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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

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

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I. INTRODUCTION

1. From the end of 2011 to 14 November 2013, **Jean-Pierre BEMBA GOMBO** (“**BEMBA**”), **Aimé KILOLO MUSAMBA** (“**KILOLO**”), **Jean-Jacques MANGENDA KABONGO** (“**MANGENDA**”), **Fidèle BABALA WANDU** (“**BABALA**”), and **Narcisse ARIDO** (“**ARIDO**”) (jointly, “the Accused”) executed a plan to defend **BEMBA** against charges of crimes against humanity and war crimes in *The Prosecutor v. Jean-Pierre Bemba Gombo*¹ (“Main Case”) by means which included the commission of offences against the administration of justice in violation of article 70 of the Rome Statute (“Overall Strategy”).

2. **BEMBA** directed the implementation of the Overall Strategy from the ICC Detention Centre, circumventing the Registry’s monitoring system to issue instructions to **KILOLO**, **MANGENDA**, and **BABALA** necessary to carry it out. **KILOLO** bribed witnesses, scripted their evidence and presented their false evidence in court. **MANGENDA** planned these offences with **KILOLO** and assisted in their execution. He relayed necessary instructions and information between **BEMBA** and **KILOLO**. **BABALA**, **BEMBA**’s long-time confidant, ensured that the money necessary for the overall strategy was made available. On **BEMBA**’s authorisation and instruction, **BABALA** bribed witnesses, and provided the funds for **KILOLO** and others to do so. **ARIDO** recruited false witnesses to testify and corruptly influenced witnesses.

3. **BEMBA**, **KILOLO**, **MANGENDA**, **BABALA**, and **ARIDO** are individually criminally responsible under article 25(3) for offences committed in violation of article 70(1)(a), (b), and (c) of the Statute.

¹ ICC-01/05-01/08 (“Main Case”).

II. CONFIDENTIALITY

4. This filing is classified as “Confidential” because it refers to evidence so designated.

III. BACKGROUND

5. The trial in the Main Case commenced before Trial Chamber III on 22 November 2010.² **BEMBA** is charged with murder and rape as crimes against humanity and murder, rape, and pillaging as war crimes. **BEMBA** faces a maximum sentence of life imprisonment. The Prosecution case commenced on 23 November 2010 and concluded on 20 March 2012. The Defence had until 14 August 2012 to prepare its presentation of evidence. The Defence called its first witness on 14 August 2012, and the Trial Chamber heard the Defence’s last witness on 14 November 2013. The judgment in the Main Case is currently pending.

6. Trial Chamber III’s 18 November 2010 decision³ adopted the *Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial* (“Unified Protocol”), a VWU-promulgated protocol regulating, *inter alia*, parties’ contact with witnesses.⁴ The Unified Protocol prohibits any non-VWU-supervised contact between the calling party and the witness once a witness arrives in The Netherlands or, in the case of video-link testimony, at the location of testimony.⁵ The Chamber specified that the Unified Protocol shall apply equally to Prosecution and Defence witnesses.⁶ The Chamber also ordered that “no proofing or preparation of witnesses for trial by parties shall be allowed”.⁷

² <http://www.icc-cpi.int/iccdocs/PIDS/publications/BembaEng.pdf>.

³ ICC-01/05-01/08-1016.

⁴ ICC-01/05-01/08-972-Anx. This protocol was later amended. See ICC-01/05-01/08-1081.

⁵ ICC-01/05-01/08-972-Anx, paras.27-31.

⁶ ICC-01/05-01/08-1016, para.9.

⁷ ICC-01/05-01/08-1016, para.34.

7. The term “VWU cut-off date” refers to the date on which the VWU informed the witness of the limitation on contact with the calling party.⁸

IV. OVERVIEW OF THE EVIDENCE

8. This brief summarises the Prosecution’s case theory and the principal evidence the Prosecution intends to offer at trial.⁹

9. The Prosecution’s evidence is authentic, accurate, reliable, and corroborated. It principally comprises: (a) intercepted telecommunications; (b) ICC Detention Centre phone records and logs; (c) call data records (“CDRs”) from independent private telecommunications carriers; (d) commercial money transfer agency records; and (e) witness statements.

10. CDRs show frequent phone contacts between certain of the Accused and the 14 Main Case Defence witnesses who form the basis of the charged incidents. Many of these contacts occurred after the VWU cut-off date and during the witness’s testimony.¹⁰ The key information from the relevant CDRs is set out in call sequence tables,¹¹ referenced throughout this brief.

⁸ ICC-01/05-01/13-207-Conf, paras.11,13.

