) discrepancies in the testimony are explained; (ii) the witness has made a plea agreement with the Prosecution; (iii) the witness has already been tried and, if applicable, sentenced for his own crimes or is awaiting the completion of his trial; and (iv) whether the witness may have any other reason for holding a grudge against the accused.⁵¹ Yet, none of these factors renders accomplice testimony unreliable *per se*. Rather, the Chamber should duly weigh the testimony, given the circumstances of each case.⁵²

31. The incriminating evidence adduced by the Prosecution is credible and reliable. *First*, the witnesses—even if “accomplices”—easily survive scrutiny. The Main Case witnesses who testified before the Chamber, pursuant to so-called Limited Use Agreements, were credible. Contrary to the Defence’s assertions, the agreements entered into with the witnesses “[do] not suggest that the witness will be prosecuted if they don’t stick to what they told the Prosecution.”⁵³ Rather, they expressly require that the witness tell the truth in their dealings with the Prosecution,⁵⁴ and warn that “[i]f the witness deviates from what [he has] told the Prosecution is the truth, that statement can be used to rebut what they claim when they testify at trial.”⁵⁵ Thus, the witnesses’ motives to lie, assuming they exist, are greatly diminished by the agreements, if not eliminated in these particular circumstances.

32. *Second*, even if the Chamber were minded to examine the witnesses’ credibility in light of the Limited Use Agreements, the witnesses were examined and cross-examined on the circumstances under which they gave these prior statements, the

⁵⁰ *Nchamihigo* AJ, para.42.

⁵¹ *Nchamihigo* AJ, para.47.

⁵² *Nchamihigo* AJ, para.47.

⁵³ T-18-ENG, p.13, lns.24-25. All transcripts of testimony in this case are hyperlinked in the Glossary appended to this brief.

⁵⁴ *E.g.* CAR-OTP-0084-1424, 1425.

⁵⁵ T-18-ENG, p.14, lns.1-2. Also CAR-OTP-0084-1424, 1424, paras.4-5.

substantive events discussed, and their reasons for testifying against the Accused.⁵⁶

33. *Third*, even if the agreements are viewed as assurances of non-prosecution—which they are expressly not—the Court’s legal framework permits their extension to advance the truth-finding purpose of trial.⁵⁷ Rule 74 permits a Chamber to provide assurances of non-prosecution for the same purpose. This Chamber provided these very assurances to P-0245, P-0260, P-0261, P-0198, P-0201, P-0243, P-0020, and P-0214, for their past conduct “to enable the witness to testify truthfully, without fear of the consequences of self-incrimination.”⁵⁸ As such, assurances given either by the Chamber or the Prosecution to bring witnesses forward to facilitate the determination of the truth cannot automatically taint their credibility.

34. *Fourth*, contrary to the Defence’s claims, the witnesses who gave statements to the Prosecution were not coerced. Witnesses considered “suspects” in this case received all due protections under article 55(2), including the assistance of counsel and the right to remain silent.⁵⁹ None of the remaining witnesses suggested that they lied in their prior statements to the Prosecution due to coercion.⁶⁰

c) Corroboration

35. Corroboration is not required at this Court.⁶¹ Nor when considered, corroboration does not require testimonies to be identical in all aspects or describe the same fact in the same way.⁶² Witness testimonies are deemed corroborative when “one *prima facie* credible testimony is compatible with the other *prima facie* credible

⁵⁶ *E.g.* T-13-ENG, p.35, ln.8-p.45, ln.18; T-15-ENG, p.85, ln.15-p.88, ln.5.

⁵⁷ See art.54(3)(d). Also ICC-01/09-02/11-868-Red, para.94.

⁵⁸ T-13-ENG, p.8, ln.16-p.9, ln.14. *Generally* ICC-01/05-01/13-1263-Conf-AnxA.

⁵⁹ *E.g.* ICC-01/05-01/13-1478-Conf, paras.57-60; CAR-OTP-0085-0617, 0623-0625, lns.158-312; CAR-OTP-0085-0785, 0787, lns.67-71, 0788-0789, lns.82-135.

⁶⁰ *E.g.* T-37-ENG, p.53, lns.10-18.

⁶¹ See rule 63(4).

⁶² *Gatete* AJ, para.125 (citing *Kanyarukiga* AJ, para.220; *Ntawukulilyayo* AJ, para.24, *Munyakazi* AJ, para.103; *Bikindi* AJ, para.81; *Nahimana* AJ, para.428). Also *Ntabakuze* AJ, para.150.

testimony regarding the same fact or a sequence of linked facts.”⁶³ Therefore, thematic consistencies among testimonies are sufficient corroboration and mirror images are unnecessary and unrealistic.

36. The Prosecution witnesses are corroborated: they are *prima facie* credible,⁶⁴ and they describe the sequence of linked facts in a compatible manner. Accordingly, the sum of the witness testimonies traces the Accused’s criminality in influencing witnesses to testify falsely, bribing them with illicit payments, gifts and other promises, and coaching those witnesses to best align testimony in **BEMBA**’s favour and elicit falsehoods in court. Not all witnesses in this case testified to every aspect of the Overall Strategy, each offence, nor described them identically. Every witness testified from their vantage point and experience.⁶⁵ Importantly, no testimony described events in a manner incompatible with another. The testimonies are thus thematically consistent. They are compatible. They are corroborated.⁶⁶

37. For example, the sequence of events concerning the Accused’s corrupt acts to influence D-0023, D-0054, and D-0055 is compatible with each other, and thus corroborated.

- *First*, in a period prior to their testimonies, the Accused approached all three witnesses and persuaded them to testify falsely. D-0023 was asked to testify falsely as a former CAR army soldier who joined BOZIZÉ, and asked by both **KILOLO** and KOKATÉ not to reveal KOKATÉ’s involvement in recruiting him as a witness. D-0055, despite his initial reluctance, was prevailed upon by **KILOLO** to repudiate the contents of his letter incriminating **BEMBA**. D-0054, as **KILOLO** confirmed to **MANGENDA**, was also persuaded to testify falsely

⁶³ Gatete AJ, para.125 (citing Kanyarukiga AJ, paras.177, 220); Ntawukulilyayo AJ, para.121 (citing Bikindi AJ, para.81; Nahimana AJ, para.428).

⁶⁴ Above, paras.30-34.

⁶⁵ See Ntawukulilyayo AJ, para.24; Munyakazi AJ, para.103.

⁶⁶ E.g. Gatete AJ, para.126.

according to **BEMBA**'s instructions.⁶⁷

- *Second*, following this, all three witnesses were given something of value. D-0023 was given cash and a brand new laptop computer—along with **KILOLO**'s express reassurance that it was “not corruption”. D-0055 was similarly reimbursed and promised that **BEMBA** would treat him well—along with **KILOLO**'s instructions not to reveal either the payment or the contact with **BEMBA**. And D-0054 was also paid—a fact that **KILOLO** and **MANGENDA** confirmed when they spoke.⁶⁸
- *Third*, all three witnesses were coached on the content of their actual testimony. As D-0023 said, **KILOLO** “[tried] to help” him by responding to his questions, including information that **SAMBATÉ** was a member of **BOZIZÉ**'s staff. D-0055 admitted that **KILOLO** “was coaching” him, so he would discredit his letter in Court. Similarly, **KILOLO** instructed D-0054 on a range of subjects, including **BEMBA**'s arrival in Bangui, **BEMBA**'s command of troops, **BEMBA**'s military role, the language spoken by the MLC troops and D-0054's prior contacts with the *Bemba* Defence.⁶⁹

38. Corroboration also emerges within and across discrete sets of witnesses. The “Brazzaville Witnesses” (D-0023, D-0026, and D-0029) falsely denied their relationships with **KOKATÉ**.⁷⁰ The “Cameroon Witnesses” (D-0002, D-0003, D-0004, and D-0006) testified falsely about their relationships with **ARIDO**.⁷¹ The “Sweden Witnesses” (D-0057 and D-0064) were paid roughly the same amounts from third party proxies prior to their testimonies, which, when questioned in Court in the Main Case, they falsely and uniformly denied.⁷²

⁶⁷ Below, paras.110-112, 182-191, 269-281.

⁶⁸ Below, paras.114, 188, 191, 274-281.

⁶⁹ Below, paras.118, 194, 273.

⁷⁰ Below, section V.C.3.

⁷¹ Below, section V.C.2.

⁷² Below, section V.C.4.

39. Likewise, other aspects of the Overall Strategy are corroborated. Several witnesses' evidence and the related intercepts demonstrate the illicit nature and content of the conversations with the Accused, including conversations between **KILOLO**, **MANGENDA**, and others, discussing the difficulties in coaching certain witnesses. **KILOLO** expressed his hesitation in calling D-0054, as he did not want to take risks given that the Witness had not been properly coached yet,⁷³ particularly given D-0015's warning that D-0054 "*n'est pas intelligent et malin*".⁷⁴ **KILOLO** also expressed his frustration in coaching D-0013.⁷⁵

40. Further, the numerous and recurrent telephone calls between the Accused and witnesses D-0013, D-0015, D-0023, D-0025, D-0026, D-0029, D-0054, D-0057 categorically—and reasonably—demonstrate their unlawful nature of this contact.⁷⁶ Notably, even when the content of the conversation is unavailable, as with D-0025, the CDRs show unauthorised, frequent and lengthy telephonic contact with **KILOLO** following the VWU cut-off date and during the period of the testimony.⁷⁷ Significantly, the number and length of these contacts follow the length and timing of **KILOLO**'s intercepted illicit calls to other witnesses, such as D-0015 and D-0054, and D-0023, who admitted being coached.⁷⁸ D-0025's post-VWU cut-off date contacts and their illicit nature are thus also corroborated.

41. With **BEMBA** and **BABALA** emphasising the importance of paying witnesses, other witnesses were illicitly paid.⁷⁹ D-0064 acknowledged that **KILOLO** sent the payment to his [REDACTED].⁸⁰ D-0057 was paid grossly disproportionate amounts "out of kindness", with the payments again being facilitated by **KILOLO** and

⁷³ Below, para.108.

⁷⁴ Below, para.104.

⁷⁵ Below, para.250.

⁷⁶ Below, paras.99, 101, 111-112, 116-117, 193, 201-202, 226, 230, 249-253, 259, 262.

⁷⁷ Below, paras.101, 111, 115-117, 193, 201-202, 218, 226, 254, 259.

⁷⁸ Below, paras.101, 111, 116-117, 193.

⁷⁹ Below, section V.B.1.

⁸⁰ Below, paras.240-242.

BABALA.⁸¹ D-0006 and D-0004 were also provided large amounts of money characterised by **KILOLO** as token, or “*juste symbolique*.”⁸²

42. Therefore, not only are the Prosecution witnesses who testified in the Main Case *prima facie* credible in this case, their testimony was compatible, consistent and corroborated, in demonstrating facts linking the Accused’s roles and conduct in implementing the Overall Strategy.

2. *Expert witnesses*

43. The Court’s Chambers have weighed expert evidence, by considering the established competence of the witness in their field of expertise, the methodologies used, the extent to which the findings were consistent with other evidence in the case, and the expert’s general reliability.⁸³ The Prosecution’s telecommunications expert called by the Prosecution (P-0361) explained the CDRs and the interception process credibly and reliably,⁸⁴ whereas the testimony of D20-0001—the forensic acoustic consultant called by **BEMBA**—was of limited value and attended to peripheral issues. Further, D21-0009—the VWU expert called by the **KILOLO**—if anything, testified favourably to the Prosecution. He noted, for example, that a Party’s contact with a witness during a prohibited period “could undermine the proceedings”⁸⁵ and that undocumented gifts, payments and favours to witnesses would usually be “[brought] to the attention of the Chamber [...] [b]ecause it contravenes [...] the good administration of justice [and is] conduct that is not permitted.”⁸⁶

44. Defence expert D22-0004, called by **BABALA** on matters of “*solidarité africaine*”, was wholly unreliable. His credibility was “impugned to such an extent that he [...] ”

⁸¹ *Below*, para.234.

⁸² *Below*, para.311.

⁸³ ICC-01/04-01/06-2842, para.112; ICC-01/04-02/12-3-tENG, para.60; ICC-01/04-01/07-3436-tENG, para.94.

⁸⁴ *Generally* T-17-ENG.

⁸⁵ T-42-ENG, p.80, ln.20-p.81, ln.5.

⁸⁶ T-42-ENG, p.96, ln.19-p.97, ln.9.

cannot be relied upon”.⁸⁷ D22-0004 had no direct knowledge of the case or the Accused’s motivations, but only what he had learned from watching television.⁸⁸ Nor did the conclusions in his report, by the Witness’ own admission, “[h]ave [anything] to do with the accused.”⁸⁹ Despite claiming authorship of the report, he prevaricated when asked if “[he] wrote every word in [the] report.”⁹⁰ Nor was he able to convincingly explain his methodology, or why several passages he claimed to have written in 2016 were near identical to an uncited report authored by a different person in 2008.⁹¹

45. Although D20-0001 was called to provide an acoustic analysis of a limited number of the DU recordings,⁹² his testimony and report do not assist the Defence case. Not only does D20-0001 merely repeat the general alignment issues existing in the DU recordings—a fact that the Prosecution has already made the Chamber well aware of⁹³—, the limited methodology of his report⁹⁴ and testimony fail to cast doubt on the reliability of the DU recordings, or the comprehensibility of their transcriptions and translations, as a whole. Rather, his evidence confirms the Prosecution’s position that the DU recordings are reliable enough to support the allegations.⁹⁵ This Chamber does not require the scientific perfection of the recordings to rely on them in making legal determinations. Even with the alignment issues, their content is not affected and remains reliable, in any event, for their mention of particular persons and/or subject matter.

46. Indeed, neither the general alignment issues nor D20-0001’s testimony and report materially affect the reliability of the DU recordings. *Firstly*, the Prosecution relies on some of the recordings primarily for standalone utterances, which do not

⁸⁷ ICC-01/04-02/12-271-Corr, para.168; ICC-01/05-01/08-3343, para.231.

⁸⁸ T-45-ENG, p.61, ln.19-p.63, ln.16.

⁸⁹ T-45-ENG, p.70, lns.17-22.

⁹⁰ T-45-ENG, p.71, ln.17-p.72, ln.10.

⁹¹ T-45-ENG, p.75, ln.20-p.83, ln.1.

⁹² T-43-ENG, p.4, ln.1.

⁹³ *E.g.* ICC-01/05-01/13-1113-Red, para.23.

⁹⁴ *Generally* CAR-D20-0006-1244.

⁹⁵ *E.g.* T-43-ENG, p.67, lns.3-25.

depend entirely on the sequence of dialogues. D20-0001 confirmed that “[t]here was no evidence that [ordering of utterances from just one speaker] was altered.”⁹⁶ *Secondly*, to the extent that the proper sequence of the conversation is essential to understand the relevant portions of the conversations, the conversations can be recreated—with logic and common sense—by using so called “anchor points” within the conversation.⁹⁷ As D20-0001 confirmed, the transcripts of the recordings accurately reflect the sequence of speech for individual speakers.⁹⁸ Significantly, he confirmed that “[t]here was no evidence that [content] was missing⁹⁹ and that “[t]he issue of reliability of these recordings is relative to the questions that one asks about them.”¹⁰⁰

47. Moreover, D20-0001’s methodology was flawed. It was based on “a small percentage of the overall recordings that were made”¹⁰¹ that the Defence pre-selected¹⁰²—a mere 28 out of the 708 recordings, or 4% of the universe of recordings known to the Witness.¹⁰³ Neither were D20-0001’s conclusions representative of the totality of the DU materials in existence, nor was the Witness able to comment or confirm otherwise, having had no further access to the remainder of the recordings.¹⁰⁴

48. Not only was D20-0001’s analysis highly circumscribed, as he revealed in cross-examination, the exercise he undertook was constrained by both time and availability of resources.¹⁰⁵ He received only one recording on the same day as the initial contact on 31 December 2015. He had only received half of the 28 recordings on 5 January 2016. It was only when he requested further recordings on 15 January 2016, a few

⁹⁶ T-43-ENG, p.67, lns 12-16.

⁹⁷ T-43-ENG, p.69, ln.24-p.70, ln.3. *Also* p.68, ln.6-p.69, ln.16; CAR-D20-0006-1244, 1252-1253 (examples of conversations with synchronisation issues, which the Witness later explains could have been pieced together).

⁹⁸ T-43-ENG, p.68, lns.1-5.

⁹⁹ T-43-ENG, p.67, lns.3-25.

¹⁰⁰ T-43-ENG, p.68, lns.1-5.

¹⁰¹ T-43-ENG, p.53, lns.2-8.

¹⁰² T-43-ENG, p.56, lns.5-6.

¹⁰³ T-43-ENG, p.70, lns.4-9. The actual universe of the materials is much larger. The Prosecution disclosed a total of 1,070 recordings to the Defence and the Defence had access to the TRIM link where all the received DU recordings were made available.

¹⁰⁴ T-43-ENG, p.54, lns.3-7, p.70, lns.8-19.

¹⁰⁵ T-43-ENG, p.53, lns.9-14.

days before the deadline, that 13 other recordings were provided.¹⁰⁶

49. D20-0001 recognised his own limitations. He agreed that, despite his conclusions, someone with more knowledge of the case and the evidence may have been more successful in piecing the conversations together.¹⁰⁷ Likewise, he conceded that he would have been better equipped in his task, had he had the assistance of native French and Lingala speakers and other facts and corroborating evidence.¹⁰⁸ As such, this Witness' testimony and report do not assist the Chamber.

3. *Documentary evidence*

50. The Prosecution's case rests substantially on documentary evidence.¹⁰⁹ The Prosecution relies on its submissions on the *prima facie* reliability and relevance to admit the documentary evidence contained in its six bar table motions, to demonstrate their weight.

51. During trial, several witnesses attested to the significant weight and reliable nature of the documentary evidence underpinning the Accused's guilt. For instance:

- With respect to the WU records, both the payees and recipients of money transfers attested to their accuracy. P-0242, a recipient of money transfers intended for [REDACTED], P-0020, confirmed that CAR-OTP-0073-0274 accurately represented details about the WU transfer.¹¹⁰ P-0272, who made payments on **BABALA**'s behalf, confirmed that CAR-OTP-0070-0007, accurately represented details of WU transactions.¹¹¹
- Regarding the intercepted communications, D-0015 and D-0054 identified their

¹⁰⁶ T-43-ENG, p.10, ln.25-p.12, ln.2.

¹⁰⁷ T-43-ENG, p.69, lns.10-16.

¹⁰⁸ The Witness had limited knowledge of French: T-43-ENG, p.5, lns.12-15, p.69, lns.10-23.

¹⁰⁹ T-10-ENG, p.34, lns.7-20.

¹¹⁰ T-37-ENG, p.36, ln.19-p.40, ln.23.

¹¹¹ T-25-ENG, p.24, ln.15- p.30, ln.20.

voices and **KILOLO**'s voice on the calls. D-0015 recognised his voice and **KILOLO**'s voice on the intercepts on five separate occasions.¹¹² Although D-0054 claims not to be able to recall the phone number "[REDACTED]",¹¹³ he identified his voice on a call to that number from **KILOLO**.¹¹⁴

- With respect to the CDRs (summarized in CAR-OTP-0090-0630), witnesses—including P-0020, P-0201, and P-0214,—identified their details and the dates and times of their calls with **KILOLO** as reflected in the CDRs.¹¹⁵

V. THE OVERALL STRATEGY

A. OVERVIEW

52. The evidence in the case shows that, from the end of 2011 to 14 November 2013, **BEMBA, KILOLO, MANGENDA, BABALA, and ARIDO** acted in concert with each other and with other persons, pursuant to a plan to defend **BEMBA** against charges of crimes against humanity and war crimes in the Main Case by means which included committing offences against the administration of justice violating article 70 of the Statute ("Overall Strategy").

53. The Accused implemented the Overall Strategy by committing offences in one or more of the following ways ("*modus operandi*"): (i) bribing witnesses in cash and *via* money transfers; (ii) making non-monetary promises or inducements to witnesses, such as the possibility of relocating abroad and benefiting from **BEMBA**'s protection; (iii) instructing witnesses on what to say when questioned in Court, including scripting their evidence, dictating and rehearsing false answers and/or

¹¹² T-30-ENG, p.15, ln.18, p.16, lns.6-11, p.18, lns.21-22 (CAR-OTP-0074-1002, intercepted on P-0198's confirmed number [REDACTED]); T-30-ENG, p.25, lns.21-22, p.29, lns.8-13, p.41, lns.16-25, p.46, lns.12-15, p.47, lns.20-21 (CAR-OTP-0074-1003, intercepted on P-0198's confirmed number [REDACTED]); T-30-ENG, p.50, lns.20-23 (CAR-OTP-0074-1008, intercepted on P-0198's confirmed number [REDACTED]); T-30-ENG, p.54, lns.11-15 (CAR-OTP-0074-1012, intercepted on P-0198's confirmed number [REDACTED]).

¹¹³ T-28-ENG, p.67, lns.16-19.

¹¹⁴ T-28-ENG, p.24, lns.23-24, p.32, lns.11-13, p.33, ln.15, p.67, lns.17-19.

¹¹⁵ T-35-ENG, p.29, ln.1-p.30, ln.7 (P-0214); p.35, lns.6-16, p.36, lns.5-p.37, lns.12 (P-0020); p.60, ln.22-p.62, ln.18 (P-0201).

questions to be posed by the parties and/or participants in the Main Case on contested issues in the trial and/or on prior contacts with, and payments from the Defence, and instructing witnesses on the manner in which they should testify to make their testimony appear credible (“illicit coaching”); (iv) circumventing the DU’s monitoring system, allowing **BEMBA** to use his privileged phone line to instruct other Accused and communicate with witnesses without detection; (v) using third parties to effect clandestine payments to witnesses and/or to receive such payments for them; (vi) providing witnesses phones to enable illicit contact with them after the VWU contact cut-off date and during their testimony; (vii) using coded language to conceal the Overall Strategy, and (viii) knowingly presenting the false testimony of witnesses into the Main Case record.

54. **BEMBA**, **KILOLO**, and **MANGENDA** played an essential role in designing and implementing the Overall Strategy. **BEMBA** led the implementation of the Overall Strategy from the DU, circumventing the Registry’s monitoring system to issue instructions to **KILOLO**, **MANGENDA**, and **BABALA** necessary to carry it out. **BEMBA** was kept informed at all times by **KILOLO**, **MANGENDA**, and **BABALA** of developments in its implementation. And, as the evidence shows, nothing was done to implement the Overall Strategy without his approval or instruction.

55. **KILOLO**, to further the Overall Strategy, bribed witnesses directly, made improper promises to witnesses in exchange for false testimony, and illicitly coached them to testify falsely. **KILOLO** procured spurious witnesses and intentionally presented their and other witnesses’ false evidence in Court.

56. **MANGENDA**, to further the Overall Strategy, relayed instructions, directions, and other information between **BEMBA** and **KILOLO** necessary to its implementation. **MANGENDA** planned the illicit coaching of witnesses with **KILOLO**, provided **KILOLO** with related assistance and advice, and provided logistical support to **KILOLO** to enable him to illicitly coach witnesses more

effectively.

57. To further the Overall Strategy, **BABALA**, **BEMBA**'s long-time confidant, assisted in handling the financial aspects of corruptly influencing witnesses in the Main Case, and provided other assistance to the Accused. **BABALA** executed **BEMBA**'s directions and instructions to further the Overall Strategy, or passed on such instructions to other participants. **BABALA** kept **BEMBA** apprised of the developments in implementing the Overall Strategy and sought **BEMBA**'s authorisation to act. **BABALA** provided the financial means to bribe witnesses, and paid witnesses and/or their relatives and close associates personally and through the Accused and other persons.

58. **ARIDO**'s involvement in the Overall Strategy consisted in identifying and personally recruiting false witnesses in Cameroon, facilitating their participation in the Main Case as such, and illicitly coaching the witnesses, who subsequently testified falsely in the Main Case.

59. Other persons involved in implementing the Overall Strategy included, *inter alia*, **KOKATÉ**, **BEMBA**'s sisters Caroline BEMBA and Françoise BEMBA, and **NGINAMAU**.

B. MODUS OPERANDI

1. Bribing witnesses

60. The Accused bribed witnesses to encourage, to induce or in exchange for, their false testimony in **BEMBA**'s favour.¹¹⁶ The Accused or persons involved in the Overall Strategy acting on their behalf made illicit payments to witnesses, either in cash or through money transfer services, sometimes through the witnesses' relatives

¹¹⁶ Below, section V.C.

or close associates to conceal the Accused's involvement.¹¹⁷

61. **BEMBA** particularly relied on **BABALA** to handle the financial aspects of the Overall Strategy.¹¹⁸ In his almost daily conversations with **BABALA**, and communications with other Accused and other persons implementing the Overall Strategy,¹¹⁹ **BEMBA** instructed, authorised, or was aware of payments made by **BABALA**, **KILOLO**, and **ARIDO**, to the Accused,¹²⁰ other persons involved in the Overall Strategy,¹²¹ and to witnesses.¹²² **BEMBA** was also consistently informed of such money transfers and discussed them with **BABALA**.¹²³

62. The Accused and other persons involved in implementing the Overall Strategy received transfers, often directly from **BABALA**,¹²⁴ or from other Accused and persons implementing the Overall Strategy, creating a network that ensured that the money ended up where needed. Caroline BEMBA, Françoise BEMBA, NGINAMAU, and the Accused at different times provided **KILOLO** with funds.¹²⁵ **KILOLO**,

¹¹⁷ Below, section V.C.

¹¹⁸ CAR-OTP-0077-1307, 1309, lns.18-34; CAR-OTP-0077-1348, 1351, lns.43-44, 50-53; CAR-OTP-0077-1324, 1328, lns.79-80; CAR-OTP-0077-1084, 1087, ln.58; CAR-OTP-0077-1299, 1301, lns.9-32; CAR-OTP-0079-1724, 1726, lns.9-20; CAR-OTP-0080-0466, 0468, ln.7; CAR-OTP-0077-1341, 1343, lns.7-18; CAR-OTP-0077-1316, 1318, lns.5-6; CAR-OTP-0080-0477, 0479, lns.5-10; CAR-OTP-0077-1291, 1295, lns.72-75; CAR-OTP-0080-0485, 0488, lns.67-70; CAR-OTP-0077-1050, 1053, lns.54-55, 1054, lns.84-85.

¹¹⁹ E.g. CAR-OTP-0079-0221; CAR-OTP-0079-0220; CAR-OTP-0079-0456; CAR-OTP-0074-0087.

¹²⁰ E.g. CAR-OTP-0077-1307, 1309, lns.29-34, 18, 20; CAR-OTP-0077-1324, 1328, lns.79-80; CAR-OTP-0077-1084, 1087, ln.58; CAR-OTP-0077-1299, 1301, lns.9-32; CAR-OTP-0079-1724, 1726, lns.9-20; CAR-OTP-0080-0466, 0468, ln.7; CAR-OTP-0079-1724, 1726, lns.9-20; CAR-OTP-0077-1316, 1318, lns.5-6; CAR-OTP-0080-0485, 0488, lns.67-70; CAR-OTP-0080-0135, 0149, lns.506-516. Also 0142, lns.259-260; T-19-ENG, p.34, lns.1-16; CAR-D20-0001-0004, 0007. Also ICC-01/05-01/13-1113-Conf, AnxA; ICC-01/05-01/13-1498-Conf, AnxA.

¹²¹ CAR-OTP-0077-1291, 1295, lns.72-75.

¹²² CAR-OTP-0077-1050, 1053, lns.54-55, 1054, lns.84-85; CAR-OTP-0077-1299, 1301, lns.9-20; CAR-OTP-0077-1324, 1328, lns.79-80.

¹²³ E.g. CAR-OTP-0080-0477, 0479, lns.5-10; CAR-OTP-0077-1341, 1343, lns.7-18; CAR-OTP-0077-1348, 1351, lns.43-44, 50-53; CAR-OTP-0077-1303, 1305, lns.6-12; CAR-OTP-0079-1727, 1730, lns.57-59, 1730, lns.65, 67, 69, 1730, lns.72-73, 88-99; CAR-OTP-0077-1291, 1295, lns.72-75. Also CAR-OTP-0077-1299, 1301, lns.9-20; CAR-OTP-0077-1077, 1079, lns.10-12; CAR-OTP-0082-0321; CAR-OTP-0082-0322; CAR-OTP-0082-0328.

¹²⁴ CAR-OTP-0073-0274, tab 38 Jean J K Mangenda, rows 3, 15, 30; CAR-OTP-0074-0855, tab 31 Fidèle Babala, rows 3, 4, 8, 9, 14, 16, 17; tab 40 Aimé Kilolo Musamba, rows 4, 29, 30, 36, 42, 49, 56; CAR-OTP-0070-0005; tab 4 Joachim Kokate, row 70, CAR-OTP-0070-0004, tab 31 Babala, row 10.

¹²⁵ Funds to **KILOLO**: CAR-OTP-0070-0007, tab 34 Nginamau, rows 7-8, 11, 14-16, 21-24, 36, 45, 53, 55, 57; CAR-OTP-0073-0274, tab 34 Robert Nginamau, rows 3, 4; CAR-OTP-0074-0855, tab 68 Caroline Bemba Wale, rows 2-4, 8-10. Also a series of telephone conversations between **KILOLO** and Françoise BEMBA regarding a WU transfer in August 2013: CAR-OTP-0077-1364, 1365; CAR-OTP-0077-1366, 1367; CAR-OTP-0077-1368, 1369; CAR-OTP-0077-1370, 1371; CAR-OTP-0077-1372, 1373-1374. Funds from **KILOLO** to witnesses:

BABALA, **NGINAMAU**, and **KOKATÉ** paid **ARIDO**.¹²⁶ **KILOLO**, **BABALA**, **NGINAMAU**, and Caroline **BEMBA** paid **KOKATÉ**.¹²⁷ Thus distributed, money was used to finance Defence missions to corruptly influence Witnesses as well as providing for the means to do so.

63. The evidence shows that **BEMBA** authorised or approved the money transfers. Examples of his direct authorisation include:

- On 25 May 2012, at 16:54, **BABALA** reported to **BEMBA** after making payments to **KILOLO**, witnesses and others, that “*BEACH OK. [...] CHARLY OK., CHARLY OK.EKE OK. OK. MAMA LEKI OK., euh ... LE COLLÈGUE D’EN HAUT OK [...] CHARLY est déjà ... euh ... c’est déjà parti et même déjà retiré*”¹²⁸, confirming payments to various persons, including **KILOLO** (referred to by code).¹²⁹ **BEMBA** responded: “[t]rès bien alors, continues comme ça”.¹³⁰ The WU records show that on 25 May 2012, at 07:40, **BABALA** sent USD 4,744 to **ARIDO**, who collected it in Yaoundé (Cameroon) on 26 May at 05:31.¹³¹ On the same day (25 May 2012), **BABALA** sent USD 3,189 to **KILOLO**.¹³²
- On 13 November 2012, **BEMBA** instructed **BABALA** to make the following money transfers: “*1 kg ira chez quelqu’un que 07, qui le COLLÈGUE D’EN HAUT te dira, et l’autre kilo, chez le COLLÈGUE D’EN HAUT*”.¹³³ The next day,

CAR-OTP-0070-0007, tab 32 A Musamba, rows 23-25, 40, 57, 132; CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, rows 11-12, 32, 41, 46-48, 52-53.

¹²⁶ CAR-OTP-0070-0005, tab 1 Narcisse Arido, rows 72-75, 77, 78, 80; CAR-OTP-0070-0007, tab 32 A Musamba, rows 35, 36, 94; CAR-OTP-0070-0007, tab 34 Nginamau, rows 6, 17; CAR-OTP-0070-0005, tab 4 Joachim Kokate, row 92.

¹²⁷ CAR-OTP-0070-0005, tab 4 Joachim Kokaté, rows 52, 66-68, 70-71, 99.

¹²⁸ CAR-OTP-0077-1341, 1343, lns.7-18 (emphasis added).

¹²⁹ See ICC-01/05-01/13-1110-Conf-AnxA, section III.B “*Collègue d’en haut*” as **KILOLO**, “*Charly*” is a code for Cameroon, where a number of Defence witnesses were paid in exchange for false testimony. *Also below*, para.306.

¹³⁰ CAR-OTP-0077-1341, 1343, ln.13.

¹³¹ See CAR-OTP-0070-0005, tab 1 Narcisse ARIDO, row 78.

¹³² See CAR-OTP-0074-0855, tab 40 Aime KILOLO Musamba, row 56.

¹³³ CAR-OTP-0077-1324, 1328, lns.79-80.

BABALA's driver Robert NGINAMAU (P-0272) transferred EUR 1,000 to **KILOLO**.¹³⁴

64. The Witnesses and/or their relatives received bribes, some directly from **BABALA**, and some from other Accused and other persons implementing the Overall Strategy.¹³⁵ For example, **ARIDO** and **KILOLO** paid Witnesses, including D-0002 and D-0003,¹³⁶ who, when testifying, denied receiving payments.¹³⁷ NGINAMAU executed payments on **BABALA's** behalf,¹³⁸ including to KOKATÉ¹³⁹ ([REDACTED]) and D-0064's [REDACTED].¹⁴⁰ KOKATÉ implemented the Overall Strategy, including by paying **ARIDO**¹⁴¹ and recruiting and corruptly influencing Witnesses.¹⁴²

65. The evidence shows direct approvals by **BEMBA** for payments executed to Witnesses or their relatives: for example, on 16 October 2012, **BABALA** told **BEMBA** about a payment to D-0064: *"il faut que cela se fasse quand même parce que c'est très important. C'est la même chose comme pour aujourd'hui"*.¹⁴³ Earlier that day, **BABALA** had transferred a USD 665 payment to D-0057's [REDACTED] (P-0242).¹⁴⁴ The following day, 17 October 2012, D-0064's VWU cut-off date,¹⁴⁵ P-0272 paid D-0064's [REDACTED] USD 700 *via* two WU transfers of USD 200 and 500, respectively.¹⁴⁶

¹³⁴ CAR-OTP-0073-0274, tab 34 NGINAMAU, row 4, column AO.

¹³⁵ Below, section V.C.

¹³⁶ Below, section V.C.2.

¹³⁷ ICC-01/05-01/08-T-322-CONF-ENG-ET, p.26, lns.19-23; ICC-01/05-01/08-T-330-CONF-ENG-ET, p.21, lns.23-25, p.22, lns.1-4.

¹³⁸ Below, para.241. For some transfers NGINAMAU also used **BABALA's** telephone number: *e.g.* CAR-OTP-0070-0007, tab 34 Nginamau, rows 6, 28, 53, column E. Babala's number is "[REDACTED]". Compare CAR-OTP-0070-0007, tab 34 Nginamau, rows 6, 28, 53, column E and CAR-OTP-0090-0831, 0833. The **BABALA** Defence does not contest that these payments were made on his behalf: ICC-01/05-01/13-596-Conf, pp.57-65. NGINAMAU also stated that he never used WU for his own purpose: CAR-OTP-0088-0224-R01, 0246, lns.786-796; T-25-ENG, p.23, lns.2-6, p.24, lns.7-13.

¹³⁹ CAR-OTP-0070-0007, tab 34 Nginamau, rows 10, 28.

¹⁴⁰ Below, paras.240-242.

¹⁴¹ CAR-OTP-0070-0005, tab 4 Joachim Kokate, row 92.

¹⁴² Below, paras.183-184, 211.

¹⁴³ CAR-OTP-0077-1299, 1301, lns.29-30.

¹⁴⁴ CAR-OTP-0070-0004, tab 31 Babala, row 19.

¹⁴⁵ CAR-OTP-0078-0290, 0292.

¹⁴⁶ CAR-OTP-0070-0007, tab 34 Nginamau, rows 2, 3. **BABALA** does not contest transferring money to D-0064 at **KILOLO's** request: see ICC-01/05-01/13-596-Conf-Corr2, paras.20, 43, 82, 124, 148; ICC-01/05-01/13-671-Conf, para.56.

66. Likewise, on 9 August 2013, **BABALA** informed **BEMBA** that **KILOLO** had called five “*enfants*”.¹⁴⁷ Days later, on 13 August 2013, **BABALA** told **BEMBA** that **KILOLO** had requested additional “*demi-KILO de CAFÉ*”.¹⁴⁸ **BEMBA** was concerned that “*la chose-là dont tu as parlé-là [...] ne s’est pas encore faite [...] celle de quoi ça que tu connais ... euh ... de ... de ... de ces cinq enfants-là*”.¹⁴⁹ **BABALA** then explained that he had just received the required information from **KILOLO** and that he was on his way to make the transfer. When **BEMBA** expressed his annoyance with the delay,¹⁵⁰ **BABALA** explained that the day before the “*histoires ... comme celles de MIKE-là ne fonctionnent... ça n’a pas fonctionné*”.¹⁵¹ In this conversation, “*MIKE*” referred to “*Moneygram*”,¹⁵² while the code “*enfants*” in both conversations referred to five Defence witnesses stationed in Congo-Brazzaville, including D-0023 and D-0026.¹⁵³ The money transfers were meant for these Witnesses.

67. A conversation on 4 July 2012, in which **BABALA** informed **BEMBA** that “*toutes les histoires du COLLEAGUE sont partis*”,¹⁵⁴ shows the same. He confirmed to **BEMBA** that the “*bad coffee*” had gone to the country that Aimé visits regularly and “*good coffee*” had gone to the country of Facebook.¹⁵⁵ The WU records show that on 4 July 2012, **BABALA** paid, *inter alia*, USD 3,000 to Eyumba BOKAMBA, Defence linguistics expert witness D-0060 in the Main Case,¹⁵⁶ residing in Illinois, USA.¹⁵⁷ As he linked these payments in his conversation with **BEMBA** to “*COLLEAGUE*”, *i.e.* **KILOLO**, **BABALA** was clearly aware of this individual’s connection to the Main

¹⁴⁷ CAR-OTP-0089-0726, 0728, lns.7-9, 0733, ln.193.

¹⁴⁸ ICC-01/05-01/13-1110-Conf-AnxA, section VI.J.

¹⁴⁹ CAR-OTP-0089-0716, 0721, lns.122-128 (emphasis added).

¹⁵⁰ CAR-OTP-0089-0716, 0721, lns.129-136.

¹⁵¹ CAR-OTP-0089-0716, 0721, lns.137-139.

¹⁵² See ICC-01/05-01/13-1110-Conf-AnxA, section VII.

¹⁵³ See ICC-01/05-01/13-1110-Conf-AnxA, section III.Q. Also CAR-OTP-0088-2729, 2732, lns.47-65, 2733, lns.71-74. “*Pays de Jeando*” refers to Congo-Brazzaville, as **KILOLO** travelled to the country on 9 August 2013 to meet with five witnesses stationed there and hand them over to VWU. See CAR-D21-0003-0162, 0164.

¹⁵⁴ CAR-OTP-0087-1155, 1157, lns. 24-25.

¹⁵⁵ CAR-OTP-0087-1155. Also ICC-01/05-01/13-1110-Conf-AnxA, section VI.J. The conversation shows that the code “*Facebook*” refers to the USA, the corporate seat of Facebook, Inc.

¹⁵⁶ See ICC-01/05-01/13-600-Conf-Corr2, para.134, fn.221.

¹⁵⁷ See CAR-OTP-0070-0004, tab 31 BABALA, rows 6, 7. **BABALA** also paid USD 3,979 to Sylvain [REDACTED] in France.

Case.¹⁵⁸ Given this evidence, the overall knowledge and involvement of **BABALA** in the affairs of the Main Case, and especially, the intercepted conversations in October 2013 during the planning and execution of the cover-up scheme orchestrated by **BEMBA, KILOLO, MANGENDA, and BABALA**,¹⁵⁹ it is clear that **BABALA** knew that the money he was transferring to the other Accused persons involved in the Overall Strategy and Witnesses, would be used to corruptly influence them.

68. The Accused, including **KILOLO, BABALA, and ARIDO**, together with the persons involved in implementing the Overall Strategy, including Caroline BEMBA, NGINAMAU, and KOKATÉ, used *inter alia*, commercial money transfer services and cash payments to pay witnesses and/or their relatives or close associates—including D-0064, D-0057, D-0029, D-0025, D-0023, D-0006, D-0004, D-0003, and D-0002.¹⁶⁰ They did so purposely, to avoid detection, and to implement the Overall Strategy more easily. In an early example showing they considered concealing payments important, on 7 May 2011, **BEMBA** instructed **BABALA** to make an urgent money transfer of “*quatre*” to **KILOLO** insisting that “[j]amais, jamais, jamais” should it be made through the bank account, but instead *via* the WHISKY (WU).¹⁶¹ He further instructed **BABALA** to coordinate with **KILOLO** and that he should confirm “WHISKY” to him.¹⁶² On Monday, 9 May 2011, **KILOLO** received from **BABALA** USD 4,328.23 through WU.¹⁶³

69. The Defence cases did not meaningfully address the evidence proving **BEMBA**’s ultimate authority over the payment schemes, **BABALA**’s incontrovertible role as the primary provider of financial means to implement the Overall Strategy, or that large sums of money changed hands between the Accused and others for this

¹⁵⁸ Also ICC-01/05-01/13-1113-Conf; ICC-01/05-01/13-1113-Conf-Anx A; ICC-01/05-01/13-1498-Conf, ICC-01/05-01/13-1113-Conf-AnxA.

¹⁵⁹ Below, section III.D. **BABALA**’s and **BEMBA**’s knowledge is also evident from evidence showing that **BABALA** helped finance Defence missions involving witness meetings: ICC-01/05-01/13-1113-Conf-AnxA, pp.32, 82-87, 89-94, 97.

¹⁶⁰ Below, section V.C.

¹⁶¹ CAR-OTP-0082-2527, 2529, lns.7-16, 31, 2530, lns.46-47.

¹⁶² CAR-OTP-0082-2527, 2530, lns.49-52.

¹⁶³ CAR-OTP-0070-0007, tab 32 A Musamba, row 124.

purpose. Significantly, the overwhelming evidence shows the illicit nature of the payments made to Witnesses, despite the Defence's implausible, if not unsubstantiated, attempts to explain them away.

70. The Defence argue that the payments made to witnesses in this case should be assessed against the purported wider “background”, of general practices of witness payments in the Main Case, and in the Court, including: (i) VWU reimbursement practices, Defence expenses in the Main Case and the difficulties in funding;¹⁶⁴ (ii) Prosecution payments to witnesses who were Defence witnesses in the Main Case;¹⁶⁵ and (iii) Prosecution payments to Prosecution witnesses in the Main Case (and other cases).¹⁶⁶ However, neither these nor related arguments¹⁶⁷ mitigate the compelling trial evidence. The issue here is whether the payments, even if legitimate on their face—which they decidedly were not, considering the evidence as a whole—were made to corruptly influence witnesses. The evidence shows this to be precisely the case.

2. *Non-monetary promises to witnesses*

71. In addition to paying bribes, the Accused made non-monetary promises to witnesses to encourage, induce, or in exchange for, their false testimony. These ranged from promising relocation abroad to benefiting from **BEMBA**'s support and influence.¹⁶⁸ These promises were important sweeteners to the deal the Accused, including **BEMBA**, **KILOLO**, and **ARIDO**, as well as **KOKATÉ**, made with the Witnesses, and an essential part of the Overall Strategy. They also helped establish trust with the Witnesses, and exploited their vulnerabilities. For example:

¹⁶⁴ E.g. ICC-01/05-01/13-1794-Conf-AnxA, pp.11, 14-28, 32, 41-45, 60, 63; ICC-01/05-01/13-1797-Conf-AnxA, pp.2-9, 13-14.

¹⁶⁵ E.g. ICC-01/05-01/13-1665-Conf-AnxA, pp.4-12; ICC-01/05-01/13-1794-Conf-AnxA, pp.111-120; ICC-01/05-01/13-1797-Conf-AnxA, pp.19-28.

¹⁶⁶ E.g. ICC-01/05-01/13-1794-Conf-AnxA, pp.111-120; ICC-01/05-01/13-1665-Conf-AnxA, pp.13-14; ICC-01/05-01/13-1797-Conf-AnxA, pp.29-35.

¹⁶⁷ E.g. ICC-01/05-01/13-1794-Conf-AnxA, pp.9, 43.

¹⁶⁸ Below, paras.129, 139, 156, 183, 272.

- **BEMBA** and **KILOLO** exploited D-0055's fear of **BEMBA** and his concern about the repercussions of his testimony on himself and his family¹⁶⁹. They promised that "*Bemba le traiterait bien*" after instructing D-0055 to testify that the content of a damning letter he had co-authored with a Prosecution witness was false.¹⁷⁰ **BEMBA** and **KILOLO** went so far as to abuse the DU's privileged line to directly communicate **BEMBA**'s appreciation.¹⁷¹
- **ARIDO** promised prospective Main Case witnesses, including the Cameroon Witnesses, D-0007, D-0008, D-0009, [REDACTED], and a certain "[REDACTED]", the possibility of relocating to Europe (in addition to CFA 10,000,000) if they testified falsely in **BEMBA**'s favour.¹⁷² **KILOLO** also told the Witnesses that after **BEMBA**'s release, he would meet with them individually in Kinshasa, and that "they will not be forgotten".¹⁷³

3. *Illicitly coaching witnesses*

72. The Accused's illicit coaching of Defence Witnesses was at the centre of the Overall Strategy. On **BEMBA**'s instruction and authorisation, **KILOLO**, **ARIDO**, and others involved in implementing the Overall Strategy, such as KOKATÉ, contacted the Witnesses by phone and/or met with them in-person.¹⁷⁴ During these meetings, how the Witness was to testify in **BEMBA**'s favour was discussed.¹⁷⁵ These contacts were deliberately had without the presence of other members of the *Bemba* Defence, such as HAYNES and GIBSON,¹⁷⁶ and violating TCIII's prohibition of witness preparation.¹⁷⁷

¹⁶⁹ Below, para.272.

¹⁷⁰ Below, para.272.

¹⁷¹ Below, paras.274-278.

¹⁷² Below, sections V.C.2.a), V.C.2.b).

¹⁷³ Below, para.157.

¹⁷⁴ Below, section V.C.

¹⁷⁵ Below, section V.C.

¹⁷⁶ Below, paras.109, 143, 188, 223, 260, 327.

¹⁷⁷ ICC-01/05-01/08-1016, para.34.

