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TRIAL CHAMBER VII

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

**Public redacted version of "Prosecution's Response to Defence Confirmation
Submissions", 21 August 2014, ICC-01/05-01/13-646-Conf**

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II. INTRODUCTION

1. The Prosecution opposes Jean-Pierre BEMBA GOMBO (“**BEMBA**”)’s,¹ Aimé KILOLO MUSAMBA (“**KILOLO**”)’s,² Jean-Jacques MANGENDA KABONGO (“**MANGENDA**”)’s,³ Fidèle BABALA WANDU (“**BABALA**”)’s,⁴ and Narcisse ARIDO (“**ARIDO**”)’s⁵ 30 July 2014 confirmation submissions (“Submissions”). The Submissions have no impact on the overwhelming evidence presented in the Prosecution’s 30 July 2014 confirmation submission⁶ and the 30 June 2014 Document Containing the Charges (“DCC”).⁷ Together, these instruments firmly establish substantial grounds to believe that each suspect is criminally responsible for the charged violations of Article 70(1)(a), (b), and (c) of the Statute.

2. As demonstrated in this Response,⁸ the Submissions are replete with unsubstantiated, erroneous, and contradictory statements. They further propose fundamentally flawed interpretations of law, inconsistent with, or ignoring altogether, the Court’s jurisprudence. As against the totality of the neutral, credible, and compelling evidence introduced, the Defence’s self-serving versions of events fail to attenuate the manifest strength of the Prosecution’s case.

3. The Submissions should be dismissed. The Chamber should confirm all charges against the suspects, and commit this case to trial.

¹ ICC-01/05-01/13-599-Conf.

² ICC-01/05-01/13-600-Conf-Corr2.

³ ICC-01/05-01/13-594-Conf-Corr.

⁴ ICC-01/05-01/13-596-Conf.

⁵ ICC-01/05-01/13-598-Conf.

⁶ ICC-01/05-01/13-597-Conf-AnxB.

⁷ ICC-01/05-01/13-526-Conf-AnxB1.

⁸ The authoritative version of this Response is filed in English, pursuant to Regulation 39(1) of the Regulations of the Court. A draft French translation will be filed in one week. A revised translation will be provided as soon as practicable thereafter.

III. CONFIDENTIALITY

4. This filing is classified as “Confidential” because it refers to evidence that is not public, and responds to documents subject to the same classification.⁹

IV. SUBMISSIONS

5. In framing this Response, the Prosecution has considered the limited scope of the confirmation of charges proceeding as set out in Article 61 of the Statute and Rules 121 and 122 of the Rules.¹⁰ Given the voluminous responses filed by the Defence (collectively) in this case, the Prosecution has confined its Response to the salient issues raised, which exposes the lack of credibility and unreliability of the Submissions.

6. In evaluating the sufficiency of the evidence for the purposes of the confirmation of charges, the Chamber should accord every reasonable inference that arises from the credible evidence as a whole.

A. Legal Elements of the Offences and Modes of Liability

7. The statements of law made by the suspects should be disregarded. The Submissions are unsubstantiated, misleading, and in many instances patently incorrect.

⁹ See Regulation 23*bis*(2) of the Regulations of the Court.

¹⁰ See also ICC-02/11-01/11-656-Red, paras 21-23; ICC-01/04-02/06-308, paras 25-27; ICC-01/04-02/06-309, para. 9.

a. Applicable law

8. In construing the relevant provisions of the Statute, **KILOLO** relies extensively and inappropriately on United States (“U.S.”) legislation and jurisprudence.¹¹ For instance, he advances a conception of inducing false testimony derived entirely from a U.S. decision, arguing that *“certaines conditions doivent être remplies pour que l’incitation à fournir un faux témoignage soit constituée. Ces conditions ont été définies dans la jurisprudence américaine, jurisprudence prépondérante quant à la définition des éléments des atteintes prévues par l’article 70”*.¹² The predominant jurisprudence defining the elements of Article 70 offences is that of the Court. Although this Chamber has yet to pronounce on these offences, the normative hierarchy of applicable law set out in Article 21 governs the issue.¹³ **KILOLO**’s unconditional reliance on a convenient decision from a single jurisdiction is both inconsistent with the Statute and the principles of international law.

9. **KILOLO** justifies his reliance on U.S. jurisprudence¹⁴ by the fact that the U.S. submitted a proposal to the Preparatory Committee concerning the extension of the Court’s jurisdiction to offences against its administration of justice.¹⁵ The justification is illusory. First, the initial U.S. proposal is quite different from the final formulation of Article 70 and is, therefore, inapposite. Second, the terms of the Statute must be construed independently from any national jurisdiction. Resort to the origins of a text in a working paper that was subsequently negotiated and amended over two years by various bodies, and delegations coming from the whole spectrum of legal systems, cannot, *a fortiori*, inform the interpretation of the Statute in its current formulation.

¹¹ ICC-01/05-01/13-600-Conf-Corr2, paras 147, 148, 150, 151, 154, 156, 159, 165, 166.

¹² ICC-01/05-01/13-600-Conf-Corr2, para. 156.

¹³ Rule 163(2) of the Rules of Procedure and Evidence.

¹⁴ ICC-01/05-01/13-600-Conf-Corr2, para. 159.

¹⁵ UN Doc. A/AC.249/WP.41.

10. **ARIDO** and **KILOLO** advance theories on the inapplicability of the Statute to Article 70 offences that are patently incorrect (for instance, the provisions on the modes of liability).¹⁶ Although **ARIDO** and **KILOLO** devote the better part of 15 paragraphs to challenging the application of Article 25(3) to Article 70 offences, they overlook Rule 163 of the Rules. Rule 163 unequivocally and unambiguously provides that the Statute and Rules apply “*mutatis mutandis*” to Article 70 offences, listing those provisions specifically excluded from application. As Part III of the Statute is not among these,¹⁷ all of the modes of liability under Article 25(3) necessarily apply.¹⁸

b. The Defence erroneously conflates counsel immunity and legal professional privilege

11. Wiretaps of **KILOLO**’s and **MANGENDA**’s telephones were conducted in accordance with the Statute, the Rules, and the attendant international agreements. Counsel’s privileges and immunities do not insulate them from a founded, judicially authorised, investigation.

12. First, as the Presidency has determined, conduct constitutive of offences against the administration of justice does not fall within the scope of counsel’s official functions¹⁹ and, therefore, is not covered by immunity.²⁰

13. In the same way that the UN Secretary-General has exclusive competence to determine the ambit of UN officials’ immunity,²¹ the ICC’s Presidency is competent

¹⁶ ICC-01/05-01/13-600-Conf-Corr2, paras 158-163 (**KILOLO**); ICC-01/05-01/13-598-Conf, paras 327-335 (**ARIDO**).

¹⁷ Rules 163 of the Rules of Procedure and Evidence.

¹⁸ See also: ICC-01/05-01/13-558, para. 14; ICC-01/05-01/13-559, para. 17; ICC-01/05-01/13-560, para. 23.

¹⁹ Article 48(4) of the Rome Statute; Article 18 of the APIC; Article 25 of the HQA; see also Article 26(1) of the APIC; Article 30(1) of the HQA.

²⁰ ICC-01/05-68, para. 10. See also: ICC-01/05-01/13-1-Red2-tENG, para. 28.

²¹ United Nations Judicial Yearbook, Part II, Chapter VI, 1976, pp.237-238; See also: Gerster, M., Rotenberg, D., “Article 105”, in Simma (ed.), *The Charter of the United Nations: A Commentary*, Vol.II, Oxford University Press, 2002, p.1320.

to decide what acts constitute official acts of Court personnel and counsel, who are similarly regarded for the purposes of immunities. As such, the Dutch courts' deferral to the Court in the determination of this issue with regard to the implementation of the in this case²² was entirely appropriate and correct.

14. Second, there is no dispute that Article 67(1)(b) of the Statute is a fundamental prerequisite for the effective and independent performance of defence functions. However, legal professional privilege should not be conflated²³ with the immunities extended to counsel and persons assisting counsel²⁴ by virtue of Article 48(4) of the Statute, Article 18 of the Agreement on the Privileges and Immunities of the ICC ("APIC") and Article 25 of the Headquarters Agreement between the ICC and the host State ("HQA"). Article 67(1)(b) and Article 48(4) and the attendant agreements are distinct, protect different interests, and are governed by separate mechanisms within the Court's legal framework.

15. While legal professional privilege protects communications made in the context of the counsel and client relationship,²⁵ counsel immunities, like those of Court officials, are geared toward protecting the interests of the Court *vis-à-vis* a state's domestic interests.²⁶ The provisions regarding immunity, which reflect the principle of functional protection, do not place counsel above the law. Rather, they curtail national authorities' exercise of jurisdiction, as necessary for the smooth and efficient functioning of the Court, and must be strictly construed. Their application is thus limited precisely to the conditions listed under Article 18(1) of the APIC or Article

²² Rechtbank Den Haag, N 767240-13, 767239-13, RK14/718, RK14/877, 28 April 2014, available at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:5203&keyword=Strafhof> (untranslated).

²³ ICC-01/05-01/13-600-Conf-Corr2, paras 22-40; ICC-01/05-01/13-594-Conf-Corr, para. 23; ICC-01/05-01/13-599-Conf, paras 31-33.

²⁴ Hereinafter in the context of privileges and immunities any reference to a counsel shall be understood as comprising persons assisting counsel.

²⁵ Rule 73(1) of the Rules.

²⁶ See: Rechtbank Den Haag, N 767240-13, 767239-13, RK14/718, RK14/877, 28 April 2014, available at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:5203&keyword=Strafhof> (untranslated).

25(1) of the HQA, and cannot be expanded. These articles do not provide for immunity of counsel from judicially authorised wiretaps, as in the circumstances of this case.

16. Legal professional privilege on the one hand, and the immunities guaranteed to counsel under the APIC and HQA on the other hand, are independent and not identical or co-extensive. **BEMBA**'s assertion that "[t]he interception of the telecommunications of KILOLO and MANGENDA violated the immunity to which they were entitled prior to its waiver. [**BEMBA**'s] fundamental rights were therefore gravely breached",²⁷ is a glaring example of the erroneous conflation of these two concepts.

17. Moreover, the proposition is transparently fallacious. First, legal professional privilege is not recognised when communications are related to the commission of an offence or fraud.²⁸ Second, nothing in the framework of privileges and immunities extended to counsel precludes the founded investigation of such offences through, *inter alia*, judicially authorised wiretaps. In arguing for the investigation of Court officials in relation to this case, **BEMBA** acknowledged this basic tenet:

It should be added that the privileges and immunities stipulated elsewhere in the Headquarters agreement are a defence to prosecution . . . but not a bar to initiation of an investigation.²⁹

This also applies to defence counsel.

18. Notwithstanding that the APIC and/or the HQA do not subsume Article 67(1)(b) rights, these are nevertheless protected within the Court's framework by its Statute, Rules, and Chambers. In this case communications which are properly covered by legal professional privilege were duly safeguarded by mechanisms put in

²⁷ ICC-01/05-01/13-599-Conf, para. 33. See also paras 31, 32.

²⁸ ICC-01/05-52-Conf-Red, para. 4 (recognising the crime or fraud exception to privileged communications).

²⁹ See ICC-01/05-01/13-170-Corr, para. 14, fn.8.

place by the Single Judge and, further, by those put in place by the Dutch authorities through procedural rights granted and exercised by **KILOLO** and **MANGENDA** to ensure that legally protected confidences were not breached in the course of the investigative process.

c. Rule of speciality

19. **MANGENDA** submits that the Prosecution violated the rule of speciality as per Article 101(1) by introducing the charge of inducing or soliciting false testimony in the DCC.³⁰ This is incorrect. Article 101(1) prohibits prosecution, sentencing and detention of a person surrendered to the Court “for any *conduct* committed prior to surrender, other than the *conduct or course of conduct which forms the basis of the crimes* for which that person has been surrendered”.³¹ The express reference to “conduct” as opposed to “offence” demonstrates that the rule of speciality is not linked to the legal qualification of the suspects’ acts, but to the underlying facts.³² This disposes of **MANGENDA**’s claim. Here, soliciting or inducing false testimony overlaps with the conduct or course of conduct giving rise to the offence of corruptly influencing a witness, which formed the basis of **MANGENDA**’s arrest, and which **KILOLO** readily discerns, albeit in the context of a flawed argument.³³

d. General issues

20. As the Prosecution has already specified in its confirmation submissions, Article 70 offences are of conduct and not of consequence.³⁴ A plain reading of the Statute

³⁰ ICC-01/05-01/13-594-Conf-Corr, para. 48 (**MANGENDA**); see also ICC-01/05-01/13-598-Conf, para. 65 (**ARIDO**).

³¹ See Article 101(1) of the Statute (emphasis added).

³² Wilkitzki, P., “Article 101: Rule of Speciality”, in Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* (Nomos Verlag: Baden-Baden, 2008), p.1638; Schabas, W., *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, 2010, p.1056.

³³ ICC-01/05-01/13-600-Conf-Corr2, para. 571.

³⁴ ICC-01/05-01/13-597-Conf-AnxB, para. 261.

does not require that any result be achieved. The suspects' allegations to the contrary are unsubstantiated.³⁵ **KILOLO** conflates the concept of conduct crimes and the attempt to commit crimes—a mode of liability: “*Aucune des atteintes listées à l'article 70 -1 n'est repertoriée comme tentative. Lorsque chaque atteinte est lue séparément, il est clair que le résultat doit avoir été atteint pour que l'atteinte à l'administration de la justice ait été commise. Par exemple, le paragraphe 1-a gouvernant le faux témoignage nécessite que le faux témoignage ait été réellement fourni*”.³⁶ A proper assessment of the offence of giving false testimony under Article 70(1)(a), however, clearly reveals that the false testimony is not the *consequence* of the proscribed conduct—but the proscribed conduct itself.

21. The Defence submissions that evidence must be given of **MANGENDA's** and **BABALA's** individual conduct regarding every count in the DCC³⁷ conflicts with the basic premise of liability based on co-perpetration. A member of a co-perpetratorship who intends the commission of a type of crime within the common plan (*e.g.*, murder as a war crime, or corruptly influencing a witness) is individually criminally responsible for all instances of such a crime that occurs as a consequence of its implementation; this is so whether the physical perpetrator is the member himself, another member of the co-perpetratorship, or a tool of such member. It is sufficient for the Prosecution to demonstrate that the person's conduct contributed to the implementation of the common plan that led to the commission of the crimes charged.

22. Similarly erroneous are the arguments **BEMBA**, **KILOLO**, **BABALA**, and **ARIDO** advance on the elements of indirect co-perpetration, which uniformly ignore

³⁵ ICC-01/05-01/13-598-Conf, paras 107 (**ARIDO**), ICC-01/05-01/13-600-Conf-Corr2, paras 160-161 (**KILOLO**).

³⁶ ICC-01/05-01/13-600-Conf-Corr2, paras 160-161.

³⁷ ICC-01/05-01/13-594-Conf-Corr, para. 56; ICC-01/05-01/13-594-Conf-AnxA, pp.10-29; ICC-01/05-01/13-594-Conf-AnxB; ICC-01/05-01/13-596-Conf, para. 15.

the judgment in the *Katanga* case.³⁸ Trial Chamber II was clear in concluding that control over a crime may take various mutually compatible forms, *including, but not limited to*, control over an organisation.³⁹ The Court has not yet dealt with all of these forms. The Chamber should, therefore, disregard the Submissions as they relate to legal and factual elements concerning this mode of liability under Article 25(3)(a), as they are irrelevant to the form of indirect co-perpetration alleged in the DCC.

e. Mens rea

23. **KILOLO**'s reliance on the jurisprudence of the *ad hoc* tribunals⁴⁰ in respect of the *mens rea* element is flawed and should not inform the Chamber's analysis. The *actus reus* of contempt as per Rule 77, common to the ICTY, ICTR, and SCSL, consists of interfering with the administration of justice.⁴¹ It may be realised through *means* that include, but are not limited to, disclosing information relating to the proceedings in knowing violation of an order of a Chamber, threatening, intimidating, causing any injury or offering a bribe to a witness, etc. In this context, requiring that the offence of interfering with the administration of justice be carried out with intent to interfere with the administration of justice—the gravamen of the crime—is appropriate. However, such an intent is not inherently a component of all 'interrelated' offences.⁴² For example, intent to interfere with the administration of justice is not a required element of the offence of giving false testimony, criminalised under Rule 91 of the *ad hoc* tribunals' procedural rules.⁴³

³⁸ ICC-01/05-01/13-596-Conf, paras 57-59, 63, 70-77; ICC-01/05-01/13-598-Conf, paras 355, 365; ICC-01/05-01/13-599-Conf, paras 147-153; ICC-01/05-01/13-600-Conf-Corr2, paras 684, 687-690.

³⁹ ICC-01/04-01/07-3436, para. 1401; ICC-01/04-01/07-717, paras 495-499.

⁴⁰ ICC-01/05-01/13-600-Conf-Corr2, paras 149, 166, 172, 173, 479.

⁴¹ Rule 77(A) of the Rules of Procedure and Evidence of the ICTY, ICTR and SCSL: "The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice".

⁴² *The Prosecutor v. Sesay, et al.*, No. SCSL-04-15-T, Decision on Sesay Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 25 July 2006, paras 23-25.

⁴³ See *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "R", 9 March 1998 ("*Akayesu Decision*"), p. 3.

24. By contrast, Article 70 proscribes six independent groups of offences (not merely means of committing a single offence), of which some are comparable to the means of interfering with the administration of justice described in Rule 77 of the *ad hoc* tribunals' rules. However, the jurisprudence regarding the requisite intent for the commission of contempt under the *ad hoc*'s respective Rules cannot be projected on to Article 70 offences, which are inherently distinct. This would violate the principle of legality.⁴⁴ The plain reading of the Statute reveals no evidential requirement to demonstrate a specific intent to interfere with the administration of justice. Contrary to **KILOLO**'s submission, counsel are not liable for prosecution for every document presented, absent such a requirement.⁴⁵ Rather, they are liable when they *intentionally* present *false* or *forged* evidence, as is alleged in the DCC.

25. **KILOLO** contends that the knowledge threshold for the offence of presenting false or forged evidence is more stringent than "the default" Article 30(3) threshold.⁴⁶ However, this contention is wholly unsubstantiated and contradicts the Statute. Article 30(3) construes the term "know" similarly to "knowingly".

26. As previously noted,⁴⁷ **BEMBA**'s argument that a "double intent" characterises the modes of liability of soliciting and inducing⁴⁸ is fundamentally incorrect. **BEMBA**'s contention is predicated upon a single article, published in 2002 and never revised. The Prosecution submits that the applicable *mens rea* element for inducing and soliciting, is 'awareness' that the crime will be committed in the ordinary course of events.⁴⁹ This reflects the standard articulated in Article 30(2)(b). It is not required that the person's conduct was a necessary condition for the commission of the

⁴⁴ Article 22 of the Rome Statute.

⁴⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 176.

⁴⁶ ICC-01/05-01/13-600-Conf-Corr2, paras 475, 476.

⁴⁷ ICC-01/05-01/13-555-Conf, para. 27.

⁴⁸ ICC-01/05-01/13-599-Conf, paras 156-158.