⁹ The Prosecution relies on evidence relating to the 14 Main Case Defence witnesses who form the basis of the charged incidents. The Prosecution also relies on evidence relating to other Main Case Defence witnesses, which is relevant evidence of the Accused’s pattern and conduct. *See e.g., infra*, paras.46 (fns.106-107), 60, 141 (fns.415, 418).

¹⁰ In the charged incident section below, where the Prosecution references the number of contacts between the Accused and a particular witness, only voice contacts lasting 10 seconds or more and SMS have been counted. *See generally* [CAR-OTP-0090-0612](#) at 0615 (explaining the analytic methodology).

¹¹ *See* [CAR-OTP-0090-0630](#). For each phone contact, the following information is provided: (i) the telephone numbers involved in the call; (ii) the attributed users of the numbers involved in the call; (iii) the time and date of the call; (iv) the type of call (voice or SMS); (v) the duration of the call; and (vi) the evidence registration number(s) for the original CDR. These call sequence tables are an annex to the report of the Prosecution’s analyst, [REDACTED]. For this report, *see* [CAR-OTP-0090-0612](#).

V. THE ACCUSED

A. Jean-Pierre BEMBA GOMBO

11. **BEMBA** is the long-time President of the political party “*Mouvement de Libération du Congo*” (“MLC”).¹²

12. At all times relevant to the charges, **BEMBA** was the Accused in the Main Case and detained at the ICC Detention Centre.

B. Aimé KILOLO MUSAMBA

13. From July 2008, and at all times relevant to the charges, **KILOLO** was assigned as Counsel in the Main Case. Beginning 1 March 2012, **KILOLO** was **BEMBA**’s lead Counsel¹³ and responsible for the conduct of the Defence and presentation of all evidence in the Main Case until the conclusion of the presentation of the Defence case.¹⁴

C. Jean-Jacques MANGENDA KABONGO

14. From October 2008, and at all times relevant to the charges, **MANGENDA** was assigned as **BEMBA**’s case manager in the Main Case.¹⁵

¹² [CAR-OTP-0005-0198](#), at 0202; ICC-01/05-01/13-599-Conf, para.50.

¹³ ICC-01/05-01/08-67-Anx2; ICC-01/05-01/08-2150-Anx; *see also* ICC-01/05-01/08-2893, p.6 (“Aimé Kilolo Musamba Lead Counsel”).

¹⁴ *See e.g.*, article 24(2) of the Code of Professional Conduct for counsel, Resolution ICC-ASP/4/Res.1.

¹⁵ [CAR-OTP-0074-0717](#) at 0718, lns.27-28, 0757, ln.1375.

D. Fidèle BABALA WANDU

15. At all times relevant to the charges, **BABALA** was *secrétaire général adjoint* for Bemba's MLC, ¹⁶ **BEMBA**'s unofficial spokesperson on political issues, ¹⁷ a Democratic Republic of Congo ("DRC") National Assembly parliamentarian,¹⁸ and *vice-président du groupe parlementaire de l'opposition*.¹⁹

E. Narcisse ARIDO

16. **ARIDO** was a member of the Central African Republic ("CAR") armed forces until at least 2001,²⁰ after which he moved to Cameroon.²¹ **ARIDO** was listed as witness D-11 in the Main Case²² but did not ultimately testify.

¹⁶ ICC-01/05-01/13-217-Conf, para.30; [CAR-OTP-0072-0091](#) at 0093; [CAR-OTP-0072-0102](#) at 0102.

¹⁷ [CAR-OTP-0072-0091](#) at 0092-0093.

¹⁸ ICC-01/05-01/13-T-1-ENG CT, 27 November 2013, p.5, ln.11; ICC-01/05-01/13-T-1-FRA ET, 27 novembre 2013, p.4, ln.24; [CAR-OTP-0072-0101](#) at 0101.

¹⁹ ICC-01/05-01/13-217-Conf, para.30.

²⁰ [CAR-OTP-0075-0160](#) at 0160; [CAR-OTP-0077-0169](#) at 0170.

²¹ ICC-01/05-01/08-2222-Conf-anxA, p.26; [CAR-OTP-0077-0169](#) at 0170; ICC-01/05-01/13-T-4-Red2-ENG CT, 20 March 2014, p.4, lns.13-14; ICC-01/05-01/13-T-4-Red-FRA, 20 mars 2014, p.4, ln.13.

²² ICC-01/05-01/08-2222-Conf-anxA, p.26; ICC-01/05-01/13-334, para.21; ICC-01/05-01/13-389-Conf, para.9.

VI. THE OVERALL STRATEGY

A. Overview

17. From the end of 2011 to 14 November 2013, **BEMBA, KILOLO, MANGENDA, BABALA**, and **ARIDO** acted in concert with each other and with other persons, pursuant to a plan to defend **BEMBA** against charges of crimes against humanity and war crimes in the Main Case by means which included the commission of offences against the administration of justice in violation of article 70 of the Statute (“Overall Strategy”).