73. To ensure that the Witnesses were properly prepared and gave the answers scripted by the Accused, **KILOLO** and **MANGENDA** kept close contact with the Witnesses immediately before and during their testimony.¹⁷⁸ They flouted TCIII's witness contact prohibition.¹⁷⁹ They even supplied the Witnesses with cell phones, knowing that [REDACTED] would seize the Witnesses' mobile device to preclude precisely the type of illicit contact the Accused sought to maintain.¹⁸⁰

74. In these contacts, **KILOLO**, **MANGENDA**, and **ARIDO**, illicitly coached witnesses on what and how to testify.¹⁸¹ **KILOLO**, in particular, scripted, rehearsed with, and/or dictated to witnesses the questions to be posed by the *Bemba* Defence and other participants in the Main Case and provided the answers best supporting **BEMBA's** defence.¹⁸² **KILOLO**, with **MANGENDA's** help, also shared questions from the LRV with the witnesses, despite knowing that they had been provided to the *Bemba* Defence confidentially.¹⁸³

75. Not only did **KILOLO** instruct the witnesses on the substance of their false testimony, but also on how to testify to make it appear credible. For instance, **KILOLO** instructed D-0015 to answer the question about the language used by **BEMBA** when addressing his troops "*avec beaucoup d'hésitation pour montrer que ça date de longtemps [...] pas spontanément, [p]las trop vite*".¹⁸⁴ **KILOLO** also instructed the witnesses to lie about anything that could reveal the Overall Strategy and, thus, undermine the Witnesses' credibility, such as the scope and nature of their prior contacts with the *Bemba* Defence, monies and gifts received from the *Bemba* Defence, and their relationship with intermediaries, such as **KOKATÉ** and **ARIDO**.¹⁸⁵

¹⁷⁸ Below, paras.99, 111, 115-117, 193, 201, 226, 230, 249, 251, 253, 259, 273.

¹⁷⁹ ICC-01/05-01/08-1016, paras.31-35; ICC-01/05-01/08-972-Anx, paras.27-31.

¹⁸⁰ E.g. below, paras.151, 192.

¹⁸¹ Below, section V.C.

¹⁸² Below, section V.C.

¹⁸³ E.g. below, paras.94, 103.

¹⁸⁴ CAR-OTP-0079-0154, 0169, lns.501-502, 513-519.

¹⁸⁵ Below, section V.C.

76. Every Accused had a role in illicitly coaching the Witnesses. **BEMBA** directed, authorised, and approved the illicit coaching of witnesses.¹⁸⁶ To implement **BEMBA**'s directions and to further the Overall Strategy, **KILOLO** planned and executed the illicit coaching necessarily assisted by other Accused, including **MANGENDA** and **ARIDO**, and other persons involved in the Overall Strategy, including **KOKATÉ**.¹⁸⁷ **MANGENDA** reported to **KILOLO** on the false testimony presented in Court when **KILOLO** was absent.¹⁸⁸ **ARIDO** and **KOKATÉ** also illicitly coached witnesses directly.¹⁸⁹

77. Information was constantly shared among the Accused about these efforts. **KILOLO** informed **BEMBA** and **MANGENDA** about his illicit coaching of witnesses.¹⁹⁰ **MANGENDA** provided **KILOLO** advice on how to best carry this out.¹⁹¹ **BABALA** knew about **KILOLO**'s illicit coaching, including through **BEMBA**.¹⁹² **KILOLO** at times sought advice on the script from the Witnesses themselves.¹⁹³ He tried to ensure that witness testimonies aligned¹⁹⁴ and organised meetings to instruct them on their respective testimonies.¹⁹⁵ **BEMBA** also relayed, through **MANGENDA**, his satisfaction or dissatisfaction with the Overall Strategy's implementation to **KILOLO**.¹⁹⁶

78. Given the criminal objective of the Overall Strategy, **BEMBA**, **KILOLO**, **MANGENDA**, **BABALA**, and **ARIDO** knew the importance of ensuring that Witnesses followed their instructions closely and answered questions precisely, that

¹⁸⁶ *Below*, section VI.A. Also CAR-OTP-0082-1293, 1300, lns.232-247, 1306, lns.415-416.

¹⁸⁷ *Below*, section VI.B.

¹⁸⁸ *Below*, section V.C. Also CAR-OTP-0079-0122, 0124-0129, lns.6-224; CAR-OTP-0079-0114, 0116-0121, lns.2-189; CAR-OTP-0080-0245, 0247-253, lns.2-248; CAR-OTP-0080-0228, 0230-0237, lns.3-278.

¹⁸⁹ *Below*, sections V.C.2, V.C.3.a).

¹⁹⁰ CAR-OTP-0080-0254, 0257-0258; CAR-OTP-0080-0245, 0247-0253; CAR-OTP-0080-0238, 0240; CAR-OTP-0082-1140, 1142-1149; CAR-OTP-0079-0122, 0129; CAR-OTP-0077-1383, 1384.

¹⁹¹ CAR-OTP-0079-1737, 1739-1743; CAR-OTP-0080-0245, 0247-0253; CAR-OTP-0082-0107, 0110; CAR-OTP-0082-0644, 0647, lns.57-59, 67; CAR-OTP-0082-1368, 1373, lns.125-127.

¹⁹² CAR-OTP-0082-0542, 0543-0546; CAR-OTP-0077-1069, 1071-1072; CAR-OTP-0077-1063, 1066-1068; CAR-OTP-0077-1081, 1083, lns.16-26.

¹⁹³ CAR-OTP-0079-0154, 0160; CAR-OTP-0077-1414, 1420; CAR-OTP-0082-0866, 0873-0874, lns.219-229.

¹⁹⁴ *Below*, paras. 110, 119, 202-203.

¹⁹⁵ *E.g. below*, section V.C.2.d).

¹⁹⁶ CAR-OTP-0079-0122, 0126; CAR-OTP-0079-0114, 0118-0119.

their testimony was aligned with that of other witnesses', and that any problematic answers were corrected in the following hearing.¹⁹⁷ **KILOLO** admitted as much to **BEMBA**. He reported to **MANGENDA**: "*le problème [...] que j'ai toujours dit au Client [BEMBA], de faire encore LA COULEUR [u]n ou deux jours avant que la personne passe, [...] [p]arce que les gens [...] ne se souviennent pas de tout avec précision*".¹⁹⁸ In fact, **KILOLO** decided about witnesses coming to testify according to their willingness to follow the script,¹⁹⁹ which **BEMBA** approved and supported.²⁰⁰

79. Despite contrary Defence arguments, the evidence shows multiple instances in which illicit coaching resulted in false testimony in Court.²⁰¹ And, where it did not—either because the witnesses did not follow their instructions, or because the right questions were not asked—this does not mitigate the Accused's criminal responsibility. Even if the substance of the testimony was true, the Accused falsely presented the evidence as spontaneous to enhance its apparent credibility when, in fact, it was choreographed and planned—facts which, if revealed, could expose the Overall Strategy and completely undermine the witness' credibility.

80. Also contrary to **KILOLO**'s arguments, the coaching of witnesses did not comprise "refreshing" their memory.²⁰² Even disregarding TCIII's prohibition on witness preparation, which would have made such conduct unacceptable in any case, the Witnesses testified falsely about information not provided in their prior statements to the *Bemba* Defence.²⁰³ Instead, their testimony in the Main Case was consistent with the coaching they received.²⁰⁴ Given this fact, and other evidence

¹⁹⁷ *Below*, section V.C. Also D-0018, who was contacted on 8 June 2013, and testified from 5 to 11 June 2013: CAR-OTP-0072-0391, rows 38071, 38114, 38119.

¹⁹⁸ CAR-OTP-0080-0245, 0248, lns.50-52; ICC-01/05-01/13-1110-Conf-AnxA, section IV.B. Also, para.223.

¹⁹⁹ CAR-OTP-0080-0245, 0250-0252.

²⁰⁰ CAR-OTP-0079-0131, 0134-0138; CAR-OTP-0079-0141, 0143-0147; CAR-OTP-0079-1744, 1746-1748; CAR-OTP-0082-0669, 0671, ln.21.

²⁰¹ *Below*, section V.C.

²⁰² *E.g.* ICC-01/05-01/13-600-Conf-Corr2, paras.182, 202, 209, 218, 608-611; ICC-01/05-01/13-674-Conf, paras.82-89, 94-95. Also *e.g.* T-29-ENG, p.9, lns.3-9, p.68, lns.9-18, p.70, ln.19-p.72, ln.8; T-30-ENG, p.29, ln.17-p.31, ln.12, pp.61-67, p.74, ln.24-p.75, ln.13.

²⁰³ *E.g. below*, paras.105, 203.

²⁰⁴ *E.g. below*, section V.C.

demonstrating the manner in which the illicit coaching was carried out, the only reasonable inference is that the Accused acted in the same way towards those Witnesses whose statements were never produced by the Defence—including that of D-0029.²⁰⁵

4. *Circumventing the Detention Unit's monitoring system*

81. To orchestrate and direct the Overall Strategy's implementation from the DU, **BEMBA** called third parties through **KILOLO** by exploiting lawyer-client privilege. **BEMBA** would initiate a call with **KILOLO** using the telephone line reserved for "privileged" communications designated by the Registry.²⁰⁶ While on the line with **BEMBA**, **KILOLO** would facilitate contact with third parties,²⁰⁷ including witnesses²⁰⁸ and other Accused,²⁰⁹ allowing **BEMBA**'s direct communication with them without the Court's knowledge.

82. **BEMBA** was obviously aware that his conversations from the DU were monitored, and he and **BABALA** were concerned that they might be understood. Further, as explained in the Prosecution's Code Memo,²¹⁰ and below,²¹¹ **BEMBA** and **BABALA** communicated in code to conceal their conversations, especially on the Overall Strategy. **BEMBA** insisted on the use of codes, frequently warning **BABALA** and Caroline BEMBA to be mindful on the phone. On 18 November 2012, **BABALA** told **BEMBA** that he had to change his phone for fear of being tapped, and would give **KILOLO** another telephone number.²¹²

83. **BEMBA**, **BABALA**, and **KILOLO** conspired to circumvent, and circumvented,

²⁰⁵ See ICC-01/05-01/13-1738-Conf (advancing arguments (later rejected) as to why the statement, which was placed at issue by **KILOLO**, should be disclosed).

²⁰⁶ See CAR-OTP-0074-0067 (listing the privileged numbers for **KILOLO**, including "[REDACTED]").

²⁰⁷ Modern mobile telephones allow the user to communicate with multiple parties at the same time. This is termed a multi-party conference call or multi-party call.

²⁰⁸ Below, paras.274-278, 319. Also ICC-01/05-01/13-1110-Conf, fns.106, 107.

²⁰⁹ Below, para.319. Also ICC-01/05-01/13-1110-Conf, fns.106, 107.

²¹⁰ ICC-01/05-01/13-1110-Conf-AnxA.

²¹¹ Below, sections VI.A, VI.D.

²¹² CAR-OTP-0082-2249, 2251, lns.15-18.

the DU's monitoring system, allowing **BEMBA** to instruct the Accused and other persons involved in implementing the Overall Strategy.

5. *Using third parties to transfer money to witnesses*

84. To disguise their illicit payments and avoid suspicion, the Accused frequently used third parties to transfer money to witnesses. For instance, **KILOLO** sent money to D-0029 through Jean Paul MOKULA;²¹³ **BABALA** sent money to D-0057 through the Witness' [REDACTED];²¹⁴ **BABALA**'s chauffeur NGINAMAU sent money to D-0064 through his [REDACTED];²¹⁵ and Caroline BEMBA sent D-0006 money through his then-[REDACTED].²¹⁶

85. This pattern of illicit conduct was anything but coincidental, as **KILOLO**'s dealings with D-0003 show. **KILOLO** similarly asked D-0003 to provide a name of someone not easily identifiable by the Court, to receive a money transfer from him. **KILOLO** rejected D-0003's suggestion to send money to his fiancée, saying "*la Cour connaissait le nom de [s]a fiancée.*"²¹⁷ D-0003 provided **KILOLO** the name of his [REDACTED],²¹⁸ to whom **KILOLO** sent the money using another third party—[REDACTED] Marie Joseph KANA NDZI—to transmit the payment.²¹⁹

6. *Enabling illicit contact after the VWU cut-off date and during the Witness' testimony*

86. Consistent with the Accused's pattern to keep close contact with witnesses during or immediately before their testimony to keep their testimony precise and consistent with the coaching, **KILOLO** and **MANGENDA** provided cell phones to

²¹³ Below, para.215.

²¹⁴ Below, paras.230-234.

²¹⁵ Below, paras.241-242.

²¹⁶ Below, para.163.

²¹⁷ T-23-FRA, p.19, lns.11-14.

²¹⁸ T-23-ENG, p.18, ln.19-p.19, ln.3.

²¹⁹ T-23-ENG, p.22, ln.25-p.23, ln.8; CAR-OTP-0083-1291-R03, 1298, paras.27-29; CAR-OTP-0079-1541, 1542; CAR-OTP-0088-0370, 0377-0378.

witnesses to ensure communication with them after their handover to the VWU.²²⁰ This was done without VWU's permission or knowledge and despite TCIII's prohibition of such contact.²²¹

7. *Use of coded language*

87. As detailed in the Prosecution's Code Submission,²²² the Accused used codes when discussing elements of the Overall Strategy, including coaching, the payment of bribes, and the intermediaries involved in executing it. The use of such codes reveals the Accused's intention and others involved in the Overall Strategy to conceal their illicit conduct.

C. EXECUTION OF THE OVERALL STRATEGY

1. *The [REDACTED]*

88. With **BEMBA**'s knowledge and authorisation and **MANGENDA**'s assistance, **KILOLO** acted corruptly to influence the testimonies of [REDACTED] D-0015 and D-0054. Intercepted communications between the Witnesses and **KILOLO**, and between the Accused about the Witnesses, expose the scope and nature of their concerted conduct.

89. These communications capture **KILOLO**'s extensive coaching of the two Witnesses immediately before and during their Main Case testimonies. Moreover, the Accused's violation of the VWU cut-off date underscores their corrupt conduct, and demonstrates how the execution of the charged crimes was calculated. Both Witnesses were coached on similar topics to ensure the alignment of their stories with other Defence witnesses. Both were fed questions to be posed by the Defence, Prosecution, and LRV, and the answers most favourable to **BEMBA**'s defence. They

²²⁰ Below, paras.151, 192.

²²¹ ICC-01/05-01/13-207-Conf, paras.11, 13; ICC-01/05-01/08-972-Anx, paras.27-31; ICC-01/05-01/08-1016.

²²² ICC-01/05-01/13-1110-Conf-AnxA.

were instructed to lie to TCIII about their extensive contacts with the *Bemba* Defence, to conceal their prior illicit communications, and to avoid unravelling the Overall Strategy. The Witnesses' belligerence and evasiveness in this case when confronted with the direct evidence of their illicit contact with the *Bemba* Defence is also telling. On the whole, the evidence leaves no doubt that the Accused acted corruptly to influence D-0015 and D-0054.

a) Witness D-0015 (P-0198) – [REDACTED]

90. Witness D-0015 is [REDACTED].²²³ He testified in the Main Case from 11 to 13 September 2013 *via* video-link²²⁴ about, *inter alia*, the structure and the chain of command within the MLC in 2002 and 2003, command and control over the MLC troops in CAR in that period, and other material facts.²²⁵

91. The evidence shows beyond reasonable doubt that **KILOLO**, with **BEMBA**'s knowledge and authorisation and **MANGENDA**'s assistance, illicitly coached D-0015 prior to and during his Main Case testimony. Communications intercepted by the Dutch authorities prove the illicit nature of D-0015's interactions with **KILOLO**.

92. *First*, during conversations immediately before and during D-0015's Main Case testimony, **KILOLO** instructed D-0015 on what to testify about. **KILOLO** explained the Defence position on certain topics.²²⁶ **KILOLO** also gave D-0015 the specific questions and answers on topics he would pose in Court, and those he anticipated the Prosecution and the LRV would ask. For example, **KILOLO** instructed D-0015 to testify:

²²³ T-29-ENG, p.53, lns.2-14. *Also* ICC-01/05-01/08-T-343-CONF-ENG-ET, p.14, lns.23-24, p.17, lns.1-4.

²²⁴ *See* ICC-01/05-01/08-T-343-Red-ENG, p.3, ln.25.

²²⁵ ICC-01/05-01/08-T-343-CONF-ENG-ET; ICC-01/05-01/08-T-344-CONF-ENG-ET; ICC-01/05-01/08-T-345-CONF-ENG-ET.

²²⁶ CAR-OTP-0077-1389, 1400-1404, lns.381-513.

- That the date MLC troops arrived in CAR—an important issue in the case—mentioned in a letter signed by **BEMBA** sent to the UN was erroneous.²²⁷
- Regarding **BEMBA**'s command and control over MLC troops operating in CAR, to offer arguments showing that it was impossible: *“plusieurs arguments qui montrent que c'était impossible”*.²²⁸
- Concerning crimes by MLC forces, to provide answers to *“réduire l'élément connaissance”* of **BEMBA**²²⁹ and that his evidence demonstrate that *“il y avait aucune information précise [...] c'étaient [sic] des simples rumeurs”*.²³⁰ If the Prosecution asked about Mongoumba town, to say: *“nos soldats ne sont pas arrivés là-bas”*, to avoid implying that **BEMBA**'s troops committed crimes there.²³¹
- Concerning the types of crimes rumoured to have been committed, not to mention rapes or murders, and to *“limite[r] [...] ça vraiment au strict minimum, en parlant simplement des biens volés”*.²³² When D-0015 did not immediately understand these instructions, **KILOLO** patiently repeated them in detail.²³³

93. After coaching D-0015, **KILOLO** elicited his contrived answers in Court to create the false impression before TCIII that they were spontaneous and unrehearsed. For instance, on 12 September 2013, **KILOLO** asked questions to elicit the false responses he had instructed D-0015 to give in Court the night before, including about the names and functions of the officers commanding the MLC troops in CAR, the whereabouts of **MOBUTU**'s troops after his fall, and whether **BEMBA** exercised

²²⁷ CAR-OTP-0079-0154, 0165, lns.349-352.

²²⁸ CAR-OTP-0079-0154, 0157, lns.41-45, 0158, lns.78-81.

²²⁹ CAR-OTP-0077-1389, 1397, ln.269.

²³⁰ CAR-OTP-0077-1389, 1396, lns.214-238.

²³¹ CAR-OTP-0079-0154, 0168, lns.463-469.

²³² CAR-OTP-0077-1389, 1397, lns.249-270, 1404-1405, lns.529-542.

²³³ CAR-OTP-0077-1389, 1404-1405, lns.514-544.

command and control over MLC troops.²³⁴ **KILOLO** did the same on 13 September, posing illicitly rehearsed questions in Court²³⁵ to elicit D-0015's false testimony.²³⁶

94. One of the most blatant examples of **KILOLO**'s corrupt conduct was his misuse of confidential questions provided by the LRV to coach D-0015. Prior to the LRV's examination, **KILOLO** promised D-0015 he would obtain the LRV's questions in advance.²³⁷ He did so with **MANGENDA**'s assistance.²³⁸ **KILOLO** then went over each question with D-0015 in detail—despite their confidentiality.²³⁹ He supplied the Witness with the answers benefitting **BEMBA**'s case.²⁴⁰ The following day in Court, the LRV posed the very questions **KILOLO** had just coached D-0015 on.²⁴¹ This sequence of events and the irrefutable evidence of **KILOLO**'s intercepted conversation with the Witness prove the falsity of his evidence in this trial that he knew the answers to the LRV's questions from following the Main Case. They also explain the Witness' evasiveness when confronted with excerpts of his intercepted conversation with **KILOLO** where he was coached about the LRV's questions.²⁴²

95. *Second*, **KILOLO** "corrected" the Witness' evidence during breaks in his testimony. For instance, earlier on 11 September 2013, D-0015 testified to the names of certain CAR military leaders without specifying their functions.²⁴³ In an intercepted conversation that evening at 20:31 CEST,²⁴⁴ **KILOLO** told D-0015 that he would again ask him about the names of the CAR military leaders who exercised command and control over the MLC troops in CAR—"[G]AMBI, MAZI,

²³⁴ ICC-01/05-01/08-T-344-CONF-ENG-ET, p.3, ln.24, p.5, ln.1, p.6, ln.3-p.7, ln.13, p.13, ln.25-p.20, ln.17.

²³⁵ ICC-01/05-01/08-T-345-Red-ENG, p.93, lns.3-7, p.97, lns.16-19.

²³⁶ ICC-01/05-01/08-T-345-Red-ENG, p.5, lns.11-20, p.9, ln.1-p.14, ln.25 (contacts with the Defence); ICC-01/05-01/08-T-345-Red-ENG, p.97, ln.16-p.98, ln.14 (control over the MLC troops).

²³⁷ CAR-OTP-0077-1389, 1393, lns.112-128.

²³⁸ CAR-OTP-0077-1407, 1408, ln.4; CAR-OTP-0088-0504, 0505-0507. See ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.

²³⁹ CAR-OTP-0079-1754, 1756-1757, lns.3-44.

²⁴⁰ CAR-OTP-0077-1389, 1393-1394, lns.104-172; CAR-OTP-0077-1407, 1408-1413, lns.3-215.

²⁴¹ ICC-01/05-01/08-T-345-CONF-ENG-ET, p.57, ln.22-p.79, ln.1, p.80, ln.4-p.92, ln.17. Also ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.

²⁴² T-30-ENG, p.51, lns.11-p.52, ln.6.

²⁴³ See ICC-01/05-01/08-T-343-Red-ENG, p.92, lns.7-17.

²⁴⁴ See CAR-OTP-0090-0630, 0682, row 102; CAR-OTP-0079-0154. Contacts under ten seconds are not included in the calculations.

BOMBAYAKE, LENGBE—to elicit the answers he sought.²⁴⁵ As D-0015 still did not know the functions of these military figures, **KILOLO** repeated the information for D-0015 to memorise. When D-0015 asked “*MAZI était de la logistique?*”, **KILOLO** corrected him saying “*[n]on, non, non, non. Logistique, c’était la garde présidentielle, pour le simple motif que tout... l’armement lourd était conservé dans des containers à la présidence de la République.*” Similarly, when D-0015 wondered if “*BOMBAYAKÉ ... BOMBAYAKÉ était ... était adjoint [...] au chef de l’état-major?*”, **KILOLO** explained “*Non. Il était le ... le chef de la garde présidentielle* ”.²⁴⁶

96. D-0015’s explanation, when confronted with this intercept—that he was only listening to **KILOLO** giving him “a lesson” regarding facts he already knew²⁴⁷—is as incredible as it is predictable. The intercepted conversation speaks for itself. And, it shows **KILOLO** saying “*non, non, non, non*” to the Witness’ assertions, and his giving him the “correct” answers. Further, the Witness never named many FACA commanders he testified about when he met with the *Bemba* Defence in April 2012, as the transcripts of that interview prove,²⁴⁸ despite the Witness’ claim before this Court that he did.²⁴⁹ The Witness also readily admitted in this case that he had not given “details of the [CAR] general staff” to **BEMBA**’s former counsel NKWEBE when they met in 2011.²⁵⁰

97. *Third*, **KILOLO** instructed the Witness to give false testimony. For instance, **KILOLO** told D-0015 to testify that he could not remember the language **BEMBA** used when talking to his troops.²⁵¹ D-0015 resisted this suggestion, responding that if he followed **KILOLO**’s instruction, “*ça paraîtra quand même suspect*”, because “*on sait*

²⁴⁵ CAR-OTP-0079-0154, 0157, lns.54-61. Earlier that day the Witness had mentioned these names in Court, but without specifying their respective functions: ICC-01/05-01/08-T-343-Red-ENG, p.92, lns.7-17.

²⁴⁶ CAR-OTP-0079-0154, 0158, lns.97-108.

²⁴⁷ T-30-ENG, p.29, ln.17-p.31, ln.12. Also p.74, ln.24-p.75, ln.1. Prior to being confronted with the recording, D-0015 acknowledged that he must have discussed CAR commanders—**BOMBAYAKÉ**, **BEMONDOMBI**, and **GAMBI**—with **KILOLO**, but stated that he could not remember if this could have happened between 11 and 13 September 2013: T-30-ENG, p.24, lns.3-16.

²⁴⁸ CAR-D21-0004-0709-R01, 0733, 0742.

²⁴⁹ T-30-ENG, p.83, lns.14-18, p.84, lns.8-23, p.87, lns.4-13.

²⁵⁰ T-30-ENG, p.87, lns.13-23.

²⁵¹ CAR-OTP-0079-0154, 0168, lns.479-482.

exactement que bon, ben, il s'adresse aux troupes souvent en lingala".²⁵² **KILOLO** replied that *"le problème de langue pour nous est capital"*²⁵³ and suggested an alternative solution—that D-0015 only discuss language under the following circumstances: *"Ou alors, tu réponds, mais avec beaucoup d'hésitation pour montrer que ça date de longtemps [...]. Tu peux en parler uniquement si on te pose la question, mais [...] [p]as spontanément, pas trop vite."*²⁵⁴

98. Similarly, **KILOLO** told D-0015 to testify that he did not encounter *Bemba* Defence Witnesses D-0019 ([REDACTED]) or D-0045 ([REDACTED]) in Bangui²⁵⁵ to ensure consistency with their testimonies. When testifying in this case, D-0015 conceded he lied. He confirmed meeting with [REDACTED] in Bangui in 2002,²⁵⁶—as reflected in his April 2012 statement to the *Bemba* Defence.²⁵⁷

99. *Fourth*, to conceal their illicit contacts and to ensure the Overall Strategy would not be exposed, **KILOLO** instructed D-0015 to testify falsely that he had only three phone communications with **KILOLO**, the last having taken place in January 2013.²⁵⁸ This was obviously false since the two were on the phone on 10 September 2013 at 23:55 CEST (the night before the Witness' testimony) discussing it, as CDRs show.²⁵⁹ Further, CDRs show that prior to that conversation, **KILOLO** and D-0015 had spoken at least 62 times for over seven hours.²⁶⁰ Knowing that the frequency and the length of these calls would reveal the illicit nature of their contacts, **KILOLO** emphasised to D-0015 that the impression to leave in Court was: *"nous ne nous connaissons pas bien"*.²⁶¹ True to **KILOLO**'s instruction, on 13 September 2013, when questioned by the Prosecution about his last contact with **KILOLO**, D-0015 testified falsely that it

²⁵² CAR-OTP-0079-0154, 0169, lns.498-500.

²⁵³ CAR-OTP-0079-0154, 0169, lns.507-508.

²⁵⁴ CAR-OTP-0079-0154, 0169, lns.501-502, 513-515.

²⁵⁵ CAR-OTP-0079-0154, 0160, lns.161-176.

²⁵⁶ T-30-ENG, p.44, lns.12-15.

²⁵⁷ CAR-D21-0004-0709-R01, 0743.

²⁵⁸ CAR-OTP-0079-0148, 0150, lns.26-34.

²⁵⁹ CAR-OTP-0090-0630, 0681, row 99.

²⁶⁰ CAR-OTP-0090-0630, 0675-0681, rows 1-98.

²⁶¹ CAR-OTP-0079-0148, 0152, lns.103-104.

was in “*janvier de cette année*”.²⁶²

100. The Witness’ claim in this trial that the question about his contact with **KILOLO** concerned prior “face-to-face” contacts,²⁶³ was false and designed to minimise his involvement in the charged offences. Two things show this: his answer was (i) very nearly *verbatim* what **KILOLO** told him to say; and (ii) did not consider the question of his prior contacts as limited to face-to-face contacts, since one of the contacts he enumerated was a *telephone call*: “[t]hey called me, asking whether I would be willing to [testify]”.²⁶⁴

101. *Fifth*, **KILOLO**’s deliberate circumvention of the VWU cut-off date and TCIII’s prohibition of witness preparation, shows its illicit nature. After D-0015’s 11 July 2013 contact cut-off date,²⁶⁵ **KILOLO** spoke with him at least 37 times, for over six hours,²⁶⁶ including at least three times for over an hour during the Witness’ testimony.²⁶⁷

102. Also, **BEMBA** knew and authorised **KILOLO**’s illicit contacts with the Witness. When speaking to D-0015, **KILOLO** conveyed **BEMBA**’s satisfaction with the Witness: “*lui-même aussi [...] t’a découvert davantage [...] il a dit que tu étais le meilleur témoin de toute l’affaire [...] il était vraiment dans une joie inhabituelle.*”²⁶⁸ **KILOLO** updated **BEMBA** on what D-0015 would testify about that day.²⁶⁹ **BEMBA** thus must have known that **KILOLO** was executing his instructions to illicitly coach witnesses, particularly given that **BEMBA** had to know that these witness contacts were in breach of TCIII’s specific orders.²⁷⁰

103. The evidence also shows without doubt that **MANGENDA** knowingly assisted

²⁶² ICC-01/05-01/08-T-345-CONF-FRA-ET, p.4, ln.26-p.5, ln.12, p.8, ln.15-p.9, ln.17. Also CAR-OTP-0079-0148, 0152, lns.86-90.

²⁶³ T-30-ENG, p.22, lns.10-14.

²⁶⁴ ICC-01/05-01/08-T-345-Red-ENG, p.5, lns.8-20.

²⁶⁵ CAR-OTP-0078-0290, 0297.

²⁶⁶ CAR-OTP-0090-0630, 0677-0682, rows 50-107.

²⁶⁷ CAR-OTP-0090-0630, 0681, rows 100-107.

²⁶⁸ CAR-OTP-0077-1389, 1391, lns.51-61, 68.

²⁶⁹ CAR-OTP-0079-1744.

²⁷⁰ ICC-01/05-01/08-1016, para.34; ICC-01/05-01/08-972-Anx, para.27.

KILOLO in illicitly coaching the Witness. **MANGENDA** facilitated **KILOLO**'s illicit coaching of D-0015 by, on **KILOLO**'s request,²⁷¹ sending him copies of the LRV questions,²⁷² which **KILOLO** coached the Witness about.²⁷³ **MANGENDA**'s knowledge of the Witness' coaching and his intention to further it is underscored by **KILOLO**'s updates to **MANGENDA** about the illicit instructions given to D-0015.²⁷⁴

104. The Witness himself was complicit in the Overall Strategy, advising **KILOLO** that the next Witness (D-0054) needed "*une très, très bonne préparation*"²⁷⁵ since D-0054 "*n'est pas intelligent et malin*" and thus the Prosecution could "*le déstabiliser, le ... le détruire automatiquement*".²⁷⁶ Having assisted **KILOLO** in the Overall Strategy, the Witness' refusal to take the oath to tell the truth before testifying in this case²⁷⁷ and his other belligerent and evasive demeanor when testifying is unsurprising.²⁷⁸

105. D-0015's testimony that during his conversations with **KILOLO**, **KILOLO** simply rehearsed what the Witness already knew, is both irrelevant and baseless. Even if it were true—which it is not—**BEMBA**, **KILOLO**, and **MANGENDA**, nevertheless worked to falsely present the evidence as spontaneous to enhance its apparent credibility. Further, D-0015 was coached about matters that he had not discussed with **KILOLO** and GIBSON in their April 2012 interview, such as Generals MAZI or LENGBE, **BEMBA**'s letter to the UN, when the MLC troops arrived in CAR, or the language used by **BEMBA** when speaking to his troops.²⁷⁹ There is no evidence showing that these matters were discussed at any other time. Finally, D-0015 demonstrated his awareness that the intercepted conversations contained evidence

²⁷¹ CAR-OTP-0079-1754, 1756-1757, lns.3-44.

²⁷² CAR-OTP-0077-1407, 1408, ln.4; CAR-OTP-0088-0504, 0505-0507. See ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.

²⁷³ Above, para.94.

²⁷⁴ CAR-OTP-0080-0604, 0607-0608, lns.61-75; CAR-OTP-0074-0926, 0945.

²⁷⁵ CAR-OTP-0077-1414, 1421-1422, lns.234-269.

²⁷⁶ CAR-OTP-0077-1414, 1422, lns.255-257.

²⁷⁷ T-29-ENG, p.44, ln.22-p.47, ln.17. The Witness had no difficulty taking a similar oath in the Main Case: ICC-01/05-01/08-T-343-CONF-ENG-ET, p.4, ln.9-p.5, ln.1.

²⁷⁸ E.g. the Witness frequently responded to questions by referring Counsel to Court documents or to ask **KILOLO**: T-29-ENG, p.68, lns.19-24, p.72, lns.9-14; T-30-ENG, p.13, lns.1-7, p.56, lns.7-17.

²⁷⁹ Compare above, paras.92, 95 with CAR-D21-0009-0001.

that the Accused acted corruptly to influence him, stating: “À moins «est-ce» que vous me dites ce que lui et moi avions dit et que vous détenez”.²⁸⁰

b) Witness D-0054 (P-0201) – [REDACTED]

106. Witness D-0054, a [REDACTED],²⁸¹ testified in the Main Case between 30 October to 1 November 2013 *via* video link about, *inter alia*, [REDACTED].²⁸²

107. The evidence shows beyond reasonable doubt that **KILOLO**, with **BEMBA**’s knowledge and authorisation and **MANGENDA**’s assistance, illicitly coached D-0054 prior to and during his Main Case testimony.

108. **BEMBA** authorised and instructed **KILOLO** to illicitly coach D-0054 prior to his testimony in the Main Case. Following TCIII’s inquiry about whether the *Bemba* Defence intended to call D-0054,²⁸³ a 29 August 2013 intercepted call at 14:17 CEST,²⁸⁴ reveals that **KILOLO** told **MANGENDA** about **BEMBA** pressuring him to call D-0054.²⁸⁵ **KILOLO** expressed to **MANGENDA** his hesitation to do so as he had not prepared D-0054 thoroughly and did not want to leave anything to chance; as **KILOLO** put it, “comme ça parler aux nuages”.²⁸⁶

109. The next day, in an intercepted conversation at 13:29 CEST,²⁸⁷ **MANGENDA** passed on **BEMBA**’s detailed instruction to **KILOLO** to illicitly coach D-0054²⁸⁸ on what and how to testify. ²⁸⁹ **MANGENDA** informed **KILOLO** of **BEMBA**’s instructions that D-0054 not answer questions “*du tic au tac*”, and that the Witness

²⁸⁰ T-29-FRA, p.73, lns.22-23. The Witness was otherwise evasive in his responses: *e.g.* T-29-ENG, p.59, ln.2-p.61, ln.1.

²⁸¹ T-28-ENG, p.16, ln.14-p.17, ln.9.

²⁸² *Generally* ICC-01/05-01/08-T-347-CONF-ENG-ET; ICC-01/05-01/08-T-348-CONF-ENG-ET; ICC-01/05-01/08-T-349-CONF-ENG-ET.

²⁸³ ICC-01/05-01/08-T-339-Red-ENG, p.67, lns.10-19.

²⁸⁴ *See* CAR-OTP-0079-1509, 1509, row 3.

²⁸⁵ CAR-OTP-0082-0107, 0110, lns.70-72.

²⁸⁶ *Ibid.*

²⁸⁷ CAR-OTP-0077-1026, row 252; CAR-OTP-0079-1507, 1508, row 17.

²⁸⁸ CAR-OTP-0079-0131, 0133, lns.15-30.

²⁸⁹ CAR-OTP-0079-0131, 0134-0138, lns.35-190. *Also* ICC-01/05-01/13-1110-Conf-AnxA, paras.73-83.

testify to specific matters,²⁹⁰ including that he (i) deny knowing anything about events at “Mongoumba”;²⁹¹ (ii) deny having any powers (“*clairement, qu’il n’avait pas de pouvoir*”) although a member of [REDACTED]²⁹² and that they had “*mélangé les troupes*”;²⁹³ (iii) pretend (“*ce qu’il doit faire c’est de prétendre*”) that he went to visit family members at a certain location;²⁹⁴ and (iv) state that he crossed over from Zongo to Bangui after the troops arrived in PK12 and joined “*le truc de ces gens-là, qui commandaient toute la guerre*” until December 2002, when he was replaced.²⁹⁵ **BEMBA** also directed that D-0054 explain that a “*grand groupe*” of soldiers crossed over to CAR because “*il fallait quand même qu’ils soient [...] à mesure de riposter*”.²⁹⁶ Finally, **BEMBA** insisted that D-0054 be instructed not to forget to mention “*les évènements qu’ils filmaient*” as well as “*les deux grands véhicules qu’ils avaient vus*”.²⁹⁷ **MANGENDA** also told **KILOLO** of **BEMBA**’s expectation that **KILOLO** finish instructing D-0054 before the Witness could speak with anyone else from the *Bemba* Defence team, particularly “[n]otre blanc”²⁹⁸—a code used for HAYNES.²⁹⁹

110. **KILOLO** and **MANGENDA** complied with **BEMBA**’s instructions to secure the testimony of, and illicitly coach, D-0054 prior to his testimony in the Main Case. Intercepted communications show that in September and October 2013, **KILOLO** repeatedly discussed D-0054’s illicit coaching with **MANGENDA**, **BEMBA**, and D-0015:

²⁹⁰ CAR-OTP-0079-0131, 0135, lns.70-72.

²⁹¹ **MANGENDA** conveyed **BEMBA**’s message that D-0054 was to testify that he did not know anything about “*l’endroit qui nous a causé beaucoup d’ennuis hier. Tu comprends? Donc lui ne connaît rien par rapport à cet endroit-là.*”: CAR-OTP-0079-0131, 0134, lns.63-66. The previous day, **MANGENDA** reported to **KILOLO** that D-0029 had provided damaging evidence by testifying that MLC troops committed crimes in Mongoumba: CAR-OTP-0080-0245, 0247, lns.6-28.

²⁹² [REDACTED]: ICC-01/05-01/08-T-182-ENG-ET, p.17, ln.20-p.18, ln.4; ICC-01/05-01/08-T-183-ENG CT, p.16, lns.1-8. Also ICC-01/05-01/08-T-347-CONF-ENG-ET, p.40, ln.11-p.42, ln.16.

²⁹³ CAR-OTP-0079-0131, 0137, lns.150-153. **KILOLO** conveyed this instruction to D-0054: CAR-OTP-0082-0877, 0888-0889, lns.377-409; CAR-OTP-0082-1109, 1129, lns.651-655.

²⁹⁴ CAR-OTP-0079-0131, 0137, lns.172-173.

²⁹⁵ CAR-OTP-0079-0131, 0136-0137, lns.127-146.

²⁹⁶ CAR-OTP-0079-0131, 0136, lns.116-122.

²⁹⁷ CAR-OTP-0079-0131, 0134, lns.46-55.

²⁹⁸ See CAR-OTP-0079-0131, 0133-0134, lns.15-39.

²⁹⁹ See ICC-01/05-01/13-1110-Conf-AnxA, paras.93-97.

- On 1 September 2013,³⁰⁰ **KILOLO** confirmed to **MANGENDA** that he had spoken to D-0054, who agreed to testify falsely according to **BEMBA**'s instructions, except in respect of his [REDACTED] membership.³⁰¹ **KILOLO** told **MANGENDA** that he would try to convince D-0054 to testify that he was at least an "[REDACTED], *ne fussent que quelques jours*" as it would lend credence to his false testimony.³⁰²
- On 9 September 2013,³⁰³ **KILOLO** and **MANGENDA** discussed how to shape D-0054's testimony to align it with the rest of the evidence and not to give the Prosecution an opportunity to discredit him.³⁰⁴ They paid close attention to keeping the instructions to D-0054 logical and simple to avoid contradictions on D-0054's part.³⁰⁵
- On 13 September 2013,³⁰⁶ **KILOLO** sought D-0015's input on how best to instruct D-0054.³⁰⁷ D-0015 advised **KILOLO** that D-0054 needed "*une très, très bonne préparation*",³⁰⁸ otherwise he might damage the *Bemba* Defence case.³⁰⁹
- On 17 October 2013,³¹⁰ **KILOLO** spoke to **BEMBA** about his ongoing illicit coaching of D-0054, reminding **BEMBA** of the hours of work already put in— "*n'oubliez pas, nous avons beaucoup arrangé avec [...] [REDACTED] et vraiment c'est des heures*".³¹¹

³⁰⁰ CAR-OTP-0079-1509, 1509, row 4.

³⁰¹ CAR-OTP-0077-1383, 1384, lns.33, 1385, lns.69-71, 1386, lns.101-102.

³⁰² CAR-OTP-0077-1383, 1386, lns.77-80, 1387, lns.109-112.

³⁰³ CAR-OTP-0072-0078, row 2020.

³⁰⁴ CAR-OTP-0079-1737, 1739-1743, lns.32-161.

³⁰⁵ CAR-OTP-0079-1737, 1740, lns.72-74.

³⁰⁶ CAR-OTP-0074-0926, 0951; CAR-OTP-0079-1509, 1509, row 17.

³⁰⁷ CAR-OTP-0077-1414, 1420, lns.192-200.

³⁰⁸ CAR-OTP-0077-1414, 1421-1422, lns.234-269.

³⁰⁹ CAR-OTP-0077-1414, 1421-1422, lns.237-257. **KILOLO** indicated to D-0015 that D-0054 was the last Defence witness left (*see* 1420, lns.196-197). D-0015's suggestions in respect of the preparation are thus solely in respect of D-0054.

³¹⁰ CAR-OTP-0080-1286, 1293, row 45.

³¹¹ CAR-OTP-0082-0618, 0623, lns.128-130.

111. **KILOLO**'s frequent contacts with D-0054 before his testimony shows the extensive time **KILOLO** spent coaching him. Between September 2013 and 29 October 2013 (the VWU cut-off date³¹²) **KILOLO** was in telephone contact with D-0054 at least 41 times (excluding SMS messages), for approximately six hours and 43 minutes.³¹³ Many of these telephone calls occurred around the time **KILOLO** either confirmed that he had just coached D-0054, or was planning to coach him. CDRs show that on 9 September 2013, the same day **KILOLO** and **MANGENDA** discussed how to shape D-0054's testimony,³¹⁴ **KILOLO** and D-0054 spoke on the telephone for nearly 50 minutes.³¹⁵ CDRs also confirm **KILOLO**'s 17 October 2013 conversation with **BEMBA** informing him of the hours of work he put into illicitly coaching D-0054.³¹⁶ Between 22 and 25 September 2013 alone, **KILOLO** was in telephone contact with D-0054 26 times (excluding SMS messages), for approximately four hours and 19 minutes.³¹⁷

112. That **KILOLO**'s communications with D-0054 prior to his testimony were illicit is also apparent from **KILOLO**'s misrepresentations to TCIII. For example, on 21 October 2013, **KILOLO** led TCIII to believe that the *Bemba* Defence had not been in contact with the Witness prior to the Chamber's then current authorisation, stating that he would only now "make the various arrangements to enter into contact with [D-0054] because of course now he will agree to talk to us over the telephone."³¹⁸ However, between 5 September and 21 October 2013 alone, **KILOLO** was in telephone contact with D-0054 at least 34 times, for a total of at least five hours and 31 minutes.³¹⁹

³¹² CAR-OTP-0078-0290, 0297.

³¹³ See CAR-OTP-0090-0630, 0710-0715, rows 8-60. Also T-28-ENG, p.23, lns.21-25, p.60, lns.16-21, p.62, lns.16-18. During these calls **KILOLO** also used an unidentified number. See CAR-OTP-0088-0398, 0427-0428, 0430, 0431.

³¹⁴ Above, para.110.

³¹⁵ See CAR-OTP-0090-0630, 0711, row 15.

³¹⁶ Above, para.110.

³¹⁷ See CAR-OTP-0090-0630, 0711-0714, rows 17-50.

³¹⁸ ICC-01/05-01/08-T-346-CONF-Red-ENG, p.25, lns.13-17.

³¹⁹ CAR-OTP-0090-0630, 0710-0714, rows 8-51.

113. The above belies any contention that **KILOLO** only spoke with the Witness during this time to encourage him to testify or to help him secure the requisite authorisations from his superiors.³²⁰

114. In addition to being illicitly coached prior to his testimony, the only reasonable inference from the evidence is that **KILOLO** also gave money to D-0054, despite D-0054's testimony in the Main Case³²¹ and this case³²² that he received no money from the *Bemba* Defence. On 19 October 2013,³²³ just two weeks before D-0054's testimony, **KILOLO** and **MANGENDA** discussed paying an upcoming witness whom **KILOLO** was trying to reach.³²⁴ In a later conversation that day,³²⁵ **KILOLO** told **MANGENDA** that he had just spoken to D-0054.³²⁶ Given the scheduling of his testimony and **KILOLO**'s 13 September 2013 statement to D-0015, that D-0054 would be the last Defence witness,³²⁷ the payment that **KILOLO** and **MANGENDA** discussed could only have concerned D-0054.³²⁸

115. The evidence, including CDRs and **KILOLO**'s intercepted communications with D-0054, shows that **KILOLO** deliberately breached the VWU cut-off date and remained in illicit contact with D-0054, including on the days he testified. The direct evidence of **KILOLO**'s intercepted conversations with D-0054 also proves **KILOLO**'s illicit coaching of the Witness.

³²⁰ *E.g.* T-29-ENG, p.18, ln.17-p.22, ln.14, p.29, lns.2-7.

³²¹ ICC-01/05-01/08-T-349-Red-ENG, p.44, ln.19-p.45, ln.6.

³²² T-29-ENG, p.4, ln.24-p.5, ln.3.

³²³ CAR-OTP-0080-1138, 1184; CAR-OTP-0080-1280, 1282, row 42.

³²⁴ CAR-OTP-0082-1349, 1352, lns.54-64.

³²⁵ CAR-OTP-0080-1138, 1188; CAR-OTP-0080-1280, 1282, row 40.

³²⁶ CAR-OTP-0082-0814, 0818, lns.81-83. **KILOLO** and D-0054 spoke for approximately five minutes on 19 October 2013: CAR-OTP-0090-0630, 0714, row 51.

³²⁷ CAR-OTP-0074-0926, 0951.

³²⁸ D-0015 finished his testimony on 13 September 2013. The next witness was D-0054, who started his testimony on 30 October 2013. D-0013 testified after D-0054, but only after the Defence filed a request to this effect on 4 November 2013: ICC-01/05-01/08-2862-Conf-Red2, para.10. *Also* CAR-OTP-0077-1414, 1421-1422, lns.196-197.

116. CDRs show that on 29 October 2013 (the VWU cut-off date³²⁹) **KILOLO** and D-0054 spoke at least five times between 20:00 and 22:41, totalling over one hour and 16 minutes.³³⁰ **KILOLO** and D-0054 spoke more frequently during D-0054's testimony. As the Witness conceded in his testimony in this case, "there was a good number of communications, many occasions when communication took place."³³¹

117. On the days of D-0054's testimony, **KILOLO** was in telephone contact with the Witness at least 16 times, for three hours and 43 minutes.³³² In the evening of 30 October 2013 (the first day of D-0054's testimony), between 19:31 and 22:14, **KILOLO** called D-0054 at least four times, for approximately one hour and 21 minutes.³³³ On the morning of 31 October (the second day of D-0054's testimony), at 06:46, **KILOLO** called D-0054 for 46 minutes.³³⁴ During the overnight adjournment of D-0054's testimony that day, **KILOLO** spoke to him at least 11 times for approximately one hour and 35 minutes.³³⁵ Attempting to minimise his own complicity, D-0054 testified that "[he] couldn't stop [**KILOLO**]" from calling him.³³⁶ However, the evidence shows that D-0054 nonetheless answered **KILOLO**'s calls.