⁴⁹ ICC-02/11-01/11-656-Red, para. 243; ICC-01/04-02/06-309, para. 153.

offence. Rather, it must merely have a “direct effect on the commission or attempted commission of the crime”⁵⁰ and thus be a *factor* in the realisation of the crime. It is, therefore, sufficient that the person is aware that the crime will be committed in the ordinary course of events in view of the totality of the relevant facts and circumstances, including his or her own conduct.⁵¹

f. Giving false testimony when under an obligation to tell the truth—
Article 70(1)(a)

27. **KILOLO’s** contention that the Prosecution has created a new substantive offence by charging the suspects alternatively with soliciting and inducing false testimony under Article 70(1)(a)⁵² conflates the substantive elements of the crimes and the modes of liability. In addition to the liability of a direct and physical perpetrator (*i.e.*, one carrying out the physical elements of the offence), the Statute provides for more indirect forms of liability, including in Article 25(3)(b), soliciting and inducing. Thus, while it is undisputed that a witness who testifies falsely can be criminally responsible as a direct and physical *perpetrator* of the offence of giving false testimony,⁵³ others who may bear criminal responsibility for such an offence obviously need not be the witness who testifies.

28. According to **MANGENDA**, the acts constitutive of the offence of corruptly influencing a witness must be motivated by the desire to cause the witness to provide testimony that differs from what they intended to say and from what they actually experienced.⁵⁴ This misconstrues the purpose underlying the offence—to stop and to prevent *corrupt conduct*. Thus, a witness’s personal motives or intentions concerning their testimony is irrelevant and does not affect the suspect’s criminality. For

⁵⁰ ICC-01/04-01/12, para. 63; ICC-01/11-01/11-656, para. 234.

⁵¹ See, *contra*, ICC-01/04-01/12-1-Red, para. 63(d).

⁵² ICC-01/05-01/13-600-Conf-Corr2, paras 562-571.

⁵³ ICC-01/05-01/13-598-Conf, paras 92-96; ICC-01/05-01/13-600-CONF-Corr2, para. 571.

⁵⁴ ICC-01/05-01/13-594-Conf-Corr, para. 55.

example, if a witness has an independent intention to lie, this has no impact on the criminal responsibility of a person who nevertheless *acts corruptly* to cause them to lie about the same matter. Secondly, as concerns “false testimony”, the Prosecution refers to its confirmation submission, and reiterates that even a technically “true” statement may be false when it deliberately withholds or partially accounts for information. There is no distinction in terms of its capacity to induce the Court to err, as against an “objectively” false statement.⁵⁵

g. Presenting evidence that the party knows is false or forged – Article 70(1)(b)

29. **ARIDO** submits that the term “evidence” must be construed to exclude testimonial evidence.⁵⁶ This interpretation is illogical and unreasonably restrictive. First, “evidence” is commonly defined as “information, whether in the form of personal testimony, the language of the documents, or the production of material objects that is given in a legal investigation to establish the fact or point in question”.⁵⁷ Second, **ARIDO**’s claim that one cannot “present a witness”⁵⁸ is fallacious. The presentation of a witness during the course of trial or confirmation proceedings is effectively the presentation of their testimony. The Statute and Rules recognise this throughout.⁵⁹

⁵⁵ ICC-01/05-01/13-597-Conf-AnxB, para. 266.

⁵⁶ ICC-01/05-01/13-598-Conf, paras 101-104.

⁵⁷ Simpson, J. and Weiner, E. (eds.), *The Oxford English Dictionary*, Vol. V (2nd ed., Clarendon Press, Oxford, 1989), p.469.

⁵⁸ ICC-01/05-01/13-598-Conf, para. 102.

⁵⁹ See Article 61(6)(C) (referring to the presentation of evidence during the confirmation proceedings). See also, *inter alia*: Article 65(4)(a): “Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may request the Prosecutor to present additional evidence, including the testimony of witnesses”; the provisions relating to witness testimony are grouped under Article 69 “Evidence”; Article 93(1)(b): “States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions: the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court”.

30. Thus, a party⁶⁰ can obviously *present* testimonial evidence to the Court. As counsel are duty-bound to refrain from presenting evidence which they know to be incorrect,⁶¹ a counsel intentionally proffering a witness knowing their testimony to be false violates Article 70(1)(b).

h. Corruptly influencing a witness – Article 70(1)(c)

31. **KILOLO** misreads the DCC in attributing to the Prosecution an understanding of the offence of corruptly influencing a witness as encompassing a plurality of *actus rei*.⁶² This offence consists of one *actus reus*, namely – acting corruptly to influence.⁶³ Illicit coaching, bribing, and making promises in exchange for testimony are some of the *means* through which this *actus reus* may be carried out, which is clearly stated by the Prosecution in paragraph 22 of the DCC: “co-perpetrators implemented the Common Plan by committing offences in furtherance of its objective, and/or using others to do so, including through one or more of the following *means*: (i) bribing witnesses; (ii) making promises to witnesses in exchange for false testimony; (iii) instructing witnesses on what to say when questioned in court”.⁶⁴

32. For the reasons set out above, the Defence legal submissions on the offences charged in the DCC and the relevant modes of liability should be disregarded.

⁶⁰ For the definition of the term “party” in the context of Article 70(1)(b), see ICC-01/05-01/13-597-Conf-AnxB, para. 270.

⁶¹ Article 25(1) of the Code of Professional Conduct for Counsel.

⁶² ICC-01/05-01/13-600-Conf-Corr2, paras 146-176.

⁶³ ICC-01/05-01/13-597-Conf-AnxB, paras 275, 277.

⁶⁴ ICC-01/05-01/13-526-Conf-AnxB1, para. 22 (emphasis added).

B. Response to the Defence's Factual Allegations

a. The Submissions are contradictory and inconsistent internally and between themselves

33. The contradictions in the claims advanced by the respective Defences readily demonstrate their unreliability, if not their absence of credibility. The following are exemplary.

i. *The 14 false or forged documents*

34. The suspects have advanced multiple versions of how the 14 alleged false or forged documents were provided to the *Bemba* Defence since their arrests. Not one is credible.

35. **KILOLO** asserts that **ARIDO** handed him the 14 false or forged documents on 21 February 2012 in Douala: “[l]es ordres opérationnels leur ont été fournis par M. Arido [...] Il avait été précisé à M^e Aimé Kilolo que ces documents émanaient des archives de l’Etat Major Général des forces armées centrafricaines”.⁶⁵ **KILOLO** states that **ARIDO** also sent him via email seven other “complementary” documents on 1 May 2012.⁶⁶ **KILOLO** has consistently claimed that **ARIDO** (D-11) is the source of the 14 false or forged documents, stating in a 6 November 2013 conversation to **MANGENDA** that: “[l]ui-même [**ARIDO**] aussi me les avait envoyés... J’avais reçu ça par email”,⁶⁷ and filing as much before Trial Chamber III.⁶⁸

⁶⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 535.

⁶⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 534; see also paras 121, 133.

⁶⁷ CAR-OTP-0082-0924 at 0934, lns 301-305.

⁶⁸ ICC-01/05-01/08-2326-Red para. 44.

36. By contrast, **ARIDO** claims only that he sent seven of the 14 false or forged documents to **KILOLO** via email.⁶⁹ His submission fails to account for the 21 February 2012 Douala meeting with **KILOLO**. Further, it is inconsistent with his 23 November 2013 and 17 January 2014 statements. In those statements, **ARIDO** claims only to have seen the false or forged documents for the first time when **KILOLO** sent them to him via email in 2012,⁷⁰ and says that “[l]e seul dossier que j’ai remis [à la défense de **BEMBA**] c’est l’étude que j’avais produite. Je ne reconnais pas le document que vous me présentez et qui porte la référence CAR-D04-0003-0129”.⁷¹

37. **MANGENDA**’s submission is different to both **ARIDO**’s and **KILOLO**’s inconsistent accounts. **MANGENDA** first alleged that the purported author of seven of the 14 documents, [REDACTED], provided the documents to the Defence. Specifically, **MANGENDA** claimed that “[REDACTED], avait transmis le document en question (ordres opérationnels) à Maîtres **KILOLO MUSAMBA** et **GIBSON** lors d’une mission”.⁷² A week after receiving the other suspects’ Submissions and undoubtedly realising that his version of events did not fall into line with both theirs and the chain of custody information that he himself filled out in e-Court concerning the 14 documents, **MANGENDA** changed his story. On 6 August, **MANGENDA** filed a “corrected” submission, omitting his previous representations concerning [REDACTED].⁷³ **MANGENDA** describes his revised version of events as “adapté vers une version plus conforme à la réalité”⁷⁴ – as opposed to the obviously fabricated earlier version filed with the Chamber.

⁶⁹ ICC-01/05-01/13-598-Conf, paras 138-139.

⁷⁰ CAR-OTP-0074-1065 at 1068 (see also: “Le seul document que j’ai remis à la défense de monsieur **BEMBA** est mon dossier d’expertise pour lequel j’ai été rémunéré”).

⁷¹ CAR-OTP-0077-0169 at 0175.

⁷² ICC-01/05-01/13-594-Conf-Corr, para. 86.

⁷³ See ICC-01/05-01/13-594-Conf-Corr, para. 86. The sentence now reads: “[REDACTED], et le document en question (ordres opérationnels) avait été transmis à la défense”.

⁷⁴ ICC-01/05-01/13-594-Conf-Corr-Anx.

38. The Prosecution charges four of the suspects – **BEMBA**, **MANGENDA**, **KILOLO**, and **ARIDO** – with unlawfully presenting the 14 false or forged documents.⁷⁵ **KILOLO** states that he, **BEMBA**, and **MANGENDA** took the decision (jointly with others) to rely on the documents.⁷⁶ **MANGENDA**, however, aiming to minimise his criminal responsibility, contradicts this claim. He asserts that he had a *“rôle subordonné dans l’équipe de défense Bemba en vertu duquel il exécutait ce qu’on lui demandait de faire. La décision concernant l’utilisation ou non de certaines pièces ne lui incombait pas”*.⁷⁷

39. **MANGENDA**’s prior statement further contradicts this claimed minimal involvement. During a 6 November 2013 conversation with **KILOLO**, **MANGENDA** stated unambiguously that *“ils [la Cour] verront que nous avons créé des ordres opérationnels, qui ne sont pas de bons documents [...] nous maintenant dans notre logique nous savons que c’est venu de chez NARCISSE”*.⁷⁸ This conversation demonstrates **MANGENDA**’s direct involvement in the planning and use of the alleged false or forged documents, and shows his participation in efforts made to conceal their origin. The statement also extinguishes **KILOLO**’s spurious claim that the *Bemba* Defence presented⁷⁹ the documents not knowing that they were false.⁸⁰

40. **KILOLO**’s statement that his communications with **ARIDO** *“ont été rompus lorsqu’il [ARIDO] a pris une destination inconnue à la date à laquelle il était attendu pour comparaître devant la Chambre de 1^{ère} instance [September 2012]”*⁸¹ is contradicted by **ARIDO**’s statement. **ARIDO** claimed that he saw **KILOLO** at [REDACTED] *“trois ou*

⁷⁵ See ICC-01/05-01/13-526-Conf-AnxB1, pp. 60 (**BEMBA**), 65 (**KILOLO**), 70 (**MANGENDA**), 81 (**ARIDO**).

⁷⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 536; see also para. 133.

⁷⁷ ICC-01/05-01/13-594-Conf-Corr, p. 89.

⁷⁸ CAR-OTP-0082-0924 at 0929, lns 111-114, 135-136 (emphasis added).

⁷⁹ **KILOLO** admits that he had *“présentés”* the documents. See ICC-01/05-01/13-600-Conf-Corr2, para. 519; see also paras 533, 536, 538.

⁸⁰ See ICC-01/05-01/13-600-Conf-Corr2, paras 535-536 (*“M^e Aimé Kilolo n’avait aucune indication que ces documents pourraient être falsifiés”; “Il n’y avait donc en cela aucune intention délictueuse”*).

⁸¹ ICC-01/05-01/13-600-Conf-Corr2, para. 737, fn. 922.

quatre mois” before his November 2013 interview, where KILOLO “[*lui*] a présenté le document qu’il m’avait déjà envoyé par mail”⁸² – the false documents.

ii. *Coded communication*

41. **KILOLO** asserts that the Prosecution’s interpretation of ‘[REDACTED]’ as referring to [REDACTED] (D-29)⁸³ is incorrect. At different points in his submission, **KILOLO** inconsistently avers that “ refers to [REDACTED], a [REDACTED] lawyer⁸⁴ and a [REDACTED] businessman [REDACTED], when referring to the same conversation.⁸⁵ Confirming the falsity of his contradictory accounts, on 4 August **KILOLO** filed – in similar fashion to **MANGENDA** – a “corrected version”, inappropriately retracting his claim with respect to [REDACTED]⁸⁶ to harmonise with **BEMBA**’s account.⁸⁷

42. While **KILOLO**’s submission is not credible in proffering conflicting accounts of who ‘[REDACTED]’ refers to, [REDACTED], and thus does nothing to exclude [REDACTED]. To the contrary, it confirms the Prosecution’s determination that the suspects used the [REDACTED] as a code, the basis upon which the Prosecution has correctly attributed ‘[REDACTED]’ to D-29. The Prosecution’s interpretation is the most reasonable.⁸⁸ The intercepted conversation in question is from 29 August 2013 at 08:38 and involves **KILOLO** telling **MANGENDA** to inform **BEMBA** about **KILOLO**’s illicit coaching of ‘[REDACTED]’ the previous evening. This conversation took place hours before D-29 started testifying, and there are intercepted

⁸² CAR-OTP-0074-1065 at 1068.

⁸³ See ICC-01/05-01/13-597-Conf-AnxB, para. 338.

⁸⁴ ICC-01/05-01/13-600-Conf-Corr2, para. 292.

⁸⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 788.

⁸⁶ See ICC-01/05-01/13-600-Conf-Corr-Anx, pp. 52-53.

⁸⁷ See ICC-01/05-01/13-599-Conf, para. 83.

⁸⁸ The Defence cannot refute a supported allegation by merely proposing an alternative interpretation without any substantiation, instead inviting the Prosecution “to check this assertion with the detention centre”. See ICC-01/05-01/13-599-Conf, para. 83.

communications to show that **KILOLO** had illicitly coached D-29 on 28 August 2013.⁸⁹

43. **KILOLO** contests the Prosecution's attribution of the code '[REDACTED]' to [REDACTED] (D-54),⁹⁰ arguing that his reference to this code in a 30 August 2013 conversation with **MANGENDA**⁹¹ concerns "*un témoin prospectif auprès de qui il fallait vérifier un certain nombre d'informations [et qui] n'a finalement jamais déposé devant la Cour*".⁹² **BEMBA**'s version is entirely different. **BEMBA** claims that he used the words '[REDACTED]' to signify "[REDACTED]".⁹³ The two claims cannot stand together – not least because [REDACTED] (D-19) was not a "*témoin prospectif*" but an actual one, who testified for the Defence from 25 February to 13 March 2013. The disparity in **BEMBA**'s and **KILOLO**'s submissions is not accidental. Rather, it reflects independent deliberate efforts to mislead the Chamber.

44. The same is true regarding **BABALA**'s statement, "*donner du sucre aux gens vous verrez que c'est bien*",⁹⁴ used in a 16 October 2012 conversation with **BEMBA**. **BABALA** claims that it refers not to bribing individuals, but to "*un sac de 50 kilos de sucre*" for the funeral ceremony of a Congolese Ambassador, "*qui avait été servi avec du café*".⁹⁵ **BEMBA**'s explanation of the phrase, however, is contradictory. **BEMBA** states that **BABALA**'s statement referred to "a payment" – not "*un sac de sucre*" – which **BEMBA** claims was "made, as customary in the DR Congo, to the grieving family".⁹⁶ That the expression refers to a financial payment is abundantly clear from **BEMBA**'s further explanation: "the remainder of the sum discussed [was ...] deployed both to

⁸⁹ ICC-01/05-01/13-597-Conf-AnxB, paras 181-186.

⁹⁰ See ICC-01/05-01/13-597-Conf-AnxB, para. 93.

⁹¹ CAR-OTP-0079-0131 at 0133, lns 17-20.

⁹² ICC-01/05-01/13-600-Conf-Corr2, para. 194.

⁹³ ICC-01/05-01/13-599-Conf, para. 79.

⁹⁴ CAR-OTP-0077-1299 at 1301, ln. 30.

⁹⁵ ICC-01/05-01/13-596-Conf, paras 49, 123; see also paras 83, 112. **BABALA** says it also may mean "*un député du MLC élu d'une circonscription où est établie la plus grande société sucrière du pays*" (para. 49).

⁹⁶ ICC-01/05-01/13-599-Conf, para. 122.

cover a debt [...] and the Suspect's personal expenses".⁹⁷ There is no question from the conversation that **BEMBA** and **BABALA** understood each other clearly at the time. Thus, the only reason the two now present mutually incompatible explanations in their submissions is that neither is true. **BEMBA** also admits that a *prima facie* reading of the relevant passage suggests that **BABALA** was "pontificat[ing] on the virtues of sweetening the lot of the unfortunate".⁹⁸

45. In relation to the suspects' use of the code '*faire la couleur*' to describe the activities of the Common Plan, **MANGENDA** provides two different explanations: (i) "[c]'est en même temps la manière Congolaise de parler, d'une manière visuelle, palpable et plastique, en « couleurs » en somme";⁹⁹ and (ii) "ce langage signifie que la Défense mettait parfois « en couleur » certaines portions de texte, afin d'en accentuer l'importance, comme la plupart des juristes utilise un marqueur afin de « mettre en couleur » certaines portions de texte".¹⁰⁰ These explanations are in themselves inconsistent, and further so when placed beside the other Defence teams'. **BEMBA** argues that '*faire la couleur*' means "to emphasize",¹⁰¹ while **KILOLO** contends that it means "*identifier et hachurer en couleur toutes les informations, pertinentes, fiables fournies préalablement par les différents témoins*".¹⁰²

46. When placed in the context of the relevant conversations, the Defence's contrivances are all the more apparent. For example, in a 2 October 2013 conversation, **MANGENDA** explained to **KILOLO** Peter HAYNES' frustration at being systematically excluded from missions and in particular from the one to Brazzaville.¹⁰³ In another call made seconds later, **MANGENDA** continued the same conversation, commenting to **KILOLO** (referring to **KILOLO**'s planned mission to

⁹⁷ ICC-01/05-01/13-599-Conf, para. 122.

⁹⁸ ICC-01/05-01/13-599-Conf, para. 85.

⁹⁹ ICC-01/05-01/13-594-Conf-Corr, p. 84.

¹⁰⁰ ICC-01/05-01/13-594-Conf-Corr, p. 74.

¹⁰¹ ICC-01/05-01/13-599-Conf, para. 11.

¹⁰² ICC-01/05-01/13-600-Conf-Corr2, para. 316.

¹⁰³ CAR-OTP-0082-0116 at 0123-0125, lns 212-288; CAR-OTP-0077-1024, row 36.

Cameroon to pay witnesses to ensure that they did not reveal the activities of the Common Plan) that: “lui [HAYNES]... il n’avait pas non plus la possibilité de comprendre l’utilité de ces voyages-là parce que l’objectif de ces voyages c’est faire LES COULEURS”.¹⁰⁴ Clearly, in this sentence, ‘emphasise’ does not fit; ‘highlighting’ or ‘cross-hatching’ important portions of Defence witness testimony makes no sense; and it is not a ‘colourful’ turn of phrase.