18. **BEMBA, KILOLO**, and **MANGENDA** played an essential role in the design and implementation of the Overall Strategy. **BABALA**, in furtherance of the Overall Strategy, assisted in handling the financial aspects of corruptly influencing witnesses in the Main Case. **ARIDO**’s involvement in the Overall Strategy consisted in his personal recruitment and corrupt influencing of witnesses, who subsequently falsely testified in the Main Case.

19. Other persons involved in implementing the Overall Strategy include, *inter alia*, Joachim KOKATE, **BEMBA**’s sisters Caroline WALE BAMANISA BEMBA and Françoise NDOKWA BEMBA, and Robert NGINAMAU.

20. The Accused implemented the Overall Strategy by committing offences in furtherance of its objective including through one or more of the following means:

- bribing witnesses; or
- making non-monetary promises to witnesses, to encourage, induce, or in exchange for, their false testimony;
- instructing witnesses on what to say when questioned in court, including scripting their evidence, dictating and rehearsing false answers and/or

questions to be posed by the parties and participants in the Main Case, or to contested issues in the trial proceedings, shortly before or after witnesses had been administered the solemn undertaking under article 69(1) and rule 66 of the Rules of Procedure and Evidence²³ (“illicit coaching”); and

- knowingly presenting the false testimony of witnesses.

B. Roles of the Accused in the Overall Strategy

21. **BEMBA** led the implementation of the Overall Strategy from the ICC Detention Centre, circumventing the Registry’s monitoring system to issue instructions to **KILOLO**, **MANGENDA**, and **BABALA** necessary to carry it out.

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

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

24. **BABALA**, **BEMBA**’s long-time confidant, executed **BEMBA**’s directions and instructions in furtherance of the Overall Strategy, or passed on such instructions to other participants in the Overall Strategy. **BABALA** provided the financial means to bribe witnesses, and paid witnesses and/or their relatives and close associates

²³ See rule 66(1) of the Rules of Procedure and Evidence (“Rules”).

personally and through the Accused and other persons implementing the Overall Strategy.

25. **ARIDO** implemented the Overall Strategy in Cameroon, identifying and recruiting false witnesses to be called in the Main Case, facilitating their participation as such, and illicitly coaching them.

C. *Modus operandi*

26. As detailed in the individual witness incident section below, the Accused's *modus operandi* involved: (i) bribing witnesses in cash and *via* money transfers; (ii) making non-monetary promises or inducements to witnesses, such as the possibility of living abroad, of being provided with the service of a lawyer should the illicit coaching be discovered, and of benefiting from **BEMBA**'s support and influence; (iii) illicitly coaching witnesses on contentious issues in the Main Case, on prior contacts with, and payments from the Defence, and instructing witnesses on the manner in which they should testify to make their testimony appear credible; (iv) circumventing the Detention Centre's monitoring system, allowing **BEMBA** to use his privileged phone line to instruct other Accused and communicate with witnesses without detection; (v) using third parties to effect clandestine payments to witnesses or to receive such payments for them; (vi) providing witnesses phones to enable illicit contact with them after the VWU contact cut-off date and during their testimony; and (viii) using coded language concealing the Overall Strategy.

i. Bribing witnesses

27. The Accused bribed witnesses to encourage, induce or in exchange for, their false testimony in support of **BEMBA**.²⁴ The Accused or persons acting on their behalf made illicit payments to witnesses, either in cash or through money transfer services, sometimes through the witnesses' relatives or close associates to conceal the Accused's involvement.²⁵ **BEMBA** instructed, authorized or was aware of payments that were implemented by **BABALA**, **KILOLO**, **ARIDO** and other persons involved in the Overall Strategy.²⁶ **BEMBA** particularly relied on **BABALA** to handle the financial aspects of the Overall Strategy.²⁷

28. In **BEMBA**'s almost daily conversations with **BABALA**,²⁸ he periodically instructed or authorised **BABALA** to make payments in furtherance of the Overall Strategy. **BEMBA** was consistently informed of money transfers among the Accused and others involved in implementing the Overall Strategy, and of payments to

²⁴ See D-23, paras.121-123; D-3, paras.140, 142; D-2, paras.147, 150; D-6, paras.156-157; D-4, para.169; D-57, paras.172, 175; D-64, paras.179-182, D-29, para.198; D-25, para.218.

²⁵ See D-23, paras.121-122; D-3, paras.140, 142; D-2, paras.147, 150; D-6, paras.156-157; D-4, para.169; D-57, paras.172, 175; D-64, paras.179-182, D-29, para.198; D-25, para.218.