118. Intercepts of some of these telephone conversations show that **KILOLO** dictated D-0054's testimony on such material matters as **BEMBA**'s arrival in Bangui,³³⁷ **BEMBA**'s command of troops,³³⁸ **BEMBA**'s military role,³³⁹ the languages spoken by MLC troops,³⁴⁰ D-0054's prior contacts with the *Bemba* Defence,³⁴¹ the motives for the

³²⁹ CAR-OTP-0078-0290, 0297.

³³⁰ CAR-OTP-0090-0630, 0715, rows 61-65. The number "[REDACTED]" was kept for "special" contacts between **KILOLO** and D-0054 during his testimony: CAR-OTP-0082-0866, 0875, lns.278-286.

³³¹ T-28-ENG, p.64, lns.11-16. Also p.25, lns.4-17, p.26, lns.10-11.

³³² CAR-OTP-0090-0630, 0715-0716, rows 66-81.

³³³ CAR-OTP-0090-0630, 0715, rows 66-69.

³³⁴ CAR-OTP-0090-0630, 0715, row 70.

³³⁵ CAR-OTP-0090-0630, 0715-0716, rows 71-81.

³³⁶ T-29-ENG, p.8, lns.7-21. Also p.24, ln.16-p.25, ln.1.

³³⁷ CAR-OTP-0082-0877, 0886-0887, lns.298-357; CAR-OTP-0082-1087, 1093-1094, lns.193-200.

³³⁸ CAR-OTP-0082-0877, 0880, lns.53-56, 0891, lns.499-517; CAR-OTP-0082-1109, 1112-1113, lns.38-99, 1116, lns.206-211, 1128, lns.607-635, 1131-1132, lns.746-758.

³³⁹ CAR-OTP-0082-0866, 0871, lns.121-136; CAR-OTP-0082-0877, 0879, lns.15-17; CAR-OTP-0082-1109, 1127, lns.586-595.

³⁴⁰ CAR-OTP-0082-1109, 1133-1134, lns.813-832.

³⁴¹ CAR-OTP-0082-0866, 0869-0870, lns.45-94.

MLC's intervention in CAR,³⁴² the dates of **BEMBA**'s troop movements,³⁴³ D-0054's awareness of military communications, the identity of the perpetrators of the crimes,³⁴⁴ investigations into the crimes, and D-0054's role and conduct.³⁴⁵ **KILOLO** also dictated to D-0054 the answers to the expected questions from the Prosecution,³⁴⁶ the Judges,³⁴⁷ and the LRV³⁴⁸—**MANGENDA** sent the LRV questions to **KILOLO** *via* email on 31 October 2013.³⁴⁹ For instance:

- **KILOLO** insisted that D-0054 testify falsely that **BEMBA**'s troops arrived in Bangui on 7 or 8 November, even though D-0054 suggested the end of November or beginning of December.³⁵⁰ The next morning, D-0054 asked **KILOLO** to go through these dates again, expressing concern about forgetting the scripted answers in Court.³⁵¹
- **KILOLO** instructed D-0054 to testify falsely that there was no complaint and no evidence had been found to support the allegations of any MLC criminal activity in CAR³⁵² and, for that reason **BEMBA**, was unaware of the crimes.³⁵³
- Concerning the language spoken by MLC troops, which ostensibly could identify them as such, **KILOLO** prevailed on D-0054 to testify falsely that "*la plupart parlait le swahili, [...] parce que le plus grand nombre était de la Brigade de*

³⁴² CAR-OTP-0082-0877, 0890-0891, lns.482-496; CAR-OTP-0082-1087, 1097-1098, lns.315-356.

³⁴³ CAR-OTP-0082-0866, 0872, lns.156-161; CAR-OTP-0082-0877, 0879, lns.19-29; CAR-OTP-0082-0659, 0661, lns.19-23.

³⁴⁴ CAR-OTP-0082-1087, 1098, lns.356-379, 1099, lns.397-399, 424-427; CAR-OTP-0082-0659, 0661, lns.9-28.

³⁴⁵ CAR-OTP-0082-0877, 0896-0897, lns.713-763; CAR-OTP-0082-1087, 1098, lns.385-387, 1101, lns.490-496, 1103-1104, lns.583-627; CAR-OTP-0082-1109, 1125, lns.527-1126.

³⁴⁶ CAR-OTP-0082-0877, 0887, lns.328-329; CAR-OTP-0082-1109, 1136, lns.914-918.

³⁴⁷ CAR-OTP-0082-0866, 0869-0875, lns.45-274; CAR-OTP-0082-0877, 0879-0901, lns.15-911; CAR-OTP-0082-1109, 1112-1113, lns.43-99.

³⁴⁸ CAR-OTP-0082-0866, 0869, lns.35-43.

³⁴⁹ CAR-OTP-0082-1109, 1113, lns.101-106, 1123-1139, lns.439-1024.

³⁵⁰ CAR-OTP-0088-0504, 0516-0518.

³⁵¹ CAR-OTP-0082-0877, 0886-0887, lns.303-333.

³⁵² CAR-OTP-0082-1087, 1093-1094, lns.183-211.

³⁵³ CAR-OTP-0082-0877, 0897, lns.756-760; CAR-OTP-0082-1087, 1103, lns.558-584.

³⁵⁴ CAR-OTP-0082-0877, 0899, lns.837-853; CAR-OTP-0082-1087, 1102, lns.506-510, 1104, lns.612-626.

MUSTAPHA, il venait de l'est. [...] [u]n petit groupe parlait lingala [...] d'autres encore parlaient français [...] [l]e ngbandi".³⁵⁴

- **KILOLO** provided D-0054 with back-up information on the physical appearance of people he was instructed to mention in his testimony to bolster the Witness' credibility, including LENGBE, MAZI, and BOMBAYAKE³⁵⁵ — senior CAR officers about whom **KILOLO** coached other witnesses.³⁵⁶
- **KILOLO** coached D-0054 to testify that they had spoken five to six times,³⁵⁷ their last contact being about a month before D-0054's testimony.³⁵⁸ **KILOLO** also directed D-0054 to say that he had never met **KILOLO**³⁵⁹ and had only met his predecessor NKWEBE once in 2011.³⁶⁰ **KILOLO** crucially reminded D-0054: *"personne de la Défense ne vous a appelé la nuit pour vous préparer, en disant faites attention demain, dites ceci, dites cela, jamais, jamais, jamais".*³⁶¹

119. The evidence also shows that **KILOLO** encouraged D-0054 to liaise with other Defence witnesses to align their fabricated testimonies, including D-0015 (who testified just before D-0054³⁶²), and instructed D-0054 to lie about it.³⁶³

120. Other elements of these conversations demonstrate their illicit nature and that **KILOLO** acted corruptly to influence the Witness. For instance, D-0054 objected to

³⁵⁴ CAR-OTP-0082-1109, 1133-1134, lns.813-832.

³⁵⁵ CAR-OTP-0082-0877, 0882-0883, lns.143-190. *Also* T-28-ENG, p.50, ln.10-p.55, ln.12.

³⁵⁶ *Above*, paras.95, 105. *Below*, paras.121, 260.

³⁵⁷ CAR-OTP-0082-0866, 0870, lns.80-86; CAR-OTP-0082-1087, 1090, lns.63-67. *Also* CAR-OTP-0082-0877, 0894, lns.646-649.

³⁵⁸ CAR-OTP-0082-0866, 0869, lns.45-48; CAR-OTP-0082-1087, 1092, lns.121-123. *Also* T-29-ENG, p.31, lns.14-25.

³⁵⁹ CAR-OTP-0082-1087, 1093, lns.162-164.

³⁶⁰ CAR-OTP-0082-0866, 0869, lns.61-69. *Also* CAR-OTP-0082-1087, 1093, lns.164-167.

³⁶¹ CAR-OTP-0082-0877, 0899, lns.820-822 (emphasis added).

³⁶² CAR-OTP-0082-0655, 0657, ln.23; CAR-OTP-0082-0866, 0873-0874, lns.219-229. "[REDACTED]" refers to "[REDACTED]". *E.g.* ICC-01/05-01/08-T-343-CONF-ENG-ET. *Also* CAR-OTP-0082-0866, 0871, ln.142. For contacts with other witnesses: *see* CAR-OTP-0082-1109, 1115-1120; CAR-OTP-0082-0659, 0661-0662, lns.27-58; CAR-OTP-0082-0663, 0665-0668, lns.8-112; CAR-OTP-0082-0903, 0906-0908, lns.60-123.

³⁶³ CAR-OTP-0082-1087, 1092-1093, lns.152-167. D-0054 did, in fact, contact D-0015, in relation to, *inter alia*, the details of the disarmament of D-0054's troops: CAR-OTP-0082-0866, 0873-0874, lns.223-233; CAR-OTP-0082-0609, 0610, lns.12-22.

some of **KILOLO**'s instructions because they did not make [REDACTED] sense. Nevertheless, **KILOLO** emphasised that:

*Mon... mon frère, ça c'est une théorie militaire, mais moi je suis en train de vous parler du procès, ici nous n'avons pas de théorie militaire, nous avons un procès, c'est une lutte [...] Alors, dans le cadre de la lutte en question, il faudra que ça sorte comme s'ils étaient mélangés, et vous n'êtes pas le seul, d'autres officiers aussi sont passés ici et ils ont soutenu la même thèse.*³⁶⁴

KILOLO also vetted any suggestions from D-0054 against their potential to further the Defence case. **KILOLO**, for example, strongly objected to D-0054's suggestion that he testify to receiving intelligence situation reports on Bangui because "*il ne faut pas que ça sonne comme si ce service de renseignement opérait à BANGUI [...]*".³⁶⁵ **KILOLO** told D-0054 that he would not ask any questions in Court that were not previously rehearsed.³⁶⁶ He instructed D-0054 to pretend that he did not know or had forgotten the answer to any question not touched on in their illicit conversations, discouraging any unrehearsed answers.³⁶⁷

121. **KILOLO** surreptitiously corrected the Witness' "mistakes" made during his testimony. For instance, on 30 October 2013, the Witness erroneously testified that the person in charge of the [REDACTED] was "*Eric Lengbe*".³⁶⁸ That evening, **KILOLO** sought to correct D-0054's "mistake", telling him "*parce que vous voyez au lieu de dire THIERRY LENGBE à un certain point vous vous êtes trompé, vous avez dit ERIC LEMBE, au lieu de dire THIERRY LENGBE*". He warned him that the issue was likely to be revisited during questioning: "*alors ils reviendront là-dessus pour vous dire que, mais euh... vous... peut-être que vous ne le connaissez même pas, si vraiment vous le connaissez,*

³⁶⁴ CAR-OTP-0082-0877, 0888-0889, lns.377-445.

³⁶⁵ CAR-OTP-0082-0877, 0891-0892, lns.533-543.

³⁶⁶ CAR-OTP-0082-0866, 0874, lns.241-247.

³⁶⁷ CAR-OTP-0082-0877, 0901, lns.909-911; CAR-OTP-0082-1087, 1106-1107, lns.697-712.

³⁶⁸ ICC-01/05-01/08-T-347-Red-ENG, p.40, ln.25-p.41, ln.2, p.46, lns.11-13 (emphasis added).

dites-nous comment il est physiquement?".³⁶⁹ The Witness made the same telltale "mistake" in this case. When asked if he recalled mentioning someone named "LENGBÉ" in the Main Case, the Witness repeated his error as he had done originally in the Main Case before being "corrected" by **KILOLO**, namely that *Eric LENGBÉ* was "a colonel [...] in charge of [REDACTED] in Bangui".³⁷⁰

122. Any suggestion that the *Bemba* Defence had no authority over D-0054 to force him to lie³⁷¹ and that D-0054's Main Case testimony was "in keeping" with what he said to the *Bemba* Defence during their interviews³⁷² is irrelevant and, in any case, refuted by the evidence. *First*, as discussed above in relation to D-0015, even if that were so, **BEMBA**, **KILOLO**, and **MANGENDA** deliberately concealed the true fact that the Witness' responses were planned and choreographed in an effort to mislead TCIII as to the weight and credibility to accord D-0054. *Second*, whether the Witness' testimony was in keeping with what he previously told the Defence fails to undermine the unequivocal content of the intercepts showing that the Accused, particularly **BEMBA**, **KILOLO**, and **MANGENDA**, intentionally acted with a corrupt purpose to influence the witness (*i.e.*, for him to misrepresent his evidence to TCIII). *Finally*, the Defence's contention is refuted by the fact that D-0054 lied when testifying according to **KILOLO**'s instructions. For example:

- According to **KILOLO**'s instructions to testify that no complaints of criminal activities had been made to the commission of investigations,³⁷³ D-0054 testified falsely that [REDACTED] about crimes being committed by MLC troops from the CAR population.³⁷⁴ The Witness conceded in his testimony in this case that when he testified in the Main Case he knew that [REDACTED]³⁷⁵ and that the

³⁶⁹ CAR-OTP-0082-0877, 0882, lns.143-145. Also T-28-ENG, p.30, lns.14-17.

³⁷⁰ T-28-ENG, p.27, lns.9-11.

³⁷¹ *E.g.* T-29-ENG, p.4, ln.24-p.5, ln.24.

³⁷² T-29-ENG, p.9, lns.3-9.

³⁷³ Above, para.118.

³⁷⁴ ICC-01/05-01/08-T-348-CONF-ENG-ET, p.50, ln.24-p.52, ln.13.

³⁷⁵ T-28-ENG, p.44, ln.24. Also T-28-ENG, p.43, lns.19-21.

Bemba Defence knew of these complaints because “they were aware of it. They had the information.”³⁷⁶

- In accordance with **KILOLO**’s instructions to lie about the number of times D-0054 had spoken with **KILOLO**, including the date of their last contact,³⁷⁷ D-0054 testified falsely that his last contact with **KILOLO** or anyone else from the *Bemba* Defence took place two months prior to his testimony³⁷⁸ and even denied knowing **KILOLO**.³⁷⁹ As instructed, D-0054 added that his only personal contact with **BEMBA**’s Defence team was with his deceased lawyer NKWEBE in 2011.³⁸⁰ After being confronted with intercepts of his conversations with **KILOLO**, D-0054 conceded that he knew **KILOLO**, had sufficient familiarity with **KILOLO** such that he could recognise **KILOLO**’s voice on the intercepted calls,³⁸¹ and that he spoke with **KILOLO** immediately prior to and during his testimony.³⁸²

123. True to his illicit preparation, D-0054 also delivered the scripted answer on languages spoken by MLC troops in his Main Case testimony³⁸³ and, at times, even volunteered the scripted information without being asked the relevant question. For example, when asked if any other ALC liaison officers were at the FACA Main Staff, D-0054 volunteered that **BEMBA** arrived in Bangui and spoke with the troops in French and Lingala.³⁸⁴

124. **BEMBA** was aware of **KILOLO**’s illicit activities during D-0054’s testimony. As reflected above, **BEMBA** instructed and authorised D-0054’s illicit coaching. Further,

³⁷⁶ T-29-ENG, p.34, ln.24-p.35, ln.3.

³⁷⁷ Above, para.118.

³⁷⁸ ICC-01/05-01/08-T-349-CONF-ENG-ET, p.39, ln.9-p.45, ln.9.

³⁷⁹ ICC-01/05-01/08-T-349-Red-ENG, p.44, lns.5-8.

³⁸⁰ ICC-01/05-01/08-T-349-Red-ENG, p.39, ln.12-p.40, ln.3, p.42, ln.12-p.43, ln.3.

³⁸¹ E.g. T-28-ENG, p.32, lns.11-13.

³⁸² T-29-ENG, p.8, lns.7-21. Also T-29-ENG, p.24, ln.16-p.25, ln.1.

³⁸³ ICC-01/05-01/08-T-349-Red-ENG, p.50, ln.21-p.51, ln.18.

³⁸⁴ See ICC-01/05-01/08-T-347-CONF-ENG-ET, p.42, ln.17-p.43, ln.2, p.46, lns.1-16; CAR-OTP-0082-0877, 0883-0884, lns.191-200.

during an intercepted call on 1 November 2013 at 07:47 CEST (immediately following the conclusion of D-0054's evidence),³⁸⁵ **KILOLO** told **BEMBA** that he had not been able to respond to **BEMBA**'s call the previous day because he was on the phone with D-0054, whose illicit coaching exhausted him: "*ça [...] m'a beaucoup épuisé*".³⁸⁶

2. The Cameroon Witnesses

125. With **BEMBA**'s knowledge and authorisation, and with **MANGENDA**'s assistance, **ARIDO** and **KILOLO** acted corruptly to influence D-0002, D-0003, D-0004, and D-0006. The pattern of evidence in this case proves the Accused's illicit conduct beyond reasonable doubt.

126. The Cameroon Witnesses were illicitly coached as a group and their false stories meticulously constructed. Likewise, they were each paid between approximately EUR 760³⁸⁷ and EUR 1000³⁸⁸ directly or through third-party proxies immediately before their scheduled testimony. According to instructions given by, *inter alia*, **ARIDO**, **KILOLO**, and **KOKATÉ**, the Witnesses testified falsely about their military status; observations on the relevant events; money received from the *Bemba* Defence; contacts with the *Bemba* Defence; and not knowing **ARIDO** or **KOKATÉ**. The evidence proves unequivocally that the Accused illicitly coached and corruptly paid the Witnesses.

127. The Cameroon Witnesses testified in the Main Case in June 2013 *via* video-link from Yaoundé, Cameroon.³⁸⁹ Specifically, D-0002 testified from 12 to 13 June 2013;³⁹⁰

³⁸⁵ CAR-OTP-0080-1286, 1289, row 8; CAR-OTP-0080-1138, 1243-1244.

³⁸⁶ CAR-OTP-0082-0669, 0671, lns.14-21. **KILOLO** similarly complained about D-0013: *below*, para.249.

³⁸⁷ CFA 500,000 (*below* para.162) using the conversation rate on 27 May 2013.

³⁸⁸ USD 1335.15 (*below* para.163) using the conversion rate on 20 June 2013.

³⁸⁹ CAR-D21-0003-0187, 0188. *Also* CAR-OTP-0078-0290, 0294; CAR-D21-0007-0004, 0005; CAR-D21-0004-0310, 0314, lns.135-143; CAR-D21-0004-0354, 0358, lns.133-140.

³⁹⁰ ICC-01/05-01/08-T-321-CONF-ENG-ET; ICC-01/05-01/08-T-321bis-CONF-ENG-ET; ICC-01/05-01/08-T-322-CONF-ENG-ET.

D-0003 from 18 to 25 June 2013;³⁹¹ D-0004 from 18 to 20 June 2013;³⁹² and D-0006 testified from 21 to 24 June 2013.³⁹³ They each testified falsely to the events as ostensible FACA soldiers in CAR between October 2002 and March 2003.

128. At trial in this case, D-0002 admitted to neither being a soldier, nor having received military training.³⁹⁴ Between October 2002 and March 2003, he was in [REDACTED], where he was a [REDACTED].³⁹⁵ Likewise, D-0003 admitted in this case that he never participated in military affairs as a militia or armed group member.³⁹⁶ He left CAR [REDACTED].³⁹⁷ And, between October 2002 and March 2003, he was in [REDACTED] and subsequently in [REDACTED].³⁹⁸ D-0004 and D-0006 also had never been soldiers.³⁹⁹ D-0004 had been in [REDACTED] before he moved to [REDACTED],⁴⁰⁰ whereas D-0006 was explained that he was a [REDACTED], who used to [REDACTED].⁴⁰¹

a) First contact with ARIDO (January 2012)

129. Around January 2012,⁴⁰² pursuant to KOKATÉ's instructions, **ARIDO** offered a group of prospective witnesses, including the Cameroon Witnesses, CFA 10,000,000

³⁹¹ ICC-01/05-01/08-T-325-CONF-ENG-ET; ICC-01/05-01/08-T-325bis-CONF-ENG-ET; ICC-01/05-01/08-T-326-CONF-ENG-ET; ICC-01/05-01/08-T-326bis-CONF-ENG-ET; ICC-01/05-01/08-T-330-CONF-ENG-ET.

³⁹² ICC-01/05-01/08-T-325bis-CONF-ENG-ET; ICC-01/05-01/08-T-326-CONF-ENG-ET; ICC-01/05-01/08-T-326bis-CONF-ENG-ET; ICC-01/05-01/08-T-327-CONF-ENG-ET; ICC-01/05-01/08-T-327bis-CONF-ENG-ET; CAR-D21-0004-0310, 0314, lns.135-143.

³⁹³ ICC-01/05-01/08-T-328-CONF-ENG-ET; ICC-01/05-01/08-T-328bis-CONF-ENG-ET; ICC-01/05-01/08-T-329-CONF-ENG-ET; ICC-01/05-01/08-T-329bis-CONF-ENG-ET.

³⁹⁴ T-18-ENG, p.35, lns.13-14, p.38, lns.8-11.

³⁹⁵ T-18-ENG, p.36, ln.22-p.37, ln.3. Also T-20-ENG, p.55, ln.9-p.56, ln.13.

³⁹⁶ T-22-ENG, p.30, ln.20-p.31, ln.1.

³⁹⁷ T-26-ENG, p.62, lns.5-8.

³⁹⁸ T-22-ENG, p.32, lns.14-25.

³⁹⁹ T-19-ENG, p.4, lns.11-24; T-26-ENG, p.37, lns.15-17, p.39, ln.14-p.40, ln.21. Also **ARIDO**'s 23 November 2013 statement: CAR-OTP-0074-1065-R02, 1068: "*Monsieur [REDACTED] n'a jamais fait parti de l'armée CENTRAFRICAINE.*" and CAR-OTP-0093-0071 listing the members of the USP in 2001.

⁴⁰⁰ T-26-ENG, p.40, lns.9-12.

⁴⁰¹ T-26-ENG, p.37, ln.17.

⁴⁰² Time-line: D-0002 testified that he met **ARIDO** one week after he first talked to him about the "*topo*" (T-18-ENG, p.67, lns.10-17) and that one month after the meeting, he met **KILOLO** in Douala: T-18-ENG, p.68, ln.25; also T-18-ENG, p.69, lns.11-15. The meeting with **KILOLO** occurred on 21 February 2012 (*below para.143*). D-0003 testified **ARIDO** first contacted him in January 2012: T-22-ENG, p.37, lns.9-11.

and possible relocation to Europe to testify falsely in **BEMBA**'s favour.⁴⁰³

130. More specifically, **ARIDO** contacted D-0002 to let him know he had a "*topo*" (an "opportunity") for him.⁴⁰⁴ In [REDACTED], they met at the junction called "[REDACTED]", where **ARIDO** explained to D-0002 that KOKATÉ was trying to locate witnesses for the *Bemba* Defence. **ARIDO**, who has [REDACTED],⁴⁰⁵ knew his civilian background. Despite this, **ARIDO** told D-0002 to falsely present himself to **BEMBA**'s lawyers as a "sub-lieutenant" and member of the MLC youth wing, trained in Karako, and assigned to President PATASSÉ. **ARIDO** made up details of what D-0002 should say regarding his military training, grade and experience. During their meeting, **KILOLO** was in contact with **ARIDO**.⁴⁰⁶

131. Similarly, in January 2012,⁴⁰⁷ **ARIDO** contacted D-0003—whom he did not know beforehand.⁴⁰⁸ He explained to D-0003 that there was "an opportunity for [them] to make some money"—"deal"—as KOKATÉ was looking for soldiers to testify for **BEMBA**, in exchange for money and relocation.⁴⁰⁹ When D-0003 replied that he was not a soldier, **ARIDO** reassured him that this was not a problem as he [ARIDO] was a soldier and "would know what to do".⁴¹⁰

132. Per **ARIDO**'s request to help him look for other prospective witnesses, D-0003 provided him with the phone number of [REDACTED], a former militiaman under

⁴⁰³ In respect of D-0002: T-18-ENG, p.72, lns.15-21; T-20-ENG, p.72, lns.7-12; T-21-ENG, p.14, lns.4-14. In respect of the others including D-0003, D-0004, and D-0006: T-20-ENG, p.3, ln.25-p.4, ln.5, p.72, lns.11-12; T-21-ENG, p.24, lns.10-15.

⁴⁰⁴ CAR-OTP-0080-0021, 0030.

⁴⁰⁵ **ARIDO** confirmed [REDACTED]: ICC-01/05-01/13-598-Conf, para.251. *Also* T-18-ENG, p.63, ln.19-p.65, ln.2; T-20-ENG, p.63, lns.12-15.

⁴⁰⁶ T-18-ENG, p.67, ln.8-p.68, ln.24; T-19-ENG, p.5, lns.7-17, p.64, lns.1-8, 13-19; T-20-ENG, p.59, ln.23-p.60, ln.5.

⁴⁰⁷ T-22-ENG, p.37, lns.9-11.

⁴⁰⁸ T-26-ENG, p.14, lns.12-15. Despite DEF-A001's contrary testimony, the credible evidence shows that [REDACTED] gave **ARIDO** D-0003's telephone number. Of the same ethnic group, they knew each other from [REDACTED]: T-23-ENG, p.4, lns.17-25.

⁴⁰⁹ T-22-ENG, p.37, ln.9-p.38, ln.5, p.55, lns.7-18, p.61, lns.1-6.

⁴¹⁰ T-26-ENG, p.15, lns.18-20, p.37, lns.10-14. *Also* T-22-ENG, p.64, lns.15-20.

[REDACTED].⁴¹¹ D-0003 told [REDACTED] about the deal **ARIDO** had proposed. He introduced [REDACTED] to **ARIDO** a few days later at the [REDACTED] neighbourhood in [REDACTED]. During a lengthy meeting, **ARIDO** made the same proposition to [REDACTED]. **ARIDO** also briefly spoke to **KILOLO** over the phone noting that he was with certain members of his group, the “*éléments*”.⁴¹²

133. **ARIDO** made the same promises to D-0004 and D-0006: CFA 10,000,000 and an opportunity to relocate to Europe.⁴¹³

b) Douala meeting (February 2012)

134. In February 2012, **ARIDO** organised a meeting in Douala to coach the prospective witnesses that he had gathered for the *Bemba* Defence before their meeting with **KILOLO** and GIBSON.

135. On 19 February 2012,⁴¹⁴ **ARIDO** introduced D-0002 to D-0003, and [REDACTED].⁴¹⁵ Together they took a bus from [REDACTED] to Douala, arriving around 22:00. They went to a hotel in the [REDACTED] sector of the [REDACTED] *quartier*, where they spent the night: D-0002 shared a room with **ARIDO** and D-0003 shared a room with [REDACTED].⁴¹⁶ **ARIDO** instructed D-0003 to start preparing his fabricated evidence with [REDACTED], which he did. Indeed, this is why **ARIDO** advised them to share a room. Since [REDACTED] had worked with [REDACTED],

⁴¹¹ T-26-ENG, p.17, lns.8-23, p.22, ln.23-p.23, ln.2. [REDACTED] was scheduled to testify in the Main Case but did not: T-18-ENG, p.69, lns.3-4; T-22-ENG, p.59, lns.3-5. He was also scheduled to testify in the present case as D24-0011 (ICC-01/05-01/13-1624-Conf-AnxA, p.3), but was withdrawn. D-0003 clarifies that [REDACTED]: T-23-ENG, p.4, lns.10-14.

⁴¹² T-22-FRA, p.62, ln.14-p.64, ln.3; T-26-ENG, p.15, ln.17, p.26, ln.10-p.27, ln.2, p.31, ln.11-p.32, ln.1.

⁴¹³ Above, fn.403.

⁴¹⁴ Time-line: D-0002, D-0003, [REDACTED], and **ARIDO** arrived late on 19 February 2012 evening. The next morning, the others arrived: T-26-ENG, p.36, lns.16-20. Later that day, **ARIDO** and KOKATÉ picked **KILOLO** up at the airport: T-18-ENG, p.70, lns.10-13. **KILOLO** arrived in Douala on 20 February 2012 at 17:45: CAR-D21-0001-0051. They were interviewed on 21 February 2012: *e.g.* CAR-D21-0008-0006. Also T-18-ENG, p.69, lns.9-15. CAR-D20-0001-0004, 0006: refers to expenses for ‘Narcisse’ for the mission to Cameroon postponed until 19 February.

⁴¹⁵ D-0002 and D-0003 referred to the group composed of D-0002, D-0003 and [REDACTED] as being the “Yaoundé Group” because of [REDACTED]: CAR-OTP-0084-0157-R01, 0158.

⁴¹⁶ T-18-ENG, p.69, lns.2-4, p.70, ln.4-p.71, ln.1; T-22-ENG, p.38, lns.6-22, p.39, lns.6-8; T-26-ENG, p.34, lns.4-23.

he was more familiar with the issues, and [REDACTED] was to brief D-0003 on what to say when meeting **KILOLO**.⁴¹⁷

136. The next morning, 20 February 2012,⁴¹⁸ six other prospective witnesses joined them at the hotel: [REDACTED] (D-0004), [REDACTED] (D-0006), [REDACTED] (D-0007), [REDACTED] (D-0008), [REDACTED] (D-0009), and a certain “[REDACTED]”.⁴¹⁹

137. In his room, **ARIDO** met with and coached the prospective witnesses. They spent the entire day preparing the account they would give **KILOLO**. All the prospective witnesses, including the Cameroon Witnesses, had been briefed before, and as a group, they reviewed and refined their fabricated stories to avoid contradiction. During their conversations, the prospective witnesses, including the Cameroon Witnesses, shared with each other that they were not soldiers.⁴²⁰ As with D-0003, **ARIDO** assured them that this was not a problem.⁴²¹

138. D-0002 took notes to help him memorise the key dates, names of military commanders, abbreviations and organisational structure of those involved in the 2002 -2003 events in CAR (referred to as Annex 1). D-0002 testified: “everything that is written here is part of the briefing or preparation that I had received from [ARIDO].”⁴²²

139. During the meeting, **ARIDO** assigned each member of the group a fictitious military rank: *e.g.*, D-0002 was told to present himself as a member of PATASSÉ’s

⁴¹⁷ T-22-ENG, p.64, lns.2-11; T-26-ENG, p.46, lns.22-24, p.47, lns.13-22, p.48, lns.2-4, p.53, lns.14-19, p.64, lns.20-23.

⁴¹⁸ *Above*, fn.414.

⁴¹⁹ D-0002 and D-0003 referred to this group as [REDACTED] because they [REDACTED]: CAR-OTP-0084-0157-R01, 0158. [REDACTED] (D-0004), [REDACTED] (D-0006), [REDACTED] (D-0007), [REDACTED] (D-0008), and [REDACTED] (D-0009) were scheduled to testify for the **ARIDO** Defence, but were withdrawn: ICC-01/05-01/13-1705-Conf.

⁴²⁰ T-18-ENG, p.75, ln.20-p.76, ln.4; T-19-ENG, p.4, lns.11-24, p.5, ln.19-p.6, ln.3, p.7, lns.13-16; T-21-ENG, p.14, ln.24-p.16, ln.5; T-22-ENG, p.38, ln.23-p.39, ln.12; T-26-ENG, p.35, lns.5-7, p.36, lns.19-20, p.37, lns.3-5; p.46, ln.25-p.47, ln.16, p.48, lns.22-25. Regarding [REDACTED]: T-19-ENG, p.36, lns.16-21.

⁴²¹ T-26-ENG, p.38, lns.11-15. *Also* T-26-ENG, p.37, lns.10-14.

⁴²² T-18-ENG, p.47, ln.3-p.48, ln.2. Annex 1 is CAR-OTP-0079-1522. *Also* T-19-ENG, p.5, lns.7-11.

intelligence service; D-0003 was told to claim that he was a corporal under [REDACTED]; and D-0006 was assigned to play the role of BOMBAYAKE's driver.⁴²³ **ARIDO** further instructed them to write down the conditions under which they would testify, which he would relay to **KILOLO**, such as their preferred relocation destination.⁴²⁴

140. Later that day, KOKATÉ joined them at the hotel. After he arrived, they continued to discuss what they were to tell **KILOLO**. The group also asked KOKATÉ how much they would be compensated for their various testimonies. KOKATÉ repeated the conditions **ARIDO** had offered,⁴²⁵ namely that they would get CFA 10,000,000 but, more importantly, a chance to relocate to Europe. Regarding the money, KOKATÉ clarified that they should ask for it “before [going] into the courtroom”. KOKATÉ stressed however, that they should not focus too much on the money, the focus was to “liberate” **BEMBA**. And that, once liberated, **BEMBA** would help KOKATÉ mount a *coup d'état*, overthrowing General BOZIZÉ.⁴²⁶

141. During their meeting, D-0003 realised KOKATÉ was acting only in his own interest. He threatened not to testify.⁴²⁷ Fully in on the deal, KOKATÉ responded that “he was no longer going to continue working with the people he was recruiting in Cameroon” but, that instead he would “go and recruit people in Congo”.⁴²⁸ Obviously, to KOKATÉ and **ARIDO**, the prospective false witnesses were wholly replaceable and interchangeable. Their objective to corruptly influence them however and to present their false evidence in the *Bemba* trial was definite.

142. Later that afternoon, around 16:00, **ARIDO** and KOKATÉ left the hotel in [REDACTED] to pick **KILOLO** up at the airport and bring him to the Hotel

⁴²³ T-22-ENG, p.39, lns.9-12; T-26-ENG, p.37, lns.24-25, p.38, lns.4-15, p.45, lns.6-10, p.46, lns.12-14.

⁴²⁴ T-22-ENG, p.65, lns.12-15; T-26-ENG, p.48, lns.9-25.

⁴²⁵ T-18-ENG, p.72, lns.15-19.

⁴²⁶ T-18-ENG, p.71, ln.2-p.72, ln.25; T-19-ENG, p.5, ln.19-p.6, ln.3; T-22-ENG, p.39, lns.5-24, p.61, lns.3-22; T-26-ENG, p.12, lns.9-11, p.50, lns.12-14. Also T-26-ENG, p.53, lns.5-13.

⁴²⁷ T-26-ENG, p.50, lns.12-14.

⁴²⁸ T-22-ENG, p.39, lns.18-24; T-26-ENG, p.50, ln.12-p.51, ln.18.

[REDACTED].⁴²⁹ **ARIDO** and **KOKATÉ** returned to the hotel that evening with CFA 10,000 from **KILOLO** for the group to have a meal.⁴³⁰

143. The following day, 21 February 2012,⁴³¹ **ARIDO** introduced the group to **KILOLO** and **GIBSON** at the Hotel [REDACTED]. **KOKATÉ** was there as well.⁴³² **ARIDO** went to **KILOLO**'s room before **KILOLO** and **GIBSON** began interviewing the witnesses there: first [REDACTED], D-0002, and D-0003, followed by a second group, which included D-0004 and D-0006. The Witnesses were interviewed individually, and their statements recorded and later transcribed.⁴³³ Following the interviews, **KILOLO** gave all ten group members EUR 50 for transportation.⁴³⁴ D-0003 clarified that **KILOLO** gave him the money at the elevator, out of **GIBSON**'s sight, and that he never signed a receipt for it.⁴³⁵

144. After the interview, when they had left **KILOLO**'s room, they went back to their hotel and compared their accounts under **ARIDO**'s guidance. **ARIDO** had notes, a chronology of everything,⁴³⁶ and each person went over what **KILOLO** had asked them and what they had responded. The group reviewed everything together and revisited their script in light of what arose during the respective interviews.⁴³⁷

145. Based on these discussions, at his hotel, and in **ARIDO**'s presence, D-0002 rewrote and corrected the information contained in Annex 1 into a new document

⁴²⁹ T-18-ENG, p.70, lns.10-13; T-22-ENG, p.39, lns.24-p.40, ln.1. **KILOLO**'s flight landed at 17:45: CAR-D21-0001-0051.

⁴³⁰ T-18-ENG, p.70, lns.10-13.

⁴³¹ Above, fn.414.

⁴³² T-18-ENG, p.75, lns.6-8.

⁴³³ T-18-ENG, p.73, ln.18-p.75, ln.19; T-22-ENG, p.40, lns.13-15, p.63, lns.8-10; T-27-ENG, p.5, lns.6-15. Also CAR-D21-0008-0006; CAR-D21-0007-0025; CAR-D21-0007-0038; CAR-D21-0007-0068; CAR-D21-0007-0079.

⁴³⁴ In respect of D-0002, D-0003, and [REDACTED]: T-19-ENG, p.33, lns.6-8; T-20-ENG, p.6, lns.8-10; T-22-ENG, p.41, lns.8-10. In respect of the other prospective witnesses: see general reference in CAR-D20-0001-0004, 0007: "*Forfait de 50 euros remis à chaque témoin individuellement à la fin de la déclaration pour le chemin de retour. Soit au total 500 Euros*".

⁴³⁵ T-27-ENG, p.28, lns.17-19, p.29, 8-10. D-0002 clarified **KILOLO** gave him the money when he accompanied him out of his room: T-19-ENG, p.33, lns.6-8.

⁴³⁶ T-21-ENG, p.32, lns.8-16.

⁴³⁷ T-18-ENG, p.76, lns.5-9; T-21-ENG, p.26, lns.3-12, p.27, lns.7-14, p.28, ln.4-p.29, ln.4, p.32, lns.8-20.

referred to as Annex 2, which he re-drafted neatly one month later, in March 2012.⁴³⁸ At trial, D-0002 conceded that what they discussed with **KILOLO**, in GIBSON's presence, were lies. In his words, "[i]t was a group of lies that had been organised and put together."⁴³⁹

146. Later that day, **ARIDO** provided D-0002 with another CFA 10,000, also for transportation back to [REDACTED].⁴⁴⁰ D-0003 received the CFA 10,000 for his transportation at a later stage.⁴⁴¹ The individuals residing in [REDACTED], including D-0004⁴⁴² and D-0006 went home. D-0002, D-0003 and [REDACTED] returned to [REDACTED].⁴⁴³

c) Contact after the Douala meeting

147. In [REDACTED], **ARIDO** contacted D-0002 to tell him that he intended to withdraw him from the *Bemba* case.⁴⁴⁴ After **ARIDO** arrived in France on 26 September 2012,⁴⁴⁵ he also informed D-0003, D-0004, D-0006, and D-0009 that he had gone to France.⁴⁴⁶

d) Yaoundé meeting (end of May 2013)

148. In January or February 2013, **KILOLO** emailed D-0003 to set up a meeting. D-0003 called **KILOLO** in response, who said he would be arriving in Cameroon and wanted to meet him and the other prospective witnesses. As **KILOLO** also asked for the telephone numbers of the other prospective witnesses, D-0003 provided him with

⁴³⁸ CAR-OTP-0079-1526; T-18-ENG, p.48, ln.3-p.49, ln.3, p.50, ln.24-p.51, ln.9; T-21-ENG, p.32, lns.14-20, p.35, lns.15-21.

⁴³⁹ T-18-ENG, p.76, lns.14-20.

⁴⁴⁰ T-19-ENG, p.33, lns.9-12.

⁴⁴¹ T-22-ENG, p.69, lns.13-18; T-26-ENG, p.55, lns.3-11.

⁴⁴² D-0004 resides in the '[REDACTED]' area: CAR-OTP-0084-0157-R01, 0158, para.E.

⁴⁴³ T-19-ENG, p.8, lns.17-20. For their place of residence: CAR-OTP-0084-0157-R01, 0158.

⁴⁴⁴ T-21-ENG, p.7, lns.3-8, p.38, lns.14-19.

⁴⁴⁵ **ARIDO** agreed not to contest this stipulation: ICC-01/05-01/13-1072-Conf-Corr, para.14. Also CAR-OTP-0075-0155, 0155; ICC-01/05-01/13-1515-Conf-AnxA, p.88, row 96.

⁴⁴⁶ T-19-ENG, p.36, lns.23-25.

[REDACTED]'s, [REDACTED]'s, D-0002's and D-0004's numbers.⁴⁴⁷

149. **KILOLO** transferred CFA 65,000 to D-0002 on 24 May 2013 *via* WU to enable his immediate travel from [REDACTED] to Yaoundé, which he did.⁴⁴⁸

150. D-0003 arrived first and met in the evening with **KILOLO** and **MANGENDA** on 25 May 2013⁴⁴⁹ at the Hotel [REDACTED] in Yaoundé.⁴⁵⁰ The next day, 26 May 2013, D-0002, D-0004, D-0006 and D-0009 arrived, joining D-0003 in meeting with **KILOLO** and **MANGENDA** at the same hotel.⁴⁵¹

151. On their arrival at the Hotel [REDACTED], they received new phones.⁴⁵² **KILOLO** asked **MANGENDA** to retrieve a bag with the new devices for the witnesses. In **MANGENDA**'s presence, **KILOLO** explained to the group that, to maintain contact, they should choose a phone and use a different SIM card in it because VWU would take away their regular telephones,⁴⁵³ a VWU practice followed in the Main Case.⁴⁵⁴ D-0003 explained that **KILOLO** sent **MANGENDA** "to go and bring us the telephones because the VWU was going to be taking all our phones away [and] he wanted to stay in contact with us".⁴⁵⁵ **KILOLO** "asked us to ask -- to buy SIM cards so that we should be able to communicate. And at that time [MANGENDA] was present".⁴⁵⁶ D-0002, D-0004, D-0006, and D-0009 chose their phones then. D-0003 took his phone the day before and, in **MANGENDA**'s presence,

⁴⁴⁷ T-23-ENG, p.7, lns.10-14, p.8, ln.20-p.9, ln.10. Also T-19-ENG, p.37, ln.21-p.38, ln.1; T-20-ENG, p.10, lns.3-8.

⁴⁴⁸ CAR-OTP-0084-0055, 0056: T-18-ENG, p.53, ln.13-p.54, ln.18; T-19-ENG, p.10, lns.13-24.

⁴⁴⁹ Time-line: D-0003 arrived on 25 May 2013: T-23-ENG, p.6, lns.18-p.7, ln.1. He signed a receipt of EUR 250 the day after his arrival, namely on 26 May 2013: CAR-OTP-0088-2917, 2918.

⁴⁵⁰ T-23-ENG, p.9, lns.14-21; T-27-ENG, p.78, lns.5-7.

⁴⁵¹ T-19-ENG, p.8, lns.24-p.9, ln.25; T-23-ENG, p.9, lns.14-16, p.11, lns.13-18; T-27-ENG, p.84, lns.5-15.

⁴⁵² T-19-ENG, p.32, lns.9-14.

⁴⁵³ T-19-ENG, p.18, lns.5-11, p.21, lns.6-11, p.24, lns.10-14, p.29, ln.3-p.30, ln.1, p.31, ln.19-p.33, ln.1; T-23-ENG, p.9, lns.24-p.10, ln.17, p.26, lns.11-21; T-27-ENG, p.79, lns.3-7, p.80, lns.7-16, p.81, ln.21-p.82, ln.14.

⁴⁵⁴ ICC-01/05-01/08-972-Anx, paras.27-31.

⁴⁵⁵ T-27-ENG, p.80, lns.7-16.

⁴⁵⁶ T-27-ENG, p.81, lns.21-24.

KILOLO gave him the exact same justification.⁴⁵⁷

152. After receiving the phones, the group members each discussed their protection with **MANGENDA**.⁴⁵⁸ Subsequently, they talked to **KILOLO** about the substance of their proposed evidence. **KILOLO** distributed to each group member a document to review—their “previous statements” to the *Bemba* Defence—which they discussed jointly.⁴⁵⁹ **KILOLO** drew their attention to inaccuracies in their prior narratives and gave them the “correct” information. He further illicitly coached the witnesses on their prospective testimony, as described below.

153. *First*, **KILOLO** illicitly coached D-0002, pointing out shortcomings in his account of the events and correcting them by providing new information on which he was to testify, including on details concerning key aspects of **BEMBA**’s criminal responsibility—*e.g.*, that between 25 and 30 October 2002 **BOZIZÉ**’s troops committed many crimes,⁴⁶⁰ including pillaging, rapes, and killings;⁴⁶¹ on 29 October 2002 the MLC troops arrived; on 30 October 2002 the joint operation to oust **BOZIZÉ**

⁴⁵⁷ **KILOLO** does not dispute that he provided D-0003 with a new phone just prior to his VWU hand-over: ICC-01/05-01/13-600-Conf-Corr2, para.235; T-23-ENG, p.9, ln.24-p.10, ln.17, p.26, lns.8-21; T-27-ENG, p.79, lns.3-7, p.80, lns.7-16.

⁴⁵⁸ See CAR-D21-0007-0004.

⁴⁵⁹ T-19-ENG, p.8, ln.24-p.10, ln.9, p.11, ln.11-p.12, ln.7; T-23-ENG, p.11, lns.20-22; T-27-ENG, p.17, lns.12-15.

⁴⁶⁰ In his February 2012 statement (“Interview”), D-0002 stated that **BOZIZÉ** committed crimes on 25 October, the day he was forced out (CAR-D21-0004-0463, 0483) and that ‘*le combat atroce*’ took place at Bossembélé (CAR-D21-0004-0463, 0486). Annex 3 notes: “25 Oct 2002–30 Oct (5 [jours]) F. **BOZIZÉ** attaque [Bangui] avec ses éléments” (CAR-OTP-0079-1530,1531); and “La plupart des crimes ont eu lieu au PK12 véritable théâtre des Opérations + quartier nord de bangui” (CAR-OTP-0079-1530, 1533). D-0002 testified: “Between 25 October and 30 October 2002, General Bozizé and the troops who were loyal to him, the Zaghawa from Chad, they entered into Bangui, the capital. At that time, during at least for at least five days, all the north neighbourhood of the Central African Republic in Bangui, particularly north of Bangui the capital, were paralysed. I’m speaking about PK12, the northern exit, the theatre of major events” (ICC-01/05-01/08-T-321-CONF-ENG-ET, p.17, lns.8-13). D-0002 admitted being coached: T-19-ENG, p.14, lns.16-23; T-20-ENG, p.29, lns.7-10.