47. Similarly, in a 30 August 2013 conversation, **KILOLO** explained to **MANGENDA** that:

*je voulais t’expliquer, tu vois pour moi le problème très important, est que tu me fasses toujours les rapports de gens qui sont en train de passer. Pourquoi ? Parce que tu vois comme moi je suis en train de **faire les couleurs**, c’est-à-dire, je me trouve dans un état tel que lorsque les choses se passent là-bas ... ça doit être clair ... parce que tu vois si ça bardait, nous tous ... mais la première personne c’est bien moi. Non seulement dans le cadre de mes fonctions, mais dans le cadre aussi qu’en réalité les couleurs c’est aussi ... moi. Donc je suis conscient donc c’est-à-dire si quelqu’un déconnaît, il citera le nom de quelqu’un. Bon pendant que je suis en train de travailler avec BRAVO, mais mon cœur est là-bas.*¹⁰⁵

48. In this conversation **KILOLO** voiced his concern to **MANGENDA** that he will be the “*première personne*” targeted if a witness revealed **KILOLO**’s illicit coaching. As before, in this context ‘emphasise’ makes no sense; **KILOLO**’s palpable concern demonstrates that he is not merely ‘highlighting’ or ‘cross-hatching’ important portions of Defence witness testimony; and he is not using a particularly animated or evocative turn of phrase.¹⁰⁶

¹⁰⁴ CAR-OTP-0080-0299 at 0301, lns 4-5; CAR-OTP-0077-1024, row 35.

¹⁰⁵ CAR-OTP-0079-0131 at 0139, lns 222-229 (emphasis added).

¹⁰⁶ See also CAR-OTP-0079-1737 at 1740, lns 41-46 (“AK : Pour toi, il a traversé quand en CENTRAFRIQUE ? [...] JJM : Non mais c’est comme on en a discuté, il faut qu’ils sachent... pour que ça soit logique, il faut qu’il parte, et que ça corresponde qu’il est parti le 30, c’est tout. Dans le cadre de la Couleur. Juste comme, on en a discuté”), wherein the Defence’s incredible interpretation of ‘faire la couleur’ would not fit; see also CAR-OTP-0082-0649 at 0652, where ‘faire la couleur’ is used in the context of money only.

iii. *Payments*

49. **KILOLO** states that his payments to witnesses “*a été fait en toute transparence*”¹⁰⁷ and “*sans aucune dissimulation*”,¹⁰⁸ using as an example the payment to D-6 (through Caroline BEMBA and [REDACTED] – D-6’s [REDACTED]): “[c]e transfert n’aurait jamais été fait par la voie la plus officielle s’il s’agissait de corrompre ce témoin, étant donné que, non seulement l’expéditeur portait le nom « Bemba », et donc facilement repérable, mais aussi le destinataire est [REDACTED] même du témoin”.¹⁰⁹

50. But, **KILOLO**’s own words contradict this claim. On 23 August 2013, **KILOLO** explained to **BABALA** that he preferred to transfer sums of money in separate transactions to avoid detection by European authorities: “*ici en Europe [...] ils sont devenus très très regardants. Il faut justifier le motif, comme c’est le nom [...] BEMBA qui est derrière, et puis c’est moi, donc tout de suite la commission financière peut commencer à embêter. C’est comme ça que j’ai préféré scinder ça*”.¹¹⁰ Further, D-3 stated that **KILOLO** asked him (D-3) to provide him with the name of someone not easily identifiable by the Court, to receive a transfer on his behalf, from **KILOLO**. When D-3 suggested his fiancée, **KILOLO** rejected it, saying, “*la Cour connaît le nom de [t]a fiancée*”.¹¹¹

51. [REDACTED].¹¹²

52. In light of these statements, it is clear that the suspects directed payments to witnesses through intermediaries to hide their tracks.

¹⁰⁷ ICC-01/05-01/13-600-Conf-Corr2, para. 406.

¹⁰⁸ ICC-01/05-01/13-600-Conf-Corr2, para. 765.

¹⁰⁹ ICC-01/05-01/13-600-Conf-Corr2, para. 406; see also paras 647-648, 765.

¹¹⁰ CAR-OTP-0077-1375 at 1376, lns 29-34.

¹¹¹ CAR-OTP-0080-0165 at 0168, lns 106-113.

¹¹² CAR-D21-0003-0050 at 0053.

iv. Witnesses

53. With respect to D-4, **ARIDO**'s story continues to evolve:

- First, in his submission, **ARIDO** relies on [REDACTED] (D-4)'s 16 May 2014 interview with the Kilolo Defence to refute the allegations against him (**ARIDO**) of illicit coaching of, and making improper promises to, witnesses in or around February 2012 in Douala.¹¹³ Specifically, **ARIDO** contends that D-4's statement to the effect that, "*personnellement [Arido et moi] on se connaît pas*",¹¹⁴ "clearly disproves the Prosecution's allegations".¹¹⁵ However, this ignores his own November 2013 interview, in which **ARIDO** admitted that he knew D-4 as one of the "*personnes qui se sont présentées dans la chambre de son [KILOLO's] hotel [REDACTED] au CAMEROUN*".¹¹⁶
- Second, **ARIDO** initially denied his 19 January 2012 CFA 18,000 Express Union money transfer to D-4¹¹⁷ in his November 2013 statement, claiming "*je n'ai pas envoyé d'argent à [REDACTED]*".¹¹⁸ Now, in the face of incontrovertible proof to the contrary, he is forced to admit it.¹¹⁹ In an effort to reconcile his statement with D-4's unequivocal denial of the transaction in his recent interview with the Kilolo Defence, **ARIDO** speculates that D-4 "could have easily forgotten such a small amount".¹²⁰ He more likely lied about it.
- Third, **ARIDO** has claimed alternately in his two statements that D-4 was part of the CAR armed forces – "[REDACTED], *il était un ancien militaire et je*

¹¹³ ICC-01/05-01/13-598-Conf, paras 203-205.

¹¹⁴ CAR-D21-0004-0310 at 0320.

¹¹⁵ ICC-01/05-01/13-598-Conf, para. 205.

¹¹⁶ CAR-OTP-0074-1065 at 1068.

¹¹⁷ See CAR-OTP-0073-0046 at 0047; CAR-OTP-0073-0048 at 0049.

¹¹⁸ CAR-OTP-0077-0169 at 0172.

¹¹⁹ ICC-01/05-01/13-598-Conf, para. 204.

¹²⁰ ICC-01/05-01/13-598-Conf, para. 204.

le connaissais comme tel”¹²¹ – and that he was not – “*Monsieur [REDACTED] n’a jamais fait partie de l’armée CENTRAFRICAINE*”.¹²²

54. **ARIDO** has also developed two different narratives regarding D-2 and D-3, who both lied under oath that they were in the military.¹²³ **ARIDO** submits that “[i]t is not convincingly established that D-2 and D-3 lied under oath”¹²⁴ and that “the Prosecution has provided no evidence that D-2 and D-3 actually lied in court and were never part of the CAR military”.¹²⁵ Again, **ARIDO** overlooks his own words. In November 2013, he stated unambiguously:

[REDACTED].¹²⁶

55. **ARIDO**’s related claim – that “it appears normal that, if proven that Mr. **ARIDO** in fact approached potential witnesses, he would tell people of whom he knew the background and concerns that in providing evidence for the *Bemba* Defence team, there is a possibility that the Court orders their relocation”¹²⁷ – also rings hollow in the light of his November 2013 admission that he knew these people were never members of the CAR armed forces.

b. The Submissions concede aspects of the Prosecution’s case

56. The Submissions concede aspects of the Prosecution’s case. The following are exemplary.

¹²¹ CAR-OTP-0077-0169 at 0173.

¹²² CAR-OTP-0074-1065 at 1068.

¹²³ See ICC-01/05-01/13-597-Conf-AnxB, paras 158, 169 (D-2), 140, 152 (D-3).

¹²⁴ ICC-01/05-01/13-598-Conf, para. 254.

¹²⁵ ICC-01/05-01/13-598-Conf, para. 256.

¹²⁶ CAR-OTP-0074-1065 at 1066.

¹²⁷ ICC-01/05-01/13-598-Conf, para. 293.

i. *Knowledge of false testimony*

57. **KILOLO** admits knowing that [REDACTED] (D-15) testified falsely about the extent of his pre-testimony contact with the Defence. **KILOLO** claims that D-15 had “*préalablement exprimé*” to **KILOLO** his “*volonté [...] de ne pas divulguer les informations relatives aux contacts avec la Défense de M. Bemba [à la Chambre]*”.¹²⁸ D-15 then testified falsely, as per his expressed intention.¹²⁹ By his own admission, therefore, **KILOLO**, called D-15 knowing that he intended to lie, and misled the Court by failing to correct the record before the Trial Chamber.

58. **KILOLO**’s claim that “[l]e but n’était pas de tromper la Chambre”¹³⁰ is belied by the fact that at no time did he alert the Chamber to the falsity of the evidence presented. Including during **KILOLO**’s re-examination, where he deliberately passed up the opportunity to correct the record,¹³¹ showing his intent for the fraud to succeed. Because Article 70 imposes no materiality requirement regarding offences committed thereunder, **KILOLO**’s admission itself amply establishes substantial grounds to believe that he knowingly presented false evidence before the Court.

59. **KILOLO** further admits that he presented witnesses previously who had similarly lied, and relied on their false evidence. He concedes, “[c]ertains autres témoins de la défense [...] se refusaient à dévoiler, même en audience à huis clos partiel, les contacts avec la défense”.¹³² Again, this establishes substantial grounds to believe that **KILOLO** knowingly presented false evidence before the Court. The fact that a witness refuses to divulge pertinent information to the Court bearing on their

¹²⁸ ICC-01/05-01/13-600-Conf-Corr2, para. 188; see also para. 578 (“La décision de ne pas révéler, y compris devant la Chambre de première instance, tous les contacts qu’il avait eus avec la Défense, émanait donc du témoin lui-même, et non de Me Kilolo”).

¹²⁹ See ICC-01/05-01/13-597-Conf-AnxB, para. 102.

¹³⁰ ICC-01/05-01/13-600-Conf-Corr2, para. 188.

¹³¹ ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p. 93, lns 2-3, et seq.

¹³² ICC-01/05-01/13-600-Conf-Corr2, para. 188.

credibility does not preclude counsel from doing so (*ex parte*, if necessary). The fact that **KILOLO** did not do so is evidence of his intent to present false evidence.

60. **KILOLO** makes similar admissions with respect to witnesses testifying falsely about payments **KILOLO** made or knew of. D-2 and D-3 stated that **KILOLO** paid them CFA 500,000 and 540,000, respectively, in cash.¹³³ **KILOLO** concedes these witnesses' evidence, admitting that he did pay D-2¹³⁴ and D-3.¹³⁵ He also admits paying eight other witnesses: D-6 (through Caroline BEMBA and D-6's [REDACTED]),¹³⁶ D-57,¹³⁷ D-64,¹³⁸ D-55,¹³⁹ D-25,¹⁴⁰ D-23,¹⁴¹ D-29 (through *Bemba* Defence financial intermediary Jean-Paul MOKULA),¹⁴² and D-4.¹⁴³

61. **KILOLO**'s explanation of these payments as legitimate expenses¹⁴⁴ – even if accepted as true, which it should not be – is inapposite. With the exception of D-4, who was not asked, each of these witnesses testified falsely about these payments.¹⁴⁵

¹³³ See ICC-01/05-01/13-597-Conf-AnxB, paras 168 (D-2), 151 (D-3).

¹³⁴ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; 766; fn. 951; see also para. 252; fn. 234.

¹³⁵ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; 766; fn. 956; see also para. 226; fn. 234.

¹³⁶ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; see also paras 396, 399-402; fn. 234.

¹³⁷ ICC-01/05-01/13-600-Conf-Corr2, paras. 761; 762; fn. 957; see also paras 325-326; fn. 234.

¹³⁸ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; fn. 956; see also paras 333-334; fn. 234.

¹³⁹ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; fn. 945; see also para. 340.

¹⁴⁰ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; fn. 945; see also para. 299.

¹⁴¹ ICC-01/05-01/13-600-Conf-Corr2, paras 761; 762; fn. 946; see also para. 382.

¹⁴² ICC-01/05-01/13-600-Conf-Corr2, para. 766; fn. 955; see also para. 294. *Contra*, para. 761. See also the *Bemba* Defence's 6 August 2013 email (CAR-D21-0003-0050 at 0051) to the [REDACTED]. See also D-29's recent statement mentioning that he received CFA 5,000 from **KILOLO** for his transportation (which contradicts **KILOLO**'s statement at para. 761 and fn. 941), and makes no mention of his receipt of any amount of money for his [REDACTED] travels, as mentioned by **KILOLO** (See CAR-D21-0004-0581 at 0587, lns 208-219).

¹⁴³ ICC-01/05-01/13-600-Conf-Corr2, para. 761; fns. 941, 954.

¹⁴⁴ ICC-01/05-01/13-600-Conf-Corr2, para. 762.

¹⁴⁵ See ICC-01/05-01/13-597-Conf-AnxB, paras 154 (D-3 testified that he never received any type of payment from the Defence), 169 (D-2 testified falsely that he did not receive any money from the Defence, either as compensation for expenses or in exchange for his testimony), 186 (D-29 testified that he was never promised anything in exchange for his testimony), which is further contradicted by his new statement in which he acknowledges receiving CFA 5,000 from **KILOLO** for his transportation and makes no mention of the receipt of the payment of USD 649.43 "for his [REDACTED]" from the *Bemba* Defence the day before he testified, 191 (D-25 testified falsely that he had not received any money from the Defence, including any legitimate reimbursement of travel or other expenses), 194 (D-57 denied receiving any money from the *Bemba* Defence or from anyone acting on their behalf), 200 (D-64 denied receiving any money from Bemba or from anyone on his behalf, in relation to the case, including for travel expenses, under oath), 215 (D-55 falsely denied receiving any payment or reimbursement from the Defence), 221 (D-23 testified that he had not received any money from the Defence), 229 (D-6 testified falsely that he did not receive any money from the Defence for his testimony other than for transport costs, amounting to CFA 50,000).

Thus, in confirming knowledge of payments to these witnesses before they testified, **KILOLO** admits that he knew the witnesses to be lying under oath. His argument that he had no “obligation” to correct the record, or that he was not “*habilité*”¹⁴⁶ is fiction. His repeated pattern of conduct as explained below was clearly intentional. **KILOLO**’s admission is enough to establish substantial grounds to believe he committed the charged offence.

62. **KILOLO**’s argument that the Prosecution cannot generalise – “[l]es documents cités en référence dans ces paragraphes concernent uniquement le témoin [REDACTED], et pas l’ensemble des 14 témoins incriminés”¹⁴⁷ – is false. Although one witness may conceivably fail to admit payments “*de son propre chef*” (independently),¹⁴⁸ systematic and repeated denials of contact and payment by *every* witnesses who was asked is not. The Prosecution has irrefutable audio recordings of **KILOLO**’s illicit coaching for witnesses D-15, D-54, and D-26, whose behaviour is entirely consistent with the 11 witnesses for whom audio recordings are not available. The most reasonable inference that arises in these circumstances is that the same behaviour that underlies the three witnesses underlies the other 11.

63. Further, **KILOLO**’s admission of the payment to D-6 (through Caroline BEMBA and [REDACTED]) concedes Caroline BEMBA’s role in the Common Plan: making payments at her brother’s direction.

ii. *Communication with witnesses*

64. **KILOLO** violated Article 70(1)(c) of the Statute by calling witnesses immediately before and during their testimony to, among other things, inform them of the questions he and the Legal Representative of Victims would ask him in court,

¹⁴⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 617.

¹⁴⁷ ICC-01/05-01/13-600-Conf-Corr2, para. 608.

¹⁴⁸ ICC-01/05-01/13-600-Conf-Corr2, para. 366.

and go through their scripted testimony.¹⁴⁹ **KILOLO** admits to “*informer un témoin [D-15] des questions qui lui seront posées*”,¹⁵⁰ and that he “*informait le témoin [D-54] sur les types de questions généralement posées à tous les témoins dans différentes affaires de la Cour*”.¹⁵¹ Further, **KILOLO** admits to “refreshing” D-54’s recollection with the substance of his evidence before he testified,¹⁵² and engaging in a “*récapitulatif*” conversation with D-26 before his testimony.¹⁵³ As addressed previously,¹⁵⁴ Article 70(1)(c) is violated by influencing a witness through corrupt means – e.g. circumventing a Court order to call a witness immediately before or during their testimony – or with a corrupt motive – e.g. to get the witness to lie. It is clear from **KILOLO**’s conversations with D-15, D-54, and D-26 that **KILOLO** corruptly influenced witnesses through both means and motivation.¹⁵⁵

65. **KILOLO** admits that Trial Chamber III had imposed a contact cut-off date, after which no contact with the witness was permitted: “[l]a seule interdiction réglementaire consiste à s’abstenir de tout contact avec le témoin à compter du déclenchement du processus de familiarisation (cut-off date) jusqu’à la fin de la déposition”.¹⁵⁶ His flagrant and inexcusable disregard of these Court-imposed rules to illicitly coach witnesses is fatal to his submission.

66. The Prosecution alleges that, on 12 September 2013, **KILOLO** instructed **MANGENDA** to provide him with a confidential document that the Legal Representative of Victims had furnished to the parties¹⁵⁷ containing the representative’s questions for D-15, who was testifying at the time.¹⁵⁸ **KILOLO**

¹⁴⁹ See, e.g., ICC-01/05-01/13-597-Conf-AnxB, paras 101, 104, 106, 110-112.

¹⁵⁰ ICC-01/05-01/13-600-Conf-Corr2, para. 181.

¹⁵¹ ICC-01/05-01/13-600-Conf-Corr2, para. 192.

¹⁵² ICC-01/05-01/13-600-Conf-Corr2, para. 202.

¹⁵³ ICC-01/05-01/13-600-Conf-Corr2, para. 209.

¹⁵⁴ ICC-01/05-01/13-597-Conf-AnxB, paras 274-277.

¹⁵⁵ See ICC-01/05-01/13-597-Conf-AnxB, paras 101-113 (D-15), 116-130 (D-54), 132-137 (D-26).

¹⁵⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 321; see also para. 331.

¹⁵⁷ ICC-01/05-01/13-597-Conf-AnxB, para. 111.

¹⁵⁸ ICC-01/05-01/13-597-Conf-AnxB, para. 100.

requested the document from **MANGENDA** so that he could go over the questions and their answers with D-15.¹⁵⁹ In his submission, **MANGENDA** admits that **KILOLO** asked him to provide the document and that he transferred it accordingly, stating that it was “*une action anodine de tous les jours*”.¹⁶⁰ **KILOLO** similarly admits to requesting **MANGENDA** to send the document, and confirms that **MANGENDA** did so.¹⁶¹ **MANGENDA** knew why he was sending the document – **KILOLO** told him that “*il [D-15] est encore debout spécialement il attend cela [the questions], avant qu’il ne dorme*”.¹⁶² Notably absent from **KILOLO**’s attempt to justify his request to **MANGENDA** is any denial that he passed the questions on to D-15 while he was under oath.