²⁶ [CAR-OTP-0074-0624](#) (Audio); [CAR-OTP-0077-1307](#) at 1309, lns.29-34 (Translation); [CAR-OTP-0074-0701](#) (Audio); [CAR-OTP-0077-1348](#) at 1351, lns.43-44, 50-52 (Translation); [CAR-OTP-0074-0636](#) (Audio); [CAR-OTP-0077-1324](#) at 1328, lns.79-80 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.10-20 (Translation); [CAR-OTP-0074-0490](#) (Audio); [CAR-OTP-0079-1724](#) at 1726, lns.9-20 (Translation); [CAR-OTP-0074-0478](#) (Audio); [CAR-OTP-0080-0466](#) at 0468, ln.7 (Translation); [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.7-18 (Translation); [CAR-OTP-0074-0628](#) (Audio); [CAR-OTP-0077-1316](#) at 1318, lns.5-6 (Translation); [CAR-OTP-0074-0498](#) (Audio); [CAR-OTP-0080-0477](#) at 0479, lns.5-10 (Translation); [CAR-OTP-0080-0135](#) at 0149, lns.506-516; see also at 0142, lns.259-260; [CAR-D20-0001-0004](#) at 0007.

²⁷ [CAR-OTP-0074-0624](#) (Audio); [CAR-OTP-0077-1307](#) at 1309, lns.29-34 (Translation); [CAR-OTP-0074-0701](#) (Audio); [CAR-OTP-0077-1348](#) at 1351, lns.43-44, 50-52 (Translation); [CAR-OTP-0074-0636](#) (Audio); [CAR-OTP-0077-1324](#) at 1328, lns.79-80 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.10-20 (Translation); [CAR-OTP-0074-0490](#) (Audio); [CAR-OTP-0079-1724](#) at 1726, lns.9-20 (Translation); [CAR-OTP-0074-0478](#) (Audio); [CAR-OTP-0080-0466](#) at 0468, ln.7 (Translation); [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.7-18 (Translation); [CAR-OTP-0074-0628](#) (Audio); [CAR-OTP-0077-1316](#) at 1318, lns.5-6 (Translation); [CAR-OTP-0074-0498](#) (Audio); [CAR-OTP-0080-0477](#) at 0479, lns.5-10 (Translation); [CAR-OTP-0074-0592](#) (Audio); [CAR-OTP-0077-1291](#) at 1295, lns.72-75 (Translation); [CAR-OTP-0074-0520](#) (Audio); [CAR-OTP-0080-0485](#) at 0488, lns.67-70 (Translation); [CAR-OTP-0074-0164](#) (Audio); [CAR-OTP-0077-1050](#) at 1053, lns.54-55, at 1054, lns.84-85 (Translation).

²⁸ See e.g., [CAR-OTP-0079-0221](#); [CAR-OTP-0079-0220](#); [CAR-OTP-0079-0456](#); [CAR-OTP-0074-0087](#). **BABALA** used the numbers "[REDACTED]" (see [CAR-OTP-0074-0059](#) at 0062; [CAR-OTP-0074-0075](#) at 0077, row 34) and "[REDACTED]" (see [CAR-OTP-0074-0075](#) at 0077, row 36). See also [CAR-OTP-0072-0091](#) at 0092.

witnesses.²⁹ **BEMBA** instructed or authorised **BABALA** to arrange money transfers to **KILOLO, MANGENDA**,³⁰ and other persons involved in implementing the Overall Strategy,³¹ and to arrange payments to witnesses and their relatives and/or close associates.³² The Accused and other persons involved in implementing the Overall Strategy subsequently received the transfers³³ and the witnesses and/or their relatives, the bribes.³⁴ **BABALA** made several of these transfers and payments,³⁵ and reported to and discussed with **BEMBA** the status or details of money transactions.³⁶

29. **BEMBA** was consistently informed of money transfers among the Accused and others involved in the Overall Strategy. For example, on 25 May 2012, **BABALA** informed **BEMBA** that “*CHARLY OK., EKE OK. OK., MAMA LEKI OK. (...)... LE COLLÈGUE D’EN HAUT OK*”, confirming payments to various persons, including

²⁹ [CAR-OTP-0074-0618](#) (Audio); [CAR-OTP-0077-1303](#) at 1305-1306 (Translation); [CAR-OTP-0074-0514](#) (Audio), [CAR-OTP-0079-1727](#) at 1730, ln.58; at 1731, ln.73, lns.97-99 (Translation); [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.7-18 (Translation); [CAR-OTP-0074-0592](#) (Audio); [CAR-OTP-0077-1291](#) at 1295, lns.72-75 (Translation); [CAR-OTP-0074-0580](#) (Audio); [CAR-OTP-0077-1077](#) at 1079, lns.10-12 (Translation); [CAR-OTP-0082-0321](#); [CAR-OTP-0082-0322](#); [CAR-OTP-0082-0328](#).