⁴⁶¹ While D-0002’s Interview omitted the types of crimes, Annex 3 notes: “entre 25 oct et 30 oct [beaucoup] de pillages ont été enregistrés **a)** pillages de biens meubles et immeubles **b)** viol des femmes **c)** meurtre des personnes qui refusent de céder leurs biens (CAR-OTP-0079-1530 at 1531). D-0002 testified: “I would like to divide it up into **three different groups** according to the intelligence that we received. There was pillaging of goods, furniture and property, because the goods of some people were taken during this time. Houses were ransacked. There were killings, murders, because some people did not want to give over their property and they had to die...there were cases of rapes—rapes of women—during this period”(ICC-01/05-01/08-T-321-CONF-ENG-ET, pp.17-18, lns.24-7). D-0002 admitted being coached: T-19-ENG, pp.12-13, lns.6-20.

began;⁴⁶² logistical details;⁴⁶³ Thuraya communications;⁴⁶⁴ and the FACA command.⁴⁶⁵ To recall **KILOLO**'s advice,⁴⁶⁶ and according to his instructions and the new information he provided, D-0002 took notes back at the hotel, which he later re-wrote in a third document he referred to as 'Annex 3'—"a mental preparation so that [he] could be able to testify"⁴⁶⁷—a summary of the role he was to play and regarding which **KILOLO** said in no uncertain terms "if [he] was going to testify, this is what [he] would be expected to do."⁴⁶⁸ A comparison between D-0002's 2012 Interview with **KILOLO**, May 2013 Annex 3, and June 2013 testimony show unquestionably

⁴⁶² In his Interview, D-0002 stated that the MLC troops arrived between 23 and 26 October (CAR-D21-0004-0463, 0510). Annex 3 notes: "29 oct.2002 Arrivée de la troupe du MLC" and "le 30 Oct s'est démarrée l'opération conjointe pour repousser BOZIZE" (CAR-OTP-0079-1530, 1531). D-0002 testified: "[Patassé], called upon the MLC, who arrived on 29 October. (...) [I]t was only on 30 October, the next day, that they started the joint operation which would drive back Bozizé" (ICC-01/05-01/08-T-321-CONF-ENG-ET, p.17, lns.19-23). D-0002 admitted being coached: T-19-ENG, pp.12-13, lns.6-20; T-20-ENG, p.29, lns.11-12, p.37, lns.6-9. In another example, while D-0002 omitted mentioning any ratio of troops regarding joint operations in his Interview, Annex 3 notes: "tous étaient regroupés en Compagnie de Combat (**2 peleton** de MLC + **1 peleton** de FACA) = piloté par soit un chef Congolais ou un chef militaire Centrafricaine" (CAR-OTP-0079-1530 at 1532). D-0002 testified: "there were **two platoons** from the MLC...they added **one platoon** of FACA, and vice-versa, and the group was led by an officer, either from the Congo or from the CAR." (ICC-01/05-01/08-T-321-CONF-ENG-ET, p.26, lns.1-4). D-0002 confirmed being coached: T-20-ENG, p.37, lns.6-9.

⁴⁶³ In his Interview D-0002 denied knowledge of Lionel GAN BEFIO (CAR-D21-0004-0463, 0467). Annex 3 notes: "les officiers centrafricaine comme G/BOMBAYAKE, G/MAZI, GANBEFIO Lionel: sont ceux qui leurs apportaient des nourritures et des médicaments. Et [même] une Ambulance était mis à leur disposition" (CAR-OTP-0079-1530, 1532). D-0002 testified: "Q. Okay. Just one last thing on this, and that is **logistics**, and in particular, food, fuel and transport. How were the loyalist forces fed and moved during the operation? A. [they] were fed through General André Mazi, Bombayake, and Lionel Gan-Befio. Furthermore, they were provided with an ambulance in the case of illness." (ICC-01/05-01/08-T-321-CONF-ENG-ET, p.27 lns.14-20). D-0002 confirmed being coached: T-19-ENG, pp.12-13, lns.6-20.

⁴⁶⁴ In his Interview, when asked whether FACA commanders had Thuraya's, D-0002 said they were means of communications and commanders were communicating, without elaboration. He also stated he never saw MUSTAPHA with a walkie-talkie or a Thuraya (CAR-D21-0004-0463,0513). Annex 3 notes: "Après lorsqu'ils dépassent le PK12 les Talkies étaient remplacés par des TURAYA—le [Commandant] MUSTAPHA recevaient les ordres à partir de ces moyens de communication" (CAR-OTP-0079-1530,1531). D-0002 testified: "The unit provided by the MLC was led by Commander Moustapha and that when [the MLC troops] were past PK12, at that time the walkie-talkies were replaced by Thurayas" (ICC-01/05-01/08-T-321-CONF-ENG-ET, p.26, lns.6-18). D-0002 confirmed being coached: T-19-ENG, p.12, ln.6-p.13, ln.20, p.76, lns.17-18.

⁴⁶⁵ D-0002's Interview provides that MBETI BANGUI was replaced by BOMBAYAKE (CAR-D21-0004-0463, 0478). Annex 3 notes: "Chef d'Etat-Major des Armées = G/MBETI BANGUI mais il sera remplacé par = G/Antoine GAMBI" (CAR-OTP-0079-1530, 1534). D-0002 testified accordingly: "General Gambi replaced General Betibangui, who had passed away" (ICC-01/05-01/08-T-322-CONF-ENG-ET, p.8, ln.16). D-0002 confirmed being: See T-21-ENG, p.76, ln.25-p.79, ln.12. Another example concerns BEMONDOMBI. Although in his Interview, D-0002 denied knowing BEMONDOMBI (CAR-D21-0004-0463, 0503), his Annex 3 notes: "Thierry LENGBE fut remplacé par le commandant BEMONDOMBI (CAR-OTP-0079-1530, 1532). D-0002 testified he knew BEMONDOMBI (ICC-01/05-01/08-T-321-CONF-ENG-ET, p.59, ln.19).

⁴⁶⁶ T-20-ENG, p.32, lns.9-14.

⁴⁶⁷ CAR-OTP-0079-1530. For D-0002's Annex 3 testimony and **KILOLO**'s coaching: T-18-ENG, p.51, ln.11-p.53, ln.10; T-19-ENG, p.12, ln.6-p.13, ln.20, p.14, lns.16-23, p.17, lns.2-12, p.68, ln.11-p.69, ln.21, p.75, ln.15-p.76, ln.19; T-20-ENG, p.28, ln.12-p.29, ln.18, p.32, lns.9-14, p.33, ln.14-p.34, ln.1, p.37, lns.1-11, p.38, lns.1-7; T-21, pp.76-79, lns.21-12.

⁴⁶⁸ T-20-ENG, p.33, 14-20.

that D-0002 was coached. The detail and complexity of D-0002's Annex 3 and testimony make any contention that Annex 3 was developed only after D-0002 met the Prosecution in April 2014⁴⁶⁹ untenable.

154. Likewise, **KILOLO** dictated aspects of D-0003's prospective testimony, including the dates MLC troops entered CAR,⁴⁷⁰ and MISKINE's troops committed the cattle market crimes.⁴⁷¹ **KILOLO** decidedly told D-0003 exactly what to say and provided D-0003 him the dates he should testify about.⁴⁷² To bolster D-0003's credibility, **KILOLO** also told him to testify that "I took part in pillaging. [...] That is why I made that testimony".⁴⁷³ Asked whether he was at fault for lying in Court, confirmed that "[**KILOLO**] told me what to say. He put the words in my mouth."⁴⁷⁴

155. *Second*, **KILOLO** instructed the prospective witnesses, including D-0002 and D-0003 on other matters potentially affecting their credibility before TCIII and risking exposing the Overall Strategy. For example, he instructed them to falsely (i) deny knowing **ARIDO**, or **KOKATÉ** in Court;⁴⁷⁵ (ii) limit the number of (telephone) contacts they had had with him;⁴⁷⁶ (iii) deny they had received any money;⁴⁷⁷ and, in

⁴⁶⁹ T-20-ENG, p.29, lns.21-24.

⁴⁷⁰ In his February 2012 statement ("Interview"), D-0003 provided no dates, except to note his civilian status on 25 October 2002, and received one month's military training. He also provided no dates on the MLC's entry into CAR: CAR-D21-0008-0006, 0007-0008. However, D-0003 testified that the MLC arrived on 29 October 2002, joining the field of the 30th. He testified he joined the FACA on 27 October 2002; his unit fought BOZIZÉ's troops between 28 and 30 October 2012; and that he saw MLC troops on 30 October 2002: ICC-01/05-01/08-T-325-CONF-ENG-ET, p.15, lns.6-22; ICC-01/05-01/08-T-325bis-CONF-ENG-ET, p.17, lns.6-14, p.24, ln.24-p.25, ln.7; ICC-01/05-01/08-T-326-CONF-ENG-ET, p.11, lns.14-17). D-0003 confirmed being coached: T-23-ENG, p.12, lns.2-3; T-27-ENG, p.15, lns.7-10, p.17, lns.1-3, p.24, ln.25-p.25, ln.2.

⁴⁷¹ D-0003's Interview did not mention the date of the cattle market massacre. Responding to **KILOLO**'s question whether MISKINE's troops committed abuses in PK13, D-0003 simply responded that they killed "people" but had no further information: CAR-D21-0008-0006, 0009-0010). However, he testified that at the cattle market, MISKINE's troops killed the Chadians: ICC-01/05-01/08-T-325-CONF-ENG-ET, p. 21, lns. 13-19. D-0003 confirmed being coached: *See* T-23-ENG, p.12, lns.3-4; T-27-ENG, p.15, lns.1-13; p.17, lns.1-3; p.25, lns.2-3.

⁴⁷² *Generally* T-23-ENG, p.11, ln.20-p.12, ln.12; T-27-ENG, p.15, lns.1-13, p.16, ln.24-p.17, ln.7, p.24, ln.25-p.25, ln.5, p.47, lns.14-17.

⁴⁷³ T-26-ENG, p.61, lns.18-25; T-27-ENG, p.16, lns.17, p.17, lns.4-7. D-0003 testified accordingly: ICC-01/05-01/08-T-325-CONF-ENG-ET, p.19, lns.3-17.

⁴⁷⁴ T-27-ENG, p.47, lns.13-17.

⁴⁷⁵ T-19-ENG, p.40, ln.14-p.41, ln.14; T-21-ENG, p.81, lns.2-9, p.17, lns.6-12; T-23-ENG, p.12, ln.16-p.13, ln.6; T-27-ENG, p.26, lns.10-15.

⁴⁷⁶ T-19-ENG, p.14, lns.4-8; T-23-ENG, p.15, lns.3-6.

⁴⁷⁷ T-19-ENG, p.38, ln.14-p.40, ln.3; T-23-ENG, p.13, ln.7-p.15, ln.6; T-27-ENG, p.28, lns.16-17.

respect of D-0002, (iv) testify that his meeting with them was not recorded.⁴⁷⁸

156. At the meeting, and in **MANGENDA**'s presence (*i.e.*, not more than four metres away), **KILOLO** promised that before each person was to testify, they would receive CFA 600,000.⁴⁷⁹ In order to avoid traces, **KILOLO** asked them to identify someone who could collect the money on their behalf. As a group, they expressed their dissatisfaction regarding that **ARIDO** and [REDACTED] (D-0007) were already in France, and that they had expected to receive CFA 10,000,000 and relocation to Europe.⁴⁸⁰

157. To motivate the prospective witnesses **KILOLO** replied that after **BEMBA**'s release, he would meet with them individually in Kinshasa.⁴⁸¹ He told them that following their testimony "they will not be forgotten".⁴⁸² **KILOLO** warned D-0002 however that he "mustn't give the impression that [he] was interested in Europe because if you give them the impression that it's Europe that interests you, they will quickly understand."⁴⁸³ D-0002 said he understood.⁴⁸⁴

158. Finally, on 26 May 2013, D-0003 and D-0006 received EUR 250 whereas D-0002 and D-0004 received EUR 350 for transportation.⁴⁸⁵

⁴⁷⁸ T-19-ENG, p.16, ln.17-p.17, ln.1, p.77, lns.1-23.

⁴⁷⁹ **KILOLO** does not dispute that he promised between CFA 500,000 and 600,000 to D-0002, D-0003, and D-0006: ICC-01/05-01/13-600-Conf-Corr2, para.665; ICC-01/05-01/13-674-Conf, para.321.

⁴⁸⁰ T-19-ENG, p.34, ln.17-p.36, ln.15; T-20-ENG, p.10, ln.19-p.11, ln.6; T-23-ENG, p.15, lns.13-22, p.16, lns.14-22, p.17, ln.10-p.18, ln.9; T-27-ENG, p.86, lns.1-19, p.97, ln.21-p.98, ln.3. For the courtroom measurements: CAR-OTP-0094-0474.

⁴⁸¹ T-23-ENG, p.15, lns.13-19, p.17, ln.25-p.18, ln.1; T-27-ENG, p.20, lns.7-11.

⁴⁸² T-19-ENG, p.78, ln.12.

⁴⁸³ T-20-ENG, p.4, lns.7-12.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ CAR-OTP-0078-0290, 0294; CAR-OTP-0088-2911, 2912; CAR-OTP-0088-2913, 2914; CAR-OTP-0088-2915, 2916; CAR-OTP-0088-2917, 2918. *Also* T-19-ENG, p.33, lns.16-17. D-0003 received EUR 150 on 25 May 2013 and EUR 100 on 26 May 2013: T-23-ENG, p.11, lns.2-5.

e) Post hand-over – end of May/June 2013

159. After being introduced to VWU, but before testifying, D-0002, D-0003, D-0004, D-0006, and D-0009, were paid the promised CFA 540,000 or more.⁴⁸⁶

160. More specifically, after being introduced to VWU, D-0002 went back to the Hotel [REDACTED], where **KILOLO** gave him CFA 550,000.⁴⁸⁷ **KILOLO** clarified it was “a small gift from the accused”, *i.e.* **BEMBA**.⁴⁸⁸

161. Likewise, **KILOLO** called D-0003 on the phone he had given D-0003 the day before⁴⁸⁹ to meet him at the Hotel [REDACTED] so **KILOLO** could give him the money he was promised. When D-0003 arrived, **KILOLO** only gave him CFA 540,000.⁴⁹⁰ D-0003 complained, given **KILOLO**’s earlier promise of CFA 600,000. **KILOLO** responded that he would take care of it afterwards.⁴⁹¹

162. D-0002 testified in this case that each of them received the money (“CFA 500,000”), *i.e.* including D-0004.⁴⁹²

163. D-0006 on the other hand received USD 1,335.16 on 20 June 2013 (the day before D-0006 began testifying), *via* WU⁴⁹³ from Caroline BEMBA through his then-girlfriend, [REDACTED] (P-0264).⁴⁹⁴ D-0006 accompanied [REDACTED] to collect the money,

⁴⁸⁶ **KILOLO** does not dispute that he paid these sums to D-0002, D-0003, and D-0006: ICC-01/05-01/13-600-Conf-Corr2, paras.226, 229, 399-402, 665, 762. *Also* ICC-01/05-01/13-674-Conf, paras.308, 311, 321; T-19-ENG, p.82, lns.19-21; T-23-ENG, p.18, lns.2-9; T-27-ENG, p.34, lns.10-16. For the identification of the individuals: T-23-ENG, p.16, lns.17-19.

⁴⁸⁷ **KILOLO** does not dispute that he gave CFA 500,000 to D-0002: ICC-01/05-01/13-600-Conf-Corr2, para.762, fn.951. *Also* T-19-ENG, p.33, lns.18-21, p.34, ln.20-p.35, ln.9. **KILOLO** left Cameroon on 28 May 2013 evening (CAR-D21-0003-0187, 0188) so the meeting necessarily occurred before that.

⁴⁸⁸ T-19-ENG, p.34, lns.1-16; T-20-ENG, p.10, ln.19-p.11, ln.6.

⁴⁸⁹ *Above*, para.151. *Also* T-23-ENG, p.16, ln.23-p.17, ln.1.

⁴⁹⁰ **KILOLO** does not dispute that he gave CFA 540,000 to D-0003: ICC-01/05-01/13-600-Conf-Corr2, para.762, fn. 950. *Also above*, fn.486.

⁴⁹¹ T-23-ENG, p.15, ln.11-p.16, ln.13, p.28, lns.16-18; T-27-ENG, p.36, lns.22-25.

⁴⁹² T-19-ENG, p.82, lns.19-20.

⁴⁹³ **KILOLO** does not dispute that he gave USD 1,335.16 to D-0006: ICC-01/05-01/13-600-Conf-Corr2, para.402. *Also* CAR-OTP-0074-0856, tab 68 Caroline Bemba Wale, row 7; CAR-OTP-0085-0523-R02, 0532-0535, lns.315-444.

⁴⁹⁴ **KILOLO** does not dispute that [REDACTED] is D-0006’s [REDACTED]: ICC-01/05-01/13-600-Conf-Corr2, para.648; CAR-OTP-0085-0523-R02, 0529, lns.192-215.

immediately took the money from her and counted it.⁴⁹⁵

f) Testimony in June 2013

164. D-0002, D-0003, D-0004, and D-0006 all testified falsely in the Main Case as instructed by both **ARIDO** and **KILOLO**.

165. D-0002 testified falsely as a FACA soldier in 2002-2003, including that he received training at the Karako military base in Boy Rabé, and attained the rank of *sous-lieutenant*. He testified falsely that he was part of the youth wing of the MLPC.⁴⁹⁶ His testimony concerning his status as a soldier, his claimed observations in the field as such, and his preparation and training were all lies.⁴⁹⁷ He followed **KILOLO**'s instructions, as noted down in his 'mental preparation' (Annex 3) and which "contained information that was made available to us to put us at the ready, if you like, to be able to testify." In Court, D-0002 falsely denied having discussed his testimony with the Defence⁴⁹⁸ or having been provided any documents to "refresh his recollection" during his meetings with members of the *Bemba* Defence.⁴⁹⁹

166. Similarly, D-0003 testified falsely about the events he claimed he witnessed as a FACA soldier in CAR between October 2002 and March 2003.⁵⁰⁰ He lied about having been a MISKINE soldier and a FACA member,⁵⁰¹ and claimed that he was living in Bangui when BOZIZÉ's troops entered Bangui in 2002,⁵⁰² that he joined the CAR armed forces at Camp Fidel Obrou on 27 October 2002, and provided details of his

⁴⁹⁵ D-0006 admits receiving the money *via* [REDACTED]: CAR-D21-0004-0750, 0755, lns.129-139; CAR-OTP-0085-0523-R01, 0534, lns.380-398, 401-406.

⁴⁹⁶ ICC-01/05-01/08-T-321-CONF-ENG-ET, p.10, ln.1-p.11, ln.1, p.48, ln.9.

⁴⁹⁷ T-18-ENG, p.36, ln.6-p.38, ln.11; T-19-ENG, p.17, lns.2-12, p.40, lns.8-13, p.64, lns.17-19; T-20-ENG, p.23, ln.19-p.24, ln.3, p.26, lns.4-6.

⁴⁹⁸ ICC-01/05-01/08-T-321bis-CONF-ENG-ET, p.38, ln.24-p.39, ln.12.

⁴⁹⁹ ICC-01/05-01/08-T-322-CONF-ENG-ET, p.26, lns.13-15.

⁵⁰⁰ T-22-ENG, p.33, ln.15-p.34, ln.1; T-23-ENG, p.38, lns.10-12; T-26-ENG, p.62, lns.13-19; T-27-ENG, p.44, lns.13-17.

⁵⁰¹ ICC-01/05-01/08-T-325-CONF-ENG-ET, p.10, ln.18-p.14, ln.25.

⁵⁰² ICC-01/05-01/08-T-325-CONF-ENG-ET, p.10, lns.7-11.

enlistment, uniform, weapons, and training.⁵⁰³ D-0003's Main Case testimony reproduced **KILOLO**'s Yaoundé instructions to him on his involvement in the looting of Bangui⁵⁰⁴ and details of the massacre at the cattle market at PK12.⁵⁰⁵ As instructed by **KILOLO**, D-0003 also told the Court falsely that his unit, which was under MISKINE's control, was fighting BOZIZÉ's troops between the 28 and 30 October 2012.⁵⁰⁶ D-0003 also told the Court that he had not discussed any aspects of his testimony with the *Bemba* Defence.⁵⁰⁷

167. Despite never having been soldiers,⁵⁰⁸ D-0004 testified falsely about being a Chief Sergeant in the USP;⁵⁰⁹ and D-0006 testified falsely that he was BOMBAYAKE's driver.⁵¹⁰ When asked if he was "introduced to Maître **KILOLO** by a committee designed to harmonise the evidence for him", D-0006 responded "[j]amais du tout. Ce n'est pas «une» comité. Je suis devant la Cour pour dire la vérité, et rien que la vérité."⁵¹¹ D-0006 also testified that he had not discussed anything concerning CAR events with the *Bemba* Defence.⁵¹²

168. As instructed by **KILOLO**,⁵¹³ and according to his "mental preparation" ("Annex 3"),⁵¹⁴ D-0002 testified falsely he had only two meetings and one telephone contact with the *Bemba* Defence.⁵¹⁵ In reality, they had been in contact on numerous occasions before,⁵¹⁶ and during D-0002's testimony, using the phone that **KILOLO** had provided for that purpose and during which they discussed the substance of D-

⁵⁰³ ICC-01/05-01/08-T-325-CONF-ENG-ET, p.10, lns.18-p.14, ln.25.

⁵⁰⁴ ICC-01/05-01/08-T-325-CONF-ENG-ET, p.19, lns.3-17.

⁵⁰⁵ ICC-01/05-01/08-T-325-CONF-ENG-ET, p.21, lns.13-19.

⁵⁰⁶ ICC-01/05-01/08-T-325-CONF-ENG-ET, p.15, lns.6-22; ICC-01/05-01/08-T-326-CONF-ENG-ET, p.11, lns.14-17.

⁵⁰⁷ ICC-01/05-01/08-T-330-CONF-ENG-ET, p.19, ln.20-p.20, ln.3.

⁵⁰⁸ *Above*, para.128.

⁵⁰⁹ ICC-01/05-01/08-T-325bis-CONF-ENG-ET, p.8, lns.14-16.

⁵¹⁰ ICC-01/05-01/08-T-328-CONF-ENG-ET, p.9, ln.5.

⁵¹¹ ICC-01/05-01/08-T-328-CONF-FRA-ET, p.29, ln.28-p.30, ln.3.

⁵¹² ICC-01/05-01/08-T-329-CONF-ENG-ET, p.19, ln.17-p.20, ln.9, p.21, ln.19-p.22, ln.2.

⁵¹³ T-19-ENG, p.13, ln.21-p.14, ln.15, p.14, ln.24-p.16, ln.16. *Also* Annex 3: CAR-OTP-0079-1530, 1533.

⁵¹⁴ CAR-OTP-0079-1530, 1533.

⁵¹⁵ ICC-01/05-01/08-T-321bis-CONF-ENG-ET, p.37, ln.21-p.38, ln.2 (D-0002 refers to two meetings, one telephone contact and no e-mails).

⁵¹⁶ CAR-OTP-0090-0630, 0631. *Also* T-19-ENG, p.14, ln.24-p.16, ln.16.

0002's testimony.⁵¹⁷ Interestingly, D-0002 also testified that sometimes he would call **KILOLO**, he would "beep" and **KILOLO** would call him back.⁵¹⁸ In line with **KILOLO**'s instructions, D-0002 also testified that the meeting with **KILOLO** was not recorded.⁵¹⁹

169. Likewise, D-0003 followed **KILOLO**'s instructions: "Once you get to the Court, if you are asked about my contacts with Mr - you have to tell them that I received all these contacts in Douala" and "only repeated what Mr Kilolo had said to [him]."⁵²⁰ He testified falsely that he had had contact with the *Bemba* Defence on only three occasions.⁵²¹ In fact, he had been in contact with **KILOLO** on numerous occasions before,⁵²² including on his first day of testimony, when **KILOLO** called him on the phone he illicitly provided to congratulate him for having done well in front of the judges.⁵²³

170. D-0006 testified that nobody had put him in touch with the *Bemba* Defence,⁵²⁴ and that he had not spoken to any person he knew to be a Main Case witness.⁵²⁵ This false evidence was further compounded by D-0006's testimony that he had no contact at all with the *Bemba* Defence as of his 28 May 2013 handover to VWU⁵²⁶ as he did not have his own telephone when in VWU's care.⁵²⁷ CDRs however show that D-0006 contacted **KILOLO** on 4 June 2013.⁵²⁸

171. After his testimony, in a 21 October 2013 conversation, D-0006 asked "[e]t le

⁵¹⁷ During his testimony D-0002 used the number "[REDACTED]": T-19-ENG, p.21, lns.6-14, p.24, lns.1-15, p.25, lns.10-19, p.26, lns.7-16, p.28, lns.19-p.29, ln.2; T-21-ENG, p.57, ln.21-p.58, ln.3, p.59, ln.16-p.60, ln.25, p.61, lns.20-24.

⁵¹⁸ T-21-ENG, p.60, lns.7-8.

⁵¹⁹ CAR-OTP-0079-1530, 1533; T-19-ENG, p.16, ln.17-p.17, ln.1, p.77, lns.1-23.

⁵²⁰ T-23-ENG, p.15, lns.3-5.

⁵²¹ ICC-01/05-01/08-T-330-CONF-ENG-ET, p.20, lns.4-17.

⁵²² CAR-OTP-0090-0630, 0636-0638.

⁵²³ T-23-ENG, p.29, lns.2-4; T-27-ENG, p.30, lns.8-9.

⁵²⁴ ICC-01/05-01/08-T-329-CONF-ENG-ET, p.16, lns.1-25.

⁵²⁵ ICC-01/05-01/08-T-329-CONF-ENG-ET, p.16, lns.1-2.

⁵²⁶ ICC-01/05-01/08-T-328-CONF-ENG-ET, p.28, lns.13-16. Also CAR-OTP-0078-0290, 0294.

⁵²⁷ ICC-01/05-01/08-T-329-CONF-ENG-ET, p.21, lns.13-18.

⁵²⁸ CAR-OTP-0072-0391, row 37555.

sénateur [**BEMBA**⁵²⁹], comment il va ?” **KILOLO** replied: “Oui, oui, lui-même, ça va, ça va. En tout cas, il est vraiment [...] content de ... de tout ce qui a été fait, parce qu’il sait que ... quand il sortira, il doit vraiment compter sur vous et il doit aussi vous rencontrer chacun personnellement [...] Parce que ... il sait que vous avez fait [...]. Ce que vous avez fait est énorme”.⁵³⁰

172. D-0006’s false Main Case testimony, and participation in the group of witnesses assembled to give such false evidence during **BEMBA**’s trial is underscored by the threats he made against D-0003 when he suspected his cooperation with the article 70 investigation.⁵³¹

173. In Court, the Cameroon Witnesses all denied knowing **ARIDO** or **KOKATÉ**. D-0002 had identified **ARIDO** as his leader and person of contact in his Douala interview with **KILOLO** and **GIBSON**, a transcript of which was sent to the entire *Bemba* Defence team.⁵³² However, when testifying in the Main Case, he denied knowing **ARIDO**⁵³³ and **KOKATÉ**.⁵³⁴ He claimed only to know **KOKATÉ**’s name, but never to have met him.⁵³⁵ Likewise, D-0003 lied about knowing **ARIDO**, claiming that “[t]hat is the first time I have heard that name”.⁵³⁶ His responses were the same for **KOKATÉ**.⁵³⁷

⁵²⁹ **BEMBA** agreed that: “**BEMBA** has been a Senator of the DRC since 19 January 2007, including [between] the end of 2011 through November 2013”: ICC-01/05-01/13-1072-Conf-AnxB-Corr, p.2.

⁵³⁰ CAR-OTP-0082-0562, 0568, lns.194-202.

⁵³¹ T-22-ENG, p.50, lns.6-16, p.52, ln.10-p.53, ln.2.

⁵³² CAR-D21-0004-0463, 0516, 0519. The transcript was sent to **HAYNES**, **GIBSON**, **KILOLO**, and **MANGENDA** on 7 August 2012 (at 0463). The excerpt was played in Court: T-19-ENG, p.55, ln.5, p.59, ln.12; T-21-ENG, p.80, ln.1-p.81, ln.9.

⁵³³ ICC-01/05-01/08-T-322-CONF-ENG-ET, p.7, lns.22-23.

⁵³⁴ ICC-01/05-01/08-T-322-CONF-ENG-ET, p.8, lns.10-11, p.11, ln.18-p.12, ln.10.

⁵³⁵ ICC-01/05-01/08-T-322-CONF-ENG-ET, p.11, ln.18-p.12, ln.10.

⁵³⁶ ICC-01/05-01/08-T-330-CONF-ENG-ET, p.20, ln.24-p.21, ln.1.

⁵³⁷ ICC-01/05-01/08-T-330-CONF-ENG-ET, p.21, lns.2-3.

174. D-0004 testified falsely that he did not know **ARIDO**,⁵³⁸ despite having given **ARIDO**'s phone number as his own contact number to the VWU⁵³⁹ and having received money from **ARIDO**.⁵⁴⁰ Moreover, that D-0004 in fact knew **ARIDO** is not disputed by the **ARIDO** Defence.⁵⁴¹ D-0004 also testified that he did not know KOKATÉ,⁵⁴² with whom he was clearly in contact three weeks prior to his testimony.⁵⁴³

175. **KILOLO** instructed D-0002 to lie in Court about having "received anything whatsoever from him", or else "it would be as if someone were buying [him] off, bribing [him] to give testimony"⁵⁴⁴—instructions he also explicitly gave Brazzaville Witness D-0023.⁵⁴⁵ D-0002 testified accordingly "so that they would understand that [he] was a real witness that Mr Kilolo had found, the one who could tell the truth that he saw, that he experienced."⁵⁴⁶ He told the Court that he did not receive any money from the *Bemba* Defence, either as compensation for expenses or in exchange for his testimony.⁵⁴⁷

176. Likewise, as instructed,⁵⁴⁸ D-0003 falsely denied receiving any money from the *Bemba* Defence or on its behalf, including any legitimate reimbursement of expenses related to the Douala meeting.⁵⁴⁹

⁵³⁸ ICC-01/05-01/08-T-326bis-CONF-ENG-ET, p.28, ln.23-p.29, ln.4.

⁵³⁹ D-0004 gave **ARIDO**'s number ([REDACTED]) to VWU: CAR-OTP-0072-0116; CAR-OTP-0077-0942, 0943. In other documents, it is identified as **ARIDO**'s number: CAR-OTP-0070-0005, tab 1 Narcisse Arido, rows 72, 76-79, column AA; CAR-OTP-0073-0003, 0003. D-0004 also denied knowing **ARIDO** in his 2014 statement to the **KILOLO** Defence: CAR-D21-0004-0310, 0320, lns.338-342.

⁵⁴⁰ **ARIDO** paid D-0004 CFA 18,000 on 19 January 2012 via Express Union: CAR-OTP-0073-0048, 0049; CAR-OTP-0073-0046, 0047.

⁵⁴¹ **ARIDO** does not dispute the transfer to D-0004 on 19 January 2012: ICC-01/05-01/13-1072-Conf-Corr, para.14; ICC-01/05-01/13-598-Conf, paras.204, 280.

⁵⁴² ICC-01/05-01/08-T-326bis-CONF-ENG-ET, p.29, lns.5-15.

⁵⁴³ CAR-OTP-0073-0533, rows 1645, 1938. D-0004 had contact with KOKATÉ on two occasions (24, 27 May 2013), immediately prior to D-0004's introduction to VWU.

⁵⁴⁴ T-19-ENG, p.39, ln.23-p.40, ln.1. Also p.38, ln.8-p.40, ln.6.

⁵⁴⁵ *Below*, para.191.

⁵⁴⁶ T-19-ENG, p.39, ln.23-p.40, ln.1.

⁵⁴⁷ ICC-01/05-01/08-T-322-CONF-ENG-ET, p.26, ln.19-p.27, ln.9.

⁵⁴⁸ T-23-ENG, p.13, ln.6-p.15, ln.6; T-27-ENG, p.28, lns.16-17.

⁵⁴⁹ ICC-01/05-01/08-T-330-CONF-ENG-ET, p.21, ln.23-p.22, ln.4.

177. During his direct examination, HAYNES asked D-0006 if **KILOLO** had offered him “any money to come and give evidence for Jean-Pierre Bemba”, to which D-0006 responded “[j]amais”.⁵⁵⁰ D-0006 testified that **KILOLO** had only reimbursed him CFA 50,000 (EUR 76) for transport costs⁵⁵¹ and “[c]’est tout. [...] Il m’a rien donné, rien. C’est tout.”⁵⁵² He denied having received any other money from anyone.⁵⁵³

3. *The Brazzaville Witnesses*

178. As detailed below, with **BEMBA**’s knowledge and authorisation, **KILOLO** corruptly paid D-0023 and D-0029. In addition, also with **BEMBA**’s knowledge and authorisation, **KILOLO**, with **MANGENDA**’s assistance, illicitly coached D-0023, D-0026, and D-0029.

179. The pattern of evidence in this case proves that the payments and **KILOLO**’s interactions with the Witnesses were illicit. Two Brazzaville Witnesses were promised something in exchange for their testimony—D-0023 the prospect of relocating to Europe and D-0029 and his wife (D-0030) the promise of being remunerated as victims. Each Witness was given money and/or “gifts” having no legitimate connection with their Main Case testimony and for which no receipts or declarations were ever provided.

180. Intercepts concerning D-0026 and D-0029 readily reveal that **KILOLO** illicitly coached them. Similarly, D-0023’s evidence shows that **KILOLO** coached and instructed him to testify falsely. All three Witnesses testified falsely about the very things that would reveal their illicit interactions with the Accused: the nature of their prior contacts with the *Bemba* Defence and their receipt of money and/or gifts. The evidence proves beyond reasonable doubt that the Accused acted corruptly to

⁵⁵⁰ ICC-01/05-01/08-T-328-CONF-FRA-ET, p.29, lns.25-27.

⁵⁵¹ ICC-01/05-01/08-T-329-CONF-ENG, p.22, ln.3-24.

⁵⁵² ICC-01/05-01/08-T-328-CONF-FRA, p.30, lns.13-15; *Also* ICC-01/05-01/08-T-329-CONF-FRA, 24 juin 2013, p.23, lns.6-12.

⁵⁵³ ICC-01/05-01/08-T-329-CONF-ENG-ET, p.22, lns.3-7.

influence these Witnesses' testimonies.

a) Witness D-0023 – [REDACTED]

181. D-0023 is a [REDACTED] citizen and has resided in [REDACTED] since [REDACTED].⁵⁵⁴ D-0023 was never a soldier in the CAR army.⁵⁵⁵ He never personally witnessed the events in CAR about which he testified in the Main Case between 20 and 22 August 2013.⁵⁵⁶

D-0023 agrees to testify falsely in BEMBA's favour

182. In late 2011, early 2012, **KILOLO** and other persons implementing the Overall Strategy, began a concerted effort to convince D-0023 to testify falsely on **BEMBA's** behalf. During this period, [REDACTED] KOKATÉ,⁵⁵⁷ informed D-0023 that he would put him in contact with "one of Jean-Pierre Bemba's lawyers, and you're going to testify as a soldier"⁵⁵⁸ to ensure "that [**BEMBA** is] made innocent".⁵⁵⁹ KOKATÉ knew that D-0023 was never a CAR soldier.⁵⁶⁰ However, according to D-0023, KOKATÉ considered that the Witness, [REDACTED] had enough knowledge of the FACA to "know something about [the] subject" and to help get **BEMBA** acquitted.⁵⁶¹

183. KOKATÉ told D-0023 that testifying in the case would give him a possibility to relocate to Europe if he agreed. KOKATÉ clearly impressed on D-0023 this opportunity, telling him "that's how others come to Europe".⁵⁶² Although D-0023 attempted to downplay KOKATÉ's conduct, claiming to have no interest in Europe

⁵⁵⁴ T-13-ENG, p.17, ln.23-p.18, ln.4.

⁵⁵⁵ T-13-ENG, p.18, lns.5-7.

⁵⁵⁶ ICC-01/05-01/08-T-332-CONF-ENG-ET, pp.6-54; ICC-01/05-01/08-T-333-CONF-ENG-ET, pp.1-59; ICC-01/05-01/08-T-334-CONF-ENG-ET, pp.2-51.

⁵⁵⁷ T-13-ENG, p.49, lns.4-9. Also T-13-ENG, p.48, lns.14-16; T-15-ENG, p.57, lns.3-4.

⁵⁵⁸ T-13-ENG, p.49, lns.21-25. Also T-13-ENG, p.50, lns.6-9, p.51, lns.10-19; T-15-ENG, p.56, ln.8-p.57, ln.11.

⁵⁵⁹ T-13-ENG, p.58, ln.25-p.59, ln.3.

⁵⁶⁰ T-14-ENG, p.26, ln.23-p.27, ln.4; T-13-ENG, p.51, lns.3-9.

⁵⁶¹ T-13-ENG, p.52, lns.19-22, p.58, ln.25-p.59, ln.3.

⁵⁶² T-13-ENG, p.60, lns.1-9, p.61, lns.16-21.

since relocation entailed leaving his family behind,⁵⁶³ KOKATÉ's mention of the opportunity betrays an intention to secure D-0023's participation in the case as a false witness.

184. In their interaction, KOKATÉ told D-0023 that he would give his telephone number to **KILOLO** to get in contact with him.⁵⁶⁴ Regarding his prospective testimony, KOKATÉ told D-0023 to "act as if I was not the person who put you in contact with Maître Kilolo."⁵⁶⁵ Significantly, **KILOLO** also reiterated precisely this direction to the witness.⁵⁶⁶

KILOLO provides illicit payments and gifts to D-0023 before his testimony

185. A few months later⁵⁶⁷ in early 2012,⁵⁶⁸ **KILOLO** contacted D-0023 to meet in Brazzaville.⁵⁶⁹ The next day,⁵⁷⁰ D-0023 met with **KILOLO** and GIBSON,⁵⁷¹ at the Hotel [REDACTED].⁵⁷² KOKATÉ was also present, arriving to the interview shortly before D-0023 left.⁵⁷³

186. During the interview, and according to KOKATÉ's instructions,⁵⁷⁴ D-0023 told **KILOLO** and GIBSON that he was a soldier in the CAR army.⁵⁷⁵ **KILOLO** must have known this was not true:⁵⁷⁶ (i) **KILOLO** and KOKATÉ were in contact about D-0023 before D-0023's meeting with the *Bemba* Defence; (ii) notwithstanding that KOKATÉ put D-0023 in contact with **KILOLO**, both KOKATÉ and **KILOLO** instructed him not

⁵⁶³ T-13-ENG, p.61, lns.16-25.

⁵⁶⁴ T-13-ENG, p.49, ln.15-p.50, ln.7, p.62, lns.8-13.

⁵⁶⁵ T-13-ENG, p.55, lns.7-20. *Also* T-15-ENG, p.82, lns.16-18.

⁵⁶⁶ *Below* para.191.

⁵⁶⁷ T-13-ENG, p.50, lns.15-18.

⁵⁶⁸ *See* CAR-D21-0001-0106; CAR-D21-0003-0219, 0219.

⁵⁶⁹ T-13-ENG, p.50, lns.15-23.

⁵⁷⁰ T-13-ENG, p.50, ln.24-p.51, ln.2.

⁵⁷¹ The Witness' description of the "white lady" matches GIBSON: T-13-ENG, p.65, ln.18. Receipts also show that GIBSON participated in the Brazzaville mission: CAR-D21-0003-0219, 0219.

⁵⁷² T-15-ENG, p.14, ln.22-p.15, ln.5; T-13-ENG, p.50, ln.24-p.51, ln.2, p.62, ln.25-p.63, ln.12, p.65, lns.15-22. The **KILOLO** Defence disclosed a transcript of this interview: CAR-D21-0004-0640; CAR-D21-0004-0601.

⁵⁷³ T-13-ENG, p.62, lns.19-24; T-15-ENG, p.15, lns.3-5.

⁵⁷⁴ *Above* para.182.

⁵⁷⁵ T-14-ENG, p.29, lns.18-22; T-15-ENG, p.55, lns.21-23, p.57, lns.14-19; T-13-ENG, p.63, lns.13-16.

⁵⁷⁶ *Contra* T-13-ENG, p.65, lns.5-14.

to reveal this to the Court;⁵⁷⁷ and (iii) during D-0023's 2012 interview, neither **KILOLO** nor GIBSON ever attempted to verify D-0023's assertion that he was a CAR soldier. As D-0023 testified, "[w]e didn't even talk about it."⁵⁷⁸

187. For instance, during their extensive interview, **KILOLO** never asked D-0023 to provide a single document indicating that he was a soldier.⁵⁷⁹ **KILOLO** never asked him to provide his registration (*matricule*) number,⁵⁸⁰ which any soldier would have been issued, and would be able to give. Although D-0023 provided **KILOLO** the name of the department head in which he claimed to have worked, **KILOLO** never asked D-0023 about the Witness' day-to-day work in that unit,⁵⁸¹ the names of other unit members to which D-0023 purportedly belonged,⁵⁸² or anything that would so much as confirm D-0023's claimed FACA membership. Furthermore, a positive answer to any of these questions would have been useful to **KILOLO**'s identification of additional witnesses potentially favourable to **BEMBA**. Had that been his legitimate interest in meeting with D-0023, as an experienced lawyer, he would have asked those questions. However, the evidence shows that **KILOLO**—who was in charge of the Defence mission—limited the interview to anything but testing the legitimacy of the "witness" at his and GIBSON's disposal.⁵⁸³

188. After the interview and outside of GIBSON's presence, **KILOLO** gave D-0023 USD 100,⁵⁸⁴ specifically telling him the money was "not corruption",⁵⁸⁵ but to reimburse his taxi fare to and from the Hotel [REDACTED].⁵⁸⁶ The sum amounted to one hundred times what D-0023 expended and/or needed. D-0023 confirmed that the

⁵⁷⁷ Above para.184 and below para.191.

⁵⁷⁸ T-15-ENG, p.57, lns.11-13.

⁵⁷⁹ T-13-ENG, p.66, ln.23-p.67, ln.3.

⁵⁸⁰ T-13-ENG, p.68, lns.2-4.

⁵⁸¹ See CAR-D21-0004-0640; CAR-D21-0004-0601.

⁵⁸² T-13-ENG, p.67, lns.15-17.

⁵⁸³ E.g. T-13-ENG, p.63, lns.6-12.

⁵⁸⁴ T-13-ENG, p.68, lns.15-17.

⁵⁸⁵ T-13-ENG, p.69, ln.21-p.70, ln.3.

⁵⁸⁶ T-15-ENG, p.16, lns.5-10, p.70, lns.5-10.

payment was much more than what he actually paid in taxi fare⁵⁸⁷ —the Hotel [REDACTED] was only 4-5 kilometres from his home⁵⁸⁸ and the taxi fare was ordinarily no more than 1,000 CFA—roughly USD 1.⁵⁸⁹

189. Despite **KILOLO**'s conspicuous qualification regarding the payment, the evidence shows that it was not an isolated occurrence. Instead, it was part of a series of monies and gifts given to the Witness before his testimony, including at least one additional cash payment and a brand-new laptop computer.⁵⁹⁰ Finally, **KILOLO** never requested receipts to justify the cash payment, or sought to document the payment in any other way. The totality of the evidence concerning **KILOLO**'s and D-0023's interaction proves beyond reasonable doubt that **KILOLO** acted corruptly to influence D-0023.

190. After their first interview, in July 2012⁵⁹¹ **KILOLO** organised a separate meeting with D-0023 at Hotel [REDACTED] with French General Jacques SEARA⁵⁹² a Defence witness in the Main Case.⁵⁹³ The **KILOLO** Defence's position that SEARA met with D-0023 to cross-check D-0023's claims on behalf of the *Bemba* Defence⁵⁹⁴ is not only unpersuasive, but unsubstantiated by any evidence adduced at trial. Despite D-0023 informing SEARA that he was formerly a soldier,⁵⁹⁵ SEARA, like **KILOLO** and GIBSON, did not request any material to verify D-0023's claimed status as a FACA soldier. Nor did he ask the Witness for his registration number, about other persons in his unit, his function, the name of a single colleague, or his immediate commander. He never asked the Witness for the contact information of any person who might be

⁵⁸⁷ T-13-ENG, p.69, lns.6-8.

⁵⁸⁸ T-13-ENG, p.68, lns.8-12.

⁵⁸⁹ T-13-ENG, p.68, lns.21-24. At the time US 10 was approximately equal to CFA 5,500: T-13-ENG, p.69, lns.2-5.

⁵⁹⁰ *Below* para.191. **KILOLO** also transferred EUR 99.09 to D-0023: CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, row 12.

⁵⁹¹ T-13-ENG, p.70, lns.12-13. *Also* CAR-D21-0001-0011 (SEARA's flight itinerary); CAR-D21-0001-0029; CAR-D21-0001-0035 (invoices from Hotel [REDACTED] showing **KILOLO**'s stay in July 2012).

⁵⁹² T-13-ENG, p.70, lns.16-20; T-15-ENG, p.20, lns.1-4.

⁵⁹³ *See* ICC-01/05-01/08-T-229-Red2-ENG-CT, p.3, lns.3-4.

⁵⁹⁴ T-15-ENG, p.21, lns.19-20, p.58, lns.19-20.

⁵⁹⁵ T-13-ENG, p.70, ln.25-p.71, ln.2.

able to verify the Witness' status. Their conversation was short and superficial, with SEARA asking two principal questions: (i) where D-0023 was trained; and (ii) which military academy he attended.⁵⁹⁶ The Witness conceded, "[w]e didn't go into depth [and] [w]e didn't spend much time with [SEARA]".⁵⁹⁷ This is consistent with the fact that SEARA's only responsibility for the *Bemba* Defence was to produce an expert military report⁵⁹⁸—not to verify the authenticity of witnesses **KILOLO** brought to him.

191. **KILOLO** and D-0023 remained in contact after these meetings, during which **KILOLO** gave D-0023 more money, a laptop computer, and also coached the Witness on what not to tell the Court when testifying. Specifically:

- **KILOLO** told D-0023 to lie to the Court and not to tell anyone that KOKATÉ had introduced them.⁵⁹⁹
- **KILOLO** met with D-0023 at the [REDACTED] Hotel less than one week before his testimony⁶⁰⁰ and, unsolicited, gave him an envelope containing approximately CFA 450,000.⁶⁰¹ **KILOLO** told the Witness that the money was "something to help you out for you and your family during the period of your absence"⁶⁰² and it was "money on his own account and that it was not an official thing [...] [that] these were personal gestures that [**KILOLO**] made towards [D-0023]".⁶⁰³
- **KILOLO** gave D-0023 a brand-new laptop when they met at the [REDACTED] Hotel⁶⁰⁴ the same week, possibly the same day, the Witness received the CFA

⁵⁹⁶ T-15-ENG, p.20, ln.5-p.22, ln.2, p.58, ln.8-p.59, ln.2.

⁵⁹⁷ T-15-ENG, p.58, ln.19-p.59, ln.2.

⁵⁹⁸ *Generally* ICC-01/05-01/08-T-229-Red2-ENG-CT.

⁵⁹⁹ T-13-ENG, p.55, lns.7-24, p.57, ln.22-p.58, ln.5.

⁶⁰⁰ T-14-ENG, p.21, lns.3-7.

⁶⁰¹ T-13-ENG, p.71, ln.9-p.72, ln.3; T-15-ENG, p.70, lns.17-25.

⁶⁰² T-13-ENG, p.72, lns.1-2, 12-16.