67. As alleged by the Prosecution,¹⁶³ **MANGENDA** admits that **KILOLO** called D-26 with his (**MANGENDA**’s) phone during a Court recess in the morning of 20 August 2013, which he claims he had “*prêt[é ...] au conseil principal*”.¹⁶⁴ Only two calls were made during the Court recess that day on **MANGENDA**’s phone – both to D-26.¹⁶⁵ It is incredible to suggest that **MANGENDA** did not know (a) that the call was in blatant violation of the Chamber’s order on witness contact, and (b) why **KILOLO** made such a call. Further, D-26 falsely denied this contact with the Defence when questioned in court.¹⁶⁶

iii. Coded and covert communication

68. The Prosecution deciphered certain codes used by the suspects to implement the Common Plan,¹⁶⁷ e.g., *Whisky*, as referring to Caroline BEMBA; *07*, referring to

¹⁵⁹ ICC-01/05-01/13-597-Conf-AnxB, para. 111.

¹⁶⁰ ICC-01/05-01/13-594-Conf-Corr, p. 76; see also p. 75.

¹⁶¹ ICC-01/05-01/13-600-Conf-Corr2, para. 788.

¹⁶² CAR-OTP-0079-1754 at 1757.

¹⁶³ ICC-01/05-01/13-526-Conf-AnxB, para. 61.

¹⁶⁴ ICC-01/05-01/13-594-Conf-Corr, p. 77.

¹⁶⁵ See CAR-OTP-0077-1024, lns 173-174.

¹⁶⁶ ICC-01/05-01/08-T-335-CONF-ENG ET, 23 August 2013, p. 18, lns 4-18.

¹⁶⁷ ICC-01/05-01/13-597-Conf-AnxB, para. 72.

BABALA; and *l'enfant de ce côté*, meaning **MANGENDA**.¹⁶⁸ **BEMBA**, **KILOLO**, **MANGENDA**, and **BABALA** all admit, not only that they used such codes to communicate during the period charged in the DCC,¹⁶⁹ but, in view of the Prosecution's analysis and the overwhelming audio-recorded evidence, are forced to concede their correctness.¹⁷⁰

69. The Prosecution alleges that **BEMBA** circumvented the Detention Centre's monitoring system by exploiting the privileged line extended to **KILOLO** as his counsel to conceal the Common Plan.¹⁷¹ In this way, **BEMBA** could freely communicate with persons other than his counsel, including **BABALA** and witnesses. **BEMBA**'s submission admits his participation in conference calls with **BABALA** on the privileged line, but asserts that this conduct is "not criminal".¹⁷² However, the Defence's qualification is pointless — an act done in furtherance of a Common Plan need not be criminal. Furthermore, what is significant and is not refuted is that **BEMBA** knowingly violated the Regulations of the Registry,¹⁷³ a deliberate act which, as such, evidences his intention to achieve the criminal objectives of the Common Plan. Similarly, **KILOLO**'s admission to facilitating illicit conference calls with **BABALA**¹⁷⁴ and with witnesses including D-55,¹⁷⁵ is evidence of his intent to further the Common Plan. These phone calls were essential to the

¹⁶⁸ See ICC-01/05-01/13-597-Conf-AnxB, paras 78 (*l'enfant*), 79-80 (07), 87 (*Whisky*).

¹⁶⁹ See, e.g., **BEMBA** – ICC-01/05-01/13-599-Conf, para. 52 ("For conversations both political and, latterly, legal, the Suspect [**BEMBA**] and **BABALA** had developed a complex code"); **KILOLO** – ICC-01/05-01/13-600-Conf-Corr2, para. 631 ("*les conversations même codées entre Me Kilolo et M. Babala sont en nombre limité et généralement brèves...*"), see also paras 632, 794; **MANGENDA** – ICC-01/05-01/13-594-Conf-Corr, p. 55, 94; **BABALA** – ICC-01/05-01/13-596-Conf, paras 33-35, 87.

¹⁷⁰ **BABALA** – ICC-01/05-01/13-596-Conf, fn. 19 (*Whisky*, 07, *l'enfant*), paras 33, 34 (*cafés* and *kilos* is money), 35-39; **BEMBA** – ICC-01/05-01/13-599, paras 96, 109 (*Whisky*), 96 (*1kg* is 1,000 dollars), 101 (*le collègue d'en haut* is Kilolo), 104 (*3 petits* is 300 dollars), 106, 111 (*l'enfant de ce côté, l'enfant qui se trouve à ses côtés* are **MANGENDA**), 109, 111 (*les trucs* is money) 117 (*le prophète* is Bemba), 121, (*Bravo Golf* is Bemba), 126, (*Ndoyi* is the Office of the Prosecutor), 126, (*Charly* is Cameroon), 128 (*Villageois* is Defence witnesses in Cameroon), 129 (*Marcelin* is France), 136, (*le blanc* is Peter Haynes), 143 (*Sierra November* is Belgium).

¹⁷¹ ICC-01/05-01/13-597-Conf-AnxB, paras 66-67.

¹⁷² ICC-01/05-01/13-599-Conf, para. 95.

¹⁷³ See Regulation 174 of the Regulations of the Registry.

¹⁷⁴ ICC-01/05-01/13-600-Conf-Corr2, paras 621-622, 677.

¹⁷⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 364.

Common Plan, allowing the suspects to discuss the Common Plan without the risk of being recorded.

iv. Payments

70. The Prosecution alleges that **BABALA** is a long-time confidant of **BEMBA**'s¹⁷⁶ and that he had almost daily conversations with **BEMBA**.¹⁷⁷ **BABALA** confirms that he is "*un ami de longue date de M. BEMBA*".¹⁷⁸ Similarly, **BEMBA** states that **BABALA** has been a "*close confidant for many years*"¹⁷⁹ and that they "*conversed on a daily basis*".¹⁸⁰

71. Further, as the Prosecution alleges,¹⁸¹ **BEMBA** admits that **BABALA** did not make payments, including to **KILOLO** and **MANGENDA**, without his (**BEMBA**'s) approval.¹⁸² **BABALA**'s admission is supported by a conversation between the two on 11 October 2013, in which **BABALA** says to **BEMBA**: "*il y a un moment où je n'ai pas ... exécuté vos instructions ?*".¹⁸³ Because **BABALA** was making payments on **BEMBA**'s behalf, **BEMBA** knew exactly why these payments were being made. This is further supported by **BEMBA**'s characterisation of himself as "*thrifty when it comes to his own financial affairs*".¹⁸⁴

72. **BABALA**¹⁸⁵ and **ARIDO**¹⁸⁶ rely on the Western Union records to support their arguments regarding payments by and between the suspects, confirming the reliability and accuracy of the records. Nothing in the other Submissions refutes this,

¹⁷⁶ See ICC-01/05-01/13-526-Conf-AnxB1, para. 3.

¹⁷⁷ See ICC-01/05-01/13-597-Conf-AnxB, para. 29.

¹⁷⁸ ICC-01/05-01/13-596-Conf, para. 13.

¹⁷⁹ ICC-01/05-01/13-599-Conf, para. 52.

¹⁸⁰ ICC-01/05-01/13-599-Conf, para. 69; see also, para. 68.

¹⁸¹ ICC-01/05-01/13-597-Conf-AnxB, paras 29, 32, 390.

¹⁸² ICC-01/05-01/13-599-Conf, paras 49, 52 ("If monies were to be transferred to KILOLO, or to anyone else, for the purpose of the Defence investigation in case ICC-01/05-01/08, BABALA would frequently coordinate the transfer albeit always with the Suspect's approval"), 60.

¹⁸³ See ICC-01/05-01/13-597-Conf-AnxB, para. 390.

¹⁸⁴ ICC-01/05-01/13-599-Conf, para. 52.

¹⁸⁵ ICC-01/05-01/13-596-Conf, pp. 57-65, *Tableau III*, and para. 157 ("*M. Babala ne nie pas ces transferts*").

¹⁸⁶ ICC-01/05-01/13-598-Conf, paras 123-124, 284-286.

and **BEMBA**'s generalised assertions on the requirements for admissibility for these documents¹⁸⁷ are unsupported factually, and rejected by the law of this court.¹⁸⁸

73. The Prosecution's allegations that **BABALA** paid witnesses, including D-57 and D-64, and **ARIDO** and **KOKATE**, at **KILOLO**'s instruction or with his knowledge¹⁸⁹ is borne out by **BABALA**'s submission. He concedes that his payments to persons outside the *Bemba* Defence team, including to D-57, D-64, **ARIDO**, and **KOKATE**, were made "*à la demande du Conseil principal*".¹⁹⁰

74. **BABALA** also admits that Robert NGINAMAU made payments on his behalf, as the Prosecution alleges.¹⁹¹ **BABALA** concedes that NGINAMAU was his chauffeur and made payments for him as instructed,¹⁹² at least 14 times in the charging period.¹⁹³

v. The cover-up

75. **BEMBA** and **BABALA** attempted to suppress the imminent exposure of the Common Plan, after being convinced by **KILOLO** and **MANGENDA** to make payments to witnesses to ensure that they did not reveal the suspects' illicit activities – the '*tour d'horizon*'.¹⁹⁴ **BEMBA** confirms the audio-recorded evidence: that (i) **KILOLO** and **MANGENDA** took advantage of a possibility to scam **BEMBA** and

¹⁸⁷ ICC-01/05-01/13-599-Conf, para. 48 ("The Suspect insists that the Prosecutor be required to prove a proper chain of custody for all incriminating pieces of evidence on which she relies. Furthermore, when relying on official computer produced records to show, for example, the transfer of monies via Western Union or telephone logs, not only should the Prosecutor be required to prove the domestic implementing court order but also that the records conform to internationally recognized judicial standards for admissibility. The Prosecutor should, thus, be required to show substantial grounds to believe that the data in all official records on which she intends to rely were legally acquired and (i) created as part of a regularly conducted activity; (ii) accurate; (iii) created in a timely manner; (iv) produced by properly trained staff, and; (v) produced by evaluated and properly maintained computer/electronic systems").

¹⁸⁸ ICC-01/04-01/06-803-tEN, paras 97-98.

¹⁸⁹ See ICC-01/05-01/13-597-Conf-AnxB, paras 33-34, 194-196, 200-203, 205.

¹⁹⁰ ICC-01/05-01/13-596-Conf, para. 159; see also paras 20, 43, 123-124, 148.

¹⁹¹ See ICC-01/05-01/13-597-Conf-AnxB, paras 33-34, 70, 202, 391.

¹⁹² ICC-01/05-01/13-596-Conf, paras 43-45; see also, paras 20, 123-124, 148, 159.

¹⁹³ See CAR-OTP-0070-0007, tab 34 Nginamau, rows 2-4, 6-11, 14-17, tab 32 A Musamba, rows 101.

¹⁹⁴ ICC-01/05-01/13-597-Conf-AnxB, paras 235-245.

BABALA of money, ostensibly to go on mission and interview Defence witnesses who had spoken to the Prosecution regarding a possible Article 70 investigation;¹⁹⁵ (ii) **BEMBA** authorised and “orchestrated” financial transfers to fund this mission;¹⁹⁶ and (iii) **BABALA** facilitated the transfers.¹⁹⁷ All of these underscore the evidence establishing **BEMBA**’s intent and knowledge.

c. The Defence makes unsubstantiated assertions

76. While the Submissions advance alternative interpretations of the evidence, they fail to back up their arguments with evidence or to present reasoned arguments undermining the Prosecution’s position. Though the burden lies on the Prosecution to prove its case, to the extent the Defence have elected to respond, they are bound “to offer comprehensive arguments and substantiated positions pertaining to the claims they make”.¹⁹⁸

77. For example, **BEMBA** claims that certain monies he supplied to **KILOLO** were used by **KILOLO** for a Lingala interpreter, but references no supporting documentation or material.¹⁹⁹

78. **MANGENDA**’s submission stands out in terms of its lack of cogency and substantiation. It is replete with false and unsupported claims, including against the Prosecution. For example, **MANGENDA** asserts that [REDACTED].²⁰⁰ Not only are such allegations totally irrelevant to these proceedings, **MANGENDA**’s failure to cite any supporting evidence typifies the approach taken throughout his submission.

¹⁹⁵ ICC-01/05-01/13-599-Conf, paras 53, 56, 92.

¹⁹⁶ ICC-01/05-01/13-599-Conf, paras 53, 56, 92.

¹⁹⁷ ICC-01/05-01/13-599-Conf, paras 52, 92, 128.

¹⁹⁸ ICC-01/04-01/06-915, para. 62.

¹⁹⁹ ICC-01/05-01/13-599-Conf, para. 118.

²⁰⁰ ICC-01/05-01/13-594-Conf-Corr, para. 53.

79. **ARIDO**'s submission engages in pure speculation in positing that [REDACTED] and [REDACTED] the 14 documents at issue in this case are false or forged.²⁰¹ To the contrary, the weight of the evidence shows that, in addition to [REDACTED] and [REDACTED], the documents also contain factual inaccuracies, inconsistencies, and list a [REDACTED] when the documents were purportedly created.²⁰²

80. Similarly, **ARIDO** seeks to undermine the reliability of D-2's statement on the basis that *"it is obvious that D-2 thought that Mr. Arido went to France as a result of his association with the Bemba Defence team, and felt that it was unfair"*,²⁰³ and *"D-2 probably perceived [a] lack of support from Mr. Arido"*.²⁰⁴ There is nothing in the witnesses' statements to support such conjecture.

d. **KILOLO's and MANGENDA's allegations of prosecutorial misconduct are specious**

81. **MANGENDA** and **KILOLO** repeat their previous allegations of misconduct against the Prosecution, which they claim corrupted, threatened, and intimidated witnesses.²⁰⁵ **MANGENDA**'s only support for his allegations is his own filing.²⁰⁶ Both he and **KILOLO** further refer to **KILOLO**'s undisposed-of complaint lodged before the Presidency.²⁰⁷ Similar allegations were also made before the Appeals Chamber,²⁰⁸ to which the Prosecution responded.²⁰⁹

²⁰¹ ICC-01/05-01/13-598-Conf, para. 164.

²⁰² ICC-01/05-01/13-597-Conf-AnxB, paras 58-59, 65.

²⁰³ ICC-01/05-01/13-598-Conf, para. 251.

²⁰⁴ ICC-01/05-01/13-598-Conf, para. 253.

²⁰⁵ See ICC-01/05-01/13-594-Conf-Corr, paras 5, 6, 9, 49, 57, 106 (**MANGENDA**); ICC-01/05-01/13-600-Conf-Corr2, paras 88-89 (**KILOLO**).

²⁰⁶ ICC-01/05-01/13-250-Conf.

²⁰⁷ ICC-01/05-01/13-450-Conf.

²⁰⁸ ICC-01/05-01/13-233-Conf; ICC-01/05-01/13-449-Conf.

²⁰⁹ ICC-01/05-01/13-314-Conf; ICC-01/05-01/13-481-Conf-Exp (available to the Kilolo Defence only).

82. These allegations are specious, and manifestly irrelevant to the sufficiency of the evidence before this Chamber. However, to the extent the Chamber may consider them relevant the Prosecution incorporates its previous submissions into this Response.²¹⁰ The Prosecution will also fully address the complaint before the Presidency in short order. Insofar as it may assist the Chamber, the Prosecution reserves its right to respond.

e. BEMBA's submissions are incapable of belief

i. *BEMBA instructed or authorised illicit witness coaching*

83. **BEMBA** makes a number of general assertions which are directly contradicted by the evidence referred to in the Prosecution's confirmation submission. For example, he incorrectly suggests that no conversation between **KILOLO** and **MANGENDA** shows that **BEMBA** "*instructed them to tell a witness to lie or to present forged evidence*".²¹¹ This is directly rebutted by the 30 August 2013 conversation at 13:29, in which **MANGENDA** told **KILOLO** that **BEMBA**: (i) "*insiste vraiment, qu'il ne faut pas qu'il [D-54] oublie cela*";²¹² (ii) said "*qu'il [D-54] n'oublie pas de mentionner les deux grands véhicules qu'ils avaient vus, comme ils étaient cités dans les cas de ces gens-là que tu connais*";²¹³ and (iii) "*a dit ceci, à sa connaissance il faut qu'il [D-54] déclare qu'un message était venu de [REDACTED]*".²¹⁴ There is no evidence to suggest that **MANGENDA** and **KILOLO** ever deceived each other when in conversation with one another; they had no reason to lie about the provenance of the instructions.

²¹⁰ The Prosecution has sought leave from the Appeals Chamber to make its filing ICC-01/05-01/13-481-Conf-Exp before the Appeals Chamber classified as *ex parte* available to the other Defence teams. See ICC-01/05-01/13-644-Conf OA.

²¹¹ ICC-01/05-01/13-599-Conf, para. 49.

²¹² CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0134, ln. 52 (Translation).

²¹³ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0134, lns 54-55 (Translation).

²¹⁴ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0135, lns 80-82 (Translation).

84. **BEMBA**'s flawed analysis of the evidence underlying the allegations in the DCC is further exemplified by his characterisation of a conversation between **KILOLO** and **MANGENDA** on 29 August 2013 at 13:29, in which **KILOLO** described the illicit coaching of a witness. **BEMBA** suggests that the conversation in question does not refer to **BEMBA** or to the witness D-54, as alleged by the Prosecution.²¹⁵ However, the conversation fully substantiates the Prosecution's submission.

85. For example, **MANGENDA** tells **KILOLO** "[l]à c'est par rapport à [REDACTED]",²¹⁶ with **KILOLO** responding "[REDACTED]".²¹⁷ As noted, the code '[REDACTED]' was used by the co-perpetrators to refer to [REDACTED], D-54.²¹⁸ **MANGENDA** tells **KILOLO** that the instructions to be given to D-54 are from "*notre frère*",²¹⁹ a term used by the co-perpetrators when referring to **BEMBA**. It is further demonstrated by the detailed instructions tailored to reduce elements of **BEMBA**'s liability.²²⁰

86. Further, **BEMBA**'s suggestion that the instructions for D-54 "*a maintenant donné la précision par rapport à le 26*"²²¹ is speculative as to whether it relates to 26 October 2002,²²² again ignores the context of the conversation. First, "*a maintenant donné la précision par rapport à le 26*" is immediately followed by "*il faut qu'il [D-54] déclare qu'un message était venu de [REDACTED]*". Second, the instructions to D-54 refer to the salient points of the conflict which **BEMBA** wanted the witness to testify to, and 26 October 2002 was a key date for the Defence case theory.²²³

²¹⁵ ICC-01/05-01/13-599-Conf, para. 70.

²¹⁶ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0133, ln. 17 (Translation).

²¹⁷ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0133, ln. 20 (Translation).

²¹⁸ ICC-01/05-01/13-597-Conf-AnxB, para. 93.

²¹⁹ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0134, ln. 35, and 0137, ln. 168 (Translation).

²²⁰ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0134-0137.

²²¹ CAR-OTP-0074-0995 (Audio); CAR-OTP-0079-0131 at 0135, lns 80-82 (Translation), see also at 0133-140.

²²² ICC-01/05-01/13-599-Conf, para. 70.

²²³ ICC-01/05-01/13-597-Conf-AnxB, paras 115-117, 121-127.