³⁰ [CAR-OTP-0074-0624](#) (Audio); [CAR-OTP-0077-1307](#) at 1309, lns.29-34 (Translation); [CAR-OTP-0074-0701](#) (Audio); [CAR-OTP-0077-1348](#) at 1351-1352, lns.43-44, 50-52 (Translation); [CAR-OTP-0074-0636](#) (Audio); [CAR-OTP-0077-1324](#) at 1328, lns.79-80 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.10-20 (Translation); [CAR-OTP-0074-0490](#) (Audio); [CAR-OTP-0079-1724](#) at 1726, lns.9-20 (Translation); [CAR-OTP-0074-0478](#) (Audio); [CAR-OTP-0080-0466](#) at 0468, ln.7 (Translation); [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.7-18 (Translation); [CAR-OTP-0074-0628](#) (Audio); [CAR-OTP-0077-1316](#) at 1318, lns.5-6 (Translation); [CAR-OTP-0074-0498](#) (Audio); [CAR-OTP-0080-0477](#) at 0479, lns.5-10 (Translation).

³¹ [CAR-OTP-0074-0592](#) (Audio); [CAR-OTP-0077-1291](#) at 1295, lns.72-75 (Translation); [CAR-OTP-0074-0520](#) (Audio); [CAR-OTP-0080-0485](#) at 0488, lns.67-70 (Translation); [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.7-18 (Translation); [CAR-OTP-0074-0164](#) (Audio); [CAR-OTP-0077-1050](#) at 1053, lns.54-55, at 1054, lns.84-85 (Translation).

³² [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.10-20 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0636](#) (Audio); [CAR-OTP-0077-1324](#) at 1328, lns.79-80 (Translation).

³³ [CAR-OTP-0073-0274](#), tab 38 Jean J K Mangenda, rows 3, 17, 37; [CAR-OTP-0074-0855](#), tab 31 Fidèle Babala, row 17, tab 40 Aimé Kilolo Musamba, rows 4, 29, 30, 36, 42, 49, 56;

³⁴ [CAR-OTP-0070-0007](#), tab 32 A Musamba, rows 120, 127, 128; [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.29-30 (Translation); [CAR-OTP-0070-0005](#), tab 1 Narcisse Arido, row 78; [CAR-OTP-0070-0004](#), tab 31 Babala, row 11; see also [CAR-OTP-0072-0170](#).

³⁵ See e.g., [CAR-OTP-0073-0274](#), tab 31 Fidèle Babala, rows 2, 4-6, 12; [CAR-OTP-0070-0004](#), tab 31 Babala, rows 4, 9-12, 14, 17; [CAR-OTP-0070-0005](#), tab 4 Joachim Kokate, row 70; [CAR-OTP-0070-0005](#), tab 1 Narcisse Arido, row 78; [CAR-OTP-0070-0007](#), tab 32 A Musamba, rows 84, 98, 107, 117, 124, 126, 130, 134, 137, 138.

³⁶ See [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.10-20 (Translation); [CAR-OTP-0074-0514](#) (Audio), [CAR-OTP-0079-1727](#) at 1730, ln.58; at 1731, ln.73, lns.97-99 (Translation); [CAR-OTP-0074-0592](#) (Audio); [CAR-OTP-0077-1291](#) at 1295, lns.72-75 (Translation); [CAR-OTP-0074-0628](#) (Audio); [CAR-OTP-0077-1316](#) at 1318, lns.5-6 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); .

KILOLO (referred to by code).³⁷ “Charly” is a code for Cameroon,³⁸ where a number of Defence witnesses were paid in exchange for false testimony.³⁹ **BEMBA** responded: “*très bien alors, continues comme ça*”.⁴⁰ Similarly, on 13 November 2012, **BEMBA** instructed **BABALA** that “*1 kg ira chez quelqu’un que 07, qui [sic] le collègue d’en haut te dira, et l’autre kilo chez le collègue d’en haut, tu comprends ?*”⁴¹ One day later, on 14 November, **KILOLO** received EUR 1,000 from **BABALA**’s chauffeur, **NGINAMAU**.⁴²

30. **BEMBA** and **BABALA** also discussed the illicit payments to witnesses. For instance, on 16 October 2012, **BABALA** told **BEMBA** about a payment to D-64: “*il faut que cela se fasse quand même parce que c’est très important. C’est la même chose comme pour aujourd’hui*”.⁴³ Earlier that day, **BABALA** had transferred a USD 665 payment to D-57 [REDACTED].⁴⁴ The following day, 17 October 2012, D-64’s VWU cut-off date,⁴⁵ **BABALA**’s chauffeur **NGINAMAU** paid D-64’s [REDACTED], USD 700 *via* two Western Union transfers of USD 200 and 500, respectively.⁴⁶

31. The Accused paid witnesses and/or their relatives or close associates through, *inter alia*, commercial money transfer services and cash payments. The Accused, including **KILOLO**, **BABALA**, and **ARIDO**, together with the persons involved in implementing the Overall Strategy, including Caroline **BEMBA**, **NGINAMAU**, and

³⁷ Substantive Annex A, Analysis of Codes and Terms Used by the Accused (hereinafter, “Annex A”), “*Collègue d’en haut*” as **KILOLO**, Section III.B. See also [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.9-15 (Translation).