⁶⁰³ T-16-ENG, p.47, lns.6-10, p.48, lns.3-13; T-14-ENG, p.19, lns.1-10.

⁶⁰⁴ T-13-ENG, p.73, lns.1-14.

450,000.⁶⁰⁵ Despite D-0023's offer to reimburse **KILOLO** for the laptop, **KILOLO** refused, saying, "[n]o, there's no need. Take it. It's a present."⁶⁰⁶

- **KILOLO** told D-0023 to lie in Court about the monies and laptop, warning him to "never make a mistake" by saying that he received *anything* from **KILOLO**.⁶⁰⁷ **KILOLO** knew that the Overall Strategy would be at risk of coming undone if that information were revealed.

KILOLO coaches D-0023 and D-0023 testifies falsely according to KILOLO's instructions

192. Prior to D-0023's handover to VWU—and knowing that VWU would take away the Witness' phone—**KILOLO** gave D-0023 another telephone.⁶⁰⁸ He told D-0023 that he was giving him the telephone because he "[p]ersonally [...] would like to remain in contact with [him]."⁶⁰⁹

193. Using the telephone given by **KILOLO**,⁶¹⁰ **KILOLO** had unauthorised contact with D-0023 after the VWU cut-off date, including on 19 August 2013, the night before his testimony and during overnight breaks when it was in progress.⁶¹¹ During his testimony, D-0023 recounted that **KILOLO** contacted him "[a] number of times. [...] each evening he would call."⁶¹² CDRs confirm **KILOLO**'s illicit contacts. On 19 August 2013, **KILOLO** spoke with the Witness twice for approximately 45 minutes.⁶¹³ **KILOLO** and D-0023 also spoke six times after D-0023 began testifying.⁶¹⁴ They spoke

⁶⁰⁵ T-14-ENG, p.21, lns.8-12.

⁶⁰⁶ T-13-ENG, p.73, lns.15-24.

⁶⁰⁷ T-16-ENG, p.48, lns.3-13.

⁶⁰⁸ T-13-ENG, p.74, ln.14-p.75, ln.3.

⁶⁰⁹ T-13-ENG, p.75, lns.2-6. VWU gave D-0023 a telephone with a SIM card, but advised him not to "call another person". VWU's phone also prevented D-0023 from making outside calls: T-15-ENG, p.28, ln.24-p.29, ln.6.

⁶¹⁰ D-0023 used his own SIM card with the telephone provided by **KILOLO**: T-15-ENG, p.27, lns.6-9.

⁶¹¹ CAR-OTP-0090-0630, 0689, rows 46-55.

⁶¹² T-13-ENG, p.75, lns.13-22.

⁶¹³ CAR-OTP-0090-0630, 0689, rows 46-47.

⁶¹⁴ CAR-OTP-0090-0630, 0689, rows 48, 51-55. Also T-13-ENG, p.80, lns.3-12.

for more than 25 minutes following D-0023's first day of testimony,⁶¹⁵ and another 19 minutes after his second day.⁶¹⁶

194. D-0023 admitted that these conversations “w[ere] [...] about the testimony”, about D-0023 telling **KILOLO** what he “knew about the case”⁶¹⁷ and **KILOLO** “tr[ying] to help” D-0023 by responding to his questions and, importantly, discussing the testimony he gave that day and what he would testify about the next day.⁶¹⁸ For example, during a 41 minute call on the eve of D-0023's testimony,⁶¹⁹ **KILOLO** asked D-0023 about the composition of BOZIZÉ's general staff.⁶²⁰ He then illicitly coached D-0023 that SAMBATÉ (or SANGBATÉ) was a member of BOZIZÉ's staff.⁶²¹ As the witness explained, he “never knew that [SAMBATÉ] joined the rebellion of Bozizé”, but “when [he] spoke to him, Mr Kilolo, he said [SAMBATÉ] was the coordinator of the -- of this general staff.”⁶²²

195. **KILOLO**'s conduct betrays his intention to steer the Witness' evidence.⁶²³ The day after coaching D-0023 on SAMBATÉ's membership in BOZIZÉ's general staff, **KILOLO** elicited the Witness' false evidence on this in Court.⁶²⁴ D-0023 even feigned surprise when **KILOLO** asked him to describe the composition of BOZIZÉ's staff, testifying, “[t]hat's a very difficult question because I could never have imagined that I would have to answer such a question”⁶²⁵—despite having discussed the issue with **KILOLO**. D-0023 then testified according to **KILOLO**'s coaching, that the general staff included “Sangbaté, who was the co-ordinator”.⁶²⁶

⁶¹⁵ CAR-OTP-0090-0630, 0689, rows 48, 51-54.

⁶¹⁶ CAR-OTP-0090-0630, 0689, row 55. VWU confirmed that **KILOLO** did not have authorisation to contact D-0023 during the overnight adjournment: CAR-OTP-0072-0172.

⁶¹⁷ T-14-ENG, p.5, lns.17-21.

⁶¹⁸ T-13-ENG, p.75, ln.18-p.76, ln.2; T-14-ENG, p.5, lns.1-21.

⁶¹⁹ CAR-OTP-0090-0630, 0689, row 47.

⁶²⁰ T-14-ENG, p.7, lns.7-11.

⁶²¹ T-14-ENG, p.7, ln.25-p.8, ln.25, p.12, ln.13-p.14, ln.14.

⁶²² T-14-ENG, p.14, lns.6-12.

⁶²³ *Contra* T-15-ENG, p.31, ln.20-p.32, ln.4.

⁶²⁴ ICC-01/05-01/08-T-332-Red-ENG, p.28, lns.6-19, p.66, lns.4-8.

⁶²⁵ ICC-01/05-01/08-T-332-Red-ENG, p.28, lns.7-9.

⁶²⁶ ICC-01/05-01/08-T-332-Red-ENG, p.28, lns.14-15.

196. **KILOLO**'s illicit coaching of the witness is consistent with other instructions he gave to D-0023 to testify falsely before the Court:

- Following **KILOLO**'s instruction not to reveal anything about the money and gifts he had received,⁶²⁷ D-0023 testified falsely that he had not received any payment in exchange for his testimony,⁶²⁸ despite having already received significant sums of money and a new laptop from **KILOLO**. D-0023 clearly knew and understood the import of the question, given that he had received money and gifts from **KILOLO** in the very week preceding his testimony and **KILOLO**'s explicit instruction to lie about the matter.
- Following **KILOLO**'s instruction not to mention that KOKATÉ had introduced them,⁶²⁹ D-0023 testified falsely that he "never spoke to [KOKATÉ]" and "wouldn't really say that [he] knew [KOKATÉ]"⁶³⁰ in an attempt "to try and veil the truth".⁶³¹

197. D-0023 also testified falsely that he had been a former FACA soldier⁶³² who joined BOZIZÉ's rebellion⁶³³ and was seconded to the intelligence section.⁶³⁴ He lied about not being offered the possibility to relocate to Europe for his testimony. He gave a rambling, nearly incoherent response.⁶³⁵

198. **KILOLO**'s instructions and D-0023's lies belie any suggestion, including the Witness',⁶³⁶ that D-0023's testimony was based solely on information he "researched" and not provided to him by **KILOLO**. Further, D-0023 confirms that any "research"

⁶²⁷ Above para.191.

⁶²⁸ ICC-01/05-01/08-T-334-Red-ENG, p.17, lns.23-25.

⁶²⁹ Above para.191.

⁶³⁰ ICC-01/05-01/08-T-333-Red-ENG, p.59, lns.15-16. Also ICC-01/05-01/08-T-334-Red-ENG, p.14, ln.20-p.15, ln.15.

⁶³¹ T-13-ENG, p.53, lns.3-17.

⁶³² ICC-01/05-01/08-T-332-CONF-ENG-ET, p.14, ln.13. Also T-16-ENG, p.36, lns.12-13, p.38, ln.25-p.39, ln.3.

⁶³³ ICC-01/05-01/08-T-332-Red-ENG, p.18, lns.7-12.

⁶³⁴ ICC-01/05-01/08-T-332-Red-ENG, p.30, lns.20-22; ICC-01/05-01/08-T-333-Red-ENG, p.57, lns.5-6.

⁶³⁵ ICC-01/05-01/08-T-334-CONF-ENG-ET, p.15, ln.16-p.16, ln.3.

⁶³⁶ Contra T-14-ENG, p.14, ln.20-p.15, ln.13; T-15-ENG, p.31, lns.22-23.

was undertaken under **KILOLO**'s direction. During their discussions, **KILOLO** would ask D-0023 about specific issues.⁶³⁷ Those issues with which D-0023 was unfamiliar, D-0023 researched.⁶³⁸ **KILOLO** then specifically elicited that information in Court.⁶³⁹ **KILOLO** had to know that D-0023 could and would give favourable substantive testimony *before* eliciting the specific information from him in Court. **KILOLO**'s illicit conversations with D-0023, during which he went over facts and information obviously unfamiliar to the Witness, was a device **KILOLO** used to influence the Witness testimony directly—whereby the Witness parroted back the falsehood as instructed, or indirectly—whereby, responding to **KILOLO**'s signal he researched the matter, and then testified falsely as though it was within his personal knowledge and experience.

199. D-0023 gave false testimony on several matters, including on issues material to the Main Case. Equally, the evidence proves beyond any doubt that **KILOLO** acted deliberately and corruptly to influence D-0023's evidence as he had with other witnesses. However, as shown above, **KILOLO** had every reason and opportunity to know that D-0023 was altogether a false witness. Indeed, the evidence shows that **KILOLO** must have known this and collaborated with KOKATÉ, which is why they both instructed D-0023 to conceal their association.

b) Witness D-0026 – [REDACTED]

200. D-0026 is a [REDACTED].⁶⁴⁰ Between 20 and 23 August 2013, the Witness testified in the Main Case *via* video link from [REDACTED] about [REDACTED] into BOZIZÉ's troops, the composition of these troops, the crimes they committed, and

⁶³⁷ *E.g.* T-15-ENG, p.31, lns.20-23.

⁶³⁸ *Ibid.*

⁶³⁹ ICC-01/05-01/08-T-332-Red-ENG, p.28, lns.14-15.

⁶⁴⁰ ICC-01/05-01/08-T-332-CONF-ENG-ET, p.62, ln.6, p.63, lns.5-6; CAR-D04-0003-0170, 0170. CAR-D04-0004-0060, 0060.

the movement of BOZIZÉ and MLC troops in CAR.⁶⁴¹

KILOLO coaches D-0026 after the VWU cut-off date and during his testimony

201. **KILOLO** illicitly coached D-0026 after the VWU cut-off date, including during the Witness' testimony. As CDRs reflect,⁶⁴² **KILOLO** spoke with D-0026 at least 12 times after the 16 August 2013 VWU cut-off date for approximately one hour and 13 minutes. Two of these conversations were intercepted, revealing **KILOLO**'s illicit coaching.

202. On 20 August 2013, during the 11:00 CEST Court recess⁶⁴³ and using a phone⁶⁴⁴ provided by **MANGENDA**,⁶⁴⁵ **KILOLO** spoke with D-0026 twice to ensure that D-0026's evidence aligned with that of D-0023.⁶⁴⁶ D-0023 testified during the morning sessions,⁶⁴⁷ while D-0026 testified in the afternoon,⁶⁴⁸ providing **KILOLO** with the opportunity to tailor D-0026's evidence.

203. Contrary to the **KILOLO**'s position, set out in his Confirmation submissions, these coaching sessions went beyond "refreshing" D-0026's memory.⁶⁴⁹ **KILOLO** supplied D-0026 with information to align his evidence with D-0023's on: (i) the timing of BOZIZÉ's rebellion;⁶⁵⁰ (ii) the number of BOZIZÉ's troops;⁶⁵¹ and (iii) the troop's composition, including FACA deserters, CAR volunteers, and former military

⁶⁴¹ Generally ICC-01/05-01/08-T-332-CONF-ENG-ET, pp.55-83; ICC-01/05-01/08-T-333-CONF-ENG-ET, pp.60-88; ICC-01/05-01/08-T-334-CONF-ENG-ET, pp.52-80; ICC-01/05-01/08-T-335-CONF-ENG-ET.

⁶⁴² CAR-OTP-0090-0630, 0705, rows 17-31.

⁶⁴³ ICC-01/05-01/08-T-332-Red-ENG, p.30, lns.5-6.

⁶⁴⁴ CAR-OTP-0090-0630, 0705, rows 25-26.

⁶⁴⁵ ICC-01/05-01/13-594-Conf-Corr, paras.75, 96.

⁶⁴⁶ ICC-01/05-01/08-2222-Conf-AnxA, pp.16-18. The "Subject Matter of Testimony" of D-0026 and D-0023 cover essentially the same points.

⁶⁴⁷ ICC-01/05-01/08-T-332-CONF-ENG-ET, pp.6-54; ICC-01/05-01/08-T-333-CONF-ENG-ET, pp.1-59; ICC-01/05-01/08-T-334-CONF-ENG-ET, pp.2-51.

⁶⁴⁸ ICC-01/05-01/08-T-332-CONF-ENG-ET, pp.55-83; ICC-01/05-01/08-T-333-CONF-ENG-ET, pp.60-88; ICC-01/05-01/08-T-334-CONF-ENG-ET, pp.52-80.

⁶⁴⁹ See ICC-01/05-01/13-600-Conf-Corr2, paras.209, 215, 218; ICC-01/05-01/13-674-Conf, paras.210-215.

⁶⁵⁰ CAR-OTP-0077-1356, 1357, lns.13-16. Compare ICC-01/05-01/08-T-332-Red-ENG, p.16, ln.18-p.17, ln.1.

⁶⁵¹ CAR-OTP-0077-1356, 1357, lns.18-19, 1358, ln.35. Compare ICC-01/05-01/08-T-332-Red-ENG, p.18, lns.13-18.

troops from Zaire who had arrived as refugees, including the “shoe-shiners”.⁶⁵² To be consistent with D-0023’s testimony, **KILOLO** also coached D-0026 on issues that deviated from⁶⁵³ or directly contradicted⁶⁵⁴ D-0026’s previous statement to the *Bemba* Defence, including that: (i) BOZIZÉ’s troops occupying the northern areas of Bangui until 30 October 2002;⁶⁵⁵ (ii) BOZIZÉ’s troops, based at Moyenne SIDO, CAR,⁶⁵⁶ attacking Bangui on 25 October 2002;⁶⁵⁷ and (iii) detailed information on the creation and composition of BOZIZÉ’s Main Staff and the individual roles of its various officers.⁶⁵⁸

204. Apart from these issues, **KILOLO** coached D-0026 on the crimes allegedly committed by the rebels⁶⁵⁹ and the reasons why.⁶⁶⁰ **KILOLO** even told D-0026 the specific questions he intended to ask him in Court, such as “*pourquoi il y a eu des pillages*”, “[p] ourquoi il y a eu des viols de femmes?”, “*pourquoi on tuait les gens*”, and “*est-ce que c’est possible de distinguer un Centrafricain et un Congolais quand ils parlaient le lingala*”.⁶⁶¹ **KILOLO** stressed to D-0026 that he remember to tell the Court that: “*les militaires centrafricains qui parlaient lingala étaient très nombreux*.”⁶⁶² He further explained the importance of showing how it was impossible to “*distinguer un*

⁶⁵² CAR-OTP-0077-1359, 1360, lns.14-22. Compare ICC-01/05-01/08-T-332-Red-ENG, p.19, lns.1-10.

⁶⁵³ CAR-OTP-0077-1356, 1358, lns.45-51; CAR-OTP-0077-1359, 1360, lns.6-12. Also ICC-01/05-01/08-T-332-Red-ENG, p.28, ln.6-p.30, ln 1. Compare CAR-D21-0004-0546, 0550, 0555, 0570.

⁶⁵⁴ D-0026 stated in 2012 that BOZIZÉ’s troops were based in Sido, Chad; mentioned Moyenne-Sido, CAR, when listing the areas where troops were deployed; and that the troops had arrived on 25 November 2002 and left Bangui two days later: CAR-D21-0004-0546, 0549-0550, 0556, 0559, 0566-0567.

⁶⁵⁵ CAR-OTP-0077-1359, 1361, lns.36-40, 1362, lns.76-80. Compare ICC-01/05-01/08-T-332-Red-ENG, p.31, lns.16-24, p.35, ln.20-p.36, ln.4, p.41, lns.7-17.

⁶⁵⁶ CAR-OTP-0077-1356, 1357, lns.13-21. Compare ICC-01/05-01/08-T-332-Red-ENG, p.17, lns.6-9, p.18, lns.7-8.

⁶⁵⁷ CAR-OTP-0077-1359, 1360-1361, lns.33-37. Compare ICC-01/05-01/08-T-332-Red-ENG, p.31, lns.12-15.

⁶⁵⁸ CAR-OTP-0077-1356, 1358, lns.45-51; CAR-OTP-0077-1359, 1360, lns.6-12. Also ICC-01/05-01/08-T-332-Red-ENG, p.28, ln.6-p.30, ln.1.

⁶⁵⁹ CAR-OTP-0077-1359, 1361, lns.41-50; ICC-01/05-01/08-T-332-Conf-ENG-ET, p.45, lns.4-8, p.49, ln.14-p.50, ln.5, p.51, ln.22-p.52, ln.19.

⁶⁶⁰ CAR-OTP-0077-1359, 1361, lns.54-58, 1362, lns.84-87. ICC-01/05-01/08-T-332-Red-ENG, p.44, ln.12-p.45, ln.2, p.49, ln.14-p.50, ln.8. When asked in 2012 why BOZIZÉ’s troops were raping civilians, D-0026 stated that the soldiers wanted to take advantage of the civilians and flee before the arrival of **BEMBA**’s troops: CAR-D21-0004-0546, 0564.

⁶⁶¹ CAR-OTP-0077-1359, 1362, lns.84-88.

⁶⁶² CAR-OTP-0077-1359, 1361, lns.60-61. Compare CAR-D21-0004-0546, 0554-0555.

Centrafricain et un Congolais quand ils parlaient le lingala".⁶⁶³ **KILOLO** also said: "*je voudrais un peu répéter les choses-là, si tu peux me suivre attentivement*".⁶⁶⁴

205. Finally, **KILOLO** instructed D-0026 to lie about their contacts, and testify that they last spoke when the Witness was handed over to VWU. Taking the cue, D-0026 suggested that he say that they spoke on the phone only six times,⁶⁶⁵ with which **KILOLO** was satisfied.

206. **MANGENDA** knew of and facilitated **KILOLO**'s illicit coaching of D-0026. **MANGENDA** does not dispute the fact that **KILOLO** called D-0026 with his phone during the morning recess on 20 August 2013.⁶⁶⁶ Further, the weight of evidence demonstrating **MANGENDA**'s intimate knowledge of **KILOLO**'s illicit coaching of Defence witnesses,⁶⁶⁷ the assistance that he provided to that end,⁶⁶⁸ and the fact that the calls to D-0026 were made after the VWU cut-off date and just before D-0026's scheduled testimony, gives rise to only one reasonable inference—one establishing **MANGENDA**'s intention to facilitate **KILOLO**'s illicit coaching.

D-0026 testifies falsely according to KILOLO's instruction

207. During his Main Case testimony, D-0026 testified falsely, providing mostly answers that he rehearsed with **KILOLO** in their conversations during the morning recess.⁶⁶⁹ When D-0026 deviated from the script, **KILOLO** would contact D-0026 that same evening and then elicit a revised answer in Court the next day. For example, when testifying on 20 August 2013, D-0026 deviated from **KILOLO**'s script, claiming

⁶⁶³ CAR-OTP-0077-1359, 1362, lns.84-88. Compare ICC-01/05-01/08-T-332-Red-ENG, p.25, ln.21-p.26, ln.11.

⁶⁶⁴ CAR-OTP-0077-1356, 1357, lns.6-7.

⁶⁶⁵ See CAR-OTP-0077-1359, 1362, lns.95-98.

⁶⁶⁶ ICC-01/05-01/13-594-Conf-Corr, para.75.

⁶⁶⁷ CAR-OTP-0080-0245, 0249, lns.75-88; CAR-OTP-0082-1326, 1341, lns.528-546, 1343, lns.602-612; CAR-OTP-0082-1140, 1142, lns.8-20.

⁶⁶⁸ See below paras.331-333.

⁶⁶⁹ ICC-01/05-01/08-T-332-CONF-ENG-ET, p.65, ln.11-p.71, ln.16, p.79, ln.7-p.80, ln.22.

that BOZIZÉ's troops arrived in Bangui on 25 November 2002⁶⁷⁰—what he told the *Bemba* Defence during their 2012 interview.⁶⁷¹ **KILOLO** called D-0026 that evening and spoke with him for 23 minutes.⁶⁷² The next day in Court, **KILOLO** revisited the crucial date, eliciting the scripted response the Witness failed to deliver the previous day.⁶⁷³ When cross-examined about the change in his story, D-0026—like other illicitly coached witnesses⁶⁷⁴—lied about being coached and falsely claimed that he had no contact with anyone since his previous day's testimony.⁶⁷⁵ Indeed, following **KILOLO**'s instruction,⁶⁷⁶ D-0026 testified falsely in the presence of **KILOLO** and **MANGENDA**,⁶⁷⁷ that he had contact with the *Bemba* Defence only twice,⁶⁷⁸ and that he had had no recent contacts with them.⁶⁷⁹

208. Finally, like the other Brazzaville witnesses, D-0026 denied falsely knowing KOKATÉ,⁶⁸⁰ a claim patently contradicted by WU records, showing two transfers between him and KOKATÉ before his testimony.⁶⁸¹

c) Witness D-0029 (D21-0003) – [REDACTED]

209. Witness D-0029 is [REDACTED].⁶⁸² He testified in the Main Case from 28 to 29 August 2013 *via* video link⁶⁸³ about [REDACTED] BOZIZÉ troops in Bangui on 26 October 2002 and the physical violence he suffered.⁶⁸⁴

⁶⁷⁰ See ICC-01/05-01/08-T-332-Red-ENG, p.79, lns.5-7, p.80, lns.2-7, p.81, lns.11-13. *Contra* CAR-OTP-0077-1359, 1360-1361, lns.33-37.

⁶⁷¹ D-0026 initially mentioned 25 November 2002, as the date of BOZIZÉ's troops arrival in Bangui before being prompted by **KILOLO** to say it was on 25 October 2002: CAR-D21-0004-0546, 0559.

⁶⁷² CAR-OTP-0090-0630, 0705, row 28. **KILOLO** was not authorized to speak with D-0026 during the overnight adjournment of his testimony: CAR-OTP-0072-0172, 0172.

⁶⁷³ ICC-01/05-01/08-T-333-Red-ENG, p.61, lns.10-17, p.66, lns.10-23.

⁶⁷⁴ *E.g. below*, para.267.

⁶⁷⁵ ICC-01/05-01/08-T-333-Red-ENG, p.68, ln.17-p.69, ln.15.

⁶⁷⁶ *Above*, para.205.

⁶⁷⁷ ICC-01/05-01/08-T-332-Red-ENG, p.55, ln.24-p.56, ln.3.

⁶⁷⁸ ICC-01/05-01/08-T-335-CONF-ENG, p.14, ln.25-p.19, ln.7.

⁶⁷⁹ ICC-01/05-01/08-T-335-Red-ENG, p.19, lns.5-7.

⁶⁸⁰ ICC-01/05-01/08-T-334-CONF-ENG-ET, p.62, ln.21-p.63, ln.7.

⁶⁸¹ CAR-OTP-0070-0005, tab 4 Joachim Kokate, rows 23, 41.

⁶⁸² ICC-01/05-01/08-T-338-CONF-ENG CT, p.60, ln.24-p.61, ln.2; CAR-D04-0004-0067; CAR-OTP-0085-0628-R02, 0642, lns.464-469.

⁶⁸³ ICC-01/05-01/08-T-338-Red-ENG CT, p.55, ln.24-p.56, ln.1.

⁶⁸⁴ *Generally* ICC-01/05-01/08-T-338-CONF-ENG-ET; ICC-01/05-01/08-T-339-CONF-ENG-ET.

KILOLO and BEMBA make a corrupt payment to D-0029

210. The evidence shows beyond reasonable doubt that **KILOLO**, on **BEMBA**'s authority and instruction, illicitly paid D-0029. That the payment was illicit is clear from the sequence of events and deliberate efforts by **KILOLO**, **BEMBA**, their associates, and the Witness, to disguise the payment and withhold information about it from TCIII.

211. While D-0029 has altered his story in various accounts provided to the Court, the Prosecution, and the Defence, several elements are uncontroversial and consistent. When the Witness and his spouse were first propositioned by KOKATÉ⁶⁸⁵— [REDACTED]⁶⁸⁶—to testify on **BEMBA**'s behalf, KOKATÉ told D-0029, individually and when the Witness was together with his wife, that if they testified for **BEMBA**, they could claim compensation as reparations for the crimes committed against them.⁶⁸⁷ D-0029 and his wife agreed to testify and KOKATÉ told them he would give their phone number to **KILOLO** to contact them,⁶⁸⁸ which **KILOLO** did.⁶⁸⁹

212. While contradicting himself several times on cross-examination in this case, money was clearly important to D-0029 and his wife. When interviewed by the Prosecution, the Witness conceded that he had "*difficultés financières*",⁶⁹⁰ which precluded him from reuniting with his son (who lived in [REDACTED] when the Witness and his remaining family were in Brazzaville) for over four years. He repeated this during his direct examination, affirmatively responding to the

⁶⁸⁵ "Djoki" is KOKATÉ's nickname: T-40-ENG, p.63, lns.16-p.64, ln.14.

⁶⁸⁶ See T-40-ENG, p.64, lns.12-14. Also CAR-OTP-0085-0628-R02, 0655, lns.933-934, 0656, lns.958-959, 0660, lns.1082-1086.

⁶⁸⁷ T-40-ENG, p.65, lns.9-20, p.66, lns.2-25. Also CAR-OTP-0085-0673, 0680, lns.230-237, 0681, lns.270-274, 0682, lns.293-296.

⁶⁸⁸ T-40-ENG, p.69, lns.7-14. Also CAR-OTP-0085-0628-R02, 0655, lns.909-915, 0656, lns.970-973, 0658, lns.1038-1043, 0660-0661, lns.1111-1117; CAR-OTP-0085-0673, 0685, lns.420-422.

⁶⁸⁹ T-40-ENG, p.22, lns.13-17. Also CAR-OTP-0085-0628-R02, 0658, lns.1038-1043, 0660-0661, lns.1111-1117.

⁶⁹⁰ CAR-OTP-0085-0628-R02, 0648, lns.661-664.

Defence's inquiry whether the "money truly help[ed] him".⁶⁹¹

213. Indeed, just a few days before D-0029 and his wife testified in August 2013, the Witness, his wife, **KILOLO**, and **MANGENDA**⁶⁹² shared a taxi *en route* to a hotel where they were to meet VWU representatives.⁶⁹³ While in the taxi, D-0029 told **KILOLO** and **MANGENDA** that he planned to ask VWU representatives to help him and his wife bring their son from [REDACTED] to Brazzaville,⁶⁹⁴ which he did—"really insist[ing], actually, about that."⁶⁹⁵ When VWU turned him down,⁶⁹⁶ the Witness immediately called **KILOLO** to inform him.⁶⁹⁷ He said, "[j]'ai posé le problème" and that "*Madame insiste*" that assistance be provided.⁶⁹⁸

214. **KILOLO** knew that if the Witness continued to insist on benefits the Overall Strategy might be compromised. He told the Witness not to press the matter with VWU as it would look like blackmail, extortion—"un chantage".⁶⁹⁹ **KILOLO** told the Witness to drop the issue: "[e]t comme c'est comme ça, il faut laisser seulement".⁷⁰⁰ During trial, the Witness admitted that he did not know "Mr Kilolo's point of view".⁷⁰¹ However, **KILOLO**'s point was clear: if the Witness continued to insist it would become patently obvious that his and his wife's cooperation with the Court depended on them getting paid.

⁶⁹¹ T-40-ENG, p.33, lns.3-6. *Also* p.31, lns.18-20.

⁶⁹² **MANGENDA** is the only person fitting the description of the fourth passenger: a "tall", "light skin[ned]" individual who wore glasses and whom **KILOLO** told D-0029 was "his colleague": T-41-ENG, p.23, lns.22-25. The Witness' comment that the individual was a "lawyer" was a mistaken assumption that due to **MANGENDA** being **KILOLO**'s colleague meant that **MANGENDA** must have been a lawyer: T-40-ENG, p.75, lns.4-6.

⁶⁹³ T-40-ENG, p.72, lns.17-20, p.73, lns.6-9.

⁶⁹⁴ T-40-ENG, p.71, lns.10-15. *Also* CAR-OTP-0085-0707-R02, 0711, lns.131-136, 0712, lns.149-152.

⁶⁹⁵ T-40-ENG, p.31, lns.19-24, p.73, lns.16-21. *Also* T-41-ENG, p.24, ln.24-p.25, ln.3; CAR-OTP-0085-0628-R02, 0647-0648, lns.649-656. CAR-OTP-0085-0707-R02, 0712, lns.154-156.

⁶⁹⁶ CAR-OTP-0085-0628-R02, 0648, lns.666-670; CAR-OTP-0085-0707-R02, 0715, lns.255-264.

⁶⁹⁷ See T-41-ENG, p.25, lns.14-19; CAR-OTP-0085-0707-R02, 0715, lns.274-278, 0732, lns.866-869.

⁶⁹⁸ See T-41-ENG, p.26, lns.13-22; CAR-OTP-0085-0707-R02, 0715, lns.280-286.

⁶⁹⁹ See T-41-ENG, p.27, lns.9-13, p.30, lns.21-25; CAR-OTP-0085-0707-R02, 0715, lns.282-286, 0717, lns.333-337.

⁷⁰⁰ T-41- FRA, p.29, lns.15-19; CAR-OTP-0085-0707-R02, 0717, lns.339-340.

⁷⁰¹ T-41-ENG, p.31, lns.4-6.

215. Nonetheless, the Witness raised the issue with **KILOLO** again.⁷⁰² On the eve of his Main Case testimony,⁷⁰³ despite knowing VWU's rejection of the Witness' request, and having told the Witness to drop the issue, **KILOLO** arranged to pay the Witness directly. He told the Witness that he would contact "*des gens qui soutiennent le Sénateur*" —a reference to **BEMBA**.⁷⁰⁴ **KILOLO** also told D-0029 that "[**BEMBA**] *a des amis [...] au sein du parti, de leur parti là bas*" and would ask that money be sent to D-0029.⁷⁰⁵ On or around the same day, D-0029 received a telephone call from Jean-Paul MOKULA who informed D-0029 that **KILOLO** had asked him to send CFA 300,000 (about USD 500) to the witness.⁷⁰⁶ That day, 28 August 2013 (the first day of his testimony) D-0029 collected the USD 665 (about CFA 400,000) sent by MOKULA from Kinshasa at Jacques LUNGUANA's request.⁷⁰⁷ LUNGUANA was **BEMBA**'s close associate and the Parliament member in charge of MLC finances.⁷⁰⁸ His participation and that of MOKULA show **BEMBA**'s involvement in the corrupt transaction.

216. While D-0029 and the **KILOLO** Defence attempted to portray the payment as a humanitarian gesture,⁷⁰⁹ the circumstances surrounding the payment make its illicit nature obvious. *First*, the money, like all the money sent to *Bemba* Defence witnesses, was sent to D-0029 shortly before his testimony. WU money transfer records show

⁷⁰² T-41-ENG, p.31, lns.16-17; CAR-OTP-0085-0707-R02, 0731, lns.827-835, 0756, lns.1700-1707.

⁷⁰³ The Witness concedes that this conversation with **KILOLO** occurred on the same day or the day before he received the WU codes and collected the money, which, according to WU records, was 28 August 2013—the first day of the Witness' testimony: CAR-OTP-0085-0628-R02, 0671, lns.1484-1497; CAR-OTP-0085-0707-R02, 0722, lns.521-530, 0760, lns.1849-1857; CAR-OTP-0074-0855, tab 28 [REDACTED], row 2, columns AA-AB.

⁷⁰⁴ CAR-OTP-0085-0628-R02, 0669, lns.1424-1444. *Also* ICC-01/05-01/13-1110-Conf-AnxA, paras.22-24.

⁷⁰⁵ CAR-OTP-0085-0628-R02, 0670-0671, lns.1474-1482.

⁷⁰⁶ CAR-OTP-0085-0628-R02, 0671, lns.1483-1506. The name of the person on the WU document is the person who called D-0029. *See* CAR-OTP-0085-0628-R02, 0671, lns.1498-1501. The WU record shows that the person is MOKULA: CAR-OTP-0074-0855, tab 28 [REDACTED], row 2, column D.

⁷⁰⁷ D-0029 collected the money at 13:13 EST (19:13 CEST, 18:13 WAT): CAR-OTP-0074-0855, tab 28 [REDACTED], row 2, columns U-AB. *Also* CAR-OTP-0085-0707-R02, 0757-0758, lns.1749-1772; CAR-OTP-0088-0105, 0114, lns.278-309.

⁷⁰⁸ **KILOLO** was in contact with LUNGUANA about money transfers: CAR-OTP-0077-0185; CAR-OTP-0077-1368; CAR-OTP-0077-0195; CAR-OTP-0077-1372; CAR-OTP-0077-1375. *Also* CAR-OTP-0074-0897, 0903, 0907-0910. **BABALA** and **BEMBA** discussed how only LUNGUANA should be in charge of MLC finances: CAR-OTP-0080-0939, 0941, lns.25-26. *Also* CAR-OTP-0082-0334, 0334 (of EUR 18,000 for the Brazzaville mission, EUR 6,000 was covered by LUNGUANA).

⁷⁰⁹ *E.g.* T-40-ENG, p.31, lns.19-24.

that this payment, like payments made to D-0057 and D-0064, was sent immediately before D-0029 testified; at 14:10 CEST (08:09 EST) on 28 August 2013, less than one hour before his scheduled testimony.⁷¹⁰

217. *Second*, **KILOLO** never asked for receipts, nor did the Witness provide any, for his receipt or ostensible use of the funds.⁷¹¹ And while the Witness suggests that “in Africa, we don’t have [receipts]” because “[r]eceipts, that’s for you people”,⁷¹² he readily admitted that he was also never asked to sign, nor provide, a declaration concerning the money, as he conceded he gave to Counsel Djunga justifying expenses incurred regarding his testimony in *this* case.⁷¹³

218. *Third*, the Witness has consistently provided false testimony about all relevant details surrounding the payment that would expose its illicit nature:

- D-0029 testified falsely that the money had no influence over his testimony because “the testimony was well before the money”.⁷¹⁴ In fact, the money was transferred to the Witness *before* he began testifying and collected by him the evening of his first day of testimony.⁷¹⁵
- D-0029 testified falsely about not knowing KOKATÉ’s role in facilitating his contact with **KILOLO**.⁷¹⁶ In fact, KOKATÉ twice told the Witness that he and his wife could be paid as victims and that he would put them in contact with **KILOLO**.⁷¹⁷ **KILOLO** told D-0029 that he had received their contact information from KOKATÉ,⁷¹⁸ undermining the Witness’ claim at trial that “[**KILOLO**]

⁷¹⁰ CAR-OTP-0074-0855, tab 28 [REDACTED], row 2, columns A-H.

⁷¹¹ T-41-ENG, p.38, lns.8-15.

⁷¹² T-41-ENG, p.38, lns.12-15.

⁷¹³ T-41-ENG, p.38, ln.16-p.39, ln.18. Also CAR-D21-0014-0083.

⁷¹⁴ T-40-ENG, p.33, lns.14-15.

⁷¹⁵ Above, para.215.

⁷¹⁶ ICC-01/05-01/08-T-339-Red-ENG, p.21, ln.17-p.22, ln.4.

⁷¹⁷ See T-40-ENG, p.69, lns.12-14.

⁷¹⁸ See T-40-ENG, p.72, lns.5-20. Also CAR-OTP-0085-0628-R02, 0656, lns.970-973; CAR-OTP-0085-0673, 0685, lns.420-422.

never gave me any details [...] I was not told who that person is”.⁷¹⁹

- D-0029 testified falsely that he was never promised anything in exchange for his testimony.⁷²⁰ The Witness knew the importance of the question, which came the day after he collected the money MOKULA sent. Moreover, it came on the heels of the Witness’ insistence on receiving it from VWU, and having been warned by **KILOLO** to drop the matter.
- D-0029 testified falsely on 29 August 2013 that he only spoke to the *Bemba* Defence four times,⁷²¹ deliberately omitting the instances when he was in contact with **KILOLO** immediately after his meeting with VWU and discussed the transfer of money. Contrary to the Witness’ statement, the evidence proves that **KILOLO** was in contact with D-0029 at least 12 times,⁷²² including once immediately before his testimony and after the VWU cut-off date.⁷²³ D-0029’s false testimony about his prior contacts with the *Bemba* Defence was identical to the falsehoods told by other witnesses at **KILOLO**’s instruction, and who were equally corruptly paid.⁷²⁴

219. Finally, at the end of D-0029’s testimony, in a 29 August 2014 intercept at 14:17 CEST,⁷²⁵ **KILOLO** asked **MANGENDA** whether the Prosecution examined D-0029 about any payments so that **KILOLO** would know “*comment se préparer par rapport à sa femme*” [referring to D-0029’s wife—D-0030—who would testify next].⁷²⁶ He also asked whether D-0029 had answered the questions on contacts with the Defence;⁷²⁷ **MANGENDA** confirmed that there had been no problems in this area.⁷²⁸

⁷¹⁹ ICC-01/05-01/08-T-339-Red-ENG, p.21, ln.25-p.22, ln.1.

⁷²⁰ ICC-01/05-01/08-T-339-CONF-ENG-ET, p.43, lns.6-20.

⁷²¹ ICC-01/05-01/08-T-339-Red-ENG-ET, p.36, ln.11-p.37, ln.4.

⁷²² CAR-OTP-0090-0630, 0707, rows 1-12.

⁷²³ CAR-OTP-0078-0290, 0296.

⁷²⁴ Above, paras.118, 155, 169, 193. Below, paras.236, 246.

⁷²⁵ CAR-OTP-0079-1509, 1509, row 3.

⁷²⁶ CAR-OTP-0082-0107, 0109, lns.10-19. D-0030 started her testimony the day after D-0029’s testimony ended. Generally ICC-01/05-01/08-T-340-CONF-ENG-ET.

⁷²⁷ CAR-OTP-0082-0107, 0109, lns.19-23.

⁷²⁸ CAR-OTP-0082-0107, 0109, lns.19-23.

KILOLO illicitly coaches D-0029 and circumvents the VWU cut-off date

220. Taken as a whole, the evidence establishes that, with **MANGENDA**'s knowledge and assistance, **KILOLO** illicitly coached D-0029 prior to the Witness' testimony in the Main Case.

221. Intercepted communications between **KILOLO** and **MANGENDA** during D-0029's testimony reveal that **KILOLO** and **MANGENDA** were upset by D-0029's failure to follow their instructions on certain issues when the Witness testified. In particular, they were concerned that the Witness told the truth and belittled him for it, demonstrating that they had coached to the contrary. For instance, on 29 August 2013, D-0029 testified that the town of Mongoumba in CAR was attacked and that crimes were committed by MLC troops,⁷²⁹ a fact directly undermining the *Bemba* Defence theory and which the Accused coached other witnesses about, including D-0015.⁷³⁰ At 13:55 CEST,⁷³¹ during the Court recess,⁷³² **MANGENDA** reported to **KILOLO**, then on mission in Cameroon,⁷³³ that unlike other Defence witnesses, D-0029 was not abiding by his instructions;⁷³⁴ that D-0029 had "*vraiment déconné*".⁷³⁵ **MANGENDA** added that "*les autres c'était si on lui pose la question sur ce qu'on n'avait pas évoqué, il reste calme il ne va pas répondre à la question. Mais avec lui, même sur les histoires qu'on n'a pas évoquées, tout d'un coup il donne des explications*".⁷³⁶ **MANGENDA** called the Witness "*la palme d'or*" of bad witnesses.⁷³⁷ **KILOLO** told **MANGENDA** that if D-0029's testimony did not conclude that day, he would contact the witness to ensure that the next morning "*il rectifie au moins deux, trois choses*".⁷³⁸

⁷²⁹ E.g. ICC-01/05-01/08-T-339-CONF-ENG-ET, p.17, ln.13-p.18, p.20, ln.1, p.53, lns.1-9.

⁷³⁰ E.g. CAR-OTP-0079-0154, 0168, lns.463-469.

⁷³¹ CAR-OTP-0079-1509.

⁷³² ICC-01/05-01/08-T-339-CONF-ENG-ET, p.56, lns.5-6.

⁷³³ **KILOLO** was in Cameroon from 27 August 2013 to 3 September 2013: CAR-D21-0001-0102.

⁷³⁴ CAR-OTP-0080-0245, 0249, lns.75-81.

⁷³⁵ CAR-OTP-0080-0245, 0247, lns.6-20.

⁷³⁶ CAR-OTP-0080-0245, 0249, lns.76-78.

⁷³⁷ CAR-OTP-0080-0245, 0250, lns.111-112.

⁷³⁸ CAR-OTP-0080-0245, 0252, lns.212-214.

222. In these intercepts, **KILOLO** and **MANGENDA** were clearly discussing D-0029's testimony. In particular, they discussed a witness who had just testified about MLC crimes in Mongoumba⁷³⁹ merely minutes after D-0029 had himself testified that MLC troops had committed acts of sexual violence in Mongoumba.⁷⁴⁰ **KILOLO** also mentioned that the Witness' wife was going to testify the next day,⁷⁴¹ which D-0029's spouse did.⁷⁴² They were the [REDACTED] to testify in the Main Case, leaving no room for doubt that this conversation concerned D-0029.

223. **KILOLO** and **MANGENDA** discussed other matters revealing that **KILOLO** coached D-0029 prior to his testimony. For instance, during an intercept on 29 August 2013 at 13:55 CEST,⁷⁴³ **KILOLO** emphasised that he had previously discussed with **BEMBA** the problems arising when illicitly coaching witnesses. He noted *"le problème que ... que j'ai toujours dit au Client, de faire encore LA COULEUR. Un ou deux jours avant que la personne passe, pourquoi? Parce que les gens [...] ne se souviennent pas de tout avec précision"*.⁷⁴⁴ Further, because of D-0029's failure to follow **KILOLO**'s instructions, **MANGENDA** commented on how co-counsel HAYNES could now see the negative consequences: *"comment les témoins allaient se comporter s'il n'y avait pas de préparation [...] car à un certain moment la personne oublie la préparation qu'on avait faite."*⁷⁴⁵

224. **KILOLO** also reconsidered calling some of the upcoming witnesses, fearing that they might ignore his instructions, and tell the truth. For example, **KILOLO** explained that BOMBAYAKE's old age may make it difficult for him to retain **KILOLO**'s instructions, resulting in his telling the truth, at which point *"il faut chaque fois les recadrer"*.⁷⁴⁶ **KILOLO** also lamented that if he failed to coach BOMBAYAKE

⁷³⁹ See CAR-OTP-0080-0245, 0247, lns.6-15, 0248, lns.69-70.

⁷⁴⁰ See ICC-01/05-01/08-T-339-CONF-ENG, p.53, lns.1-14.

⁷⁴¹ CAR-OTP-0080-0245, 0247-0248, lns.31-35.

⁷⁴² ICC-01/05-01/08-T-340-CONF-ENG, p.8, lns.3-7.

⁷⁴³ CAR-OTP-0079-1509, 1509, row 2.

⁷⁴⁴ CAR-OTP-0080-0245, 0248, lns.50-53. Also ICC-01/05-01/13-1110-Conf-AnxA, paras.113-114.

⁷⁴⁵ CAR-OTP-0080-0245, 0253, lns.236-241.

⁷⁴⁶ CAR-OTP-0080-0245, 0251, lns.161-165. Also ICC-01/05-01/13-1110-Conf-AnxA, paras.62-64.

every evening, BOMBAYAKE's testimony could turn out to be just as bad as D-0029.⁷⁴⁷ The *Bemba* Defence never called BOMBAYAKE to testify in the Main Case.

225. These intercepts⁷⁴⁸ are consistent with the Accused's demonstrated pattern of conduct. **KILOLO**, with the assistance of the Accused, particularly **MANGENDA**, and under **BEMBA**'s direction and authorisation, consistently coached witnesses prior to their testimony in the Main Case. This was the case with, *inter alia*, D-0015, D-0026, and D-0054.⁷⁴⁹

226. **KILOLO**'s CDRs also prove these coaching sessions. **KILOLO** and D-0029 were in telephone contact at least 12 times prior to the VWU cut-off date.⁷⁵⁰ They were also in contact after the VWU cut-off date and during the Witness' testimony. The sequence of events and documentary evidence belie the Witness' contention that he did not have access to a telephone during his testimony, nor spoke with **KILOLO** during that period. *First*, the Witness admitted to using a telephone to receive an SMS containing WU transfer codes and to contact his wife the day he collected the payment.⁷⁵¹ D-0029's collection of the payment the evening of his first day of testimony⁷⁵² confirms that he had his telephone that day. *Second*, in an intercept between **KILOLO** and **MANGENDA** on 28 August 2013 at 13:37 CEST⁷⁵³ before the start of D-0029's testimony,⁷⁵⁴ **MANGENDA** reported to **KILOLO** that the next witness (D-0029) would start in the afternoon at 15:00 CEST.⁷⁵⁵ **KILOLO** indicated that he would contact D-0029 as "*il n'est pas informé qu'il commence cet après-midi*".⁷⁵⁶ *Third*, **KILOLO**'s contact with the Witness after the VWU cut-off date is consistent

⁷⁴⁷ CAR-OTP-0080-0245, 0251, lns.166-167.

⁷⁴⁸ *Above*, paras.221-224.

⁷⁴⁹ *See above*, sections V.C.1, V.C.3.b).

⁷⁵⁰ CAR-OTP-0090-0630, 0707, rows 1-12.

⁷⁵¹ T-41-ENG, p.34, ln.25-p.35, ln.11. *Also* CAR-OTP-0085-0628-R02, 0671, lns.1493-1497; CAR-OTP-0085-0707-R02, 0722, lns.521-528.

⁷⁵² D-0029 collected the money at 13:13 EST (19:13 CEST, 18:13 WAT): CAR-OTP-0074-0855, tab 28 [REDACTED], row 2, columns U-AB.

⁷⁵³ *See* CAR-OTP-0077-1024, row 134.

⁷⁵⁴ D-0029 started his testimony at 15:05 CEST: ICC-01/05-01/08-T-338-Red-ENG-CT, p.54, lns.2-8.

⁷⁵⁵ CAR-OTP-0079-0122, 0124, lns.7-15.