87. Similarly, **BEMBA**'s suggestion that the Prosecution misinterprets an intercepted conversation between **KILOLO** and **BEMBA** regarding the illicit coaching of D-15 avoids the context in which it occurred.²²⁴ The 12 September 2013 conversation at 07:58, involves **KILOLO** telling **BEMBA** of the three specific questions that **KILOLO** has practiced with D-15 in preparation for the witness's testimony that day.²²⁵ Intercepted conversations on 10 September and 11 September show **KILOLO** illicitly coaching D-15, and updating **MANGENDA** on his (**KILOLO**'s) instructions to D-15.²²⁶ Consequently, **BEMBA**'s suggestion that the conversation of 12 September 2013 at 07:58 appears to show **BEMBA** "instructing **KILOLO** on how to conduct his examination in Court",²²⁷ is inaccurate and a transparent attempt to obfuscate **BEMBA**'s involvement in illicit witness coaching.

ii. ***BEMBA** instructed or authorised payments to witnesses*

88. In addition, **BEMBA**'s analysis of the evidence is deeply flawed. Though alleged to be an "*analytical approach*",²²⁸ **BEMBA** assesses individual statements from the DCC or single transcripts in a vacuum, systematically isolating evidence from the context in which it appears. In several instances, **BEMBA** takes isolated transcripts and suggests that while their content demonstrates the transfer of money to co-perpetrators or witnesses, they present no evidence suggesting that the transfers were not legitimate.²²⁹ **BEMBA**'s analysis is flawed. The Prosecution's submission describes **BEMBA** instructing and authorising payments to other co-perpetrators, who in turn paid witnesses in exchange for false testimony.²³⁰ It is not necessary to demonstrate that each and every payment made by **BEMBA** directly resulted in the

²²⁴ ICC-01/05-01/13-599-Conf, para. 74.

²²⁵ ICC-01/05-01/13-599-Conf, para. 108.

²²⁶ ICC-01/05-01/13-599-Conf, para. 107.

²²⁷ ICC-01/05-01/13-599-Conf, para. 74.

²²⁸ ICC-01/05-01/13-599-Conf, para. 63.

²²⁹ ICC-01/05-01/13-599-Conf, paras 95, 99, 100, 101, 103, 104, 112, 113.

²³⁰ ICC-01/05-01/13-597-Conf-AnxB, paras 29-37.

illicit payment of witnesses. **BEMBA**'s attempted justification of isolated instances is inapposite.

iii. ***BEMBA** directed the 'tour d'horizon'*

89. **BEMBA** also mischaracterises the '*tour d'horizon*'. At paragraph 56 of his submission, **BEMBA** accepts that the "*faux scenario*" described by the Independent Counsel "*has a solid basis in the transcripts*". The evidence shows that the '*tour d'horizon*' arose from information **MANGENDA** received on 11 October 2013 alerting him to the existence of the Article 70 investigation, that he shared with **KILOLO**: "*il y a des rumeurs qui circulent [...] Que nous [KILOLO and MANGENDA] [...] nous sommes en train de donner des livres [money] à nos gens qui viennent*".²³¹ On 16 October, **KILOLO** described to **MANGENDA** **BEMBA**'s instruction "*que je [KILOLO] fasse le tour d'horizon*".²³² **KILOLO** explained "*Que j'appelle toutes ces personnes l'une après l'autre, cette même nuit*".²³³ At paragraph 92 of his submission, **BEMBA** "*does not deny that he authorized, or even 'orchestrated' the transfer of monies*" to fund **KILOLO**'s mission to contact Defence witnesses who had spoken to the Prosecution.

90. **BEMBA**'s claim not to have authorised bribing witnesses in the context of the '*tour d'horizon*' is contradicted by evidence showing him approving payments to people he believed to be Defence witnesses to buy their silence regarding the Common Plan. For example, he told **KILOLO** on 19 October at 20:24 that he (**BEMBA**) would give such witnesses a maximum of 15,000.²³⁴ **BABALA** then facilitated the transfer of this money to **KILOLO**.²³⁵

²³¹ ICC-01/05-01/13-597-Conf-AnxB, para. 235.

²³² CAR-OTP-0074-1032 (Audio); CAR-OTP-0079-1762 at 1764, ln. 19 (Translation).

²³³ CAR-OTP-0074-1032 (Audio); CAR-OTP-0079-1762 at 1764, lns 19-20 (Translation).

²³⁴ ICC-01/05-01/13-597-Conf-AnxB, paras 235-245.

²³⁵ ICC-01/05-01/13-597-Conf-AnxB, paras 239, 243.

91. Although **BEMBA** admits his approval of the ‘*tour d’horizon*’,²³⁶ he deliberately conflates it with another instance of potential witness bribery – **KILOLO**’s allegation that the Prosecution had corrupted witnesses.²³⁷ In a 10 November 2013 conversation at 19:04 regarding this separate scheme, which **BEMBA** does not dispute refers to him,²³⁸ **MANGENDA** tells **KILOLO**: “*j’en ai parlé avec notre frère [BEMBA] [...] Je lui ai expliqué que LES LIVRES [money], que nous sommes en train de faire pour qu’ils aient un impact très important. Il faut qu’on arrive jusqu’à ce niveau-là de sorte que...nous puissions déjà rencontrer ces gens, maintenant c’est une bonne opportunité*”.²³⁹ In addition to mischaracterising the ‘*tour d’horizon*’, **BEMBA**’s suggestion that, in a 21 October 2013 conversation, **KILOLO** informs **BEMBA** of relocating witnesses to “*prevent further prosecutorial misconduct*” is totally unsupported by the evidence cited.²⁴⁰

92. Therefore, **BEMBA**’s claim to have “*blindly consented to [KILOLO and MANGENDA’s] demands for payment while believing that the monies that they requested were destined for legitimate purpose*”²⁴¹ is demonstrably false.²⁴²

iv. The Independent Counsel’s reports

93. **BEMBA**’s treatment of the Independent Counsel’s reports demonstrates his selective approach to the evidence. For example, **BEMBA** relies on the Independent Counsel’s summary of intercepted conversations as they relate to the opportunistic attempts by **KILOLO** and **MANGENDA** to scam money from **BEMBA**.²⁴³ Yet, **BEMBA** asserts that the Independent Counsel held a “*partisan attitude*”,²⁴⁴ based only on **BEMBA**’s disagreement with the Independent Counsel’s interpretation of a 1

²³⁶ ICC-01/05-01/13-599-Conf, para. 127.

²³⁷ ICC-01/05-01/13-599-Conf, para. 127.

²³⁸ ICC-01/05-01/13-599-Conf, para. 140.

²³⁹ CAR-OTP-0080-1419 (Audio); CAR-OTP-0082-1140 at 1143, lns 41-45.

²⁴⁰ ICC-01/05-01/13-599-Conf, para. 129.

²⁴¹ ICC-01/05-01/13-599-Conf, para. 53; see also para. 55.

²⁴² ICC-01/05-01/13-597-Conf-AnxB, paras 29-37.

²⁴³ ICC-01/05-01/13-599-Conf, paras 53, 92, 125.

²⁴⁴ ICC-01/05-01/13-599-Conf, para. 132.

November 2013 conversation.²⁴⁵ In that conversation, **KILOLO** told **BEMBA** “*si, si en fait, c’est qui ça qui m’a beaucoup épuisé. La personne que vous connaissez*”, in response to **BEMBA**’s question about **KILOLO** having missed **BEMBA**’s call the previous day.²⁴⁶ Contrary to **BEMBA**’s assertion, the context demonstrates that **KILOLO**’s fatigue was the result of his efforts to illicitly coach D-54. Intercepted conversations from 31 October show six calls between **KILOLO** and D-54 on the night of his second day of testimony, totalling more than two hours, the last of which took place at 23:09.²⁴⁷

v. BEMBA knew and intended the presentation of the false or forged documents

94. Contrary to **BEMBA**’s erroneous assertion, the evidence demonstrates his knowledge of the false or forged nature of the documents presented in his defence.²⁴⁸ In a 24 October 2013 conversation at 18:02, **MANGENDA** and **KILOLO** discussed the potential damage [REDACTED] regarding the authenticity of the documents.²⁴⁹ Subsequently, **KILOLO** and **MANGENDA** had a number of conversations in which they discussed the repercussions of the falsity of the documents being revealed to the Court, and possible scenarios [REDACTED].²⁵⁰ In a conversation on 7 November 2013 at 15:57, **MANGENDA** told **KILOLO** of an earlier conversation he had with **BEMBA**: “*nous [MANGENDA and BEMBA] avons parlé aujourd’hui au téléphone [...] Nous avons parlé et je lui ai déjà expliqué...euh...le but de...de ce que j’ai l’habitude d’évoquer avec toi; moi, [MANGENDA and KILOLO] quel est le but de ces histoires*”.²⁵¹ **MANGENDA** also confirmed that he spoke to **BEMBA** about the possibility of [REDACTED].²⁵² **BEMBA** was clearly kept up to date and was involved – as with the illicit coaching

²⁴⁵ ICC-01/05-01/13-599-Conf, paras 133-134.

²⁴⁶ CAR-OTP-0080-1372 (Audio); CAR-OTP-0082-0669 at 0671, lns 14-16 (Translation).

²⁴⁷ CAR-OTP-0080-1138 at 1234-1243.

²⁴⁸ ICC-01/05-01/13-599-Conf, paras 88-90.

²⁴⁹ ICC-01/05-01/13-597-Conf-AnxB, para. 246.

²⁵⁰ ICC-01/05-01/13-597-Conf-AnxB, paras 247-251.

²⁵¹ ICC-01/05-01/13-597-Conf-AnxB, para. 252.

²⁵² ICC-01/05-01/13-597-Conf-AnxB, para. 252.

and bribing of witnesses²⁵³ – with developments regarding the false/forged documents and the continued reliance thereon.²⁵⁴ Moreover, **KILOLO** states in his written submission that **BEMBA** was consulted and consented to the tendering of the documents into evidence,²⁵⁵ further demonstrating **BEMBA**'s involvement in the decision to use the documents.

f. **KILOLO**'s submissions are incapable of belief

95. In an unsuccessful attempt to rebut the charges, **KILOLO** seeks to explain away the evidence concerning all 14 witnesses.²⁵⁶ The Prosecution's confirmation submission details extensively the specific instances underlying the charges and modes of liability. Consequently, the Prosecution will only address instances exemplary of the distortions and misrepresentations contained in **KILOLO**'s submission.

i. *D-15 – [REDACTED]*

96. **KILOLO**'s submission relies on demonstrably false evidence. For example, **KILOLO** relies on D-15's 13 April 2014 statement to the Kilolo Defence, in which D-15 affirms that he and **KILOLO** were in contact only three times, the last time being in December 2012 or January 2013.²⁵⁷ This reiterates the same lie D-15 told when testifying. The intercepted communications indisputably show that **KILOLO** directed D-15 to testify falsely that the two communicated by phone only three times,²⁵⁸ the last being in January 2013.²⁵⁹ D-15 complied with this direction

²⁵³ ICC-01/05-01/13-597-Conf-AnxB, paras 29-37, 40-49.

²⁵⁴ See ICC-01/05-01/13-597-Conf-AnxB, paras 314-315.

²⁵⁵ ICC-01/05-01/13-600-Conf-Corr2, paras 133, 535.

²⁵⁶ ICC-01/05-01/13-600-Conf-Corr2, paras 177-471.

²⁵⁷ CAR-D21-0004-0102 at 0111-0112, lns 305-345. The first contact is mentioned at lns 305-308; the second one at lns 330-334; the third one at lns 335-337. The statement is cited by **KILOLO** in his submissions: ICC-01/05-01/13-600, para. 185, fn. 301.

²⁵⁸ CAR-OTP-0074-1002 (Audio); CAR-OTP-0079-0148 at 0150, lns 26-34 (Translation).

²⁵⁹ CAR-OTP-0074-1002 (Audio); CAR-OTP-0079-0148 at 0152, lns 86-90 (Translation).

precisely.²⁶⁰ The evidence further shows that the two in fact had communicated at least 26 times between May and September 2013.²⁶¹

97. **KILOLO** argues that D-15 was not influenced to reduce the element of **BEMBA**'s knowledge of the crimes committed by the ALC when testifying, and actually highlighted **BEMBA**'s knowledge in this respect.²⁶² During cross-examination, on 12 September 2013 (before the morning break), D-15 indeed testified that **BEMBA** was aware of the crimes committed by the ALC soldiers.²⁶³ However, that evening, 12 September 2013 at 20:59, **KILOLO** illicitly coached D-15 to provide answers to "*réduire l'élément 'connaissance' [de BEMBA]*".²⁶⁴ Regarding alleged MLC crimes, **KILOLO** instructed D-15 to falsely testify that "*il y avait aucune information précise... c'était des simples rumeurs*".²⁶⁵

98. In another instance, **KILOLO** attempts to explain why D-15 provided false testimony in respect of their contacts, namely that he was afraid of reprisals by the [REDACTED].²⁶⁶ If this were so, D-15's concerns could have been dealt with on an *ex parte* basis with the Chamber. This did not happen because **KILOLO**'s explanation is not true. The reference to [REDACTED]²⁶⁷ is misleading: [REDACTED] was not

²⁶⁰ ICC-01/05-01/08-T-345-CONF-ENG ET, p. 10, lns 1-5; ICC-01/05-01/08-T-345-CONF-FRA ET, p. 9, lns 11-17; ICC-01/05-01/08-T-345-CONF-ENG ET, p. 5, lns 8-20, p. 9, lns 5-17; 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. 1; ICC-01/05-01/08-T-345-CONF-ENG ET, p. 10, lns 1-2; ICC-01/05-01/08-T-345-CONF-FRA ET, p. 9, lns 11-13; See also CAR-OTP-0079-0148 at 0152, lns 88-89.

²⁶¹ CAR-OTP-0072-0391, rows 1297, 1337, 1341, 1491, 1493, 1494, 1495, 1492, 33988, 34009, 35303, 35304, 35419, 38092, 43660, 43661, 43663 45224, 45228, 45999, 46001, 46002, 46004, 46005; CAR-OTP-0072-0427 rows 56, 459, 643, 708, 709, 717. D-15's telephone numbers were [REDACTED] (CAR-OTP-0072-0116 at 0116; CAR-OTP-0077-0942 at 0943) and [REDACTED] (CAR-OTP-0070-0005, tab 40 [REDACTED], Column E) and [REDACTED] (CAR-OTP-0074-0926 at 0941-0951); CAR-OTP-0072-0391, rows 43660, 43661, 43663, 45226, 45228, 45999, 46001, 46002, 46004, 46005; CAR-OTP-0072-0427 rows 459, 643, 708, 709, 717. D-15's telephone numbers were [REDACTED] (CAR-OTP-0072-0116 at 0116; CAR-OTP-0077-0942 at 0943) and [REDACTED] (CAR-OTP-0070-0005, tab 40 [REDACTED], Column E).

²⁶² ICC-01/05-01/13-600-Conf-Corr2, para. 186.

²⁶³ ICC-01/05-01/08-T-344-CONF-FRA ET, 12-09-2013, p. 25, lns 10-15 [the morning break is announced at p. 27, lns 15-17]

²⁶⁴ CAR-OTP-0074-1008 (Audio); CAR-OTP-0077-1389 at 1397, ln. 269 (Transcript)

²⁶⁵ CAR-OTP-0074-1008 (Audio); CAR-OTP-0077-1389 at 1396, lns 214-238 (Transcript).

²⁶⁶ ICC-01/05-01/13-600-Conf-Corr2, paras 188, 577.

²⁶⁷ ICC-01/05-01/13-600, para. 188.

present in court during D-15's testimony.²⁶⁸ **KILOLO**'s submission ignores that the intercepted communications show that **KILOLO** instructed D-15 to testify falsely about his contact with the *Bemba* Defence.²⁶⁹

ii. D-54 – [REDACTED]

99. In respect of D-54, **KILOLO** asserts that his 19 October 2013 conversation with **MANGENDA** at 12:36, which refers to "*ce monsieur qui doit venir*",²⁷⁰ does not concern D-54.²⁷¹ However, this is contradicted by the context of the conversation,²⁷² as well as a conversation later that day in which **KILOLO** tells **MANGENDA**: "*il faut que ça se fasse cette semaine parce que la semaine prochaine ... je ... je crois que nous serons avec [REDACTED], Parce que je viens de parler avec lui*".²⁷³

100. **KILOLO**'s claim that D-54 never received money from the *Bemba* Defence²⁷⁴ is contradicted by the same 19 October 2013 conversation, in which **KILOLO** discussed with **MANGENDA** the payments to be given to D-54 in advance of his testimony.²⁷⁵ Moreover, the explanation ignores the substance of a later conversation with the witness on 30 October 2013. There, **KILOLO** explicitly instructed D-54: "*alors on va vous demander, est-ce que vous n'avez pas perçu de l'argent ? Est-ce que vous n'avez pas reçu de promesse, selon laquelle si vous parlez correctement demain ils vont... euh... que s'il*

²⁶⁸ See ICC-01/05-01/08-T-343-CONF-ENG ET, 11 September 2013, ICC-01/05-01/08-T-343-CONF-FRA ET, 11 September 2013; ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, ICC-01/05-01/08-T-344-CONF-FRA ET, 12 September 2013; ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, ICC-01/05-01/08-T-345-CONF-FRA ET, 13 September 2013.

²⁶⁹ CAR-OTP-0074-1002 (Audio); CAR-OTP-0079-0148 at 0150, lns 26-34 and at 0152, lns 86-90 (Translation).

²⁷⁰ CAR-OTP-0082-1349 at 1352, ln. 54.

²⁷¹ ICC-01/05-01/13-600, para. 192.

²⁷² E.g., the reference to '*il faut l'appeler, obligatoirement il faut que je lui donne un certain montant de 5 maintenant et avant son arrivé, le reste sera environ 3-4, il aura l'autre*' and to '*son histoire...nos blancs ne l'entendent plus*' CAR-OTP-0080-1416 (audio) and CAR-OTP-0082-1349 at 1352 and 1353, lns 54-76.

²⁷³ CAR-OTP-0080-1329 (Audio); CAR-OTP-0082-0814 at 0818, lns 81-83.

²⁷⁴ ICC-01/05-01/13-600-Conf-Corr2, para. 192.

²⁷⁵ CAR-OTP-0080-1416 (Audio); CAR-OTP-0082-1349 at 1352, lns 54-70 (Translation). D-15 finished his testimony on 13 September 2013. The next witness was D-54, who started his testimony on 30 October 2013. On 19 October 2013, **KILOLO** asks **MANGENDA** what is the agreed sum for the "*monsieur qui doit venir*" (ln. 54), reminding **MANGENDA** that he must give him a certain amount '*avant son arrivée*' (ln. 64).

*sort et qu'il a une fonction, il va vous mettre peut-être à un poste privilégié ? Donc ça il ne faut jamais l'accepter".*²⁷⁶

101. **KILOLO** suggests that D-54's 'correct' testimony denying [REDACTED] demonstrates that **KILOLO** did not influence the witness.²⁷⁷ However, **KILOLO** omits that D-54 testified to being an "[REDACTED]",²⁷⁸ and that in an intercepted conversation on 1 September 2013 at 13:47, **KILOLO** told **MANGENDA**: "[j]e vais essayer encore de le convaincre [D-54] [...] pour voir s'il peut accepter d'être le [...] [REDACTED]".²⁷⁹

102. **KILOLO**'s and **MANGENDA**'s insistence on the fact that conversations with D-54 took place one or two months before his testimony²⁸⁰ is inapposite: the Defence in the *Bemba* case originally proposed that D-54 testify "from 24 September [2013]".²⁸¹ The illicit coaching of D-54 in September 2013 was thus undertaken in view of his then imminent testimony.²⁸²

103. Further, in respect of the date that D-54 moved from the [REDACTED] to [REDACTED], **KILOLO** claims that D-54 did not testify falsely.²⁸³ Again, **KILOLO**'s submission disregards evidence showing that **KILOLO** and **MANGENDA** discussed at length which of the different possible entry-days D-54 should testify to, particularly taking into account the testimony of other Defence witnesses.²⁸⁴

²⁷⁶ CAR-OTP-0080-1364 (Audio), CAR-OTP-0082-0877 at 0893, lns 592-596 (Translation) (emphasis added).