³⁸ Annex A, “Charly” as Cameroon, Section V.E.

³⁹ See D-3, paras.140, 142; D-2, paras.147, 150; D-6, paras.156-157; D-4, para.169.

⁴⁰ [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, ln.13 (Translation).

⁴¹ [CAR-OTP-0074-0636](#) (Audio), [CAR-OTP-0077-1324](#) at 1328, lns.79-80 (Translation). See Annex A, “kilogram” as 1,000 units of money, Section VI.G; “07” as **BABALA**, Section III.D.1; “*Collègue d’en Haut*” as **KILOLO**, Section III.B.

⁴² [CAR-OTP-0073-0274](#), tab 34 Nginamau, row 4, column AO. [CAR-OTP-0088-0188-R01](#) at 0201-0203, lns.452-509.

⁴³ [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.29-30 (Translation).

⁴⁴ [CAR-OTP-0070-0004](#), tab 31 Babala, row 19.

⁴⁵ [CAR-OTP-0078-0290](#) at 0292.

⁴⁶ [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 2, 3. See also [CAR-OTP-0074-0707-R01](#) (Audio), [CAR-OTP-0074-1169](#) at 1185, lns.567-570 (Transcript). Note that **BABALA** admits transfer of money to D-64 at **KILOLO**’s request: see ICC-01/05-01/13-596-Conf-Corr2, paras.20, 43, 82, 124, 148 and ICC-01/05-01/13-671-Conf, para.56.

KOKATE, used these means to pay witnesses—including D-64, D-57, D-29, D-25, D-23, D-6, D-4, D-3, and D-2—as detailed in the section pertaining to each witness.⁴⁷

32. Caroline BEMBA, Françoise BEMBA, NGINAMAU, and the Accused provided KILOLO with funds.⁴⁸ ARIDO was provided funds by the other Accused and other persons involved in implementing the Overall Strategy, including KILOLO, BABALA, NGINAMAU, and KOKATE.⁴⁹ ARIDO paid witnesses, including D-2⁵⁰ and D-3,⁵¹ who denied in their testimony having received payments.⁵² ARIDO made promises of significant payments (“10 millions de francs CFA”,⁵³ approximately EUR 15,200) to induce D-2 to testify falsely.⁵⁴ NGINAMAU executed payments on BABALA’s behalf,⁵⁵ including to KOKATE⁵⁶ and D-64 [REDACTED].⁵⁷ KILOLO,

⁴⁷ See D-23, paras.121-123; D-3, paras.140, 142; D-2, paras.147, 150; D-6, paras.156-157; D-4, para.169; D-57, paras.172, 175; D-64, paras.179-182, D-29, para.198; D-25, para.218.

⁴⁸ Funds to KILOLO see [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 7-8, 11, 14-16, 21-24, 36, 45, 53, 55, 57; [CAR-OTP-0073-0274](#), tab 34 Robert Nginamau, rows 3, 4; [CAR-OTP-0074-0855](#), tab 68 Caroline Bemba Wale, rows 2, 4, 8-10. See also a series of telephone conversation between KILOLO and Françoise BEMBA regarding a Western Union transfer in August 2013, [CAR-OTP-0077-1364](#) at 1365; [CAR-OTP-0077-1366](#) at 1367; [CAR-OTP-0077-1368](#) at 1369; [CAR-OTP-0077-1370](#) at 1371; [CAR-OTP-0077-1372](#) at 1373-1374. Funds from KILOLO to witnesses see [CAR-OTP-0070-0007](#), tab 32 A Musamba, rows 23-25, 40, 57, 132; [CAR-OTP-0074-0855](#), tab 40 Aimé Kilolo Musamba, rows 11-12, 32, 41, 46-48, 52-53.

⁴⁹ [CAR-OTP-0070-0005](#), tab 1 Narcisse Arido, rows 72-75, 77, 78, 80; [CAR-OTP-0070-0007](#), tab 32 A Musamba, rows 35, 36, 94; [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 6, 17; [CAR-OTP-0070-0005](#), tab 4 Joachim Kokate, row 92; see also [CAR-OTP-0072-0168](#) at 0168.