⁷⁵⁶ CAR-OTP-0079-0122, 0124, lns.11-15, 0129, lns.214-224.

with his pattern and conduct regarding other witnesses.⁷⁵⁷

4. *The Sweden Witnesses*

227. As detailed below, with **BEMBA**'s knowledge and authorisation, **KILOLO** and **BABALA** corruptly paid D-0057 and D-0064. The pattern of evidence proves the illicit nature of these payments. Both Witnesses were paid roughly the same amount through third-party proxies, [REDACTED] and [REDACTED]; both were paid just before their scheduled testimony; and both payments were authorised by **BEMBA**, communicated to the Witnesses by **KILOLO**, and transferred by, or as directed by, **BABALA**. Finally, both Witnesses testified falsely about their receipt of the money and their contacts with the *Bemba* Defence during which the payments were discussed. The evidence proves beyond reasonable doubt that the Accused corruptly paid the Witnesses.

a) Witness D-0057 – [REDACTED]

228. Witness D-0057 was a [REDACTED].⁷⁵⁸ He testified in the Main Case from 17 to 19 October 2012 about, *inter alia*, BOZIZÉ's flight and the subsequent military intervention in CAR, **BEMBA**'s visit to Bangui, and crimes committed by BOZIZÉ troops.⁷⁵⁹

229. The evidence as a whole proves that **KILOLO**, **BEMBA**, and **BABALA** acted corruptly to influence D-0057 by arranging and executing money transfers to him before his scheduled testimony.

230. D-0057 admitted that some time before leaving for The Hague to testify, **KILOLO** asked him for [REDACTED] name, supposedly so he (**KILOLO**) could send

⁷⁵⁷ See above, section V.B.6.

⁷⁵⁸ ICC-01/05-01/08-T-256-CONF-ENG-ET, p.11, lns.10-11, p.12, ln. 21-p.13, ln.1.

⁷⁵⁹ ICC-01/05-01/08-T-256-CONF-ENG-ET; ICC-01/05-01/08-T-257-CONF-ENG-ET; ICC-01/05-01/08-T-258-CONF-ENG-CT.

*“un peu de choses aux enfants.”*⁷⁶⁰ CDRs show that indeed the two were in contact on 15 October 2012 for approximately 70 minutes⁷⁶¹—just two days before D-0057’s testimony. **KILOLO** also spoke with the Witness twice the next morning—16 October—(the day the Witness left for The Hague to testify,⁷⁶² and the VWU cut-off date):⁷⁶³ first at 08:35 CEST, for approximately 6 minutes, and then at 11:11 CEST, for approximately 12 minutes.⁷⁶⁴ [REDACTED] (P-0242) also conceded that in the morning before [REDACTED] left for The Hague, he told [REDACTED] he had given her telephone number to someone who would send money.⁷⁶⁵

231. That morning, D-0057 received a phone call from **BABALA** telling him that “he was sending a little bit of money”,⁷⁶⁶ which **BABALA** did.⁷⁶⁷ **BABALA** gave D-0057 “the name” for the WU transfer, which D-0057 wrote down and gave to P-0242.⁷⁶⁸ P-0242 testified that she received an SMS with the WU transfer number, name, and amount being sent, which she showed D-0057.⁷⁶⁹ Altogether, it was clear to P-0242 that the money **BABALA** sent “was intended for [REDACTED]”⁷⁷⁰ and not for providing *“un peu de choses aux enfants”* as stated by D-0057.⁷⁷¹

232. The evidence proves that **KILOLO** and **BABALA** coordinated with one another about paying D-0057. **KILOLO** and **BABALA** were in contact between **KILOLO**’s morning calls with D-0057, at 09:01 CEST,⁷⁷² and again after **BABALA** had confirmed P-0242’s receipt of the money,⁷⁷³ at 18:27 CEST.⁷⁷⁴ This issue is not disputed.⁷⁷⁵

⁷⁶⁰ CAR-OTP-0077-0088, 0105, lns.586-587, 0106, lns.627-628, 0109, lns.745-747. Also T-31-ENG, p.22, lns.1-6, p.54, lns.20-22.

⁷⁶¹ See CAR-OTP-0090-0630, 0720, row 14.

⁷⁶² See ICC-01/05-01/08-T-255-Red2-ENG, p.47, lns.14-16.

⁷⁶³ CAR-OTP-0078-0290, 0292.

⁷⁶⁴ CAR-OTP-0090-0630, 0720, rows 18, 20.

⁷⁶⁵ T-37-ENG, p.34, lns.6-8. Also T-31-ENG, p.22, lns.7-13.

⁷⁶⁶ T-31-ENG, p.25, lns.24-25, p.26, ln.23-p.27, ln.2.

⁷⁶⁷ CAR-OTP-0073-0274, tab 31 Fidele Babala, row 14, columns A-G. Also T-37-ENG, p.40, lns.10-19.

⁷⁶⁸ T-31-ENG, p.26, lns.17-21, p.34, lns.7-8, 17-21; T-37-ENG, p.30, lns.1-16, p.32, ln.22-p.33, ln.10.

⁷⁶⁹ T-37-ENG, p.33, lns.23-25, p.34, lns.10-24.

⁷⁷⁰ T-37-ENG, p.34, lns.4-5.

⁷⁷¹ CAR-OTP-0077-0088, 0106, lns.627-628.

⁷⁷² CAR-OTP-0072-0082, row 222.

⁷⁷³ See T-37-ENG, p.33, lns.21-22, p.36, ln.10.

⁷⁷⁴ CAR-OTP-0072-0082, row 262.

233. **BEMBA** was informed of and authorised the money transfer to D-0057. On 16 October 2012—the same day **BABALA** transferred the payment to P-0242⁷⁷⁶—**BABALA** and **BEMBA** discussed a payment to D-0064, stating that it should be “*la même chose comme pour aujourd’hui*”, referring to D-0057’s payment earlier that day.⁷⁷⁷ That they were discussing D-0057’s payment is also confirmed by the fact that the conversation between **BEMBA** and **BABALA** was at 19:49 CEST⁷⁷⁸ and, thus, after **BABALA** transferred the money to [REDACTED] at 09:52 CEST.⁷⁷⁹ Further, **BEMBA**’s notes seized from his cell contain information on D-0057’s “management costs”, indicating EUR 500 for “*transport, repas, soutien*”.⁷⁸⁰

234. The illicit nature of the payment to D-0057 is proved by the sequence of events above, and the fact that it was not paid to reimburse the Witness for any expenses incurred. To the contrary, P-0242 testified in this case that the money “represent[ed] nothing for my family”,⁷⁸¹ while D-0057 conceded that neither **KILOLO** nor **BABALA** actually told him what the money was for (they never discussed it)—leading the Witness to assume that the money was sent “out of kindness”.⁷⁸² Had this been true, however, there would have been no logical reason for him to deny it when testifying in the Main Case. Instead, D-0057 testified that “[n]o one gave me any money” whether directly or indirectly,⁷⁸³ which was patently false. The evidence that he received the 16 October 2012 USD 665 payment through [REDACTED]⁷⁸⁴ and a USD 106.14 payment directly from **KILOLO** on 14 June 2012⁷⁸⁵ is incontrovertible.

⁷⁷⁵ See ICC-01/05-01/13-596-Conf-Corr2, paras.20, 43, 82, 124, 148; ICC-01/05-01/13-671-Conf, para.56.

⁷⁷⁶ CAR-OTP-0073-0274, tab 31 Fidele Babala, row 14, columns A-G.

⁷⁷⁷ CAR-OTP-0077-1299, 1301, lns.29-30.

⁷⁷⁸ See CAR-OTP-0074-0609, row 1.

⁷⁷⁹ CAR-OTP-0073-0274, tab 31 Fidele Babala, row 14, columns A-G.

⁷⁸⁰ CAR-D20-0001-0008, 0009.

⁷⁸¹ T-37-ENG, p.44, lns.3-11.

⁷⁸² T-31-ENG, p.27, lns.10-18, p.60, lns.7-14.

⁷⁸³ ICC-01/05-01/08-T-258-Red2-ENG-CT, p.2, ln.25-p.3, ln.10.

⁷⁸⁴ CAR-OTP-0073-0274, tab 31 Fidele Babala, row 14.

⁷⁸⁵ CAR-OTP-0070-0007, tab 32 A Musamba, row 23; CAR-OTP-0074-0855, tab 40 Aime Kilolo Musamba, row 52. Also CAR-OTP-0077-0003, 0010, lns.225-240; T-31-ENG, p.22, ln.23-p.23, ln.16. The Witness also paid for the guesthouse (not hotel) with his money, which cost 350 krona (approximately USD 50). T-31-ENG, p.51, lns.3-15.

And, his explanation for withholding this information from TCIII is, at best, implausible.⁷⁸⁶

235. When D-0057 testified in the Main Case, he knew that [REDACTED] had gone to collect the money that **KILOLO** had arranged for him to receive through **BABALA**. D-0057 sent P-0242 “to go and retrieve the money”,⁷⁸⁷ before ever leaving his home for The Hague. And, the evidence shows that this is exactly what [REDACTED] did, collecting the payment less than one hour⁷⁸⁸ after **KILOLO**’s 11:11 CEST conversation with D-0057.⁷⁸⁹ D-0057 further contacted [REDACTED] upon arriving in The Netherlands,⁷⁹⁰ during which he no doubt would have confirmed her collection of the payment he had specifically sent [REDACTED] to collect.

236. D-0057 testified falsely about this payment in the Main Case and his related contacts with **KILOLO**. When asked about the nature of his contacts with the *Bemba* Defence, D-0057 testified falsely that he had had *only three prior contacts* with **KILOLO** comprising: (i) a phone conversation in May or June 2012 to discuss D-0057’s willingness to provide a statement to the *Bemba* Defence; (ii) a meeting in late June 2012; and (iii) a telephone contact in late September 2012 concerning the Prosecution’s request to meet with D-0057 (which D-0057 refused).⁷⁹¹ D-0057 deliberately withheld that he had other contacts with **KILOLO**, particularly those wherein money was discussed. He left out his multiple phone calls with **KILOLO** on the day [REDACTED] collected the USD 665 payment for him,⁷⁹² as well as the multiple telephone contacts he had with **KILOLO** in October 2012, shortly before his testimony.⁷⁹³ The evidence rules out that D-0057 could have inadvertently or

⁷⁸⁶ T-31-ENG, p.28, ln.16-p.30, ln.11.

⁷⁸⁷ T-37-ENG, p.34, lns.13-15.

⁷⁸⁸ P-0242 collected the money at 05:56 EST (11:56 CEST): CAR-OTP-0073-0274, tab 31 Fidele Babala, row 14, columns T-AA; CAR-OTP-0070-0004, tab 31 Babala, row 19, columns T-AC; T-37-ENG, p.34, ln.25-p.35, ln.1.

⁷⁸⁹ CAR-OTP-0090-0630, 0720, row 20.

⁷⁹⁰ T-37-ENG, p.26, ln.24-p.27, ln.2.

⁷⁹¹ ICC-01/05-01/08-T-257-CONF-ENG-ET, p.20, lns.6-17, p.24, lns.19-23.

⁷⁹² *Above*, 230, 235.

⁷⁹³ *See* CAR-OTP-0090-0630, 0719-0720, rows 4-20.

mistakenly omitted this information. That the omission was deliberate is consistent with the nature and pattern of false testimony given by several other *Bemba* Defence witnesses.⁷⁹⁴

b) Witness D-0064 – [REDACTED]

237. D-0064, [REDACTED]⁷⁹⁵ [REDACTED] during the 2002-2003 conflict in CAR,⁷⁹⁶ testified in the Main Case from 22 to 23 October 2012. His testimony concerned, *inter alia*, **BEMBA**'s visit to his troops deployed in CAR, the movement of MLC and BOZIZÉ troops, the crimes committed by the latter, and the functioning of the chain of command during the CAR operation, including the joining of MLC and FACA/USP troops.⁷⁹⁷

238. Taken as a whole, the evidence establishes that, prior to D-0064's Main Case testimony, **BEMBA**, **KILOLO**, and **BABALA** orchestrated several corrupt payments to the Witness.

239. On 16 October 2012,⁷⁹⁸ **BEMBA** and **BABALA** discussed the importance of making payments to "*aux gens*" (to people)—meaning witnesses.⁷⁹⁹ They discussed **BABALA**'s payment of USD 665 to D-0057's [REDACTED] made earlier that day⁸⁰⁰ and how—a payment to D-0064 should be the same way: "*il faut que cela se fasse quand même parce que c'est très important. C'est la même chose comme pour aujourd'hui*".⁸⁰¹ The conversation shows **BABALA**'s awareness of D-0064's status as a witness, and his recognition of the importance of paying witnesses to **BEMBA**'s defence—wherein he advises **BEMBA**, "[d]onner [sic] du sucre aux gens vous verrez que c'est bien."⁸⁰²

⁷⁹⁴ E.g. paras.99, 118, 122, 168-170, 205, 207, 218, 244, 246, 256, 282.

⁷⁹⁵ T-32-ENG, p.37, ln.14.

⁷⁹⁶ T-32-ENG, p.59, ln.25-p.60, ln.2, p.62, ln.24-p.63, ln.1.

⁷⁹⁷ See ICC-01/05-01/08-T-259-CONF-ENG-CT; ICC-01/05-01/08-T-260-CONF-ENG-ET.

⁷⁹⁸ See CAR-OTP-0074-0609, row 1.

⁷⁹⁹ CAR-OTP-0077-1299, 1301, lns.29-30.

⁸⁰⁰ Above, paras.230-233.

⁸⁰¹ CAR-OTP-0077-1299, 1301, lns.29-30.

⁸⁰² CAR-OTP-0077-1299, 1301, ln.30. Also ICC-01/05-01/13-1110-Conf-AnxA, section VI.K.

240. The next day, on 17 October, **KILOLO** facilitated the payment **BEMBA** and **BABALA** had discussed. As D-0064 was *en route* to The Hague,⁸⁰³ **KILOLO** called him and asked for the contact details of an adult in his household. **KILOLO** claimed that he “*voulait les aider*” in D-0064’s absence.⁸⁰⁴ However, the Witness confirmed that “I do not know [what] was the intention of Mr Kilolo, I’m not in his mind to be able to know that.”⁸⁰⁵ D-0064 gave **KILOLO** [REDACTED]’s contact details.⁸⁰⁶

241. **KILOLO** coordinated with **BABALA**, who in turn transferred the money to the Witness. Immediately after **KILOLO**’s call with D-0064, **BABALA**’s chauffeur NGINAMAU paid a total of USD 700 in two WU transactions to D-0064’s [REDACTED].⁸⁰⁷ **BABALA** does not dispute making the payment on **KILOLO**’s behalf⁸⁰⁸ and NGINAMAU concedes that he indeed made the transfers for **BABALA**.⁸⁰⁹ D-0064 also acknowledges that the money “*devait venir de M. Kilolo*”.⁸¹⁰

242. **BABALA** contacted [REDACTED] twice informing her that the money would be transferred and ensuring she received the correct amount.⁸¹¹ [REDACTED]’s description of the caller as someone from “*l’Afrique*”⁸¹² who sounded Congolese⁸¹³ fits **BABALA**’s identity. NGINAMAU also confirmed that **BABALA** was the one generally responsible for contacting and speaking with the recipient of WU transactions about the payments.⁸¹⁴ Shortly after the transfers were made,⁸¹⁵ but

⁸⁰³ T-32-ENG, p.50, lns.20-24, p.53, lns.5-8, 23-24.

⁸⁰⁴ T-32-FRA, p.56, lns.16-p.57, ln.9.

⁸⁰⁵ T-32-ENG, p.68, lns.10-15.

⁸⁰⁶ T-32-ENG, p.54, ln.25-p.55, ln.14.

⁸⁰⁷ CAR-OTP-0070-0007, tab 34 Nginamau, rows 2, 3. Also CAR-OTP-0074-1169, 1185, lns.567-570.

⁸⁰⁸ See ICC-01/05-01/13-678-Conf, para.8. Also ICC-01/05-01/13-596-Conf-Corr2, paras.20, 43, 82, p.62; ICC-01/05-01/13-671-Conf, para.56.

⁸⁰⁹ T-25-ENG, p.24, lns.7-11.

⁸¹⁰ T-32-FRA, p.56, lns.12-13. Also CAR-OTP-0074-1189-R02, 1194, lns.158-173.

⁸¹¹ T-32-ENG, p.55, lns.17-22; CAR-OTP-0074-1169, 1187, lns.630-631.

⁸¹² CAR-OTP-0074-1229-R01, 1252, lns.843-846.

⁸¹³ CAR-OTP-0074-1189-R01, 1193-1194, lns.142-179.

⁸¹⁴ CAR-OTP-0088-0224-R01, 0241, lns.589-591.

⁸¹⁵ The payments were made at 05:48 EST (11:48 CEST) and 06:41 EST (12:41 CEST): CAR-OTP-0070-0007, tab 34 Nginamau, rows 2, 3, columns A-G.

before their collection,⁸¹⁶ **KILOLO** called D-0064 at 13:17 CEST and 13:27 CEST,⁸¹⁷ confirming that the transfers had been made.⁸¹⁸

243. While the **KILOLO** Defence has argued that the payments were intended to reimburse D-0064's accommodation and transportation fees for his stay in Stockholm from 15 to 16 June 2012,⁸¹⁹ there is no such evidence in this case. To the contrary, the evidence shows that D-0064's trip to Stockholm to meet with the *Bemba* Defence was pre-funded by the EUR 84.50 that **KILOLO** transferred to the Witness on 14 June 2012, two days before their meeting.⁸²⁰ Nor could D-0064 have stayed at a hotel, since he made a return trip to meet **KILOLO** in Stockholm on 16 June 2012.⁸²¹ Finally, D-0064 testified at trial that, during his return journey to Stockholm, he did not incur any further expenses, including for refreshment or meals, requiring reimbursement.⁸²²

244. D-0064's testimony establishes that he lied about the payment he received and his contacts with **KILOLO** concerning it when testifying in the Main Case.⁸²³ That he lied about these matters underscores their illicit purpose. D-0064 testified falsely in the Main Case that he had not received any money from **BEMBA** or anyone on his behalf, including for travel expenses,⁸²⁴ and that no promises had been made to him in exchange for his testimony.⁸²⁵ The evidence proves that D-0064 received multiple payments, directly and through [REDACTED], from **KILOLO** and **BABALA**.⁸²⁶

245. The sequence of events described above and the nature of **KILOLO**'s

⁸¹⁶ The payments were collected at 08:47 EST (14:47 CEST) and 08:50 EST (14:50 CEST): CAR-OTP-0070-0007, tab 34 Nginamau, rows 2, 3, columns Y-AC.

⁸¹⁷ See CAR-OTP-0090-0630, 0721, rows 9-10.

⁸¹⁸ T-32-ENG, p.57, lns.4-10.

⁸¹⁹ ICC-01/05-01/13-600-Conf-Corr2, p.301, fn. 956.

⁸²⁰ See T-31-ENG, p.37, lns. 16-22; T-32-ENG, p.12, lns. 19-22.

⁸²¹ See T-32-ENG, p.46, lns.1-7.

⁸²² T-32-ENG, p.46, lns.20-22.

⁸²³ See T-32-ENG, p.54, lns.14-20. Also T-32-ENG, p.57, lns.4-10.

⁸²⁴ ICC-01/05-01/08-T-260-Red3-ENG, p.6, lns.14-20.

⁸²⁵ ICC-01/05-01/08-T-260-Red3-ENG, p.6, lns.21-23.

⁸²⁶ Above, paras.239-242. Also CAR-OTP-0070-0007, tab 32 A Musamba, row 24; CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, row 53.

discussions with D-0064 belie the Witness' contention that he did not know about the money until his return from The Hague.⁸²⁷ At trial, the Witness conceded that he spoke with **KILOLO** about the money transfer while he was *en route* to The Hague.⁸²⁸ Indeed, the **BABALA** Defence concedes that **BABALA** contacted D-0064 to provide him with the codes required for the WU transaction.⁸²⁹

246. Further, D-0064 lied about the number of prior contacts he had with **KILOLO**, testifying that there were only three: (i) a phone call in June 2012; (ii) a meeting in June 2012; and (iii) a phone call about D-0064's meeting with the Prosecution.⁸³⁰ In his testimony in the Main Case, D-0064 deliberately withheld the fact that he had other contacts with **KILOLO**, particularly those wherein money was discussed, such as his two contacts with **KILOLO** the day he was paid *via* WU through [REDACTED],⁸³¹ as well as multiple contacts in October 2012, shortly before D-0064's testimony.⁸³²

5. *The Other Witnesses*

a) Witness D-0013 – [REDACTED]

247. Witness D-0013, [REDACTED],⁸³³ testified in the Main Case from 12 to 14 November 2013 *via* video-link about, *inter alia*, MLC operations in CAR in 2002.⁸³⁴

KILOLO illicitly coaches D-0013

248. Taken as a whole, the evidence establishes that, with **MANGENDA**'s knowledge and assistance, **KILOLO** illicitly coached D-0013 prior to and during the

⁸²⁷ CAR-OTP-0074-1169, 1186, lns.603-612.

⁸²⁸ T-32-ENG, p.57, lns.4-10.

⁸²⁹ See ICC-01/05-01/13-596-Conf-Corr2, paras.126, 148.

⁸³⁰ ICC-01/05-01/08-T-259-Red2-ENG, p.61, lns.3-11; ICC-01/05-01/08-T-260-Red3-ENG, p.5, lns.15-17, p.6, lns.2-6.

⁸³¹ Above, paras.240, 242.

⁸³² See CAR-OTP-0090-0630, 0721, rows 1-10.

⁸³³ ICC-01/05-01/08-T-350-CONF-ENG, p.13, lns.2-6.

⁸³⁴ Generally ICC-01/05-01/08-T-350-CONF-ENG-ET; ICC-01/05-01/08-T-351-CONF-ENG-ET; ICC-01/05-01/08-T-352-CONF-ENG-ET.

Witness' testimony in the Main Case.

249. Only two days before D-0013 began testifying, in a 10 November 2013 intercepted conversation at 19:04 CEST,⁸³⁵ **KILOLO** explained to **MANGENDA** how exhausting it was coaching D-0013: "[m]oi, par exemple, je suis occupé avec LES COULEURS de cette personne [...] ça m'a fatigué à fond".⁸³⁶ CDRs confirm that, between 7 November 2013 and 10 November 2013 at 19:04 CEST, D-0013 and **KILOLO** had spoken at least 36 times, for more than six hours.⁸³⁷

250. **KILOLO** also explained to **MANGENDA** that D-0013 had forgotten much of what he had been previously coached about.⁸³⁸ D-0013's testimony had originally been scheduled between 19 November and 13 December 2012.⁸³⁹ Following multiple requests and decisions rescheduling his testimony,⁸⁴⁰ the *Bemba* Defence withdrew the Witness on 27 June 2013.⁸⁴¹ Months later, on 4 November 2013, the *Bemba* Defence requested to present D-0013's testimony *in lieu* of a different witness,⁸⁴² which TCIII granted on 8 November 2013.⁸⁴³ Because a year had elapsed between the Witness' originally scheduled and actual dates of testimony, as well as his interim withdrawal, **KILOLO** explained to **MANGENDA** in their 10 November 2013⁸⁴⁴ intercepted conversation that D-0013 "*n'avait plus ces choses-là dans sa tête*" when "*dans sa tête il savait qu'il n'allait plus venir*".⁸⁴⁵ For this reason, **KILOLO** had to coach the Witness anew — in his words, "*recommencer à zéro*".⁸⁴⁶

⁸³⁵ CAR-OTP-0080-1280, 1281, row 43.

⁸³⁶ CAR-OTP-0082-1140, 1142, lns.10-16. Also ICC-01/05-01/13-1110-Conf-AnxA, section IV.B.

⁸³⁷ CAR-OTP-0090-0630, 0661-0666, rows 61-99.

⁸³⁸ CAR-OTP-0082-1140, 1142, lns.10-16.

⁸³⁹ ICC-01/05-01/08-T-269-Red2-ENG, p.2, lns.3-13.

⁸⁴⁰ See ICC-01/05-01/08-2628, paras.8, 12; ICC-01/05-01/08-2630, para.5; ICC-01/05-01/08-2638, para.6.

⁸⁴¹ See ICC-01/05-01/08-2731, para.15.

⁸⁴² ICC-01/05-01/08-2862-Conf-Red2, para.10.

⁸⁴³ See ICC-01/05-01/08-2865-Conf-Red, para.19.

⁸⁴⁴ See CAR-OTP-0080-1280, 1281, row 43.

⁸⁴⁵ CAR-OTP-0082-1140, 1142, lns.11-12.

⁸⁴⁶ CAR-OTP-0082-1140, 1142, ln.16.

251. **KILOLO**'s frequent telephone contacts with D-0013 show the extensive amount of time he invested in coaching him immediately before his scheduled testimony. CDRs show that between 10 May and 27 June 2013 (when the *Bemba* Defence withdrew the Witness) **KILOLO** was in contact with D-0013 at least 15 times for approximately 30 minutes.⁸⁴⁷ Further, in the days before 21 May 2013—the first scheduled date of D-0013's testimony following its postponement⁸⁴⁸—the two were in contact on at least 11 occasions, for approximately 28 minutes.⁸⁴⁹

252. In the five days preceding D-0013's 12 November 2013 testimony, **KILOLO** was in telephone contact with the Witness at least 41 times, for over nine hours.⁸⁵⁰ This included at least 10 contacts totalling approximately one hour⁸⁵¹ on 11 November 2013—the day before D-0013's testimony⁸⁵² and the VWU cut-off date.⁸⁵³

253. CDRs reflect that during the course of D-0013's testimony, between 12 and 14 November 2013, **KILOLO** was in contact with the Witness at least 13 times, for over one hour and 24 minutes.⁸⁵⁴

254. Only one reasonable inference arises from these contacts — **KILOLO** continued to illicitly coach D-0013 after the VWU cut-off date and during the course of his testimony. Further, the length and frequency of these communications follow the same pattern as **KILOLO**'s contact with other Witnesses who testified before D-0013,⁸⁵⁵ such as D-0015 and D-0054. For the reasons set out at their respective sections, the pattern which D-0013's contacts with **KILOLO** demonstrates, both establishes their illicit purpose, and **KILOLO**'s guilt.

⁸⁴⁷ CAR-OTP-0090-0630, 0656-0658, rows 3-27.

⁸⁴⁸ See ICC-01/05-01/08-2628, paras.8, 12; ICC-01/05-01/08-2630, para.5.

⁸⁴⁹ CAR-OTP-0090-0630, 0656-0657, rows 3-19.

⁸⁵⁰ CAR-OTP-0090-0630, 0662-0668, rows 61-116.

⁸⁵¹ CAR-OTP-0090-0630, 0667-0668, rows 105-116.

⁸⁵² Generally ICC-01/05-01/08-T-350-CONF-ENG-ET.

⁸⁵³ CAR-OTP-0078-0290, 0297.

⁸⁵⁴ CAR-OTP-0090-0630, 0669-0671, rows 117-135.

⁸⁵⁵ Above, paras.99, 111.

D-0013 lies according to KIOLO's instruction

255. D-0013 testified falsely in the Main Case according to **KIOLO**'s instructions. This is evident from the nature of D-0013's lies, which parallel those which **KIOLO** instructed other Witnesses to state.

256. Specifically, D-0013 lied about the nature and extent of his contacts with the *Bemba* Defence. On 14 November 2013, D-0013 testified falsely that his last telephone contact with **KIOLO** "was about three weeks ago or a month ago".⁸⁵⁶ However, CDRs prove that the Witness' last telephone contact with **KIOLO** occurred merely a matter of *hours* before making that statement under oath.⁸⁵⁷ Both **KIOLO** and **MANGENDA** were present in Court during D-0013's testimony⁸⁵⁸ and knew that this evidence was false.⁸⁵⁹ Significantly, as Lead Counsel,⁸⁶⁰ **KIOLO** took no action to correct the record before TCIII, underscoring his intent to present the false testimony.

b) Witness D-0025 – [REDACTED]

257. Witness D-0025 was the [REDACTED].⁸⁶¹ He testified in the Main Case on 26 and 27 August 2013 about, *inter alia*, **BEMBA**'s movements in 2002 and 2003 and **BEMBA**'s role in military operations.⁸⁶²

KIOLO illicitly coaches D-0025

258. The evidence taken as a whole establishes that **BEMBA** directed and/or authorised **KIOLO**'s illicit coaching of D-0025, of which **MANGENDA** knew and assisted.

⁸⁵⁶ ICC-01/05-01/08-T-352-Red-ENG, p.35, lns.4-20. Also p.36, ln.2.

⁸⁵⁷ CAR-OTP-0090-0630, 0671, row 135.

⁸⁵⁸ ICC-01/05-01/08-T-350-Red-ENG, p.3, ln.25-p.4, ln.5.

⁸⁵⁹ Above, paras.249-250.

⁸⁶⁰ See Code of Conduct, art. 25.

⁸⁶¹ ICC-01/05-01/08-T-336-CONF-ENG-ET, p.9, ln.15-p.10, ln.14.

⁸⁶² Generally ICC-01/05-01/08-T-336-CONF-ENG-ET; ICC-01/05-01/08-T-337-CONF-ENG-ET.

259. **KILOLO** and D-0025 were in constant telephone contact before, during, and after the Witness' testimony. CDRs show that, following the 15 August 2013 VWU cut-off date,⁸⁶³ **KILOLO** and D-0025 were in telephone contact nine times, including three times on the eve of his testimony and three times during its course.⁸⁶⁴

260. At 14:14 CEST on the first day of D-0025's testimony⁸⁶⁵ during a court recess,⁸⁶⁶ **MANGENDA** updated **KILOLO** (who was not present at the hearing)⁸⁶⁷ on D-0025's progress. ⁸⁶⁸ **KILOLO** asked **MANGENDA** if D-0025 had followed his "*enseignements*", to which **MANGENDA** replied, "*il a bien suivi [les enseignements]*".⁸⁶⁹ **KILOLO** did not fully agree, arguing that D-0025 did not follow his instructions regarding "*un autre détail très important*",⁸⁷⁰ since he failed to name and describe the three CAR officers who, according to the Defence case, had commanded the MLC troops in CAR: LENGBE, BOMBAYAKE, and MAZI.⁸⁷¹ Notably, **KILOLO** illicitly coached other witnesses testifying after D-0025 on the same issue, including D-0015 and D-0054.⁸⁷² **KILOLO** also complained that D-0025 should have mentioned that **BEMBA** had informed his troops at PK12 that they were placed under the command of these three CAR officers and to obey them.⁸⁷³ **MANGENDA** advised that it was better that the Witness did not mention these facts, as HAYNES, who examined D-0025 in Court, had not specifically asked about this point.⁸⁷⁴ Had the Witness done so, per **MANGENDA**, "*ça peut paraître un peu suspect*".⁸⁷⁵

⁸⁶³ CAR-OTP-0078-0290, 0295.

⁸⁶⁴ CAR-OTP-0090-0630, 0700-0701, rows 62-72.

⁸⁶⁵ CAR-OTP-0074-0897, 0913.

⁸⁶⁶ ICC-01/05-01/08-T-336-Red-ENG, p.48, lns.17-18.

⁸⁶⁷ ICC-01/05-01/08-T-336-Red-ENG, p.1, lns.18-20, p.3, lns.14-17.

⁸⁶⁸ *Generally* CAR-OTP-0080-0228, 0230-0235, lns.6-184.

⁸⁶⁹ CAR-OTP-0080-0228, 0231, lns.59-61.

⁸⁷⁰ CAR-OTP-0080-0228, 0232, lns.80-85.

⁸⁷¹ CAR-OTP-0080-0228, 0231, lns.39-41, 0232, lns.80-85.

⁸⁷² *E.g.* CAR-OTP-0079-0030, 0032-0034, lns.54-137; CAR-OTP-0082-0877, 0883, lns.169-188, 0891, lns.499-504.

⁸⁷³ CAR-OTP-0080-0228, 0232, lns.80-85.

⁸⁷⁴ CAR-OTP-0080-0228, 0230, lns.9-12.

⁸⁷⁵ CAR-OTP-0080-0228, 0232, lns.95-96.

261. **MANGENDA** also reported to **KILOLO** that the judges appeared to suspect that the Witness had been illicitly coached.⁸⁷⁶ When asked in Court “[w]hat happened during the time Mr Bemba was in PK-12?”,⁸⁷⁷ D-0025 volunteered that “[**BEMBA**] spoke to the troops in Lingala, but he also spoke to them in French.”⁸⁷⁸ The topic of the languages spoken by **BEMBA**’s MLC troops was another matter **KILOLO** illicitly coached other witnesses on who testified after D-0025, including D-0015 and D-0054.⁸⁷⁹ **MANGENDA** described the scene in the courtroom as follows:

*[C]ela a fait bouger les dames-là [the judges] avec quelques sourires, parce qu’à ce moment-là ils savaient que de ce côté-là si ça corroborait, cela veut dire qu’un entretien s’était tenu secrètement [...] Mais il n’y avait pas moyen pour qu’ils établissent [...] il y a même du côté du Bureau du Procureur, tu vois, il y avait aussi des sourires.*⁸⁸⁰

262. Later that night at 23:42 CEST, **KILOLO** spoke to D-0025 for approximately half an hour.⁸⁸¹ **KILOLO** also contacted D-0025 the next morning, on 27 August 2013, just before his second and final day of testimony.⁸⁸² The length and time of these calls parallel **KILOLO**’s intercepted calls with other Main Case witnesses during which they were coached about what to say, and what not to.⁸⁸³

263. On 27 August 2013, after D-0025 concluded his testimony,⁸⁸⁴ **KILOLO** again asked **MANGENDA** if D-0025 mentioned the CAR officers that he failed to discuss the previous day.⁸⁸⁵ **MANGENDA** answered that D-0025 did not because he was never asked about it.⁸⁸⁶ He informed **KILOLO** that D-0025 testified that he did not

⁸⁷⁶ CAR-OTP-0080-0228, 0230, lns.14-35.

⁸⁷⁷ ICC-01/05-01/08-T-336-Red-ENG, p.31, ln.17.

⁸⁷⁸ ICC-01/05-01/08-T-336-Red-ENG, p.31, ln.18.

⁸⁷⁹ See CAR-OTP-0079-0030, 0043-0045, lns.479-523; CAR-OTP-0082-1109, 1133, lns.813-817.

⁸⁸⁰ CAR-OTP-0080-0228, 0230, lns.28-35.

⁸⁸¹ See CAR-OTP-0090-0630, 0701, rows 70, 71.

⁸⁸² See CAR-OTP-0090-0630, 0701, row 72.

⁸⁸³ See above, paras.99, 111.

⁸⁸⁴ CAR-OTP-0079-1507, 1508.

⁸⁸⁵ CAR-OTP-0079-0114, 0116, ln.32.

⁸⁸⁶ CAR-OTP-0079-0114, 0116-0117, lns.33-39.

meet Defence military expert Jacques SEARA⁸⁸⁷—a fact contradicted by SEARA’s expert report.⁸⁸⁸ **MANGENDA**, implicitly acknowledging his participation in coaching the Witness, also explained, “*je pense qu’on avait oublié de lui dire de lui rappeler par rapport avec sa rencontre avec SEARA*”.⁸⁸⁹ **KILOLO** understood the problem was “*une erreur grave*”,⁸⁹⁰ but told **MANGENDA** that he was relieved that D-0025 had not revealed his presence at the meeting: “[*c*]e qui est bien c’est qu’il a nié, parce-que tu t’imagines s’il avait accepté et puis qu’il dise qu’on était à trois, moi, lui et SEARA ... tu t’imagines un peu?”.⁸⁹¹

264. In the same telephone call, **MANGENDA** reported to **KILOLO** that **BEMBA** was satisfied with the results: “[*le client*] a vu vraiment que [...] un véritable travail de couleurs a été effectivement fait [...] lui-même il a vraiment senti cela”.⁸⁹² **BEMBA** acknowledged “*un travail*” (the work) done with the Witness⁸⁹³ and **KILOLO** confirmed that **BEMBA** saw the precision with which the Witness had testified⁸⁹⁴ — with D-0015 especially, “*ça c’était clair*”.⁸⁹⁵

D-0025 lies according to KILOLO’s instruction

265. D-0025 testified falsely in the Main Case according to **KILOLO**’s instructions. The nature and subject matter of D-0025’s lies, and their similarity to those **KILOLO** instructed other Witnesses to state gives rise to no other reasonable inference.

266. D-0025 falsely denied receiving any monies from the *Bemba* Defence, including ostensibly legitimate reimbursements for travel or other expenses,⁸⁹⁶ similar to other Main Case Defence witnesses, including the Cameroon Witnesses, Sweden

⁸⁸⁷ CAR-OTP-0079-0114, 0119-0120, lns.134-160. Also ICC-01/05-01/08-T-337-Red-ENG, p.39, lns.6-9.

⁸⁸⁸ See CAR-D04-0003-0342, 0350.

⁸⁸⁹ CAR-OTP-0079-0114, 0119, lns.136-137.

⁸⁹⁰ CAR-OTP-0079-0114, 0120, ln.158.

⁸⁹¹ CAR-OTP-0079-0114, 0120, lns.158-160.

⁸⁹² CAR-OTP-0079-0114, 0118, lns.103-107.

⁸⁹³ *Ibid.*

⁸⁹⁴ CAR-OTP-0079-0114, 0119, lns.108-117.

⁸⁹⁵ CAR-OTP-0079-0114, 0119, lns.115-117.

⁸⁹⁶ ICC-01/05-01/08-T-337-Red-ENG, p.40, lns.3-20.

Witnesses, D-0023, D-0029, and D-0055, who did the same⁸⁹⁷ at **KILOLO**'s explicit direction. WU records readily expose D-0025's false testimony. In fact, they show that three weeks before his appearance, on 9 August 2013, **KILOLO** transferred EUR 99.09 to the Witness.⁸⁹⁸ A document detailing expenses for the *Bemba* Defence's August 2013 Brazzaville mission seized from **BEMBA**'s cell at the DU⁸⁹⁹ confirms the payment and reflects **BEMBA**'s knowledge of it.

267. D-0025 also testified falsely about not being coached by the *Bemba* Defence.⁹⁰⁰ Again, the nature of this lie is consistent with those told by other Main Case Defence witnesses, including D-0026, at **KILOLO**'s direction.⁹⁰¹ When questioned about whether the *Bemba* Defence asked him to prepare certain subjects or themes for his testimony so that certain information "was all entered into the record", D-0025 responded, "I have not been asked to prepare any subjects at all. I am telling you what I did, what I know. I did not prepare anything."⁹⁰² However, **MANGENDA**'s later report to **KILOLO**—that the Witness had indeed followed the instructions given and had been performing well: "*il a bien suivi [les enseignements]*"⁹⁰³—exposes D-0025's false testimony.

c) Witness D-0055 (P-0214) – [REDACTED]

268. D-0055, a self-proclaimed [REDACTED],⁹⁰⁴ testified in the Main Case from 29 to 31 October 2012 about his relationship with [REDACTED] and the genuineness of [REDACTED] in 2009.⁹⁰⁵ In that [REDACTED], D-0055 and [REDACTED] detailed

⁸⁹⁷ *E.g. above*, paras.175-176, 196, 216-218, 234, 236, 244, 282.

⁸⁹⁸ CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, row 11.

⁸⁹⁹ CAR-OTP-0082-0334, 0334. D-0025 was referred to by "[REDACTED]". See ICC-01/05-01/13-1110-Conf-AnxA, section III.K. Also CAR-D21-0003-0162, 0164 (email from **KILOLO** that he was traveling to Brazzaville on mission with **MANGENDA** to meet with witnesses).

⁹⁰⁰ ICC-01/05-01/08-T-337-Red-ENG, p.20, ln.14-p.21, ln.10.

⁹⁰¹ *E.g. above*, paras.99, 118, 205.

⁹⁰² ICC-01/05-01/08-T-337-Red-ENG, p.20, ln.14-p.21, ln.10.

⁹⁰³ CAR-OTP-0080-0228, 0231, lns.59-60.

⁹⁰⁴ ICC-01/05-01/08-T-264-CONF-ENG-ET, p.13, ln.23-p.14, ln.4.

⁹⁰⁵ *Generally* ICC-01/05-01/08-T-264-CONF-ENG-ET; ICC-01/05-01/08-T-265-CONF-ENG-ET; ICC-01/05-01/08-T-266-CONF-ENG-ET. Also CAR-OTP-0062-0094-R02.

crimes committed in CAR by troops under **BEMBA**'s command, including that "[v]u les massacres, les viols et autres barbaries comis em Republique Centre Africaine [sic] par les troupes de MLC [sic]."⁹⁰⁶

KILOLO persuades D-0055 to testify falsely

269. Given the obvious damage [REDACTED] posed to **BEMBA**'s defence in the Main Case,⁹⁰⁷ neutralising it was crucial. Thus, in a bid to persuade D-0055 to testify in **BEMBA**'s favour,⁹⁰⁸ **KILOLO** set to work on him. After D-0055's early resistance,⁹⁰⁹ **KILOLO** contacted him by phone in the beginning of 2011.⁹¹⁰ **KILOLO** subsequently made several unsuccessful attempts to convince D-0055 to testify for **BEMBA** through mid-2012,⁹¹¹ when his persistence finally paid off.

270. On 5 June 2012, **KILOLO**, **MANGENDA**,⁹¹² and D-0055 met in Amsterdam, where **KILOLO** sought to convince D-0055 to testify for **BEMBA** and to negate the damning letter.⁹¹³ **KILOLO** emailed D-0055 a round trip ticket from [REDACTED]⁹¹⁴ to Amsterdam and paid for his hotel stay.⁹¹⁵ **KILOLO** also promised to reimburse D-0055's expenses for a change of flight and taxi fare.⁹¹⁶ Significantly, **KILOLO** instructed D-0055 not to reveal the meeting in Amsterdam, explaining that "*le voyage à Amsterdam avait été fait à titre privé*".⁹¹⁷

⁹⁰⁶ CAR-OTP-0062-0094-R02.

⁹⁰⁷ See ICC-01/05-01/08-T-264-CONF-ENG-ET, p.3, lns.1-4.

⁹⁰⁸ CAR-OTP-0074-0872-R03, 0877; ICC-01/05-01/08-T-264-Red2-ENG, p.62, ln.22-p.63, ln.5.

⁹⁰⁹ *Ibid.*

⁹¹⁰ CAR-OTP-0074-0872-R03, 0877. Also ICC-01/05-01/08-T-264-Red2-ENG, p.63, ln.21-p.64, ln.7, p.66, lns.8-14.

⁹¹¹ CAR-OTP-0074-0872-R03, 0878.

⁹¹² D-0055 did not identify **MANGENDA** by name. However, **MANGENDA** is the only member of the *Bemba* Defence meeting the Witness' description: "*une autre personne, un africain*". CAR-OTP-0074-0872-R03, 0878.

⁹¹³ CAR-OTP-0074-0872-R03, 0878. **KILOLO** does not contest meeting D-0055 in Amsterdam: ICC-01/05-01/13-600-Conf-Corr2, para.339.

⁹¹⁴ CAR-OTP-0074-0872-R03, 0878. Also CAR-D21-0003-0036, 0036-0038.

⁹¹⁵ CAR-OTP-0074-0872-R03, 0878. Also CAR-D21-0003-0056, 0056.

⁹¹⁶ CAR-OTP-0074-0872-R03, 0878. Also CAR-D21-0004-0579, 0580.

⁹¹⁷ CAR-OTP-0074-0872-R03, 0880. Also CAR-OTP-0089-1156, 1163, lns.201-221.

271. The evidence supports only one reasonable inference — that **BEMBA** and **KILOLO** intended to secure D-0055's false testimony by promising him safety in exchange. During the meeting in Amsterdam, **KILOLO** asked D-0055 to testify that [REDACTED] was false and had been written to assist [REDACTED].⁹¹⁸ That idea, as the Witness later testified, came from **KILOLO**.⁹¹⁹ However, D-0055 did not agree with **KILOLO**'s suggestion, which he considered would not have been credible, [REDACTED].⁹²⁰

272. D-0055 told **KILOLO** that "*il avait peur de Bemba*" and expressed concern about the repercussions of his testimony to himself and his family.⁹²¹ Protection was important to D-0055. [REDACTED].⁹²² To persuade D-0055 to testify, **KILOLO** promised D-0055 that "*Bemba le traiterai bien*".⁹²³

273. Following the meeting, **KILOLO** contacted D-0055 several times, insistent that D-0055 discredits [REDACTED] in Court⁹²⁴ and to persuade him to give false testimony. D-0055 described **KILOLO** as telling him to "*[v]ient faire ceci, faire ceci, dire ceci.*"⁹²⁵ He bluntly admitted that **KILOLO** "*it faisait bien du coaching*".⁹²⁶ Indeed, CDRs⁹²⁷ confirm that **KILOLO** was in contact with D-0055 five times in October 2012, including on the 23 October VWU cut-off date.⁹²⁸

⁹¹⁸ CAR-OTP-0074-0872-R03, 0878; CAR-OTP-0089-1156, 1165, lns.267-275.

⁹¹⁹ T-36-ENG, p.29, lns.19-25.

⁹²⁰ CAR-OTP-0074-0872-R03, 0878; T-36-ENG, p.29, lns.17-18.

⁹²¹ CAR-OTP-0074-0872-R03, 0878.

⁹²² CAR-OTP-0074-0872-R03, 0877-0878.

⁹²³ CAR-OTP-0074-0872-R03, 0878.

⁹²⁴ CAR-OTP-0074-0872-R03, 0879.

⁹²⁵ CAR-OTP-0089-1149, 1155, lns.202-203. Also CAR-OTP-0089-1156, 1158, lns.31-33.

⁹²⁶ CAR-OTP-0089-1156, 1160-1161, lns.113-123, 1165, lns.291-298 (emphasis added).

⁹²⁷ See CAR-OTP-0090-0630, 0718, rows 1-5.

⁹²⁸ See CAR-OTP-0078-0290, 0292.

BEMBA guarantees D-0055's safety in exchange for his testimony

274. D-0055 told **KILOLO** that he would testify for the *Bemba* Defence on condition that he could speak directly to **BEMBA** because the Witness did not trust **KILOLO**,⁹²⁹ who had not fulfilled his promise to reimburse the Witness' expenses incurred in relation to their Amsterdam meeting.⁹³⁰ In response, **KILOLO** arranged for the Witness to speak with **BEMBA**, placing him in contact with the Witness from the DU, using his "privileged" line at about 19:49 CEST on 5 October 2012.⁹³¹

275. This call could only have been about gaining assurances in exchange for D-0055's prospective testimony. D-0055 noted that he did not trust **KILOLO**, which is why he sought to speak directly with **BEMBA**.⁹³² D-0055 also conceded that the 5 October 2012 call was neither about the money he wanted nor the content of his testimony.⁹³³ The only matter of importance to D-0055 was his and his family's protection, which only **BEMBA** could guarantee. Indeed, although D-0055 had never retracted [REDACTED] in the more than two years since he [REDACTED] it, he decided to undercut it only after **KILOLO**'s persistent efforts and his call with **BEMBA**.