²⁷⁷ ICC-01/05-01/13-600-Conf-Corr2, paras 197-198.

²⁷⁸ ICC-01/05-01/08-T-348-CONF-FRA ET, p. 36, line 15 and p. 40, lns 9-10.

²⁷⁹ CAR-OTP-0074-0999 (Audio); CAR-OTP-0077-1383 at 1385-1387, lns 69-113 (Transcript).

²⁸⁰ ICC-01/05-01/13-600-Conf-Corr2, paras 194, 196; ICC-01/05-01/13-594-Conf-Corr, para. 74.

²⁸¹ ICC-01/05-01/08-2796, para. 2.

²⁸² ICC-01/05-01/08-2796, para. 2.

²⁸³ ICC-01/05-01/13-600-Conf-Corr2, para. 201.

²⁸⁴ CAR-OTP-0074-1001 (Audio); CAR-OTP-0079-1737 at 1739-1741, lns 41-91 (Translation).

iii. D-26 – [REDACTED]

104. **KILOLO** claims that D-26 was not illegally coached and did not testify falsely, referring in particular to D-26's testimony on the composition of the *État-major* of the Bozizé rebels.²⁸⁵ According to **KILOLO**,²⁸⁶ this assertion is supported by D-26's recent declaration signed on 18 April 2014.²⁸⁷

105. **KILOLO** further argues that the 20 August 2013 conversation he had with D-26 was intended to recap information that the witness had provided in his 2012 statement and was not to provide D-26 a different version of the facts.²⁸⁸

106. **KILOLO** does not address that this intercepted conversation as well as other calls he made to D-26 occurred after the VWU's 16 August 2013 cut-off date.²⁸⁹ Moreover, and contrary to **KILOLO**'s assertion, the content of D-26's 2012 statement is different from his court testimony – which follows the scripted answers provided to D-26 by **KILOLO**. This illicitly coached testimony is also consistent with D-23's version of the events. For example, in his 2012 statement, D-26 does not speak of the *État-major* but mentions that SANGBATÉ led the troops,²⁹⁰ that MBAYI was BOZIZÉ's spokesman,²⁹¹ and that both François and Francis BOZIZÉ gave orders to attack civilians.²⁹² Yet, in court, when asked by **KILOLO** the composition of the *État-major*, D-26 provided the answers rehearsed with **KILOLO**.²⁹³ In addition, D-26's testimony regarding his movements during the uprising,²⁹⁴ the date he left Bangui,²⁹⁵

²⁸⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 204.

²⁸⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 204, fn. 315.

²⁸⁷ CAR-D21-0004-0184 at 0184-0185.

²⁸⁸ ICC-01/05-01/13-600-Conf-Corr2, para. 209.

²⁸⁹ ICC-01/05-01/13-207-Conf-Anx, p.6.

²⁹⁰ CAR-D21-0004-0546 at 0550.

²⁹¹ CAR-D21-0004-0546 at 0555.

²⁹² CAR-D21-0004-0546 at 0570.

²⁹³ (D-26): ICC-01/05-01/08-T-332-CONF-FRA, pp.72-74, lns 17-27; ICC-01/05-01/08-T-332-CONF-ENG, pp. 66-68, lns 4-8; (D-23): ICC-01/05-01/08-T-332-CONF-FRA, pp. 30-32, lns 5-5; ICC-01/05-01/08-T-332-CONF-ENG, p. 28-30, lns 6-1; see CAR-OTP-0077-1356 at 1358; CAR-OTP-0077-1359 at 1360.

²⁹⁴ ICC-01/05-01/08-T-332-CONF-FRA, pp. 86-87, lns 19-87, ln. 2; ICC-01/05-01/08-T-332-CONF-ENG, pp. 79, lns 5-14.

the crimes he witnessed,²⁹⁶ and the number of soldiers deployed,²⁹⁷ varies greatly from his 2012 statement.²⁹⁸ His in-court testimony in this regard is consistent with **KILOLO**'s illicitly coached instructions.²⁹⁹

iv. D-3 – [REDACTED]

107. **KILOLO** suggests that there is no reference to D-3 having been asked to lie by **KILOLO** about contacts with the Defence or monies received.³⁰⁰ However, **KILOLO** ignores D-3's statement, in which he states that **KILOLO** contacted him by phone after the VWU cut-off date and that **KILOLO** gave him money in exchange for false testimony.³⁰¹ The trial record shows that D-3 lied about these issues when testifying.³⁰²

108. **KILOLO** further claims that all of D-3's statements show his (**KILOLO**'s) lack of awareness that D-3 was lying about his military background.³⁰³ This is irrelevant. Although **KILOLO** may have been unaware of **ARIDO**'s illicit witness coaching, D-3 confirms that **KILOLO** coached him as well. **KILOLO** instructed him to testify, *inter alia*, that the MLC entered Bangui on 30 October 2002 and to "*prétendre*" that D-3 participated in the looting of Bangui in November.³⁰⁴ D-3 then testified falsely as instructed.³⁰⁵

²⁹⁵ ICC-01/05-01/08-T-332-CONF-FRA, pp. 88-89, lns 16-5; ICC-01/05-01/08-T-332-CONF-ENG, pp. 80-81, lns 23-8.

²⁹⁶ ICC-01/05-01/08-T-332-CONF-FRA, p.87, lns 3-12, pp. 88-89, lns 1 -24, p.90, lns 4-10; pp. 90-91, lns 21-2; ICC-01/05-01/08-T-332-CONF-ENG, p.79, lns 15-23; pp. 80- 82, lns 12-3; p. 82, lns 10-15; pp. 82-83, lns 24-9; ICC-01/05-01/08-T-333-CONF-FRA, pp. 69-71, lns 7-5; ICC-01/05-01/08-T-332-CONF-ENG, pp. 61-63, lns 24-10.

²⁹⁷ ICC-01/05-01/08-T-332-CONF-FRA ET, 20 August 2013, p. 19, lns 2-8; ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p. 18, lns 13-18; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 August 2013, p. 19, lns 2-8.

²⁹⁸ CAR-D21-0004-0546 at 0559-0569.

²⁹⁹ CAR-OTP-0077-1359 at 1360-1362, lns 33-81; CAR-OTP-0077-1356 at 1357-1358, lns 18-19, ln. 35.

³⁰⁰ ICC-01/05-01/13-600-Conf-Corr2, para. 583.

³⁰¹ ICC-01/05-01/13-597-Conf-AnxB, paras 149, 151.

³⁰² ICC-01/05-01/13-597-Conf-AnxB, paras 149-155.

³⁰³ ICC-01/05-01/13-600-Conf-Corr2, para. 583.

³⁰⁴ ICC-01/05-01/13-597-Conf-AnxB, para. 150.

³⁰⁵ ICC-01/05-01/13-597-Conf-AnxB, para. 152.

v. D-2 – [REDACTED]

109. Though admitting his knowledge that D-2 falsely testified “*sur plusieurs questions*”, **KILOLO** suggests that he did not know that D-2 lied about his military background.³⁰⁶ Again, in addition to **ARIDO**’s illicit coaching, **KILOLO** illicitly coached D-2, *inter alia*, on key military issues in the *Bemba* case, including: 29 October 2002 being the date of the arrival of MLC troops; that Bozizé fighters attacked Bangui from 25 to 30 October 2002; that FACA and MLC collaborated; and identifying specific locations as places of combat.³⁰⁷ D-2 then testified falsely according to **KILOLO**’s instructions.³⁰⁸

110. In light of such evidence, and given that D-2 was part of the group of prospective witnesses **ARIDO** put in contact with **KILOLO** and **MANGENDA** for the purposes of falsely testifying as former soldiers,³⁰⁹ **KILOLO**’s denials are transparently false.

vi. D-4 – [REDACTED]

111. Similarly, contrary to **KILOLO**’s denial of involvement in illicitly coaching D-4 regarding his knowing **ARIDO** or military status,³¹⁰ the evidence demonstrates that D-4 was part of the group of prospective witnesses organised by **ARIDO** – including D-2, D-3, D-6, and D-9 – whose false testimonies were prepared in a meeting with **KILOLO** and **MANGENDA** in Yaoundé in or around May 2013.³¹¹ Like D-2, D-4 made notes of the instructions received from **KILOLO** regarding key military issues

³⁰⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 586.

³⁰⁷ ICC-01/05-01/13-597-Conf-AnxB, para. 167.

³⁰⁸ ICC-01/05-01/13-597-Conf-AnxB, para. 169.

³⁰⁹ ICC-01/05-01/13-600-Conf-Corr2, paras 158-170.

³¹⁰ ICC-01/05-01/13-600-Conf-Corr2, para. 588.

³¹¹ ICC-01/05-01/13-597-Conf-AnxB, para. 175.

pertinent to the Defence case.³¹² **KILOLO** promised D-4 money in exchange for his false testimony that he had a military background,³¹³ which he later paid.³¹⁴

vii. D-29 – [REDACTED]

112. **KILOLO** asserts that the Prosecution did not establish that **KILOLO** solicited D-29 to lie about his contacts with the Defence.³¹⁵ **KILOLO** ignores, however, the evidence showing: his extensive contact with D-29 prior to testifying, including on the morning of D-29's testimony;³¹⁶ **KILOLO** telling **MANGENDA** before D-29 testified to update **BEMBA** on **KILOLO**'s illicit coaching of D-29;³¹⁷ **MANGENDA** updating **KILOLO** on D-29's testimony, saying: "*il [D-29] lui a donné aussi les mêmes réponses en suivant les mêmes voies comme tu l'avais indiqué*", further demonstrating **KILOLO**'s illicit coaching;³¹⁸ and when D-29 failed to follow the script, **MANGENDA** telling **KILOLO** that D-29 had "*vraiment déconné*" and that co-counsel must be satisfied that "*il y a un témoin qui dit la vérité*".³¹⁹ Therefore, contrary to **KILOLO**'s narrow focus on D-29's testimony regarding contacts with the Defence, it is clear that **KILOLO** illicitly coached D-29 as well as soliciting and presenting his false testimony – which the evidence shows D-29 was paid in exchange for.³²⁰

113. Further, during his testimony D-29 denied receiving any promises in exchange for his testimony,³²¹ despite one day previously receiving USD 649.43 from Jean-Paul MOKULA, allegedly for [REDACTED] travel from [REDACTED] to [REDACTED].³²² He also failed to mention in his testimony that during his meeting with **KILOLO** he

³¹² CAR-OTP-0080-0494 at 0515-0516, lns 786-805; see also ICC-01/05-01/13-597-Conf-AnxB, paras 175, 167.

³¹³ ICC-01/05-01/13-597-Conf-AnxB, paras 172, 175, 178.

³¹⁴ ICC-01/05-01/13-597-Conf-AnxB, para. 175.

³¹⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 589.

³¹⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 181.

³¹⁷ ICC-01/05-01/13-600-Conf-Corr2, para. 182.

³¹⁸ CAR-OTP-0074-0993 (Audio); CAR-OTP-0079-0122 at 0127, lns 130-131 (Translation).

³¹⁹ ICC-01/05-01/13-600-Conf-Corr2, paras 183-185.

³²⁰ ICC-01/05-01/13-600-Conf-Corr2, para. 180.

³²¹ ICC-01/05-01/13-597-Conf-AnxB, para. 186.

³²² ICC-01/05-01/13-600-Conf-Corr2, fn. 955.

was given CFA 5,000 for his transportation, as he asserts in his 18 April 2014 statement.³²³ A sum that **KILOLO** denies having given.³²⁴

viii. D-25 – [REDACTED]

114. With respect to the telephone conversation on 26 August 2013 at 14:14, wherein **KILOLO** enquired about the progress of D-25's false testimony,³²⁵ **KILOLO** suggests there is a translation/transcription error. **KILOLO** claims that he asked **MANGENDA** whether the witness "*a suivi les renseignements*" rather than the "*enseignements*", as currently transcribed.³²⁶ **MANGENDA** highlights the fallacy by admitting D-25 was given "[des] enseignements".³²⁷

115. Further, **KILOLO** contends that **MANGENDA**'s damaging statement "*ça peut paraître un peu suspect*" in the same conversation³²⁸ simply means that his testimony "*aurait paru douteux ou moins credible*".³²⁹ This is clearly not borne out by the immediate context: "*JJM : [...] Maintenant là ... euh ... on te pose la question A, mais toi, tu réponds jusqu'à Z. Ça démontre déjà ... euh ... ça peut paraître un peu suspect quoi*",³³⁰ or by its broader context of illicit coaching.

116. **KILOLO**'s attempt to minimise the importance of D-25's failure to testify about his meeting with military expert Jacques SEARA, D-53, misses the point.³³¹ The import of the conversation lies in **MANGENDA**'s statement, that "*je pense qu'on avait oublié de lui dire de lui rappeler par rapport avec sa rencontre avec SEARA*".³³² This is a

³²³ CAR-D21-0004-0581 at 0587, lns 208-219.

³²⁴ See ICC-01/05-01/13-600-Conf-Corr2, para. 761 and fn. 941.

³²⁵ ICC-01/05-01/13-597-Conf-AnxB, para. 188.

³²⁶ ICC-01/05-01/13-600-Conf-Corr2, para. 309. The transcript concerned refers to "*enseignements*", see CAR-OTP-0080-0228 at ln. 59.

³²⁷ ICC-01/05-01/13-594-Conf-Corr, para. 79.

³²⁸ CAR-OTP-0074-0991 (Audio); CAR-OTP-0080-0228 at 0232, ln. 96 (Translation).

³²⁹ ICC-01/05-01/13-600-Conf-Corr2, para. 312.

³³⁰ CAR-OTP-0080-0228 at 0232, lns 95-96 (Translation).

³³¹ ICC-01/05-01/13-600-Conf-Corr2, para. 317.

³³² CAR-OTP-0074-0992 (Audio); CAR-OTP-0079-0114 at 0119 to 0121, lns 136-137 (Translation).

damning admission that **MANGENDA** and/or **KILOLO** had spoken to D-25, but forgotten to “*rappeler*” this aspect of his intended testimony. Further on in the conversation, **KILOLO** expressed relief that D-25 had not revealed that **KILOLO**, D-25 and D-53 had met – “[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 ?”.³³³ **KILOLO** also expressed satisfaction that D-25 had followed his clear instruction not to engage in anything he and the witness had not discussed: “*je lui avais donné des instructions claires, c’est-à-dire que tout ce qui n’est pas clair, vraiment qu’il ne s’engage pas dans cette discussion-là*”.³³⁴

ix. D-57 – [REDACTED]

117. **KILOLO**’s self-serving explanation of the payments to D-57 – “*pour lui rembourser les frais*”³³⁵ – rings hollow in light of D-57’s statement. D-57 explained to Prosecution investigators that **KILOLO** asked [REDACTED] because he wanted to send “*un peu de choses aux enfants*”,³³⁶ and claimed **KILOLO** sent the money out of “*gentillesse*”.³³⁷ Notably, **KILOLO** makes no attempt to explain these statements.

118. Further, although **KILOLO** correctly points out that the Prosecution does not have “*le contenu de la communication téléphonique alléguée entre Me Aimé KILOLO et ce témoin*”,³³⁸ it is not required for the Chamber to find substantial grounds to believe. The significance of **KILOLO**’s and D-57’s 70 minute conversation two days before D-57 testified is its complete consistency with a pattern of recordings that the Prosecution *does* have, in relation to D-15, D-54, and D-26. Thus, after a significant payment, and a long phone call just before testifying, D-57 testified falsely about,

³³³ CAR-OTP-0074-0992 (Audio); CAR-OTP-0079-0114 at 0119 to 0121, lns 158-160 (Translation).

³³⁴ CAR-OTP-0074-0992 (Audio); CAR-OTP-0079-0114 at 0119 to 0121, lns 179-180 (Translation).

³³⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 326.

³³⁶ CAR-OTP-0074-0712 (Audio); CAR-OTP-0077-0088 at 0106, lns 627-637 (Transcript).

³³⁷ CAR-OTP-0074-0712 (Audio); CAR-OTP-0077-0088 at 0107, lns 643-645 (Transcript).

³³⁸ ICC-01/05-01/13-600-Conf-Corr2, para. 323.

among other things, not receiving any money from the *Bemba* Defence or from anyone acting on their behalf,³³⁹ and his prior contacts with **KILOLO**.³⁴⁰

x. D-64 – [REDACTED]

119. **KILOLO**'s payment and subsequent illicit coaching of D-64 follows a similar pattern to D-57, and to the other witnesses. Following a USD 700 payment³⁴¹ and a 48-minute phone call several days before his testimony (among other communications³⁴²),³⁴³ D-64 testified falsely about receiving any money from **BEMBA** or from anyone on his behalf, in relation to the case, *including for travel expenses*.³⁴⁴

120. If **KILOLO**'s explanation, that the USD 700 payment was to "*rembourser à ce témoin les frais*",³⁴⁵ was truthful, D-64 would not have denied that it occurred. The most logical explanation for the systematic denial by Defence witnesses of all payments is that they were illicitly coached to say so to cover up illicit payments. D-64's statement supports this inference. He states that [REDACTED] "*je vous envoie un peu d'argent pour que vous viviez [REDACTED]*" at the time of [REDACTED] testimony in The Hague.³⁴⁶

xi. D-55 – [REDACTED]

121. **KILOLO** alleges that "*rien n'est dit [in the DCC] sur l'éventualité que c'est bien M. Kilolo qui lui aurait demandé de mentir à ces sujets* [D-55's denial of his contact with the

³³⁹ ICC-01/05-01/08-T-258-CONF-ENG CT, 19 October 2012, p. 2, ln. 25-p. 3, ln. 10; ICC-01/05-01/08-T-258-CONF-FRA ET, 19 October 2012, p. 2, ln. 27-p. 3, ln. 12.

³⁴⁰ ICC-01/05-01/08-T-257-CONF-ENG ET, 18 October 2012, p. 20, ln. 18-p. 21, ln. 1, p. 22, ln. 11-p. 26, ln. 23, ICC-01/05-01/08-T-257-CONF-FRA ET, 18 October 2012, p. 22, ln. 3-13-p. 24, ln. 4-p. 28, ln. 22.

³⁴¹ See ICC-01/05-01/13-597-Conf-AnxB, para. 202.

³⁴² See ICC-01/05-01/13-597-Conf-AnxB, para. 199.

³⁴³ CAR-OTP-0072-0082, row 272.

³⁴⁴ ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012, p. 6, lns 14-23, ICC-01/05-01/08-T-260-CONF-FRA ET, 23 October 2012, p. 6, ln. 25-p. 7, ln. 6.

³⁴⁵ ICC-01/05-01/13-600-Conf-Corr2, para. 334.

³⁴⁶ CAR-OTP-0074-1169 at 1187, lns 629-633.