⁵⁰ In February 2012, ARIDO gave D-2 CFA 15,000, see [CAR-OTP-0080-0021](#) at 0032, lns.390-391, at 0033, ln.408; [CAR-OTP-0080-0043](#) at 0055, lns.415-423. ARIDO gave D-2 CFA 10,000, see [CAR-OTP-0080-0021](#) at 0036, lns.519-521. ARIDO further gave D-2 CFA 10,000, see [CAR-OTP-0080-0021](#) at 0038, lns.604-606; [CAR-OTP-0080-0069](#) at 0077, lns.290-291 ; at 0080, lns.387-397.

⁵¹ Around February 2012, ARIDO gave D-3 CFA 1,000, see [CAR-OTP-0078-0218-R01](#) at 0221-0222, lns.100-108, ARIDO gave D-3 CFA 4,000, see [CAR-OTP-0078-0218-R01](#) at 0230, ln.413; [CAR-OTP-0078-0264-R01](#) at 0280, lns.565-566; ARIDO gave D-3 CFA 10,000, see [CAR-OTP-0078-0184-R01](#) at 0190, lns.201-209; around April 2012, ARIDO gave D-3 CFA 10,000, see [CAR-OTP-0078-0184-R01](#) at 0192, lns.284-286; [CAR-OTP-0078-0248-R01](#) at 0251, lns.107-108.

⁵² See for D-2 ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.26, lns.19-23; ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.26, lns.6-10; see for D-3 ICC-01/05-01/08-T-330-CONF-ENG ET, 25 June 2013, p.21, lns.23-25, p.22, lns.1-4; ICC-01/05-01/08-T-330-CONF-FRA ET, 25 juin 2013, p.23, lns.15-21.

⁵³ *Communautés Financières d’Afrique* (“CFA”). Where the euro or U.S. dollar (“EUR” or “USD”) equivalent is indicated in the main text, this is an approximation based on the exchange rate at the time of the offer or exchange.

⁵⁴ [CAR-OTP-0080-0021](#) at 0030-0031, lns.304-324; [CAR-OTP-0080-0043](#) at 0050, lns.250-256.

⁵⁵ For example, NGINAMAU transferred USD 700 to D-64 [REDACTED] on BABALA’s behalf. See paras.30, 180. For some transfers made on BABALA’s behalf, NGINAMAU used BABALA’s telephone number when making payments via Western Union, see e.g., [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 6, 28. Compare [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 6, 28, 53, column E and [CAR-OTP-0090-0831](#) at 0833 NGINAMAU’s number is “[REDACTED]”, see [CAR-OTP-0070-0007](#), tab 34 Nginamau, column E, rows 2-5, 7, 11-17, 19, 22-24, 26, 27, 29. The BABALA Defence stated that BABALA does not deny the money transfers listed in Tableau III (containing payments made by, among others, NGINAMAU) as payments made on BABALA’s behalf. See ICC-01/05-01/13-596-Conf, pp.57-64, and paras.156-157 at p.65. NGINAMAU also

BABALA, **NGINAMAU**, and Caroline **BEMBA** paid **KOKATE**.⁵⁸ **KOKATE** played an important role in implementing the Overall Strategy, including by paying **ARIDO**⁵⁹ and recruiting and corruptly influencing witnesses.⁶⁰

ii. Non-monetary promises to witnesses

33. The Accused made non-monetary promises to witnesses to encourage, induce, or in exchange for, their false testimony, including about the possibility of living abroad, receiving a lawyer's service should the illicit coaching be discovered, and benefiting from **BEMBA**'s support and influence.

34. D-55, who [REDACTED]—implicating **BEMBA** in crimes committed in CAR, was afraid for his security since [REDACTED] became known among **BEMBA**'s supporters in [REDACTED].⁶¹ Since then, D-55 encountered many difficulties including [REDACTED].⁶² **KILOLO** instructed D-55 to testify that [REDACTED] was false and promised that "*Bemba le traiterai bien*".⁶³ D-55, who feared **BEMBA**, testified that [REDACTED] "*était monté[e] avec d'autres objectifs*".⁶⁴

35. **ARIDO** made improper promises to prospective witnesses in the Main Case—including D-2, D-3, D-4, D-6, and D-7—to encourage, induce, or in exchange for, their false testimony.⁶⁵ For instance, **ARIDO** told D-2 that if he testified for the *Bemba*

stated that he never used Western Union for his own purpose. See [CAR-OTP-0088-0224-R01](#) at 0246, lns.786-796.

⁵⁶ [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 10, 28.

⁵⁷ [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 2, 3.

⁵⁸ [CAR-OTP-0070-0005](#), tab 4 Joachim Kokaté, rows 52, 66-68, 70-71, 99.

⁵⁹ [CAR-OTP-0070-0005](#), tab 4 Joachim Kokaté, row 92.