276. Although the Witness did not confirm **BEMBA**'s participation in that call,⁹³⁴ the following establishes that he indeed spoke directly with **BEMBA**: (i) **KILOLO** arranged the call in response to D-0055's specific demand to speak with **KILOLO**'s "patron" (boss)⁹³⁵ as a condition of his testifying. **KILOLO** would not have risked losing this crucial witness by putting him in contact with an imposter, which the already distrustful Witness⁹³⁶ might discover; (ii) CDRs concretely reflect a call

⁹²⁹ CAR-OTP-0074-0872-R03, 0879; CAR-OTP-0089-1156, 1162, lns.169-174.

⁹³⁰ CAR-OTP-0074-0872-R03, 0879.

⁹³¹ CAR-OTP-0074-0872-R03, 0879-0880. Also CAR-OTP-0072-0391, rows 709, 710; CAR-OTP-0074-0065, row 681.

⁹³² CAR-OTP-0074-0872-R03, 0879.

⁹³³ T-36-ENG, p.36, ln.20-p.37, ln.15.

⁹³⁴ See T-36-ENG, p.41, lns.1-21, p.66, lns.5-6.

⁹³⁵ CAR-OTP-0089-1156, 1162, lns.168-175. Above, para.274.

⁹³⁶ Above, para.274.

involving **KILOLO**'s number, D-0055's number and **BEMBA**'s DU line on the date and time in question;⁹³⁷ (iii) the individual to whom D-0055 spoke thanked the Witness for accepting to testify in *his* favour, stating that *he* had been in jail for years and the victim of a conspiracy;⁹³⁸ and (iv) the conversation was in Lingala,⁹³⁹ which **BEMBA** speaks.⁹⁴⁰ Significantly, the issue is not genuinely contested — **KILOLO**'s 12 September 2014 confirmation submission concedes his facilitation of the call.⁹⁴¹

277. **Figure 1**,⁹⁴² an extract of CDRs obtained from KPN, shows **BEMBA**'s 5 October 2012 call to **KILOLO** at 19:49:16 CEST, which lasted 1962 seconds (approximately 32 minutes). During that time, at 20:05:55 CEST, **KILOLO** called D-0055. That call lasted 223 seconds. The overlap confirms **KILOLO**'s facilitation of **BEMBA**'s contact with D-0055. **KILOLO** used the number "[REDACTED]"; D-0055 used "[REDACTED]", and **BEMBA** used the DU number "[REDACTED]".⁹⁴³

Figure 1

KPN CDR Showing Multi-Party Call Between BEMBA, KILOLO and D-0055

[REDACTED]

278. **Figure 2**,⁹⁴⁴ an extract of the DU's records, further corroborates and confirms the independent information contained in CDRs. It shows a call from **BEMBA**'s privileged line to **KILOLO**'s phone number ("[REDACTED]") on 5 October 2012 at 19:49, lasting 32 minutes and 6 seconds.

⁹³⁷ Below, paras.277-278.

⁹³⁸ CAR-OTP-0074-0872-R03, 0879; T-36-ENG, p.65, lns.19-21.

⁹³⁹ CAR-OTP-0074-0872-R03, 0880.

⁹⁴⁰ E.g. CAR-OTP-0074-0248 (audio of DU call during which **BEMBA** speaks in Lingala); CAR-OTP-0079-1618 (transcript of DU call showing the same).

⁹⁴¹ See ICC-01/05-01/13-674-Conf-Anx3, p.21, row 69.

⁹⁴² CAR-OTP-0072-0391, rows 709, 710.

⁹⁴³ See Annex D.

⁹⁴⁴ CAR-OTP-0074-0065, row 681.

Figure 2**DU Phone Record Showing Call Between BEMBA and KILOLO**

[REDACTED]

279. **BEMBA** must have known of the nature of the Witness' prospective testimony before making the call to thank him for his willingness to testify in his behalf, given that the Witness had authored [REDACTED] and given **BEMBA**'s general direction and authority concerning witnesses.⁹⁴⁵ **BEMBA** also had to know that **KILOLO** had been successful in prevailing on the Witness to discredit his [REDACTED]. This is underscored by **BEMBA** Counsel's concession during *this trial* that the *Bemba* Defence provided him with the prospective evidence of witnesses to allow him to make informed decisions and to instruct his counsel.⁹⁴⁶ Finally, **BEMBA**'s response in the 5 October 2012 conversation is telling—specifically, thanking D-0055 for accepting to testify in his favour⁹⁴⁷ at a time when the Witness had not yet committed to do so.⁹⁴⁸ This demonstrates **BEMBA**'s direct involvement in procuring not only D-0055's false testimony about [REDACTED], but **BEMBA**'s knowledge and complicity concerning D-0055's false testimony which deliberately omitted his direct contact with **BEMBA** himself, when asked about *all* of his prior contacts with the *Bemba* Defence.⁹⁴⁹

280. The illicit nature of the call is also evident from **KILOLO**'s instruction to D-0055 not to reveal his contact with **BEMBA**, explaining that it was "*quelque chose d'inhabituel*".⁹⁵⁰ **KILOLO** also promised to pay D-0055 for his expenses incurred at the Amsterdam meeting by transferring money *via* WU.⁹⁵¹ Indeed, on the same day as the call with **BEMBA**, **KILOLO** reimbursed D-0055's Amsterdam expenses in the

⁹⁴⁵ Below, section VI.A.

⁹⁴⁶ Above, paras.77-78, 102, 110-111, 124 and below, para.320.

⁹⁴⁷ CAR-OTP-0074-0872-R03, 0879; T-36-ENG, p.65, lns.19-21.

⁹⁴⁸ CAR-OTP-0074-0872-R03, 0880.

⁹⁴⁹ Below para.282.

⁹⁵⁰ CAR-OTP-0074-0872-R03, 0880.

⁹⁵¹ CAR-OTP-0074-0872-R03, 0880.

amount of USD 130.⁹⁵²

281. Following the payment and his conversation with **BEMBA**, D-0055 agreed to testify⁹⁵³ to “*cesser d’avoir peur de Bemba, car celui-ci était encore très puissant et avait de nombreux amis hors de la prison*”.⁹⁵⁴ Further telling of the illicit nature of this interaction, **KILOLO** instructed D-0055 not to mention the money to the Court.⁹⁵⁵

D-0055 lies according to KILOLO’s instructions

282. Just over three weeks later, from 29 to 31 October 2012, D-0055 testified in the Main Case.⁹⁵⁶ According to **KILOLO**’s instructions—“*[il] a menti à la Cour conformément aux instructions de M^e Kilolo*”⁹⁵⁷—D-0055 repeatedly lied to the Court:

- According to **KILOLO**’s instruction to discredit [REDACTED],⁹⁵⁸ D-0055 lied that [REDACTED] “*était monté[e]*” and that it was “fabricated, with a hidden agenda”,⁹⁵⁹
- According to **KILOLO**’s instruction not to reveal their meeting in Amsterdam⁹⁶⁰ or the multi-party call with **BEMBA**,⁹⁶¹ D-0055 testified falsely that he only had three phone calls with the *Bemba* Defence. He deliberately withheld the truth concerning his unmonitored phone contact with **BEMBA** and his meeting with **KILOLO** in Amsterdam.⁹⁶² D-0055 also testified falsely that no promises were

⁹⁵² CAR-OTP-0070-0007, tab 32 A Musamba, row 25. **KILOLO** does not dispute making the payment: ICC-01/05-01/13-600-Conf-Corr2, para.340; T-35-ENG, p.27, lns.2-4.

⁹⁵³ CAR-OTP-0074-0872-R03, 0880.

⁹⁵⁴ CAR-OTP-0074-0872-R03, 0879.

⁹⁵⁵ CAR-OTP-0089-1156, 1163, lns.210-215.

⁹⁵⁶ *Generally* ICC-01/05-01/08-T-264-CONF-ENG-ET; ICC-01/05-01/08-T-265-CONF-ENG-ET; ICC-01/05-01/08-T-266-CONF-ENG-ET.

⁹⁵⁷ CAR-OTP-0074-0872-R03, 0881. *Also* T-35-ENG, p.20, lns.6-7; T-36-ENG, p.33, lns.23-24; CAR-OTP-0089-1167, 1169-1170, lns.34-65.

⁹⁵⁸ CAR-OTP-0074-0872-R03, 0878.

⁹⁵⁹ ICC-01/05-01/08-T-264-CONF-ENG, p.21, ln.18-p.22, ln.4.

⁹⁶⁰ CAR-OTP-0074-0872-R03, 0880; CAR-OTP-0089-1156, 1163, lns.201-221.

⁹⁶¹ CAR-OTP-0074-0872-R03, 0880.

⁹⁶² ICC-01/05-01/08-T-264-Red2-ENG, p.62, ln.22-p.66, ln.23.

made to him in exchange for his testimony,⁹⁶³ despite having been promised the benefit of being in **BEMBA**'s good graces regarding his security concerns;⁹⁶⁴

- According to **KILOLO**'s instruction not to reveal the 6 October 2012 WU transaction,⁹⁶⁵ D-0055 lied that he never received any payment, including any reimbursement of expenses, from the *Bemba* Defence.⁹⁶⁶

D. COVER-UP OF THE OVERALL STRATEGY

283. The evidence shows that in October 2013 **BEMBA**, **KILOLO**, **MANGENDA**, and **BABALA** engaged in a concerted effort to conceal the Overall Strategy through which the charged offences were committed:

- Around 11 October 2013, **KILOLO** and **MANGENDA** found out about the article 70 investigation from **MANGENDA**'s friend (a Court staffer), who revealed the highly confidential information.
- **BEMBA** was by then already seriously concerned about a possible investigation. His fears were realised when on or around 16 October **KILOLO** informed him that a Defence witness or witnesses had leaked information about the Overall Strategy to the Prosecution; and that this person or persons had to be uncovered and paid off, to prevent further damage.
- Between 16 and 22 October, **BEMBA**, spurred on by **KILOLO** and **MANGENDA**, coordinated the cover-up effort from the DU, including locating and paying off Defence witnesses who they suspected of having cooperated with the ongoing investigation. **BEMBA** issued instructions and authorisations

⁹⁶³ ICC-01/05-01/08-T-265-Red2-ENG, p.15, lns.13-18.

⁹⁶⁴ Above, paras.272, 274-275.

⁹⁶⁵ CAR-OTP-0089-1156, 1163, lns.210-215.

⁹⁶⁶ ICC-01/05-01/08-T-265-Red2-ENG, p.15, lns.1-18.

for money transfers to **BABALA**, who both suggested and facilitated the witness' payoff by providing the necessary funds to **KILOLO**.

- In late October, **KILOLO** travelled to Cameroon to meet with Defence witnesses, and to provide them with the cover-up money in person, and via money transfers.

284. On 2 October 2013 at 16:27,⁹⁶⁷ **BEMBA** called **MANGENDA** about, *inter alia*, the arrest warrant issued in the Kenya situation for article 70 offences.⁹⁶⁸ **BEMBA** wanted to know whether the case was against the Kenyan vice-president, or if it would reach that level.⁹⁶⁹ **MANGENDA** reassured him that for the moment, it was at the level of the suspect (Walter BARASA), who allegedly interfered with witnesses.⁹⁷⁰ Days later, on 7 October 2013 at 19:26 CEST, **BABALA** asked **BEMBA** whether he had spoken to **KILOLO**. **BEMBA**—obviously referencing the information **MANGENDA** recently provided him, responded that there was nothing to be alarmed about because "*nous avons... des gens là-dedans, ceux-ci nous tiendrons [sic] informés.*"⁹⁷¹

285. Four days later, on 11 October 2013 at 22:00,⁹⁷² just over a month before the Defence case concluded,⁹⁷³ **MANGENDA** told **KILOLO** about information he received from a friend whose spouse worked at the Court, that "*il y a une enquête qui est en train de se faire*" concerning **KILOLO**'s and **MANGENDA**'s involvement in bribing witnesses.⁹⁷⁴

286. The main events concerning the cover-up occurred, for the most part, between 16 and 22 October 2013 as set out below.

⁹⁶⁷ CAR-OTP-0079-1509, 1509.

⁹⁶⁸ CAR-OTP-0079-0191, 0195-0196, lns.77-123.

⁹⁶⁹ CAR-OTP-0079-0191, 0196-0197, lns.123-154.

⁹⁷⁰ CAR-OTP-0079-0191, 0197, lns.155-161.

⁹⁷¹ CAR-OTP-0089-0895, 0898, ln.35. *Also* 0897-0898, lns.29-41; ICC-01/05-01/13-1110-Conf-AnxA, section III.B.

⁹⁷² CAR-OTP-0079-1509, 1509.

⁹⁷³ The last witness for the Defence in the Main Case was heard from 12-14 November 2013: ICC-01/05-01/08-T-350-CONF-ENG-ET; ICC-01/05-01/08-T-351-CONF-ENG-ET; ICC-01/05-01/08-T-352-CONF-ENG-ET.

⁹⁷⁴ CAR-OTP-0079-0198, 0200, lns.4-32.

1. 16 October 2013

287. On 16 October 2013 at 19:46 CEST,⁹⁷⁵ **KILOLO** told **MANGENDA** that he had informed **BEMBA** of the article 70 investigation.⁹⁷⁶ **KILOLO** also told **BEMBA** that someone had leaked information, and that they needed to identify that person to verify this.⁹⁷⁷ **BEMBA**'s initial reaction was that of "*panique*" and, as **KILOLO** described it, "*la peur*".⁹⁷⁸ Notwithstanding **KILOLO** and **MANGENDA**'s subsequent discussions on exploiting **BEMBA**'s serious concerns about the scope and potential consequences of the ongoing article 70 investigation for their personal gain,⁹⁷⁹ **BEMBA**'s apprehension, and resulting conduct show his consciousness of guilt regarding the offences committed through the Overall Strategy.

288. That evening at 22:19 CEST,⁹⁸⁰ **KILOLO** and **MANGENDA** spoke again. **KILOLO** apprised **MANGENDA** that he had spoken to **BEMBA** in the meantime, and further informed him of the potential consequences of the Overall Strategy being uncovered, including (i) losing all the work they had done so far ("*si tel est le cas ça veut dire que tous les efforts qu'on a fournis sont tombés dans l'eau*");⁹⁸¹ and (ii) **BEMBA** facing a possible 5-year prison sentence, separate from any sentence he might receive in the Main Case ("*Ils vont vous poursuivre et vous pouvez, peut-être écopier d'une condamnation de 5 ans, donc ce qui n'a même rien à avoir [sic] avec l'autre [...] Là, ça commence à compter à 0 à partir de ce jour-là [...] Ça n'a rien à avoir [sic] avec les 5 ans déjà purgés [...] Parce que c'est pour d'autres faits*").⁹⁸²

289. **BEMBA** immediately sought to frustrate the investigation and to conceal the Overall Strategy. In the same conversation, **KILOLO** explained to **MANGENDA** that

⁹⁷⁵ CAR-OTP-0079-1509, 1509.

⁹⁷⁶ CAR-OTP-0080-0322, 0324-0325, lns.7-12, 63-72.

⁹⁷⁷ CAR-OTP-0080-0322, 0325-0326, lns.72-74.

⁹⁷⁸ CAR-OTP-0080-0322, 0327, lns.123-127.

⁹⁷⁹ See CAR-OTP-0080-0322, 0326, lns.102-111.

⁹⁸⁰ CAR-OTP-0079-1509, 1509.

⁹⁸¹ CAR-OTP-0079-1762, 1766, lns.82-83.

⁹⁸² CAR-OTP-0079-1762, 1766, lns.88-98.

BEMBA instructed him to “*faire le tour d’horizon*” — which, as **KILOLO** explained to **MANGENDA**—meant to call up their witnesses⁹⁸³ one by one, right away: “[q]ue j’appelle toutes ces personnes l’une après l’autre, cette même nuit. Tout ça”.⁹⁸⁴ However, **KILOLO** also told **MANGENDA** that he had told **BEMBA** that it was not that simple—it would not be so easy to call 10 or 15 people ‘just like that’.⁹⁸⁵

290. The two agreed to tell **BEMBA** that the leak on the defence side originated with the Cameroon Witnesses, because they believed **BEMBA** could not effectively check the information.⁹⁸⁶ These witnesses included D-0002,⁹⁸⁷ D-0003⁹⁸⁸ and a prospective witness who eventually did not testify⁹⁸⁹ —most likely [REDACTED] or [REDACTED].⁹⁹⁰ **KILOLO** and **MANGENDA** further agreed to tell **BEMBA** that witnesses were demanding money in the context of the cover-up, in order to “*augmente[r] le stress*” and get **BEMBA** to pay out more money for the witnesses out

⁹⁸³ **KILOLO** mentions that the persons they are discussing are witnesses: “*Ce sont nos témoins, et j’ai le droit de les rencontrer.*” See CAR-OTP-0079-1762, 1775, lns.421-422.

⁹⁸⁴ CAR-OTP-0079-1762, 1764, lns.19-20.

⁹⁸⁵ CAR-OTP-0079-1762, 1764 lns.5-26.

⁹⁸⁶ CAR-OTP-0079-1762, 1767-1768, lns.135-157.

⁹⁸⁷ CAR-OTP-0079-1762, 1769, ln.203. D-0002 is referred to as “*celui qui parle beaucoup le français*”, and in other conversations as, “*l’homme (l’autre) du français*” or “*l’homme du français kilométrique*”, as he used to write long emails in very good French. ICC-01/05-01/13-1110-Conf-AnxA, section III.L. Here, **KILOLO** also describes him as “*lui qui a l’habitude d’écrire tout le temps.*”, see 1770, ln.213. In another conversation, **KILOLO** told **BEMBA** that this “*(l’autre) du français*” “*c’est un type problématique [...] c’est vraiment quelqu’un a problèmes. Il se dispute avec tout le monde, y compris même ses propres gens. [...] Il me parlait même qu’il faut...euh...il me parlait même de...a un certain moment, ils se sont disputés avec l’enfant de l’homme-là que vous connaissez de [REDACTED]...qu’il devait même l’éliminer ... avec des trucs bizarres, là*”, CAR-OTP-0082-1065, 1070, lns.131-140. Also below, para.302. In an email to **KILOLO**, D-0002 indicated that he had a dispute with **ARIDO**, D-0004, and D-0007 that “*risque d’entraîner [sic] la mort*”: CAR-OTP-0088-0504, 0509. This also shows that “*l’enfant de l’homme-la que vous connaissez de [REDACTED]*” is **ARIDO** whereas “*l’homme-la que vous connaissez de [REDACTED]*” is **KOKATÉ**, who coordinated **ARIDO**. For “[REDACTED]” as France: ICC-01/05-01/13-1110-Conf-AnxA, sections III.L, V.D.

⁹⁸⁸ CAR-OTP-0079-1762, 1769, lns.198-199, 1770, lns.216-217. The references “*le premier qu’on avait rencontré, celui qu’on avait vu*” and “*l’autre petit-là entraîné par celui qui parle le français*” are to D-0003. In a subsequent conversation, **KILOLO** and **MANGENDA** discuss these Witnesses again, and refer to “*l’homme de français*” and “*l’autre*”. See CAR-OTP-0082-1293, 1307, lns.451-484. Below, para.302. In a different conversation, **KILOLO** told **BEMBA** that this second witness “*est un illettré, un fait. C’est vraiment le ... l’homme... l’enfant que vous connaissez [...] complètement illettré, quoi*”: CAR-OTP-0082-1065, 1070, lns.116-120. **KILOLO** also describes D-0003 as an “*illettré*” in a prior filing: ICC-01/05-01/13-600-Conf-Corr2, fn.821. Also ICC-01/05-01/13-674-Conf, para.299. This code is based on the fact that D-0003 was thought to require reading assistance in Court: ICC-01/05-01/08-T-330-Red-ENG-ET, p.6, lns.14-21; T-23-ENG- p.11, lns.20-24.

⁹⁸⁹ CAR-OTP-0079-1762, 1770, lns.220-225. The Witness is referred to as “*le mécontent (...) qui était venu là et était rentré (...) il était resté là-bas*”. Later, **KILOLO** refers to him as the one who they had “*laissé là*”. Generally CAR-OTP-0082-1293, 1307, lns.455-482.

⁹⁹⁰ Above, para.136.

of fear,⁹⁹¹ while intending to pocket the difference.⁹⁹² Their belief that their demand was morally justified having put their careers at risk,⁹⁹³ only underscores the criminality of those actions.

291. When **KILOLO** indicated, in code, that **BABALA** (who resides in DRC) would be the one sending the money, **MANGENDA** expressed his concern that any system of payment used could be traced and used as evidence—and that it would be better if money was passed “*en mains propres*” to avoid the risk that a connection can be made with the DRC through WU archives.⁹⁹⁴

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292. By 17 October 2013, **BABALA** was informed of the cover-up and acted as a link between other Accused, facilitating transfers to **KILOLO** and **MANGENDA** at **BEMBA**’s direction and with his approval, aware that the money would be used to bribe witnesses to conceal the Overall Strategy and the resultant offences. At 09:26 CEST that morning, **BABALA** phoned **BEMBA** and asked if he had spoken with **KILOLO**, which **BEMBA** denied.⁹⁹⁵ **BABALA** told **BEMBA** that **KILOLO**—who he had spoken with the night before—would contact him, and that it was “*lui [KILLOLO] qui va vous en parler, mais je ne sais pas comment il va vous le dire*”. **BABALA** further said that “*il y a une urgence, il faut que vous puissiez le joindre d’abord. Mais, moi de mon côté, je m’active hein*”,⁹⁹⁶ adding that the matter “[...]est un peu sur l’exceptionnel”.⁹⁹⁷ As shown later that day, this conversation referred to **BEMBA**’s tacit approval of a requested payment from **BABALA** to **KILOLO** that took place later that day, at 16:03 CEST (10:03 EST).⁹⁹⁸

⁹⁹¹ CAR-OTP-0079-1762, 1770, lns.236-245, 1773, lns.346-352, 1775, lns.392-400.

⁹⁹² CAR-OTP-0079-1762, 1773, lns.346-352.

⁹⁹³ CAR-OTP-0079-1762, 1773, lns.346-352, 1783, lns.675-695.

⁹⁹⁴ CAR-OTP-0079-1762, 1781-1783, lns.614-648.

⁹⁹⁵ CAR-OTP-0089-0885, 0887, lns.24-25.

⁹⁹⁶ CAR-OTP-0089-0885, 0887, lns.24-35.

⁹⁹⁷ CAR-OTP-0089-0885, 0888, lns.36-37.

⁹⁹⁸ *Below*, para.298.

293. At 11:57 CEST, **BABALA** asked **BEMBA** again if he had spoken with **KILOLO**, which **BEMBA** had not yet done.⁹⁹⁹ **BEMBA** asked whether the issue was “*gérable*”,¹⁰⁰⁰ which **BABALA** confirmed, but noted that he wanted **BEMBA** to be apprised of what he was doing.¹⁰⁰¹ **BEMBA** then sent a message through **BABALA** to **KILOLO** that **BEMBA** needed to be informed at all times.¹⁰⁰² As the other intercepted conversations earlier and later that day, in which **BABALA** and **KILOLO** engaged in discussions about the so-called plugging of the leak, and the money transfer at 16:03 show, this conversation also concerned the cover-up.

294. At 12:03 CEST,¹⁰⁰³ **KILOLO** and **MANGENDA** discussed **KILOLO**’s ongoing efforts to contact the Defence witnesses purportedly on the verge of recanting their testimonies on 17 October 2013,¹⁰⁰⁴ observing that whenever ‘work’ was done with more than two or three persons, the likelihood of a “*brèche*” increased.¹⁰⁰⁵ **MANGENDA** advised that they needed to make **BEMBA** see that it was their duty to “*gérer*” these issues, maintaining good relations with the witnesses through the final judgment in the case.¹⁰⁰⁶ It was vital that they did not create an impression with the witnesses that they were leaving them with “*mains vides*”.¹⁰⁰⁷ **MANGENDA** then asked **KILOLO** to update **BEMBA** in code “*qu’il comprenne*”.¹⁰⁰⁸ Furthermore, **KILOLO** and **MANGENDA** discussed their suspicions that the leak came from witnesses, “*homme de français*” or “*français kilométriques*”, and “*l’autre*”, as well as the man that they had “*laissé là*”.¹⁰⁰⁹ As explained above, these codes referred to witnesses D-0002¹⁰¹⁰ and D-0003,¹⁰¹¹ as well as another one, who they had “*laissé là*”; and they

⁹⁹⁹ CAR-OTP-0089-0876, 0878, lns.18-21.

¹⁰⁰⁰ CAR-OTP-0089-0876, 0878, lns.25-33.

¹⁰⁰¹ CAR-OTP-0089-0876, 0878-0879, lns.34, 36.

¹⁰⁰² CAR-OTP-0089-0876, 0879, lns.39-40, 46-48.

¹⁰⁰³ CAR-OTP-0080-1280, 1285.

¹⁰⁰⁴ CAR-OTP-0082-1293, 1295, lns.5-30.

¹⁰⁰⁵ CAR-OTP-0082-1293, 1296, lns.33-48.

¹⁰⁰⁶ CAR-OTP-0082-1293, 1296, lns.54-60.

¹⁰⁰⁷ CAR-OTP-0082-1293, 1296, lns.61-63.

¹⁰⁰⁸ CAR-OTP-0082-1293, 1303, lns.320-327.

¹⁰⁰⁹ CAR-OTP-0082-1293, 1307, lns.451-484.

¹⁰¹⁰ “*Homme de français*” is D-0002. Above, para.290, fn.987. Also below, para.302.

were the same individuals who **KILOLO** mentioned to **BEMBA** later that day.¹⁰¹²

295. At 12:38 CEST,¹⁰¹³ **BABALA** and **KILOLO** discussed the cover-up and the article 70 investigation, with **KILOLO** reporting that he had been successful in identifying “la fameuse fuite”.¹⁰¹⁴ When **KILOLO** spoke about the difficulty of “colmater” — plugging the leak,¹⁰¹⁵ **BABALA** responded that he had told the “client de ... de t’avoir”¹⁰¹⁶ but “pour le côté finances, c’est pas son problème. [...] Moi, je sais de toute façon ce que je dois faire”.¹⁰¹⁷ **KILOLO** suggested that the leak occurred because the Accused had neglected to stay in contact with the witnesses,¹⁰¹⁸ with which **BABALA** agreed, noting that it was necessary “[d]’assurer le [...] service après-vente”.¹⁰¹⁹ **KILOLO** and **BABALA** also discussed the Kenya article 70 case, with **KILOLO** telling **BABALA** that **BARASA**’s arrest was sought “tout simplement parce que ... il est soupçonné d’avoir fait pression sur des témoins”.¹⁰²⁰ **KILOLO** assured **BABALA**, much as **BABALA** had assured **BEMBA** earlier,¹⁰²¹ that their situation was “gérable”; although, “C’est un peu difficile pour le moment pour moi parce que ... en fait, c’est un autre qui a dénoncé [...] son ami, mais l’ami en question [...] refuse de me prendre au téléphone”.¹⁰²² **BABALA**’s clear understanding of the situation and the codes used by **KILOLO** in this conversation — in particular his reference to term “ami” — which referred to Defence witnesses, as the evidence proves¹⁰²³ — demonstrates **BABALA**’s participation in the Overall Strategy.

¹⁰¹¹ “L’autre” is D-0003, who **KILOLO** later in his conversation with **BEMBA** refers to as “illettré”. Above, para.290, fn.987. Also below, para.302.

¹⁰¹² The man who they had “laissé là” refers to the third witness from Cameroon, who was ultimately not called to testify, previously referred to as “le mécontent (...) il était resté là-bas”. Above, para.290.

Later he was referred to by **KILOLO** in his conversation with **BEMBA** as “l’homme de YANKEE (...) que j’avais exclu” (i.e., a witness who was on the witness list, but the Bemba Defence in the Main Case did not call him to testify). Below, para.302. See CAR-OTP-0082-1065, 1067, lns.15-20, 1068, lns.49-63, 1070, lns.115-131; CAR-OTP-0082-1309, 1312, ln.40, 1313, lns.111-114. Also ICC-01/05-01/13-1110-Conf-AnxA, sections III.N., V.E, V.G.

¹⁰¹³ CAR-OTP-0080-1286, 1294.

¹⁰¹⁴ CAR-OTP-0082-0542, 0543-0544, lns.15-50.

¹⁰¹⁵ CAR-OTP-0082-0542, 0543, lns.21-29, 0544, lns.42-56.

¹⁰¹⁶ CAR-OTP-0082-0542, 0544, ln.61.

¹⁰¹⁷ CAR-OTP-0082-0542, 0544, lns.63-64.

¹⁰¹⁸ CAR-OTP-0082-0542, 0545, lns.77-83.

¹⁰¹⁹ CAR-OTP-0082-0542, 0545, lns.82, 84.

¹⁰²⁰ CAR-OTP-0082-0542, 0543-0544, lns.31-36.

¹⁰²¹ Above para.293.

¹⁰²² CAR-OTP-0082-0542, 0544, lns.42-44.

¹⁰²³ See ICC-01/05-01/13-1110-Conf-AnxA, section III.P: “Amis” as witnesses.

296. Shortly thereafter, at 13:01 CEST¹⁰²⁴ **KILOLO** reported to **BEMBA** that he had progressed in identifying the ostensible informers.¹⁰²⁵ He assured **BEMBA** that “*on va redresser ça*”.¹⁰²⁶ **BEMBA** responded that in the worst-case scenario, **KILOLO** can “*nier tout cela c’est du mensonge*”,¹⁰²⁷ which **KILOLO** reaffirmed, stating, “*Ah oui bien sûr, là il n’y a pas de choix*.”¹⁰²⁸ **KILOLO** brought to **BEMBA**’s attention the Kenya article 70 proceedings:¹⁰²⁹ “*Tu as écouté une histoire similaire qui s’est passée à ... à Kilo ECHO ... NOVEMBRE hein ... un truc similaire ... KILO ECHO NOVEMBRE YANKEE ... Voilà*”¹⁰³⁰ and told him that “[*j*]e ne voudrais même pas que ... qu’on en arrive à ce genre des choses”.¹⁰³¹

297. **BEMBA**’s intention to conceal the Overall Strategy by directing **KILOLO** to conduct a “*tour d’horizon*” is made clear from his follow up conversation with **KILOLO** at 14:45 CEST¹⁰³² to check on the implementation of his instructions regarding the witnesses in Cameroon: “[*t*]u n’as eu personne du côté de CHARLY [Cameroon], alors?”¹⁰³³

298. At 16:03 CEST (10:03 EST), **BABALA** executed a USD 2,355 transfer to **KILOLO** via WU.¹⁰³⁴ This transfer confirms that **BABALA**’s 09:26 CEST conversation with **BEMBA** concerned **KILOLO**’s urgent request for funds needed for the cover-up, and

¹⁰²⁴ CAR-OTP-0080-1299, 1311.

¹⁰²⁵ CAR-OTP-0082-1309, 1312-1313, lns.40–114. Also CAR-OTP-0082-1065, 1067, lns.15-20, 1068, lns.49-63, 1070, lns.115-131.

¹⁰²⁶ CAR-OTP-0082-1309, 1325, ln.537.

¹⁰²⁷ CAR-OTP-0082-1309, 1325, ln.538.

¹⁰²⁸ CAR-OTP-0082-1309, 1325, ln.539.

¹⁰²⁹ See ICC-01/09-01/13-1-Red2.

¹⁰³⁰ CAR-OTP-0082-1309, 1325, lns.545-546.

¹⁰³¹ CAR-OTP-0082-1309, 1325, ln.548.

¹⁰³² CAR-OTP-0080-1286, 1293.

¹⁰³³ CAR-OTP-0082-0614, 0616, lns.9-17. See ICC-01/05-01/13-1110-Conf-AnxA, sections V.E, V.G. The assertion that **BEMBA** and **KILOLO** were referring to witnesses from Cameroon (“CHARLY”) is further supported by a conversation where **MANGENDA** and **KILOLO** agreed to falsely represent to **BEMBA** that the leak originated with three Cameroonian witnesses: See CAR-OTP-0079-1762, 1767-1768, lns.122-157. Above, para.290. In this conversation, the Cameroonian witnesses were referred to as “*le groupe de Yankee*” (witnesses from Yaoundé–Cameroon). Accordingly, the next day **KILOLO** told **BEMBA** that the source of the leak was emanating from Cameroon. See CAR-OTP-0082-1065, 1067, lns.15-20, 1068, lns.49-63, 1070, lns.115-132; CAR-OTP-0082-1309, 1312, ln.40. See ICC-01/05-01/13-1110-Conf-AnxA, section III.N. “Homonyme” as the OTP.

¹⁰³⁴ CAR-OTP-0074-0855, tab 40 Aimé Kilolo Musamba, row 4, columns A-G.

that he called **BEMBA** about it to inform him and seek his approval prior to making the transfer, which **BEMBA** tacitly provided.

299. At 16:37 CEST,¹⁰³⁵ **MANGENDA** recounted to **KILOLO** that he had told **BEMBA** that the contacts between the informers and the Prosecution needed to be cut immediately because if the Prosecution was to relocate these witnesses “*c’est fini*”¹⁰³⁶—they could no longer get to them. **KILOLO** and **MANGENDA** also agreed on the amount of money to extort from **BEMBA**, keeping in mind that the latter would negotiate the amount he was willing to pay (“*lui [BEMBA] te demandera déjà que tu négocie*”).¹⁰³⁷ Tellingly, **KILOLO** told **MANGENDA** half-jokingly that he was sure that **BEMBA** was contemplating how he would sacrifice **KILOLO**, and say that **KILOLO** acted alone without his knowledge.¹⁰³⁸ The candour of this conversation, particularly that both **KILOLO** and **MANGENDA** laughed at the notion of **BEMBA** claiming that they acted without his knowledge proves unequivocally the central roles of all three in the Overall Strategy.

300. In the same conversation, **MANGENDA** told **KILOLO** that **BEMBA** had asked him what effect the article 70 investigation could have on the Main Case.¹⁰³⁹ **MANGENDA** responded:

*Ça va maintenant détruire tous les témoins que nous avons. Et quand ça... ça les anéantit, on ne peut plus contrer les éléments de preuves du procureur pour dire que ce ... ce n’est pas établi au-delà du doute raisonnable quoi. Ces faits sont sensés prouvés.*¹⁰⁴⁰

Taken together with **BEMBA**’s earlier instruction to contact the witnesses one by one,¹⁰⁴¹ the above conversation shows the broad scope of the Overall Strategy, which

¹⁰³⁵ CAR-OTP-0080-1286, 1293.

¹⁰³⁶ CAR-OTP-0082-1326, 1331, lns.140-141, 1335, lns.316-320, 1342, lns.564-571.

¹⁰³⁷ CAR-OTP-0082-1326, 1338, lns.414-437.

¹⁰³⁸ CAR-OTP-0082-1326, 1343-1344, lns.633-637.

¹⁰³⁹ CAR-OTP-0082-1326, 1336, lns.330-332.

¹⁰⁴⁰ CAR-OTP-0082-1326, 1336, lns.334-337 (emphasis added).

¹⁰⁴¹ CAR-OTP-0079-1762, 1764, lns.19-20.

was not limited to the fourteen Defence witnesses involved in the charged incidents, but encompassed to varying degrees “*tous les témoins*”.

301. At 16:38 CEST, **BABALA** informed **BEMBA** that “*chez le COLLÈGUE, c’est déjà fait*”,¹⁰⁴² obviously referring to the 16:03 CEST (10:03 EST) payment, which was discussed earlier in the day between **KILOLO** and **MANGENDA**, and between **KILOLO** and **BABALA** at 12:03 CEST,¹⁰⁴³ and 12:38 CEST,¹⁰⁴⁴ respectively.

302. At 18:26 CEST,¹⁰⁴⁵ **KILOLO** told **BEMBA** that although three witnesses—“*l’homme de français*”, the “*illettré*”, and “*l’homme de YANKEE [...] que j’avais exclu*”, (i.e. D-0002, D-0003, and a third witness who did not testify)¹⁰⁴⁶—had informed the Defence they have spoken to the Prosecution (referred to as “*les gens de l’homonyme*”),¹⁰⁴⁷ they had not yet signed off on their statements.¹⁰⁴⁸ **KILOLO** told **BEMBA** that he had learned that the informers had acknowledged the illicit coaching, bribery, and their knowledge of the individuals involved, including—**ARIDO** and the ‘other’ Cameroon witnesses—who he referred to in coded language.¹⁰⁴⁹ **BEMBA** enquired whether “*l’homme qui se trouve chez MARCELLIN*” (**ARIDO**) “*a[vait] encore ... la mainmise*” over D-0002, so he would be able to influence him regarding his cooperation with the Prosecution.¹⁰⁵⁰ **KILOLO** informed **BEMBA** that **ARIDO** and D-0002 “*se sont disputés*”.¹⁰⁵¹

¹⁰⁴² CAR-OTP-0089-0863, 0865, lns.10-15.

¹⁰⁴³ See CAR-OTP-0080-1280, 1285; CAR-OTP-0082-1293.

¹⁰⁴⁴ See CAR-OTP-0080-1286, 1294; CAR-OTP-0082-0542.

¹⁰⁴⁵ CAR-OTP-0080-1286, 1293.

¹⁰⁴⁶ “[L]’homme de français” is D-0002, “illettré” is D-0003, and “l’homme de YANKEE (...) que j’avais exclu” is a third witness from Cameroon not called. Above, fn.988.

¹⁰⁴⁷ CAR-OTP-0082-1065, 1086, lns.687-688. Also ICC-01/05-01/13-1110-Conf-AnxA, section III.N.

¹⁰⁴⁸ CAR-OTP-0082-1065, 1067, lns.15-20, 1068, lns.49-63, 1069, lns.83-85, 1070, lns.115-132. Also above, para.299.

¹⁰⁴⁹ CAR-OTP-0082-1065, 1074, lns.262-277. Also, 1070, lns.115-120.

¹⁰⁵⁰ CAR-OTP-0082-1065, 1084, lns.618-620, 1074, lns.251-253. **ARIDO** is here “*l’homme qui se trouve chez MARCELLIN, celui qui dernièrement...euh...l’autre fou qui est là-bas*” and further on, “*l’enfant de cet homme-là...euh...ils ont appelé...euh...celui que vous connaissez, celui...celui qui se trouve chez MARCELLIN*”. Whereas “*homme-là...()* celui qui se trouve chez MARCELLIN” is KOKATÉ. For “*Marcellin*” as France, see ICC-01/05-01/13-1110-Conf-AnxA, section V.D.

¹⁰⁵¹ CAR-OTP-0082-1065, 1084, lns.618-622.

303. **KILOLO** confirmed to **BEMBA** that the meeting with **ARIDO** had been discussed, including “*LA COULEUR*”—coaching and “*LE LIVRE*”—payments.¹⁰⁵² Finally, **KILOLO** promised **BEMBA** to “*faire un tour d’horizon*” of all Defence witnesses.¹⁰⁵³ **BEMBA** insisted that **KILOLO** especially reach out to those who did not testify.¹⁰⁵⁴

3. 18 October 2013

304. Cognisant of the danger to the *Bemba* Defence posed by Defence witnesses cooperative in the Article 70 investigation, on 18 October 2013, at 11:17 CEST,¹⁰⁵⁵ **KILOLO** informed **MANGENDA** that **BEMBA** had directed him to warn the witnesses who leaked the Overall Strategy to the Prosecution that they (the witnesses) could themselves be arrested.¹⁰⁵⁶ This statement is tantamount to an admission by **BEMBA** of the witnesses’ participation in the Overall Strategy, having provided the false testimony presented before the Court.

4. 19 October 2013

305. As **KILOLO** and **MANGENDA** predicted,¹⁰⁵⁷ **BEMBA** negotiated the amount he was willing to pay witnesses to buy them off. On 19 October 2013, **BEMBA** directed **KILOLO**—as the latter told **MANGENDA** at 20:24 CEST¹⁰⁵⁸—to tell the witnesses that the maximum he was willing to pay was “15000”.¹⁰⁵⁹

¹⁰⁵² CAR-OTP-0082-1065, 1074, lns.251-253, lns.270-274. Also ICC-01/05-01/13-1110-Conf-AnxA, sections IV.B, V.D, VI.B, V.E, VI.I.

¹⁰⁵³ CAR-OTP-0082-1065, 1080, lns.503-508.

¹⁰⁵⁴ CAR-OTP-0082-1065, 1081, lns.516-520.

¹⁰⁵⁵ CAR-OTP-0080-1273, 1279.

¹⁰⁵⁶ CAR-OTP-0082-0626, 0628, lns.23-29.

¹⁰⁵⁷ CAR-OTP-0082-1326, 1338, ln.427. Also above para.299.

¹⁰⁵⁸ CAR-OTP-0080-1280, 1284.

¹⁰⁵⁹ See CAR-OTP-0082-0630, 0632, lns.5-11.

5. 21 October 2013

306. On 21 October 2013 at 10:07 CEST,¹⁰⁶⁰ **KILOLO** discussed with **BABALA** an urgent money transfer for the witnesses who purportedly leaked the Overall Strategy. **BABALA** asked if **KILOLO** had spoken to **BEMBA** (“[t]u as parlé avec le client”),¹⁰⁶¹ with **KILOLO** responding that **BEMBA** was in agreement: “[j]’ai parlé avec le client, oui. On a convenu ça hier soir”.¹⁰⁶² **BABALA** told **KILOLO** to collect the money from **BABALA**’s bank in France.¹⁰⁶³ As agreed with **BABALA**, **KILOLO** then sent a text message at 10:24 CEST to **BABALA** listing the payments they discussed over the phone: “Budget urgent: 17.100 usd (charly) + 2.500 eur (KILOLO) + 2.000 usd (standby a kinshasa)”.¹⁰⁶⁴

307. At 13:06 CEST¹⁰⁶⁵ that day, **KILOLO** and **BEMBA** discussed in code the details of the requested amounts and their purpose, indicating the same amounts he gave to **BABALA** earlier:

*AK : Euh...du côté de la BIBLIOTHEQUE...les ouvrages... je crois... euh... donc, euh... ceux du VILLAGE... attends... un, deux, trois, quatre... ça va ... OK. Un point sept... JPB : Hum-mm! AK : Un point sept là c’est ... euh... au VILLAGE. JPB : Hum. AK : C’est-à-dire les ... les gens du VILLAGE mais ... euh ... à YANKEE.*¹⁰⁶⁶

The “un point sept” of “ouvrages” for “les gens du Village” in “Yankee”, referred to the USD 17,000 for CAR witnesses in Yaoundé, Cameroon.¹⁰⁶⁷

¹⁰⁶⁰ CAR-OTP-0080-1286, 1293.

¹⁰⁶¹ CAR-OTP-0082-0547, 0548, ln.24.

¹⁰⁶² CAR-OTP-0082-0547, 0548, ln.25.

¹⁰⁶³ CAR-OTP-0082-0547, 0560, lns.406-418.

¹⁰⁶⁴ CAR-OTP-0080-1331. Also CAR-OTP-0080-1286, 1293.

¹⁰⁶⁵ CAR-OTP-0080-1286, 1293.

¹⁰⁶⁶ CAR-OTP-0082-0828, 0830, lns.22, 25, 0831-0834, lns.46-160 (emphasis added). **KILOLO** used, *inter alia*, “Villageois” in “Yankee” for witnesses from CAR residing in Cameroon; “livre” (and, accordingly, “ouvrage” or “bibliothèque”) for “money”; “Marcellin” for “France”. ICC-01/05-01/13-1110-Conf-AnxA, sections V.D, V.E, V.F, V.G, VI.I. In the context of other evidence, and based on the Lingala original (CAR-OTP-0082-0704), the French translation “un point sept” denotes the number 17, and not 1.7.

¹⁰⁶⁷ See ICC-01/05-01/13-1110-Conf-AnxA, sections V.E, V.F, V.G, VI.I, VI.H (“Village” as CAR; “Yankee” as Yaoundé; “livre” (and accordingly, “bibliothèque” or “ouvrages”), as money/amounts of money).

308. Fourteen minutes later, at 13:20 CEST, **BEMBA** and **BABALA** spoke, referring to the amounts discussed earlier among **BABALA** and **KILOLO** and **BEMBA** and **KILOLO**, but using different codes:

*[C]es chèvres-là pour janvier... euh ... le ma ... le mariage de ce MWANA-là, c'est 17, mais 17 du côté de la mauvaise qualité [...] de petites chèvres [...] Regarde pour ce qui concerne les vaches ... euh ... deux ou trois, de bonne qualité, les vaches... euh ... du côté ... euh ... de son côté.*¹⁰⁶⁸

BEMBA thought that “07” [**BABALA**] had said there was “une ... possibilité directement ... euh ... SIERRA NOVEMBER?” [France], which **BABALA** confirmed would happen through “MIKE”—Moneygram¹⁰⁶⁹—further evidence that they were discussing money transfers. **BEMBA** warned **BABALA** to be careful, as MIKE [Moneygram transfers] were not the same as WHISKY [WU transfers].¹⁰⁷⁰ **BEMBA** was concerned whether **BABALA** would be able to obtain the money to complete the transfer by the following day, and emphasised the urgency—this was a matter of “vie ou mort” and the transfer would prevent other problems.¹⁰⁷¹

309. At 14:05 CEST,¹⁰⁷² **BABALA** spoke to **KILOLO** again. **BABALA** informed **KILOLO** that even though he had not received **KILOLO**’s SMS, **BEMBA** had spoken to him about it.¹⁰⁷³ **BABALA** and **KILOLO** further discussed **KILOLO**’s impending travel, which was coming up that Thursday [24 October 2013].¹⁰⁷⁴

¹⁰⁶⁸ CAR-OTP-0090-1428, 1430, lns.15-19, 23-25. **BEMBA** and **BABALA** use the code “mariage de Mwana” for “witnesses”, and “chèvres” and “vaches” for different denominations of money. “Mwana” means “child” in Lingala.

¹⁰⁶⁹ CAR-OTP-0090-1428, 1430, lns.23-26. “MIKE” refers to “MoneyGram”. See ICC-01/05-01/13-1110-Conf-AnxA, sections III.D.1, V.C, VII.

¹⁰⁷⁰ CAR-OTP-0090-1428, 1430-1431, lns.27-38. “WHISKEY” refers to WU. See ICC-01/05-01/13-1110-Conf-AnxA, section IV.A.

¹⁰⁷¹ CAR-OTP-0090-1428, 1431, lns.40-60. Here “WHISKEY” denotes two different meanings: compare ln.37 (payments through WU) with ln.42 (Caroline BEMBA). See ICC-01/05-01/13-1110-Conf-AnxA, sections III.F.1, IV.A.