Defence and the payment of money from the Defence]”.³⁴⁷ This is plainly incorrect. **KILOLO** clearly instructed D-55 not to reveal either his contact with **BEMBA** or the fact that he was paid before the Court.³⁴⁸ **KILOLO** explained that payment for the travel expenses was done “à titre privé, ce qui suppose (dans les deux cas) qu’il ne devrait en aucun cas le révéler en public”.³⁴⁹ **KILOLO** told D-55 that the contact he had with **BEMBA** was also “quelque chose d’inhabituel et que cela ne devrait pas être révélé au public”.³⁵⁰ As directed by **KILOLO**, on 29 October 2012, D-55 falsely declared under oath that his last contact with the Defence was in September 2011, and failed to disclose his unmonitored telephone contact with **BEMBA**.³⁵¹ D-55 further falsely denied receiving any payment or reimbursement from the Defence.³⁵² In his statement, D-55 confirmed that “[il] a menti à la Cour conformément aux instructions de M^e Kilolo”.³⁵³ **KILOLO**’s responsibility in this is crystal clear.

xii. D-23 – [REDACTED]

122. **KILOLO**’s submission that the co-perpetrators could not have promised D-23 relocation in Europe in return for his testimony because: (i) D-23 testified via video-link; (ii) the Defence did not request relocation; and (iii) D-23 testified that he was not promised relocation³⁵⁴ is plainly illogical. These facts are not dispositive – least of all D-23’s testimony, which has proved to be false in other areas, including contact with the Defence during the course of his testimony and payments from the Defence.³⁵⁵

³⁴⁷ ICC-01/05-01/13-600-Conf-Corr2, para. 595.

³⁴⁸ CAR-OTP-0074-0872 at 0880.

³⁴⁹ CAR-OTP-0074-0872 at 0880.

³⁵⁰ CAR-OTP-0074-0872 at 0880.

³⁵¹ ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p. 66, lns 17-20; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 October 2012, p. 76, lns 3-9.

³⁵² ICC-01/05-01/08-T-265-CONF-ENG ET, 30 October 2012, p. 15, lns 1-12; ICC-01/05-01/08-T-265-CONF-FRA ET, 30 October 2012, p. 16, lns 6-19.

³⁵³ CAR-OTP-0074-0872 at 0881.

³⁵⁴ ICC-01/05-01/13-600-Conf-Corr2, paras 385-388.

³⁵⁵ See ICC-01/05-01/13-597-Conf-AnxB, paras 220-221.

123. In addition to a probative 20 June 2014 statement that bears out the Prosecution's allegations,³⁵⁶ promises of relocation made to D-23 in exchange for his false testimony are entirely consistent with D-2's and D-3's evidence that similar promises were made to D-2, D-3, D-4, D-6, D-7, and D-9³⁵⁷ in Douala in or around February 2012.³⁵⁸

xiii. D-6 – [REDACTED]

124. **KILOLO** focuses on D-6's having testified that he only received money from the *Bemba* Defence for transport expenses, suggesting that D-6 did not admit to being paid to testify falsely.³⁵⁹ **KILOLO** ignores evidence showing that D-6 was part of the group of witnesses he illicitly coached in Yaoundé in or around May 2013, and was directly instructed by **KILOLO** on key names and dates concerning military events in the CAR despite never having been a member of the CAR armed forces, as well as being paid for his false testimony.³⁶⁰

xiv. D-13 – [REDACTED]

125. In an intercepted conversation on 10 November 2013 at 19:04, two days prior to D-13's testimony, **KILOLO** states that he is in contact with the upcoming witness, D-13.³⁶¹ Four days later, on 14 November, D-13 falsely testified that his last telephone contact with **KILOLO** was several weeks prior to his testimony.³⁶² **KILOLO**'s knowledge of this false testimony and his subsequent failure to correct the record

³⁵⁶ CAR-OTP-0082-0460 at 0478, lns 606-621.

³⁵⁷ CAR-OTP-0080-0021 at 0030, lns 314-315 and 0035, lns 464-474; CAR-OTP-0080-0043 at 0067-0068, lns 870-936; CAR-OTP-0078-0218 at 0234, lns 551-553; CAR-OTP-0078-0264 at 0273.

³⁵⁸ See ICC-01/05-01/13-597-Conf-AnxB, para. 144.

³⁵⁹ ICC-01/05-01/13-600-Conf-Corr2, paras 591-592.

³⁶⁰ ICC-01/05-01/13-597-Conf-AnxB, paras 226-228.

³⁶¹ CAR-OTP-0080-1138 at 1262-1263; CAR-OTP-0080-1419 (Audio); CAR-OTP-0082-1140 at 1142, lns 6-20 (Translation).

³⁶² ICC-01/05-01/08-T-352-CONF-ENG ET, p. 35, lns 4-20, ICC-01/05-01/08-T-352-CONF-FRA ET, p. 31, ln. 28-p. 32, ln. 20.

demonstrates his intent. Again, although **KILOLO** claims that the Prosecution “*ne précise pas quelles instructions M^e Kilolo aurait données à ce témoin*”,³⁶³ the most reasonable inference, based on the weight of similar evidence for other witnesses, is that **KILOLO** was illicitly coaching D-13.

126. Further, in his submission **KILOLO** continues to rely on demonstrably false evidence. D-13’s 17 April 2014 statement falsely declares that his evidence in the *Bemba* case was not suborned.³⁶⁴

g. **MANGENDA’s submissions are incapable of belief**

i. ***MANGENDA did not have a merely functionary role in the Bemba Defence team***

127. **MANGENDA’s** claim, which underpins his submission, that he was a mere background figure following the instructions of his superiors,³⁶⁵ is totally refuted by the evidence. First, **MANGENDA’s** official title in the *Bemba* Defence team is irrelevant to the question of his personal responsibility for violations of Article 70. Second, the evidence relied upon by the Prosecution in support of confirmation demonstrably shows that **MANGENDA** played a key role in the implementation of the Common Plan.³⁶⁶

128. **MANGENDA’s** attempt to hide behind others to avoid personal responsibility is transparent. For example, **MANGENDA** suggests that if his superiors in the *Bemba* Defence team defended the authenticity of the documents, he cannot be considered

³⁶³ ICC-01/05-01/13-600-Conf-Corr2, para. 410.

³⁶⁴ CAR-D21-0004-0179 at 0179.

³⁶⁵ ICC-01/05-01/13-594-Conf-Corr, paras 44-46, 54, 73, 87.

³⁶⁶ See, e.g., ICC-01/05-01/13-597-Conf-AnxB, paras 357-383.

to have acted other than in good faith that the documents were authentic.³⁶⁷ Such an implausible claim is directly contradicted by a 6 November 2013 conversation at 20:29, in which **MANGENDA** tells **KILOLO** that [REDACTED], “ils [la Cour] verront que nous avons créé des ordres opérationnels, qui ne sont pas de bons documents”.³⁶⁸

129. Another example is a conversation on 7 November 2013 at 15:57, wherein **MANGENDA** told **KILOLO** that: “nous [MANGENDA and BEMBA] avons parlé aujourd’hui au téléphone [...] Nous avons parlé et je lui ai déjà expliqué...euh...le but de...de ce que j’ai l’habitude d’évoquer avec toi; moi, [MANGENDA and KILOLO] quel est le but de ces histoires”.³⁶⁹ This conversation demonstrates that (i) **MANGENDA** explained to **BEMBA** substantive developments, both in the case and about the implementation of the Common Plan, and their import; and (ii) **MANGENDA** would discuss with **KILOLO** these same issues. This is not the conduct of a mere functionary.

ii. *MANGENDA is liable for the presentation of the false or forged documents*

130. **MANGENDA**’s reliance on an intercepted conversation in which **KILOLO** suggests that he and **BEMBA** want the documents to be analysed³⁷⁰ is irrelevant to his responsibility, as a co-perpetrator, for subsequently relying on the documents despite knowing of their falsity.³⁷¹

131. In addition, **MANGENDA** suggests that the decision in the *Bemba* case to admit the false or forged documents into evidence precludes the Prosecution from now alleging an Article 70 violation.³⁷² This assertion ignores that Trial Chamber III was

³⁶⁷ ICC-01/05-01/13-594-Conf-Corr, paras 46, 86.

³⁶⁸ ICC-01/05-01/13-597-Conf-AnxB, para. 64 (emphasis added).

³⁶⁹ ICC-01/05-01/13-597-Conf-AnxB, para. 252.

³⁷⁰ ICC-01/05-01/13-594-Conf-Corr, para. 88.

³⁷¹ See, e.g., ICC-01/05-01/13-597-Conf-AnxB, paras 51-65, 246-255.

³⁷² ICC-01/05-01/13-594-Conf-Corr, paras 51, 65.

not aware of the intercepted communications in which **MANGENDA** and **KILOLO** extensively discuss the falsity of the documents and potential steps to prevent their involvement from being revealed.³⁷³

iii. MANGENDA is liable for illicit witness coaching

132. **MANGENDA** either fails to fully comprehend the DCC or genuinely considers that the conduct alleged against the co-perpetrators comports with accepted practices. For instance, he suggests that the Prosecution does not show that specific instructions were given by the co-perpetrators when illicitly coaching witnesses, “*autres que celles qui sont classiquement données à des témoins en vue de leur témoignage*”.³⁷⁴ Yet, the Prosecution’s confirmation submission catalogues how words were put in the witnesses’ mouths ahead of and during their testimony. The illicit coaching covered central points at issue in the case and matters bearing directly on their credibility as witnesses, such as their prior contacts with the Defence, and whether they received anything from the Defence in relation to their testimony.³⁷⁵

133. **MANGENDA** suggests that a conversation in which he relays to **KILOLO** the points to which **BEMBA** wants D-54 to testify “*ne contient aucune preuve d’instructions criminelles à des témoins*”.³⁷⁶ To the contrary, the conversation shows **MANGENDA** passing on specific instructions regarding what **BEMBA** wanted D-54 to testify to, including the issue of authority over forces in the CAR.³⁷⁷ Whether this was in fact true or not – whether D-54 was going to give this answer despite **KILOLO**’s instruction – is irrelevant. It was the co-perpetrators’ intention to illicitly coach D-54 to give answers that would exonerate **BEMBA**, regardless of the truth. The same

³⁷³ See, e.g., ICC-01/05-01/13-597-Conf-AnxB, paras 246-255.

³⁷⁴ ICC-01/05-01/13-594-Conf-Corr, para. 51. See also, paras 55, 68, 78-79.

³⁷⁵ See, e.g., ICC-01/05-01/13-597-Conf-AnxB, paras 40-50, 101, 104-106, 110-111, 117, 119, 121-127, 132-134, 145, 150, 160, 163, 167-168, 174, 189, 209, 226, 233.

³⁷⁶ ICC-01/05-01/13-594-Conf-Corr, para. 59.

³⁷⁷ ICC-01/05-01/13-597-Conf-AnxB, paras 312, 361.

conversation shows the co-perpetrators taking steps to conceal the illicit coaching from the rest of the *Bemba* Defence team,³⁷⁸ and **KILOLO** telling **MANGENDA** of the need to be kept informed of witnesses' testimonies when **KILOLO** was away from The Hague illicitly coaching other witnesses.³⁷⁹

134. **MANGENDA** suggests that when providing the Legal Representatives questions regarding D-15 to **KILOLO**, he was not aware of what **KILOLO** intended to do with the questions.³⁸⁰ This denial is flatly rebutted by intercepted communications showing that **KILOLO** made clear that he wanted the questions to illicitly coach D-15.³⁸¹ **KILOLO** tells **MANGENDA**: "*il [D-15] est encore debout spécialement il attend cela [the questions], avant qu'il ne dorme*",³⁸² which **MANGENDA** clearly understands to mean D-15. As regards D-54, **MANGENDA** simply disregards the evidence establishing the illicit coaching of the witness and his role therein.³⁸³

135. **MANGENDA** suggests that he was not aware of the contents of a conversation between **KILOLO** and D-26, although he admits providing his phone to **KILOLO** to contact the witness during testimony.³⁸⁴ Considering the weight of evidence demonstrating **MANGENDA**'s intimate knowledge of **KILOLO**'s illicit coaching, the fact that the call was made after the VWU's contact cut-off date and immediately before D-26 was to testify, and **KILOLO**'s extensive illicit coaching of D-26, the most reasonable inference is that **MANGENDA** knew of the coaching and provided his phone to facilitate it.³⁸⁵

³⁷⁸ ICC-01/05-01/13-597-Conf-AnxB, paras 98, 115, 360.

³⁷⁹ ICC-01/05-01/13-597-Conf-AnxB, paras 343, 351.

³⁸⁰ ICC-01/05-01/13-594-Conf-Corr, para. 73.

³⁸¹ ICC-01/05-01/13-597-Conf-AnxB, paras 111, 366. See also, paras 103-110, 112-113, 338.

³⁸² CAR-OTP-0074-1009 (Audio); CAR-OTP-0079-1662 (Transcript); CAR-OTP-0079-1754 (Translation) at 1757, lns 35-36.

³⁸³ ICC-01/05-01/13-594-Conf-Corr, para. 74. See ICC-01/05-01/13-597-Conf-AnxB, paras 115-130.

³⁸⁴ ICC-01/05-01/13-594-Conf-Corr, para. 75.

³⁸⁵ ICC-01/05-01/13-597-Conf-AnxB, paras 131-137.

136. **MANGENDA** asserts that there is no evidence that he was involved “*dans aucune conversation qui aurait concerné le contenu de ses [D-3] déclarations ou dans aucune remise d'argent*”.³⁸⁶ **MANGENDA** ignores D-3’s evidence, which shows that **MANGENDA** was present while D-3 was being coached and given money by **KILOLO**.³⁸⁷ In addition, and contrary to **MANGENDA**’s suggestion,³⁸⁸ the evidence also shows that D-2 was illicitly coached in his presence.³⁸⁹

137. Regarding D-29, **MANGENDA** asserts that he merely occupied a “*rôle passif*” as case manager, also suggesting that the falsity of D-29’s statements and his involvement therein has not been established.³⁹⁰ To the contrary, **KILOLO**’s illicit coaching of D-29 is clear from the evidence, which also shows **MANGENDA** saying that D-29 had “*vraiment déconné*” and that co-counsel must be satisfied that “*il y a un témoin qui dit la vérité*”, when D-29 did not testify as instructed.³⁹¹

138. Further, **MANGENDA** suggests that there was nothing criminal in the co-perpetrators’ interaction with D-25, categorising it as a “*pratique courante et professionnelle*”.³⁹² However, the evidence shows **KILOLO** expressing relief to **MANGENDA** that D-25 had not revealed an illicit coaching meeting and had stayed on script, as instructed: “*je lui avais donné des instructions claires, c’est-à-dire que tout ce qui n’est pas clair, vraiment qu’il ne s’engage pas dans cette discussion-là*”.³⁹³

³⁸⁶ ICC-01/05-01/13-594-Conf-Corr, para. 76.

³⁸⁷ ICC-01/05-01/13-597-Conf-AnxB, paras 150-151.

³⁸⁸ ICC-01/05-01/13-594-Conf-Corr, para. 77.

³⁸⁹ ICC-01/05-01/13-597-Conf-AnxB, paras 166-168; see also paras 149-151.

³⁹⁰ ICC-01/05-01/13-594-Conf-Corr, para. 78.

³⁹¹ ICC-01/05-01/13-597-Conf-AnxB, paras 180-186.

³⁹² ICC-01/05-01/13-594-Conf-Corr, para. 79.

³⁹³ ICC-01/05-01/13-597-Conf-AnxB, paras 188-191.

iv. MANGENDA is liable for payments to witnesses

139. **MANGENDA** appears to accept that money was transferred to D-57, but asserts that no criminality arises.³⁹⁴ However, in light of: (i) D-57's false testimony about his contacts with the *Bemba* Defence; (ii) D-57's denial in court of receiving any money from the *Bemba* Defence or from anyone acting on their behalf; (iii) D-57's regular telephone contact with **KILOLO** right up until his testimony; and (iv) **MANGENDA**'s intimate involvement with **KILOLO** in the illicit coaching of witnesses, **MANGENDA** was clearly involved in the crimes, as charged. The same is true for D-64,³⁹⁵ D-55,³⁹⁶ D-23,³⁹⁷ D-6,³⁹⁸ and D-13.³⁹⁹

v. MANGENDA's submissions are incomplete and distract from the issues in this case

140. **MANGENDA**'s submissions are, at times, incomplete. For example, **MANGENDA** states "[p]ar ailleurs et comme expliqué ci-dessous le Procureur a abandonné ses pièces maîtresses concernant la prétendue subornation et la corruption de témoins, notamment les paiements WESTERN UNION".⁴⁰⁰ Subsequently, he concludes, "[c]omme déjà expliqué le Procureur a abandonné l'accusation des paiements WESTERN UNION par le concluant et elle ne fait mention d'aucun autre paiement qu'aurait fait ou auquel aurait contribué de quelque sorte le concluant."⁴⁰¹ However, nowhere in the intervening paragraphs does **MANGENDA** explain his assertion, which is unfounded.

³⁹⁴ ICC-01/05-01/13-594-Conf-Corr, para. 80.

³⁹⁵ ICC-01/05-01/13-597-Conf-AnxB, paras 199-205. *Contra* ICC-01/05-01/13-594-Conf-Corr, para. 81.

³⁹⁶ ICC-01/05-01/13-597-Conf-AnxB, paras 208-215. *Contra* ICC-01/05-01/13-594-Conf-Corr, para. 82.

³⁹⁷ ICC-01/05-01/13-597-Conf-AnxB, paras 219-221. *Contra* ICC-01/05-01/13-594-Conf-Corr, para. 83.

³⁹⁸ ICC-01/05-01/13-597-Conf-AnxB, paras 224-231. *Contra* ICC-01/05-01/13-594-Conf-Corr, para. 84.

³⁹⁹ ICC-01/05-01/13-597-Conf-AnxB, paras 232-234. *Contra* ICC-01/05-01/13-594-Conf-Corr, para. 85.

⁴⁰⁰ ICC-01/05-01/13-594-Conf-Corr, para. 51.

⁴⁰¹ ICC-01/05-01/13-594-Conf-Corr, para. 54.

141. Further, instead of responding to the weight of evidence against him – which is heavily based on his own words – **MANGENDA**’s submission contains unfounded counter-allegations and conspiratorial assertions against the Prosecution. These are addressed in paragraphs 81-82.

h. **BABALA**’s submissions are incapable of belief

142. **BABALA**’s submission concedes, *inter alia*, that he was in daily contact with **BEMBA**, in frequent contact with the other suspects, and made numerous payments to suspects, other persons involved in the Common Plan, and Defence witnesses.⁴⁰² At issue is **BABALA**’s intent and knowledge to implement the Common Plan and to commit the charged offences carried out thereunder. **BABALA**’s version of events – that despite his close involvement with the suspects and the Common Plan his conduct was entirely devoid of criminal intent⁴⁰³ – is untenable. The following evidence demonstrates that **BABALA** was intimately involved in the implementation of the Common Plan, that he knew the status of those he paid, and why he was doing so.

143. First, as discussed above, **BABALA** talked to **BEMBA** “*on a daily basis*”.⁴⁰⁴ He was a critical link between **BEMBA** and the other suspects, passing on **BEMBA**’s instructions and carrying out **BEMBA**’s orders essential to the implementation of the Common Plan. Through this regular communication, **BABALA** knew about his role, the roles that the other co-perpetrators were assigned within the Common Plan, and about the specific actions they and other persons took in implementing it.

⁴⁰² See ICC-01/05-01/13-596-Conf, pp. 57-65, Tableau III, and paras 20, 43, 123-124, 148, 157 (“*M. Babala ne nie pas ces transferts*”), 159.

⁴⁰³ See ICC-01/05-01/13-596-Conf, paras 29, 42, 102, 142.

⁴⁰⁴ ICC-01/05-01/13-599-Conf, para. 69; see also para. 68.

144. This is most clearly demonstrated by **BABALA**'s intimate involvement in the planning of the cover-up of the Common Plan in October 2013. Although **BABALA** claims "*ignorance totale*" of the cover-up,⁴⁰⁵ the evidence suggests otherwise. **BABALA** not only facilitated transfers to **KILOLO** and **MANGENDA** in the belief that the money would be used to bribe witnesses to conceal the Common Plan, but actively contributed to its planning and coordinating.

145. For instance, on 17 October 2013 at 12:38, **BABALA** and **KILOLO** discussed the leak and the investigation, which **BABALA** already knew about.⁴⁰⁶ When **KILOLO** spoke about the difficulty of 'plugging the leak',⁴⁰⁷ **BABALA** responded that, "*pour le côté finances, c'est pas son problème. [...] Moi, je sais de toute façon ce que je dois faire*".⁴⁰⁸ **KILOLO** suggested that the leak occurred because the co-perpetrators had not stayed in touch with the witnesses,⁴⁰⁹ to which **BABALA** agreed, noting that they had failed "*[d]'assurer le [...] service après-vente*".⁴¹⁰

146. Further, in a 22 October 2013 conversation at 20:26, **KILOLO** told **BABALA** that, from a list of five witnesses, **BEMBA** had agreed to pay three because he did not view the remaining two as presenting a problem: "*tu vois, ils sont cinq. Alors là, en fait, je vais pour servir deux plus un qui n'est pas dans la liste des cinq. [...] Alors par contre, les trois-là, bon, le client m'a dit qu'on puisse attendre, comme eux ne posent pas de problèmes*".⁴¹¹ **BABALA** disagreed: "*[n]on, non, non, je ne suis pas d'accord avec lui, là. Il faut y aller, faire le service après-vente*",⁴¹² meaning that the co-perpetrators should contact the witnesses they had previously bribed and illicitly coached to ensure they would not reveal the Common Plan. These words are irreconcilable with **BABALA**'s

⁴⁰⁵ ICC-01/05-01/13-596-Conf, para. 42.

⁴⁰⁶ CAR-OTP-0080-1319 (Audio); CAR-OTP-0082-0542 at 0543, lns 19-20 (Translation).

⁴⁰⁷ CAR-OTP-0080-1319 (Audio); CAR-OTP-0082-0542 at 0543-0545, lns 21-22, 42-56 (Translation).

⁴⁰⁸ CAR-OTP-0080-1319 (Audio); CAR-OTP-0082-0542 at 0544, lns 63-64 (Translation).

⁴⁰⁹ CAR-OTP-0080-1319 (Audio); CAR-OTP-0082-0542 at 0545, lns 77-81 (Translation).

⁴¹⁰ CAR-OTP-0080-1319 (Audio); CAR-OTP-0082-0542 at 0545, lns 81-84 (Translation).

⁴¹¹ CAR-OTP-0080-1360 (Audio); CAR-OTP-0082-0596 at 0598, lns 38-42 (Transcription).

⁴¹² CAR-OTP-0080-1360 (Audio); CAR-OTP-0082-0596 at 0598, lns 43-46 (Transcription).

alleged passive, mechanical, role. Instead, they show that **BABALA** fully participated in the discussion of the most effective way to cover-up the Common Plan.

147. Further, **BABALA**'s claim that he "*n'est investi d'aucune autorité au sein de l'équipe de défense de M. Bemba*"⁴¹³ is belied by his statements in a 22 October 2013 conversation with **KILOLO**: "*c'est moi qui prend des risques, hein, c'est pas lui [...] En tant que financier*".⁴¹⁴ **BABALA**'s intent and knowledge are clear from the awareness he expressed regarding the risks taken to implement the Common Plan.

148. Finally, **BABALA** refutes all knowledge of the purpose of payments to Defence witnesses D-57 and D-64 one year before the cover up – in October 2013: "*[l]es sommes que le Concluant a eu à transférer à D-57 et à D-64 dont il ignorait le statut*".⁴¹⁵ This assertion is demonstrably false. In addition to the above statements regarding the cover-up, **BABALA** contemporaneously told **BEMBA** that the payment was "*très important. C'est la même chose comme pour aujourd'hui. Donner du sucre aux gens vous verrez que c'est bien*".⁴¹⁶

i. **ARIDO**'s submissions are incapable of belief

i. ***ARIDO** was the source of the documents*

149. **ARIDO** argues that the Prosecution failed to show that **ARIDO** was the source of the 14 false or forged documents.⁴¹⁷ In particular, he argues that he did not send the documents to **KILOLO**, but rather that he merely forwarded an email previously

⁴¹³ ICC-01/05-01/13-596-Conf, para. 75.

⁴¹⁴ CAR-OTP-0080-1360 (Audio); CAR-OTP-0082-0596 at 0599, lns 74-80 (Transcription).

⁴¹⁵ ICC-01/05-01/13-596-Conf, para. 20; see also paras 43, 123-127, 148, 153.

⁴¹⁶ CAR-OTP-0077-1299 at 1301, lns 28-31.

⁴¹⁷ ICC-01/05-01/13-598-Conf, para. 135.

sent to **KILOLO** by [REDACTED], to which seven of the 14 documents were attached.⁴¹⁸

150. This argument is untenable. No meaningful distinction can be made between forwarding an email attaching the documents and sending the documents in the first instance. Either way, he acted deliberately to convey the material. The text of **ARIDO**'s 1 May 2012 email to **KILOLO** made it clear that **ARIDO** intended to provide the documents to **KILOLO**: "*vous avez les docs merci*".⁴¹⁹ **KILOLO** confirms receipt of the documents.⁴²⁰

151. **ARIDO**'s status as the source of the false or forged documents was confirmed on 6 November 2013, when **KILOLO** said to **MANGENDA**: "[l]ui-même [ARIDO] aussi me les avait envoyés... J'avais reçu ça par email".⁴²¹ Again, there is no distinction, for the purposes of liability arising under Article 70(1)(b), between sending the documents or forwarding them. **ARIDO** being the source is further confirmed by **KILOLO**'s confirmation submissions, wherein he states that **ARIDO** gave the documents to him on 21 February 2012 in Douala: "*en présence de M. Kokate, capitaine de l'armée centrafricaine. Il [ARIDO] avait été précisé à Me Aimé Kilolo que ces documents émanaient des archives de l'Etat Major Général des forces armées centrafricaines*".⁴²² **KILOLO** also states that **ARIDO** sent via email seven other, "complementary", documents on 1 May 2012.⁴²³

152. Even if [REDACTED] is considered the original source of the documents, there is evidence to suggest that **ARIDO** had access to [REDACTED] account or that [REDACTED] sent documents on **ARIDO**'s behalf. First, **ARIDO** had previously

⁴¹⁸ ICC-01/05-01/13-598-Conf, para. 138.

⁴¹⁹ CAR-OTP-0075-0259.

⁴²⁰ CAR-OTP-0075-0267.

⁴²¹ CAR-OTP-0080-1375 (Audio); CAR-OTP-0082-0794 (Transcription); CAR-OTP-0082-0924 (Translation) at 0934, lns 301-305.

⁴²² ICC-01/05-01/13-600-Conf-Corr2, para. 534.

⁴²³ ICC-01/05-01/13-600-Conf-Corr2, para. 533; see also paras 121, 133, 534.

used [REDACTED] email account for his own purposes⁴²⁴ when he sent a bill to a client of his firm in Bangui on 27 April 2012.⁴²⁵

153. **ARIDO** disputes the Prosecution's assessment of **KILOLO's** and **MANGENDA's** 6 November 2013 conversation, arguing that "this conversation shows that in fact, it was **KOKATE** who provided such documents, and that Mr **KILOLO** and Mr **MANGENDA** appear to have decided to keep stating that Mr **ARIDO** gave them the documents because it was their position before".⁴²⁶ Read as a whole, however, this conversation negates **ARIDO's** argument – and shows that **ARIDO** and possibly **KOKATE** were the providers of the documents, as the Prosecution alleges in its DCC.⁴²⁷

154. In making this argument, **ARIDO** relies on **KILOLO's** statement: "*est-ce que notre ami, notre ami KOKATE, est-ce que ce n'est pas le moment de le relancer, le supplier qu'il vienne seulement pour....pour nous couvrir avec ses documents parce que c'est venu quand même de lui*".⁴²⁸ However, **MANGENDA** affirmed that **ARIDO** is the producer of the documents, telling **KILOLO** "*pour l'atteinte à l'administration de la justice car on a produit de faux documents, de faux éléments de preuve; et la personne qui a produit ça c'est NARCISSE il vit seulement ici en FRANCE*".⁴²⁹

155. The fact that the documents came from **ARIDO** and possibly **KOKATE** is also demonstrated later in the conversation. **KILOLO** asked **MANGENDA** whether **KOKATE** or **ARIDO** should be called to explain the documents: "*[e]st-ce que, entre NARCISSE et LE CAPITAINE, qui peut venir nous aider à expliquer les messages portés*

⁴²⁴ CAR-OTP-0075-0259.

⁴²⁵ CAR-OTP-0075-0255.

⁴²⁶ ICC-01/05-01/13-598-Conf, para. 153.

⁴²⁷ ICC-01/05-01/13-526-Conf-AnxB1, para. 42.

⁴²⁸ ICC-01/05-01/13-598-Conf, para. 151, citing CAR-OTP-0080-1375 (Audio); CAR-OTP-0082-0794 (Transcription); CAR-OTP-0082-0924 (Translation) at 0929, lns, 132-134.

⁴²⁹ CAR-OTP-0080-1375 (Audio); CAR-OTP-0082-0794 (Transcription); CAR-OTP-0082-0924 (Translation) at 0929, lns 142-144.

?”⁴³⁰ **MANGENDA** replied, “[p]as LE CAPITAINE parce que déjà les messages portés selon, selon, la chain of custody ; on n’a jamais dit LE CAPITAINE, on a toujours cité NARCISSE, Donc c’est plus NARCISSE que le CAPITAINE, parce que même NARCISSE on l’attendait par rapport aux messages portés”.⁴³¹ This indicates that both **ARIDO** and **KOKATE** were involved in the production of the documents.

156. In addition to **KILOLO**’s and **MANGENDA**’s admission, other evidence shows that **ARIDO** was the source of the documents: (i) **ARIDO** was listed in the chain of custody;⁴³² (ii) he had access to [REDACTED] (found in a document in his email account);⁴³³ (iii) he had some degree of military knowledge, being in the CAR military;⁴³⁴ and (iv) his email account shows his possession of the other forged or false official documents, including a [REDACTED] identity card with an altered date of birth,⁴³⁵ and a [REDACTED] issued in his own name.⁴³⁶

ii. *The emailed and uploaded documents come from the same source*

157. **ARIDO** argues that the 14 false or forged documents uploaded into e-Court differ from the PDF versions attached to [REDACTED] (and **ARIDO**)’s email. Thus, “had the documents sent by [REDACTED] been the ones the *Bemba* Defence received for the first time, the scanned versions would have been identical when comparing

⁴³⁰ CAR-OTP-0080-1375 (Audio); CAR-OTP-0082-0794 (Transcription); CAR-OTP-0082-0924 (Translation) at 0935, lns 358-359.

⁴³¹ CAR-OTP-0080-1375 (Audio); CAR-OTP-0082-0794 (Transcription); CAR-OTP-0082-0924 (Translation) at 0935, lns 360-362.

⁴³² CAR-OTP-0077-1121; CAR-OTP-0077-1122; CAR-OTP-0077-1123; CAR-OTP-0077-1124; CAR-OTP-0077-1125; CAR-OTP-0077-1126; CAR-OTP-0077-1127; CAR-OTP-0077-1128; CAR-OTP-0077-1129; CAR-OTP-0077-1130; CAR-OTP-0077-1131; CAR-OTP-0077-1132; CAR-OTP-0077-1133; CAR-OTP-0072-0171.

⁴³³ CAR-OTP-0075-1227, as referenced in ICC-01/05-01/13-598-Conf, para. 155.

⁴³⁴ CAR-OTP-0074-1065 at 1066.

⁴³⁵ Compare CAR-OTP-0075-1520, attaching CAR-OTP-0075-1522 and CAR-OTP-0075-1523, with CAR-OTP-0075-1518, attaching CAR-OTP-0075-1519.

⁴³⁶ See CAR-OTP-0075-1505; CAR-OTP-0075-1506; CAR-OTP-0075-1535; CAR-OTP-0075-1536; CAR-OTP-0075-0606; CAR-OTP-0075-0607; CAR-OTP-0075-1547; CAR-OTP-0075-2330.

the attachments to [REDACTED] email and the versions on e-court”.⁴³⁷ This is incorrect. The PDF versions of the seven documents attached to **ARIDO’s** and [REDACTED] email do not differ from those uploaded to e-Court.

158. The e-Court uploads are **further scanned** and **enhanced** copies of the documents attached to **ARIDO’s** email. This explains the difference in the quality of the documents, and negates **ARIDO’s** argument. A close comparison shows that the emailed and uploaded versions share irrefutable characteristics and thus are the same documents attached to **ARIDO’s** email. For example:

- a comparison of CAR-OTP-0075-0266 and CAR-D04-0003-0128 reveals that the document uploaded into e-Court was adjusted to reduce background imperfections. However, the placement of the signature, the imperfections (including black marks appearing on the bottom left and middle right), the handwriting, and the positioning of the text remain exactly the same;
- a close inspection of CAR-OTP-0075-0264 and CAR-D04-0003-0140 shows that both documents suffer from the same imperfections, including identical dark dots on the middle right and bottom right hand corners of the page, the same grainy overlay on the text directly under “*destinataires*” and the same incomplete stamp under [REDACTED]; and
- a comparison of CAR-OTP-0075-0261 and CAR-D04-0003-0137 shows that the two documents are exactly the same. The same imperfections are noticeable on both documents, for example the black mark in the right hand margin, and the two black dots on the bottom left hand side of the page. The date stamp of 25 November 2002 has the same right leaning placement and the handwriting on the top left hand corner “0147” is exactly the same.

⁴³⁷ ICC-01/05-01/13-598-Conf, para. 141.

iii. *The documents are false or forged*

159. **ARIDO** argues that “without any evidence as to how supposedly real official CAR documents should look like, there is no way of assessing whether the documents in question are false”.⁴³⁸ This, of course, ignores the evidence in the case, which includes [REDACTED].

160. [REDACTED] at the time.⁴³⁹ [REDACTED] the documents contain factual inaccuracies. With respect to document CAR-D04-0003-0133, [REDACTED].⁴⁴⁰

161. [REDACTED] the 14 documents were false or forged.⁴⁴¹ Tellingly, when questioned, the *Bemba* Defence was unable to provide the originals of the documents.⁴⁴²

162. **ARIDO**’s assertion that evidence provided by [REDACTED] fails to meet the relevant threshold for confirmation – “[REDACTED]”⁴⁴³ – is unpersuasive, at best. [REDACTED] the documents contain factual inaccuracies, [REDACTED].⁴⁴⁴

⁴³⁸ ICC-01/05-01/13-598-Conf, para. 161.

⁴³⁹ CAR-OTP-0069-0010 at 0027.

⁴⁴⁰ CAR-OTP-0069-0010 at 0038.

⁴⁴¹ ICC-01/05-01/08-T-353-CONF-ENG ET, 18 November 2013, p. 25, ln. 17-p. 41, ln. 3; ICC-01/05-01/08-T-353-CONF-FRA ET, 18 November 2013, p. 23, ln. 8-p. 37, ln. 11; with respect to CAR-D04-0003-0129, a document purporting to be executed by [REDACTED], see ICC-01/05-01/08-T-353-CONF-ENG ET, 18 November 2013, p. 77, ln. 6-p. 78, ln. 21; ICC-01/05-01/08-T-353-CONF-FRA ET, 18 November 2013, p. 68, ln. 18-p. 70, ln. 8; ICC-01/05-01/08-T-354-CONF-ENG ET, 19 November 2013, p. 3, ln. 19-p. 5, ln. 22; ICC-01/05-01/08-T-354-CONF-FRA ET, 19 November 2013, p. 3, ln. 4-p. 5 ln. 9; with respect to CAR-D04-0003-0134, document purporting to be executed by [REDACTED], see ICC-01/05-01/08-T-354-CONF-ENG ET, 19 November 2013, p. 5, ln. 24-p. 9, ln. 12; ICC-01/05-01/08-T-354-CONF-FRA ET, 19 November 2013, p. 5, ln. 10-p. 8, ln. 7; with respect to CAR-D04-0003-0141, document purporting to have been executed by [REDACTED], see ICC-01/05-01/08-T-354-CONF-ENG ET, 19 November 2013, p. 26, ln. 6-p. 34, ln. 20; ICC-01/05-01/08-T-354-CONF-FRA ET, 19 November 2013, p. 22-ln. 20-p. 29, ln. 25; with respect to documents purporting to be executed by [REDACTED], see ICC-01/05-01/08-T-353-CONF-ENG ET, 18 November 2013, p. 72, ln. 24-p. 77-ln. 2; ICC-01/05-01/08-T-353-CONF-ENG ET, 18 November 2013, p. 65, ln. 5-p. 68, ln. 16; ICC-01/05-01/08-T-354-CONF-ENG ET, 19 November, p. 13, ln. 7-p. 25, ln. 9; ICC-01/05-01/08-T-354-CONF-FRA ET, 19 November, p. 11, ln. 16-p. 21, ln. 8.

⁴⁴² CAR-OTP-0072-0173.

⁴⁴³ ICC-01/05-01/13-598-Conf, para. 165.

⁴⁴⁴ CAR-OTP-0069-0083 at 0097, 0099, 0101.

163. The only evidence **ARIDO** proffers showing that the documents are authentic is **KILOLO**'s witness, [REDACTED], D-59, and D-53.⁴⁴⁵ [REDACTED] views as to the apparent authenticity are irrelevant, considering that he is no position to authenticate the documents and at best can make "apparent" – as opposed to definitive – determinations.⁴⁴⁶ D-59's and D-53's accounts are no more credible or probative. Both relied on the false documents for the purpose of preparing their expert reports. They are in no position to authenticate the documents, and have a manifest interest in attesting that the documents are accurate.

V. REQUESTED RELIEF

164. Having demonstrated substantial grounds to believe that **BEMBA, KILOLO, MANGENDA, BABALA** and **ARIDO** committed each and every charge in the Prosecution's DCC, the Prosecution requests the Chamber to dismiss the Submissions, confirm the charges on the factual and legal grounds alleged, and commit this case to trial.



Fatou Bensouda, Prosecutor

Dated this 13th Day of July 2016
At The Hague, The Netherlands

⁴⁴⁵ ICC-01/05-01/13-598-Conf, paras 168-170.

⁴⁴⁶ See CAR-D21-0004-0068 at 0078, lns 339-340, 361.