¹⁰⁷² CAR-OTP-0080-1286, 1293.

¹⁰⁷³ CAR-OTP-0082-0570, 0571, lns.4-5.

¹⁰⁷⁴ CAR-OTP-0082-0570, 0571, lns.8-28.

310. At 19:44 CEST, **BEMBA** instructed **BABALA** to communicate the details of a money transfer to “*destinataire*” and asked him whether he has told him “*ce qu’il doit faire*”.¹⁰⁷⁵ **BABALA** said that the “*destinataire*” has already told **BEMBA** that he wanted to receive “*chez lui*”.¹⁰⁷⁶ **BEMBA** was worried that this might cause a delay and instructed **BABALA** to tell “*destinataire*” to “*cesse[r] avec ces bêtises*”.¹⁰⁷⁷ In the context of the preceding conversations on the same day, which discussed money transfers to **KILOLO**, the term “*destinataire*” obviously refers to **KILOLO**.

311. The same day, D-0006 inquired with **KILOLO** about a payment of CFA 500,000 (EUR 760) that had been promised to him and others.¹⁰⁷⁸ In response, **KILOLO** said that he did not have the money available,¹⁰⁷⁹ but confirmed that D-0006, D-0004 and others would receive CFA 100,000 (EUR 152) each by the end of the week, “[...] *juste symbolique, à chacun, quoi*”.¹⁰⁸⁰

6. 22 October 2013

312. On 22 October 2013, the Dutch intercepted conversations show that **BEMBA**, **BABALA**, and **KILOLO** were contemporaneously coordinating an urgent money transfer in France by **BABALA** to **KILOLO**.¹⁰⁸¹ At 10:33 CEST,¹⁰⁸² **KILOLO** discussed this with **BEMBA** to get his approval to pay off the informants, and for the matter to be arranged with **BABALA**.¹⁰⁸³ **BEMBA** expressed serious concern that WU payments—“*de WHISKY là*”—leave traces, especially “*dans des histoires ... comme*

¹⁰⁷⁵ CAR-OTP-0089-0855, 0857, lns.13-15.

¹⁰⁷⁶ CAR-OTP-0089-0855, 0857, lns.16-18.

¹⁰⁷⁷ CAR-OTP-0089-0855, 0857, lns.23-26.

¹⁰⁷⁸ CAR-OTP-0082-0562, 0563, lns.11-15. *Also above*, paras.133, 156.

¹⁰⁷⁹ CAR-OTP-0082-0562, 0563, lns.18-19.

¹⁰⁸⁰ CAR-OTP-0082-0562, 0564, lns.42-44, 0569, lns.209-217.

¹⁰⁸¹ *E.g.* CAR-OTP-0082-0633, 0635-0636, lns.4-37; CAR-OTP-0082-0591, 0592, lns.3-31. While **KILOLO** is on the line with **BEMBA**, the call with **BABALA** takes place. *See* CAR-OTP-0082-0842, 0852-0853, lns.315-335; CAR-OTP-0080-1339; CAR-OTP-0080-1343; CAR-OTP-0080-1344; CAR-OTP-0080-1345; CAR-OTP-0080-1346; CAR-OTP-0080-1347; CAR-OTP-0080-1348; CAR-OTP-0080-1349; CAR-OTP-0080-1351; CAR-OTP-0080-1352; CAR-OTP-0080-1354; CAR-OTP-0080-1355; CAR-OTP-0080-1356.

¹⁰⁸² CAR-OTP-0080-1286, 1292.

¹⁰⁸³ *E.g.* CAR-OTP-0082-0842, 0851, lns.267-297, 0857, lns.468-476.

celles-ci."¹⁰⁸⁴ At 15:01 CEST, **BABALA** informed **BEMBA** that he had just finished a "MIKE" — Moneygram — transaction.¹⁰⁸⁵

313. In **KILOLO**'s follow up conversation with **BABALA** at 20:26 CEST,¹⁰⁸⁶ **BABALA** informed him that the money would arrive and would hopefully allow him to do what is necessary, to which **KILOLO** answered that he was going to "*servir quelqu'un qui a déconné*".¹⁰⁸⁷ To **KILOLO**'s suggestion that a one-time payment of 1.000 be made to each person, **BABALA** did not agree: "*continuez à faire le service après-vente. De temps en temps un 50, de temps en temps un 100, ça fait du mal à personne*".¹⁰⁸⁸ As this conversation demonstrates, **BABALA** fully endorsed the Overall Strategy and implemented it. Even if, **KILOLO** did not fully adopt **BABALA**'s proposed course in terms of the amounts promised or paid witnesses, **BABALA**'s involvement reflects a clear intention to cover up the article 70 offences, thereby further assisting the ongoing offences committed through the Overall Strategy.

7. 24-28 October 2013

314. On Thursday,¹⁰⁸⁹ 24 October 2013, according to the cover-up plan discussed with **BEMBA**, **BABALA** and **MANGENDA** in the preceding weeks, **KILOLO** finally travelled to Cameroon where he stayed until 28 October.¹⁰⁹⁰ While there he exchanged several SMS's with Defence witnesses, including D-0002, D-0003, D-0009, and D-0023.¹⁰⁹¹ **KILOLO** met D-0002 at the [REDACTED] Hotel in Douala, and paid him CFA 100,000.¹⁰⁹² He also arranged a money transfer to D-0003 on 26 October 2013

¹⁰⁸⁴ CAR-OTP-0082-0842, 0852, lns.309-314.

¹⁰⁸⁵ CAR-OTP-0090-1050, 1052, lns.11-14. *Also* CAR-OTP-0090-1057, 1059, lns.27-29; CAR-OTP-0089-0839, 0844, lns.116-119, 0845, lns.145-154; ICC-01/05-01/13-1110-Conf-AnxA, sections IV.A, VII.

¹⁰⁸⁶ CAR-OTP-0080-1299, 1307.

¹⁰⁸⁷ CAR-OTP-0082-0596, 0597, lns.33-34.

¹⁰⁸⁸ CAR-OTP-0082-0596, 0598, lns.53-61.

¹⁰⁸⁹ *See* CAR-OTP-0082-0570, 0571, lns.8-28 (**KILOLO** refers to travelling that Thursday). *Also above*, para.309.

¹⁰⁹⁰ CAR-D21-0001-0091. *Also* CAR-D21-0001-0109.

¹⁰⁹¹ CAR-OTP-0088-0370, 0373-0379. *Also* T-23-ENG, p.21, lns.2-4.

¹⁰⁹² T-19-ENG, p.33, lns.22-25. *Also* T-23-ENG, p.18, ln.18.

through **KILOLO**'s associate, D-0263.¹⁰⁹³ To make the transfer, **KILOLO** had asked D-0003 to provide him with the name of a third person who would not be known to the Court, and D-0003 gave him the name of his sister-in-law, [REDACTED].¹⁰⁹⁴ To completely avoid suspicion, **KILOLO** asked his associate P-0263 to pay [REDACTED] on his behalf, which [REDACTED] did.¹⁰⁹⁵ Clearly, **KILOLO**'s trip to Cameroon was made to execute the cover-up discussed in the preceding weeks among **KILOLO**, **BEMBA**, **MANGENDA**, and **BABALA**.

315. All this evidence, taken in its totality, shows beyond reasonable doubt, that **BEMBA**, **KILOLO**, **MANGENDA**, and **BABALA**, aware of the purpose of the payments, coordinated payments to: (i) to keep Defence witnesses from cooperating with the Prosecution in the context of the article 70 investigation; (ii) to conceal the Overall Strategy and the crimes perpetrated pursuant to it; and (iii) to advance the Overall Strategy and the continuation of such crimes through the close of the *Bemba* Defence's case.

316. **KILOLO**'s and **MANGENDA**'s exploitation of **BEMBA**'s apprehensions regarding the Article 70 investigation underscores both **BEMBA**'s and **BABALA**'s *mens rea* for the charged offences. That they could turn to **BEMBA** and **BABALA** for money to buy the silence of witnesses concerning the Article 70 investigation demonstrates their direct involvement in committing the charged offences. It further crystallises their participation and investment in the Overall Strategy. That **BEMBA** and **BABALA** acted on partially false information provided to them by **KILOLO** and **MANGENDA** is irrelevant. Their individual and collective course of conduct independently demonstrates beyond reasonable doubt their corrupt acts in which they engaged to influence witnesses in the Main Case.

¹⁰⁹³ CAR-OTP-0088-0370, 0377-0379. While the Witness believed the trip took place in November 2013, the records show it taking place the end of October: T-23-ENG, p.18, ln.10-p.23, ln.11.

¹⁰⁹⁴ T-23-ENG, p.18, ln.10-p.23, ln.11; CAR-OTP-0079-1541, 1542.

¹⁰⁹⁵ CAR-OTP-0088-0370, 0377-0379; CAR-OTP-0079-1541, 1542; CAR-OTP-0083-1291-R03, 1298, paras.27-28.

VI. INDIVIDUAL CRIMINAL RESPONSIBILITY

317. The Prosecution's Pre-Trial Brief, incorporated herein by reference, advances the basis for the Accused's individual criminal responsibility for the confirmed charges.¹⁰⁹⁶ As much of that evidence has been formally submitted, only the core trial arguments establishing the Accused's responsibility are discussed below.

A. THE CRIMINAL RESPONSIBILITY OF JEAN-PIERRE BEMBA GOMBO

1. *BEMBA is criminally responsible as a direct co-perpetrator*

318. Jean-Pierre **BEMBA GOMBO** is criminally responsible for presenting false evidence and corruptly influencing witnesses as a direct co-perpetrator under article 25(3)(a). **BEMBA** was the overall planner, coordinator, and ultimate beneficiary of the Overall Strategy,¹⁰⁹⁷ the objective of which was to ensure his acquittal in the Main Case, by means including the commission of article 70 offences.¹⁰⁹⁸

319. Contrary to **BEMBA**'s assertion,¹⁰⁹⁹ the evidence shows beyond reasonable doubt that he led the Overall Strategy despite his detention. **BEMBA** was at the origin of many culpable acts committed by the other Accused, including **KILOLO**, **MANGENDA**, and **BABALA**. Regarding the illicit coaching, **BEMBA** issued instructions to **KILOLO** and **MANGENDA** on the content of the testimony witnesses were to provide.¹¹⁰⁰ In particular, **BEMBA** instructed **KILOLO** to contact witnesses and to revert to him on those contacts.¹¹⁰¹ He discussed the testimonies witnesses should be instructed to give.¹¹⁰² As necessary, **BEMBA** directly communicated with

¹⁰⁹⁶ ICC-01/05-01/13-1110-Conf, paras.220-265.

¹⁰⁹⁷ As noted in the PTB, "[b]y its terms the Overall Strategy is properly legally characterised as a common plan" for purposes of assessing liability under article 25(3)(a). ICC-01/05-01/13-1110-Conf, para.237.

¹⁰⁹⁸ Above section V.B.

¹⁰⁹⁹ T-38-ENG, p.11, lns.1-4.

¹¹⁰⁰ E.g. CAR-OTP-0079-1744, 1746-1748, lns.21-74; CAR-OTP-0079-0131, 0134-0138, lns.46-189. Also above, section V.A.3.

¹¹⁰¹ E.g. CAR-OTP-0079-0131, 0134, lns.57-61.

¹¹⁰² E.g. CAR-OTP-0079-1744, 1746-1748, lns.21-74.

witnesses and other Accused,¹¹⁰³ including by abusing the “privileged” line with **KILOLO**, who in turn connected calls to the relevant third party, thus facilitating **BEMBA**’s contacts secretly from the Registry and TCIII.¹¹⁰⁴ With respect to the payment of bribes, **BEMBA** gave **KILOLO** specific instructions on the maximum he was willing to pay.¹¹⁰⁵ He also instructed **BABALA** to make money transfers¹¹⁰⁶ and directed **KILOLO** and **BABALA** to liaise with each other.¹¹⁰⁷

320. **BEMBA**’s central role in the Overall Strategy belies his attempts at scapegoating **KILOLO** to avoid responsibility.¹¹⁰⁸ **BEMBA** gave direction and instructions concerning the witnesses to be called in his Defence. **BEMBA**’s Defence in this case concedes this fact, noting that **BEMBA** would receive recordings of witness interviews as an “internal *aide memoire* to [...] obtain instruction from [**BEMBA**] as to whether to call the person in question as a witness.”¹¹⁰⁹ The evidence supports this fact. **KILOLO**, **MANGENDA** and **BABALA** reported to **BEMBA** and consistently sought his authorisation and approval for their actions to further the Overall Strategy. **KILOLO** and **MANGENDA** continuously kept **BEMBA** apprised of their illicit coaching of witnesses¹¹¹⁰ and the possible outcome of their testimonies.¹¹¹¹ **BABALA** informed **BEMBA** of money transfers that he executed¹¹¹² and requested **BEMBA**’s authorisation for others.¹¹¹³

321. In their interactions with others, **KILOLO** and **MANGENDA** made clear they

¹¹⁰³ *E.g. above*, section V.A.4. Also paras.276-278.

¹¹⁰⁴ *E.g. above*, paras.276-278. Also ICC-01/05-01/13-1110-Conf, fns.106, 107.

¹¹⁰⁵ See CAR-OTP-0082-0630, 0632, lns.5-13.

¹¹⁰⁶ See CAR-OTP-0077-1050, 1053, lns.54-55, 1054, lns.84-85; CAR-OTP-0080-0466, 0468, lns.7-8; CAR-OTP-0079-1724, 1726, lns.9-20; CAR-OTP-0080-0477, 0479, lns.5-10; CAR-OTP-0080-0485, 0488, lns.67-70; CAR-OTP-0077-1084, 1087, ln.58; CAR-OTP-0077-1291, 1295, lns.72-76; CAR-OTP-0077-1299, 1301, lns.3-20; CAR-OTP-0077-1307, 1309, lns.29-34; CAR-OTP-0077-1316, 1318, lns.5-8; CAR-OTP-0077-1324, 1328, lns.79-80; CAR-OTP-0077-1341, 1343, lns.7-18; CAR-OTP-0077-1348, 1351, lns.43-53.

¹¹⁰⁷ CAR-OTP-0077-1081, 1083, lns.16-26; CAR-OTP-0082-0842, 0852-0853, lns.307-360.

¹¹⁰⁸ T-38-ENG, p.15, ln.19-p.16, ln.12.

¹¹⁰⁹ ICC-01/05-01/13-836, para.19.

¹¹¹⁰ *E.g.* CAR-OTP-0080-0238, 0240, lns.4-23, 0244, lns.171-172; CAR-OTP-0082-1140, 1146, lns.153-158.

¹¹¹¹ *E.g.* CAR-OTP-0080-0245, 0251-0252, lns.171-184.

¹¹¹² *E.g.* CAR-OTP-0079-1727, 1730, lns.58-59, 1731, lns.73, 97-99; CAR-OTP-0077-1341, 1343, lns.7-18; CAR-OTP-0077-1291, 1295, lns.72-76; CAR-OTP-0077-1077, 1079, lns.10-12; CAR-OTP-0082-0321; CAR-OTP-0082-0322; CAR-OTP-0082-0328.

¹¹¹³ CAR-OTP-0077-1077, 1079, lns.10-13; CAR-OTP-0077-1084, 1087, ln.58.

were acting for **BEMBA**. For example, when paying D-0002 some CFA 550,000, **KILOLO** pointed out that it was a “small gift [...] from the accused”.¹¹¹⁴ In D-0015’s case, **KILOLO** relayed **BEMBA**’s gratitude to the Witness following his false testimony.¹¹¹⁵ Indeed, **KILOLO** and **MANGENDA** were constantly concerned with pleasing **BEMBA** and implementing his instructions to his satisfaction.¹¹¹⁶

322. **BEMBA**’s conduct and role in the Overall Strategy leave no doubt about his intent and knowledge of its criminality and the commission of the resultant crimes. Other evidence in the record also makes this clear. **BEMBA** constantly expressed his satisfaction with the Accused’s illicit conduct.¹¹¹⁷ He sought to disguise the group’s conduct, speaking in code when discussing illicit acts with **KILOLO**, **MANGENDA**, and **BABALA**, particularly those relating to the Overall Strategy.¹¹¹⁸ **BEMBA** was vigilant in using codes in respect of the Overall Strategy, reminding **KILOLO**, **BABALA**, and Caroline BEMBA, to use them to ensure their conversations could not be understood by others.¹¹¹⁹ When the investigation was leaked **BEMBA** actively sought **KILOLO**’s and **MANGENDA**’s advice on the possible consequences.¹¹²⁰ And, he directed **KILOLO** to warn potentially cooperating witnesses that if they leaked the Overall Strategy to the Prosecution that they themselves could be arrested.¹¹²¹ **BEMBA** also sought to buy these witnesses’ silence—the so-called “*service après-vente*”—which he authorised **KILOLO** to carry out with **BABALA**.¹¹²²

2. *BEMBA is criminally responsible for soliciting the charged offences*

323. **BEMBA** is also criminally responsible for soliciting the giving of false testimony under article 25(3)(b). Further, and in the alternative to his responsibility as a direct

¹¹¹⁴ T-19-ENG, p.34, lns.4-9.

¹¹¹⁵ CAR-OTP-0077-1389, 1391, lns.51-61, 68.

¹¹¹⁶ E.g. CAR-OTP-0079-0122, 0126, lns.108-109; CAR-OTP-0079-0114, 0118, lns.103-105.

¹¹¹⁷ E.g. CAR-OTP-0079-0114, 0118, lns.104-105; CAR-OTP-0077-1414, 1415, lns.21-23.

¹¹¹⁸ E.g. ICC-01/05-01/13-1110-Conf-AnxA, paras.9-10, 80-81, 85-86, 109-112.

¹¹¹⁹ ICC-01/05-01/13-1110-Conf-AnxA, paras.5-6.

¹¹²⁰ CAR-OTP-0079-1762, 1766, lns.88-98. *Also above*, paras.288-289.

¹¹²¹ *Above*, para.304.

¹¹²² *Above*, paras.306-314.

co-perpetrator, **BEMBA** is criminally responsible for soliciting the presentation of false evidence and the corrupt influence of witnesses. The same evidence proving **BEMBA**'s criminal responsibility under 25(3)(a) establishes his responsibility under 25(3)(b).

B. THE CRIMINAL RESPONSIBILITY OF AIMÉ KILOLO MUSAMBA

1. *KILOLO is criminally responsible as a direct co-perpetrator*

324. Aimé **KILOLO MUSAMBA** is criminally responsible for presenting false evidence and corruptly influencing witnesses as a direct co-perpetrator under article 25(3)(a).

325. **KILOLO** was the principal person in charge of implementing the Overall Strategy. He was involved in every facet of its execution. **KILOLO** illicitly coached witnesses before and during their testimony in the Main Case, including the Brazzaville Witnesses, the Cameroon Witnesses, D-0013, D-0015, D-0025, D-0054, and D-0055. **KILOLO** instructed witnesses on a variety of topics.¹¹²³ He instructed witnesses on answers to be given on substantive topics and in response to questions posed by the Prosecution, the Defence, the LRV, and the Court.¹¹²⁴ **KILOLO** also instructed witnesses to testify falsely about the scope and nature of their prior contacts with the *Bemba* Defence, the payments and "gifts" they were provided, and their association with persons involved in executing the Overall Strategy, such as KOKATÉ.¹¹²⁵ **KILOLO** reported to **BEMBA** about the actions taken pursuant to the Overall Strategy.¹¹²⁶ He also facilitated **BEMBA**'s abuse of the "privileged line" to organise his direct contact with witnesses, such as D-0055,¹¹²⁷ deliberately violating

¹¹²³ Above, sections V.B.3, V.C.

¹¹²⁴ *Ibid.*

¹¹²⁵ *Ibid.*

¹¹²⁶ Above, para.320.

¹¹²⁷ Above, paras.274-278.

the applicable Contacts Protocol¹¹²⁸ and TCIII's prohibition of witness proofing.¹¹²⁹

326. **KILOLO**'s payments and "gifts" provided to the witnesses as detailed above were illicit. They were not provided in respect of legitimate expenses nor accompanied by receipts or declarations justifying them. **KILOLO** facilitated or personally provided payments and gifts to the Cameroon Witnesses, the Sweden Witnesses, D-0023, and D-0029.¹¹³⁰ And when **KILOLO** realised that the Overall Strategy had been exposed, he tried to cover-up the crimes, including through paying off witnesses according to **BEMBA**'s instructions and with **BABALA**'s assistance.¹¹³¹

327. The evidence at trial proves unequivocally that **KILOLO** acted with knowledge and intent and in full awareness that the Overall Strategy involved committing article 70 crimes. In addition to his conduct, the circumstances under which **KILOLO** acted prove his intent and knowledge. For instance, **KILOLO** led and allowed Witnesses to testify falsely before TCIII,¹¹³² despite his duty of candour to the Court under the Code of Conduct,¹¹³³ and despite his national deontological training and obligations.¹¹³⁴ He took steps to ensure that the false testimony and evidence adduced at trial would not be upset, by seeking to withdraw witnesses unwilling or unable to testify falsely.¹¹³⁵ **KILOLO**'s conversation with **MANGENDA** on 29 August 2013 underscores the point. In that conversation, the two deride D-0029 for failing to follow the instructions given to him—noting that Co-Counsel HAYNES should be "content" as "*il y a un témoin qui dit la vérité*".¹¹³⁶

328. **KILOLO**'s concealment of the Overall Strategy by using code words, including those relating to the illicit coaching and/or bribing of witnesses also shows his

¹¹²⁸ ICC-01/05-01/08-972-Anx, paras.27-31.

¹¹²⁹ ICC-01/05-01/08-1016, para.34.

¹¹³⁰ Above, sections V.B.1, V.C.

¹¹³¹ Above, section V.D.

¹¹³² E.g. above, paras.93, 195, 198, 256.

¹¹³³ See Code of Conduct, art. 25.

¹¹³⁴ See CAR-OTP-0094-0003, 0005-0006; CAR-OTP-0093-0449, 0451-0452.

¹¹³⁵ E.g. CAR-OTP-0080-0245, 0251, lns.161-181.

¹¹³⁶ CAR-OTP-0080-0245, 0252, lns.182-190.

intent.¹¹³⁷ When the Article 70 investigation was leaked, **KILOLO** discussed the matter with **BEMBA** and **BABALA**.¹¹³⁸ He also discussed the consequences of the ongoing potential investigation with **MANGENDA**.¹¹³⁹ The four, discussed and implemented measures to obstruct the investigation, particularly, paying witnesses “hush money” to prevent their cooperation with OTP representatives.¹¹⁴⁰

2. *KILOLO is criminally responsible for soliciting or inducing the charged offences*

329. **KILOLO** is also criminally responsible for soliciting or inducing the giving of false testimony under article 25(3)(b). The same evidence proving **KILOLO**’s responsibility under 25(3)(a) establishes his responsibility under 25(3)(b).

C. THE CRIMINAL RESPONSIBILITY OF JEAN-JACQUES MANGENDA KABONGO

1. *MANGENDA is criminally responsible as a direct co-perpetrator*

330. Jean-Jacques **MANGENDA KABONGO** is criminally responsible for presenting false evidence and corruptly influencing witnesses as a direct co-perpetrator under article 25(3)(a).

331. **MANGENDA**’s role in the Overall Strategy was significant. His contributions were essential to the implementation of the Overall Strategy and its resultant commission. He was the conduit between **BEMBA** and **KILOLO**. **MANGENDA** relayed **BEMBA**’s instructions to **KILOLO** on the content of the illicit coaching, such as with D-0054.¹¹⁴¹ In turn, **KILOLO** relied on **MANGENDA** to transmit messages to **BEMBA**,¹¹⁴² which **MANGENDA** did, reporting to **BEMBA** on actions taken

¹¹³⁷ ICC-01/05-01/13-1110-Conf-AnxA, section IV.

¹¹³⁸ Above, section V.D.

¹¹³⁹ Above, para.288.

¹¹⁴⁰ Above, paras.289-291, 294-297.

¹¹⁴¹ Above, para.109. Also ICC-01/05-01/13-1110-Conf, paras.84-85.

¹¹⁴² CAR-OTP-0080-0245, 0250-0251, lns.143-147. Also CAR-OTP-0080-0238, 0240, lns.13-23.

pursuant to the Overall Strategy, including the content of false testimony to be given by Witnesses and the process of obtaining and facilitating it.¹¹⁴³ **MANGENDA** also reported the situation in Court to **KILOLO** when **KILOLO** was on mission, such as whether witnesses were following their instructions to testify falsely, enabling **KILOLO** to intervene in furtherance of the Overall Strategy.¹¹⁴⁴

332. **MANGENDA**'s role and influence in the Overall Strategy was commensurate with his key position on the *Bemba* Defence and professional training as a lawyer.¹¹⁴⁵ **MANGENDA** proposed strategies to pursue in the Main Case,¹¹⁴⁶ discussed money transfers with **KILOLO**,¹¹⁴⁷ and even advised **KILOLO** not to call back one witness for re-examination before his testimony ended to rectify the evidence he had initially given to avoid risking the discovery of the Overall Strategy.¹¹⁴⁸ **MANGENDA** was also present with **KILOLO** at the Yaoundé Meeting, and specifically when **KILOLO** was explicitly instructing the Cameroon Witnesses on the content of their testimony.¹¹⁴⁹

333. **MANGENDA** also provided other forms of practical assistance towards the charged offences, which essentially contributed to the Overall Strategy. For instance, he transmitted to **KILOLO** questions submitted by the LRV so that **KILOLO** could forward them to D-0015 and D-0054.¹¹⁵⁰ He facilitated **KILOLO**'s phone call with D-0026 by allowing **KILOLO** to use his phone.¹¹⁵¹ Together with **KILOLO**, he provided the Cameroon Witnesses cell phones to remain in contact with **KILOLO** illicitly, aware that the VWU would collect their personal phones before their testimony in an

¹¹⁴³ *E.g.* CAR-OTP-0079-0131, 0134-0138, lns.46-189; CAR-OTP-0079-1744, 1746-1748, lns.21-74.

¹¹⁴⁴ *Above*, paras.221-223, 260-264. *Also e.g.* CAR-OTP-0079-0114, 0116-0117, lns.11-39, 0119-0121, lns.134-183; CAR-OTP-0080-0245, 0247-0250, lns.6-114; CAR-OTP-0079-0122, 0124-0129, lns.7-222; CAR-OTP-0080-0228, 0231-0234, lns.59-151.

¹¹⁴⁵ ICC-01/05-01/13-1072-Conf-Corr, para.12(ii).

¹¹⁴⁶ *E.g.* CAR-OTP-0082-1140, 1144-1145, lns.70-110.

¹¹⁴⁷ *E.g.* CAR-OTP-0082-1349, 1352, lns.54-68.

¹¹⁴⁸ *E.g.* CAR-OTP-0080-0245, 0252, lns.203-219.

¹¹⁴⁹ *Above*, section V.C.2.d).

¹¹⁵⁰ *Above*, paras.94, 103, 118.

¹¹⁵¹ *Above*, para.202.

effort to prevent such contact.¹¹⁵²

334. **MANGENDA's** conduct, important function on the *Bemba* Defence team, training as a lawyer, and liaising role between **KILOLO** and **BEMBA**, belie any suggestion that his acts were legitimate or unintended. To the contrary, the evidence establishes beyond reasonable doubt that **MANGENDA** acted with knowledge and intent and in full awareness that the Overall Strategy involved the commission of article 70 crimes. **MANGENDA** was fully aware of **BEMBA's** and **KILOLO's** commission of the charged offences,¹¹⁵³ the professional risks the Accused were taking,¹¹⁵⁴ and the possible legal consequences if an article 70 investigation was initiated by the Court.¹¹⁵⁵ He also had to have known of **KILOLO's** prior illicit instructions to witnesses, given his role of monitoring their testimonies and reporting to **KILOLO** on whether their testimony was in accordance with them.¹¹⁵⁶

335. **MANGENDA** was present when **KILOLO** illicitly coached and paid the Cameroon Witnesses.¹¹⁵⁷ **MANGENDA** also reported and/or discussed with **KILOLO** the effectiveness of the illicit instructions, including to testify falsely, given to D-0015, D-0025, D-0029, and D-0054.¹¹⁵⁸ And, he conceded to **KILOLO** that if the Overall Strategy were found out, "[ç]a va maintenant détruire tous les témoins que nous avons".¹¹⁵⁹ Like that of **KILOLO**, **MANGENDA's** intent is underscored by his belittling of D-0029 for testifying truthfully about crimes committed by MLC forces contrary to the instructions he was given. He repeated to **KILOLO** that D-0029 had "*beaucoup déconné*", "*vraiment déconné*", "*déconné à mort*" and that D-0029 was "*la palme d'or*" of bad witnesses.¹¹⁶⁰

¹¹⁵² Above, para.151.

¹¹⁵³ CAR-OTP-0082-1326, 1341, lns.518-552; CAR-OTP-0079-0191, 0195, lns.77-108.

¹¹⁵⁴ CAR-OTP-0082-1326, 1341, lns.545-546.

¹¹⁵⁵ CAR-OTP-0079-1762, 1778, lns.499-504.

¹¹⁵⁶ Above, paras.221-223, 260-264.

¹¹⁵⁷ Above, section V.C.2.d).

¹¹⁵⁸ Above, paras.103, 109-110, 221-224, 260-264.

¹¹⁵⁹ CAR-OTP-0082-1326, 1336, lns.334-337 (emphasis added).

¹¹⁶⁰ See CAR-OTP-0080-0245, 0247-0252, lns.10-211.

336. Finally, **MANGENDA** took steps to disguise his conduct. He participated in the cover-up operation and used code-words, particularly those that would reveal the Overall Strategy, such as “[REDACTED]” for D-0054;¹¹⁶¹ “*qui parle beaucoup le français*” for D-0002;¹¹⁶² and “*la couleur*” when referring to the illicit coaching and/or bribing of witnesses.¹¹⁶³ Indeed, **MANGENDA** reminded **KILOLO** to use coded language when briefing **BEMBA** about their activities, including the illicit coaching and/or bribing of Defence witnesses.¹¹⁶⁴

2. *MANGENDA is criminally responsible for aiding, abetting, or otherwise assisting the commission of the charged offences*

337. **MANGENDA** is also criminally responsible for aiding, abetting, or otherwise assisting the giving of false testimony under article 25(3)(c). Further, and in the alternative to his responsibility as a direct co-perpetrator, **MANGENDA** is criminally responsible for aiding, abetting, or otherwise assisting the presentation of false evidence and the corrupt influence of witnesses. **MANGENDA**’s culpable acts, as set out above,¹¹⁶⁵ include liaising between **BEMBA** and **KILOLO** to pass along **BEMBA**’s instructions and report back information, providing practical assistance, and taking steps to conceal the Overall Strategy. The same evidence demonstrating **MANGENDA**’s knowledge and intent under 25(3)(a) prove the same for purposes of his responsibility under 25(3)(c).

¹¹⁶¹ CAR-OTP-0079-0131, 0134-0138, lns.46-89. Also ICC-01/05-01/13-1110-Conf-AnxA, paras.76, 82.

¹¹⁶² CAR-OTP-0079-1762, 1769-1770, lns.203-217; CAR-OTP-0082-1293, 1307, lns.455-482. Also ICC-01/05-01/13-1110-Conf-AnxA, paras.90, 92.

¹¹⁶³ ICC-01/05-01/13-1110-Conf-AnxA, paras.114-117, 119-123.

¹¹⁶⁴ CAR-OTP-0082-1293, 1303, lns.326-332.

¹¹⁶⁵ Above, section VI.C.1.

D. THE CRIMINAL RESPONSIBILITY OF FIDÈLE BABALA WANDU

338. Fidèle **BABALA WANDU** is criminally responsible for aiding, abetting, or otherwise assisting the giving and presentation of false testimony and evidence, and corruptly influencing witnesses in the Main Case under article 25(3)(c).

339. **BABALA's** role in the Overall Strategy was primarily as its treasurer. The evidence proves that he ensured that the money to carry out the Overall Strategy was made available,¹¹⁶⁶ the expenditures were authorised by **BEMBA**,¹¹⁶⁷ and money was distributed to further the Overall Strategy.¹¹⁶⁸ **BEMBA** and **BABALA** were in near daily contact with one another during the charged period.¹¹⁶⁹ And although they also discussed political affairs, **BABALA** communicated to **BEMBA** requests for money made by **KILOLO** and **MANGENDA**,¹¹⁷⁰ and passed on **BEMBA's** instructions to them.¹¹⁷¹ **BABALA** also served more generally as a liaison between **BEMBA** and **KILOLO**, especially in urgent situations when **BEMBA** wanted to communicate with **KILOLO** expeditiously.¹¹⁷² **BABALA** ensured that bribes were paid out in several ways. He arranged payments to the Accused, including **KILOLO**¹¹⁷³ and **ARIDO**,¹¹⁷⁴ who subsequently corruptly paid witnesses.¹¹⁷⁵ He provided money to **KOKATÉ**¹¹⁷⁶ who was involved in implementing the Overall Strategy.¹¹⁷⁷ **BABALA** also directly,

¹¹⁶⁶ *Above*, sections V.B.1, V.D.

¹¹⁶⁷ *Ibid.*

¹¹⁶⁸ *Ibid.*

¹¹⁶⁹ *Above*, para.61.

¹¹⁷⁰ *Above*, sections V.B.1, V.D. Also CAR-OTP-0077-1077, 1079, lns.10-12; CAR-OTP-0087-2158, 2169, lns.361-362; CAR-OTP-0089-0763, 0766, lns.69-70; CAR-OTP-0086-1607, 1611, lns.98-105; CAR-OTP-0077-1050, 1053, lns.54-55, 1054, lns.84-85.

¹¹⁷¹ *E.g. above*, paras.66, 68, 292-293

¹¹⁷² *E.g. above*, paras.66, 68, 292-293. Also CAR-OTP-0077-1336, 1340, lns.84-85.

¹¹⁷³ CAR-OTP-0070-0007, tab 32 A. Musamba, rows 84-85, 98-99, 101, 103-107, 113-114, 116-117, 119-120, 123-124, 126, 129-130, 134-135, 137-138, tab 34 Nginamau, rows 7-8, 11, 14-16, 21-24, 36, 45, 53, 55, 57; CAR-OTP-0073-0274, tab 31 Fidele Babala, row 5; CAR-OTP-0070-0004, tab 31 Babala, rows 9, 12; CAR-OTP-0074-0855, tab 40 Aime Kilolo Musamba, rows 4, 10, 20, 29-30, 36-38, 42-45, 49, 56.

¹¹⁷⁴ CAR-OTP-0070-0005, tab 1 Narcisse Arido, row 78.

¹¹⁷⁵ *See above*, section V.C.1.

¹¹⁷⁶ CAR-OTP-0070-0005, tab 4 Joachim Kokaté, rows 50, 99; CAR-OTP-0070-0007, tab 34 Nginamau, rows 10, 28.

¹¹⁷⁷ *Above*, para.64, 71, 76.

or through his chauffeur NGINAMAU, paid bribes to witnesses or their proxies.¹¹⁷⁸

340. These payments were not made on the basis of some notion of “*solidarité africaine*”. No evidence to that effect has been brought by the Defence and **BABALA** concedes that the testimony of Professor KAMBAYI—irrespective of its questionable reliability—“*ne vient pas justifier le comportement de M. Babala en rapport avec les éléments constitutifs des charges lui imputées.*”¹¹⁷⁹ Further, the evidence belies any suggestion that the money was used for this purpose or to meet **BEMBA**’s legitimate defence or subsistence needs.¹¹⁸⁰ It is clear that **BABALA** acted with the awareness that the offences would occur in the ordinary course of events for the purpose of facilitating the commission of the charged offences. **BABALA**’s conduct, daily interactions with **BEMBA**, and frequent communications with **KILOLO**, viewed with the evidence as a whole, admits of no other reasonable conclusion.

341. In addition, and contrary to his arguments,¹¹⁸¹ **BABALA** was intimately aware of internal case matters relating to the *Bemba* Defence, including the identity of witnesses,¹¹⁸² some of whom he kept in direct touch with.¹¹⁸³ Not only that, but **BABALA** was clearly aware that he was paying witnesses, as well as financing Defence missions for the purposes of such payments, and liaised with **KILOLO** to help organise them.¹¹⁸⁴

¹¹⁷⁸ Above, paras.62, 64, 84.

¹¹⁷⁹ ICC-01/05-01/13-1604, para.15. Otherwise, the evidence of Professor KAMBAYI would directly infringe upon the Chamber’s province to draw factual conclusions on **BABALA**’s acts and conduct and which “the Single Judge stress[ed] that the Chamber will not consider.” ICC-01/05-01/13-1653, para.18. Also ICC-01/05-01/13-1594, paras.3-8.

¹¹⁸⁰ T-38-ENG, p.61, lns.9-12.

¹¹⁸¹ T-38-ENG, p.53, lns.8-14.

¹¹⁸² E.g. CAR-OTP-0082-2405, 2409, lns.82-95; CAR-OTP-0086-1688, 1690, lns.5-31; CAR-OTP-0087-2140, 2143, lns.41-63; CAR-OTP-0086-0921, 0926, lns.140-145; CAR-OTP-0086-0942, 0944, lns.31-37, 0945, lns.50-63. In the latter conversation, **BABALA** refers to [REDACTED]—first mentioned by name, and then as [REDACTED]” (0944, ln.35), who testified in the Main Case, being briefed in preparation for his testimony. [REDACTED] is a “[REDACTED]”, a [REDACTED], which may explain the use of [REDACTED] to refer to him: ICC-01/05-01/13-599-Conf, para. 79. It is clear from this conversation that **BABALA** is aware [REDACTED] is being called as a witness and for that reason is being briefed by his superiors.

¹¹⁸³ E.g. CAR-OTP-0086-0921, 0925-0926, lns.120-145; CAR-OTP-0086-0942, 0944, lns.34-41.

¹¹⁸⁴ Above, section V.B.1. Also e.g. CAR-OTP-0082-0052, 0055-0056, lns.70-76; CAR-OTP-0087-1168, 1170, lns.7-17; CAR-OTP-0087-2246, 2251, lns.118-128, 137-138; CAR-OTP-0090-0283, 0287, lns.136-137, 140; CAR-OTP-0089-0491, 0495, lns.86-89; CAR-OTP-0089-0533, 0536, lns.66-68.

342. Owing to its illicit nature, **BABALA** took steps to disguise his conduct. He used coded language when referring to the monies (such as *kilos*, *petits*, and *grands*)¹¹⁸⁵ and the beneficiaries of monies (such as “*le collègue d’en haut*”, “*collègue*”, and “*enfant à ses côtés*”) ¹¹⁸⁶ when speaking with **BEMBA**, **KILOLO**, and others involved in implementing the Overall Strategy. **BABALA** also used the phrase “*service après-vente*” (literally “after-sales service”) in his conversations with **KILOLO** to denote their strategy to keep witnesses who testified falsely in **BEMBA**’s favour from exposing the Overall Strategy after the Article 70 investigation had been leaked.¹¹⁸⁷ He prescribed to **KILOLO** the means and manner by which to keep the Defence witnesses suspected of cooperating with the Article 70 investigation quiet¹¹⁸⁸—going so far as to suggest “*[d]e temps en temps un 50, de temps en temps un 100*”,¹¹⁸⁹ and sent the funds to help pay them off.¹¹⁹⁰ Consistent with the Prosecution’s case against him, **BABALA** himself acknowledged his role as “*en tant que financier*” and, due to its illicit nature, acknowledged the risks he bore: “*c’est moi qui prend des risques*”.¹¹⁹¹ **BABALA**, like **BEMBA**, was afraid of his conversations being monitored.¹¹⁹² Finally, **BABALA**, as **BEMBA**’s close confidant and advisor, even stressed the importance of the bribes to **BEMBA**, showing his intent, telling him “*donner du sucre aux gens [...] c’est bien*”.¹¹⁹³

¹¹⁸⁵ ICC-01/05-01/13-1110-Conf-AnxA, sections VI.C, D, G. Also CAR-OTP-0077-1324, 1328; CAR-OTP-0077-1084, 1087; CAR-OTP-0077-1077, 1079; CAR-OTP-0080-0466, 0468.

¹¹⁸⁶ ICC-01/05-01/13-1110-Conf-AnxA, sections III.B, C. Also CAR-OTP-0077-1307, 1309; CAR-OTP-0077-1050, 1053-1054; CAR-OTP-0077-1336, 1338; CAR-OTP-0077-1316, 1318; CAR-OTP-0077-1324, 1328; CAR-OTP-0080-0481, 0484; CAR-OTP-0080-0477, 0479; CAR-OTP-0077-1291, 1295; CAR-OTP-0080-0485, 0488; CAR-OTP-0079-1727, 1730; CAR-OTP-0077-1311, 1314.

¹¹⁸⁷ Above, paras.295, 313.

¹¹⁸⁸ Above, paras.312-313.

¹¹⁸⁹ CAR-OTP-0082-0596, 0598, lns.53-61.

¹¹⁹⁰ Above, paras.312-313.

¹¹⁹¹ CAR-OTP-0082-0596, 0599, ln.76.

¹¹⁹² CAR-OTP-0082-2249, 2251, lns.15-18.

¹¹⁹³ CAR-OTP-0077-1299, 1301, lns.29-30.

E. THE CRIMINAL RESPONSIBILITY OF NARCISSE ARIDO

1. *ARIDO is criminally responsible as a direct perpetrator*

343. Narcisse **ARIDO** is criminally responsible as a direct perpetrator for corruptly influencing witnesses under article 25(3)(a).

344. The evidence shows beyond reasonable doubt that **ARIDO** instructed the Cameroon Witnesses both to provide false information and withhold true information concerning their testimony in Court.¹¹⁹⁴ Despite knowing that all four Witnesses were not CAR military soldiers and had no prior military experience, **ARIDO** instructed them to pretend to be CAR military figures in testifying before the Court.¹¹⁹⁵ In Douala, **ARIDO** met, *inter alia*, with all four witnesses, where he spent the entire day rehearsing their false accounts, and allaying their concerns about the risks of testifying falsely as soldiers in **BEMBA**'s favour.¹¹⁹⁶

345. The evidence also shows beyond reasonable doubt that **ARIDO** encouraged or induced this false testimony. **ARIDO** promised the Cameroon Witnesses sums of money significant to them,¹¹⁹⁷ some of which he paid them.¹¹⁹⁸ He also held out to them the opportunity to travel to Europe, where they could seek asylum.¹¹⁹⁹ Thus, **ARIDO** exploited the precarious personal situations of these Witnesses, selling them the illusion that by testifying falsely for **BEMBA** they would have a better future.

346. **ARIDO**'s conduct and the steps he took to conceal his actions establish his intent and knowledge. In addition, **ARIDO** cautioned the Witnesses in their manner of communication, advising them to refrain from using social media to avoid

¹¹⁹⁴ Above, section V.C.2.b).

¹¹⁹⁵ *Ibid.*

¹¹⁹⁶ *Ibid.*

¹¹⁹⁷ Above, section V.C.2.a).

¹¹⁹⁸ Above, section V.C.2.b).

¹¹⁹⁹ Above, section V.C.2.b). Also CAR-OTP-0080-0021, 0030-0031, lns.290–327; CAR-OTP-0080-0043, 0050, lns.250-256.

potentially exposing their association.¹²⁰⁰ **ARIDO**'s lies to the French authorities at his arrest as to the number of payments received from **KILOLO**, or on his behalf, in a transparent attempt to mitigate the scope and nature of their relationship,¹²⁰¹ are exposed by the evidence adduced at trial.¹²⁰² Moreover, the misinformation he deliberately provided the French authorities underscores his consciousness of guilt. Finally, as an individual with legal training,¹²⁰³ **ARIDO** would most certainly be aware of the unlawful nature of his conduct.

347. The **ARIDO** Defence's argument that **ARIDO** briefed the Cameroon Witnesses to provide false information to **KILOLO** rather than TCIII¹²⁰⁴ is unavailing. It concedes dealings with the Cameroon Witnesses, which **ARIDO** denied in his two statements to the French authorities.¹²⁰⁵ Further, the evidence shows—as the **ARIDO** Defence's opening statement also concedes¹²⁰⁶—that **ARIDO** knew that **KILOLO** was **BEMBA**'s lead Counsel and that the purpose of the Douala Meeting was to recruit individuals to testify in Court on **BEMBA**'s behalf.¹²⁰⁷ His unsubstantiated argument that there was no “further interference” or “further briefing[s]”¹²⁰⁸ is irrelevant. To the contrary, it effectively concedes or at least fails to undermine, the overwhelming evidence that **ARIDO** did in fact “interfere” and “brief” the Cameroon Witnesses.

2. *ARIDO is criminally responsible for aiding, abetting, or otherwise assisting the commission of the charged offences*

348. **ARIDO** is criminally responsible for aiding, abetting, or otherwise assisting the giving and presentation of false testimony and evidence under article 25(3)(c).

¹²⁰⁰ CAR-OTP-0075-0762, 0762.

¹²⁰¹ See CAR-OTP-0074-1065-R02, 1067, section 2.

¹²⁰² E.g. CAR-OTP-0070-0005, tab 1 Narcisse Arido, rows 72-75, 77-78, 80.

¹²⁰³ ICC-01/05-01/13-1072-Conf-Corr, para.14(ii).

¹²⁰⁴ T-39-ENG, p.25, lns.13-17.

¹²⁰⁵ E.g. CAR-OTP-0074-1065-R02, 1068-1069; CAR-OTP-0077-0169, 0174.

¹²⁰⁶ T-39-ENG, p.25, lns.13-17.

¹²⁰⁷ Above, section V.C.2.b).

¹²⁰⁸ T-39-ENG, p.25, lns.11-13 (emphasis added).

Further, and in the alternative to his responsibility as a direct perpetrator, **ARIDO** is criminal responsible for aiding, abetting, or otherwise assisting the corrupt influence of witnesses. **ARIDO**'s culpable acts, as set out in section V.C.2, comprise instructions he issued to the Witnesses to present themselves falsely before the Court regarding their military status, claimed observations of events at issue in the Main Case, association with him or with **KOKATÉ**, by either providing deliberately false information to TCIII or withholding true information from it. **ARIDO**'s procurement of and inducements to the Cameroon Witnesses for **KILOLO**, intending that they testify falsely in **BEMBA**'s favour at trial, prove his culpable conduct beyond reasonable doubt. These acts, including the circumstances demonstrating **ARIDO**'s knowledge and intent for purposes of responsibility under 25(3)(a), equally prove his intent and knowledge.

VII. CONCLUSION

349. The evidence before the Chamber, considered and weighed in its totality, establishes the Accused's guilt of each of the confirmed charges beyond reasonable doubt.¹²⁰⁹



Fatou Bensouda, Prosecutor

Dated this 10th Day of June 2016
At The Hague, The Netherlands

¹²⁰⁹ ICC-01/05-01/13-749, pp.47-54.