⁶⁰ See D-23, paras.120-121,124; D-3, paras.133, 135; D-2, paras.145-147; D-6, para.156; D-4, para.165; D-29, para.195.

⁶¹ D-55, para.188.

⁶² [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0877-0878 (Translation).

⁶³ D-55, paras.187-189.

⁶⁴ D-55, paras.188, 192.

⁶⁵ See D-3, paras.133-134, 136; D-2, para.145; D-6, paras.156-157, 162; D-4, para.169.

Defence in The Hague he could “*trouver l’asile*”.⁶⁶ Similarly, **ARIDO** told D-3 that if he testified for the *Bemba* Defence he could go to live in countries like “*la France, le Canada, voire les Pays-Bas*”.⁶⁷

36. **ARIDO** reassured D-2, D-3, D-4, D-6 and D-7 about giving false testimony, telling them “*même si nous mentons dans notre déposition, nous serons assistés d’un avocat qui va nous défendre*.”⁶⁸

iii. Illicitly coaching witnesses

37. For the purpose of illicit coaching, the Accused contacted witnesses by phone and/or met with them in person.⁶⁹ When witnesses were formally interviewed in the presence of other members of the Defence team who were not involved in the Overall Strategy, they were coached before or after such interviews.⁷⁰ Witnesses were illicitly coached on the contentious issues in the Main Case and provided with the answers to the questions the Defence intended to ask.⁷¹ Witnesses were also informed of the questions the Prosecution was likely to raise in their cross-examination and the confidential questions of the Legal Representatives of Victims (“LRV”), and were likewise provided with the answers that best supported the Defence case.⁷²

⁶⁶ [CAR-OTP-0080-0021](#) at 0030, ln.315, *more generally*, lns.304-318.

⁶⁷ [CAR-OTP-0078-0218-R01](#) at 0234, ln.561, *more generally*, lns.551-561. **ARIDO** himself travelled to France from Cameroon on 26 September 2012 using the visa delivered to him by the Court for the purpose of testifying. ICC-01/05-01/13-1072-Conf-AnxA, p.10, stipulation 37; ICC-01/05-01/13-1072-Conf-AnxB-Corr, p.5 (admitting stipulation 37). **ARIDO** then applied for asylum in France. [CAR-D24-0001-0032-R01](#).

⁶⁸ See para.136; see also [CAR-OTP-0078-0218-R01](#) at 0234, lns.552-553.

⁶⁹ On the phone: D-15, paras.66-67, 69, 75; D-54, paras.91-94, D-26, paras.108-109, 113, 115-116; D-23, paras.126-127; D-25, paras.213-215; D-13, paras.209-210. Meeting in person: see D-3, paras.134-135, 138; D-2, paras.145-148; D-6, paras.156-157; D-4, para.165 and D-55, paras.186-187.

⁷⁰ D-4 para.165; D-3, para.136; D-2, para.147; D-6, para.156.

⁷¹ D-15, paras.69-74, 78; D-54, paras.95-104; D-26, paras.110-112; D-23, paras.119,124,126; D-2, paras.146-148; D-3, para.138, D-6, paras.156-157; D-4, paras.165-166; D-55, paras.186-189 ; D-25, paras.213-217.

⁷² For the OTP questions: D-15 paras.67, 69, 74; D-54, paras.95, 101; D-26 para.112. For the LRV questions: D-15, para.79 and D-54, para.95.

38. **BEMBA** directed or authorised the illicit coaching of witnesses.⁷³ For example, in relation to D-54, **MANGENDA** told **KILOLO** that **BEMBA** “*a maintenant donné la précision par rapport à le 26 [Octobre 2002] [...]. il faut qu’il [D-54] déclare [...] qu’un message était venu de [REDACTED]*”,⁷⁴ and that the witness should testify “*qu’on avait mélangé les [REDACTED]*”⁷⁵ and mention “*les événements qu’ils filmaient*”⁷⁶ as well as “*les deux grands véhicules qu’ils avaient vus, comme ils étaient cités dans les cas de ces gens-là que tu connais*”.⁷⁷ These instructions were relayed to **KILOLO** by **MANGENDA** when **KILOLO** was travelling or otherwise unavailable and not easily reachable by **BEMBA**.⁷⁸ **MANGENDA** also relayed **BEMBA**’s satisfaction or dissatisfaction with the implementation of the Overall Strategy to **KILOLO**.⁷⁹ Both co-perpetrators agreed that the most important thing was to keep **BEMBA** satisfied in this respect.⁸⁰

39. **KILOLO** informed **BEMBA** that illicit coaching should be conducted in close proximity to the witnesses’ testimony to ensure that witnesses follow closely the instructions and answer questions with sufficient precision.⁸¹ **KILOLO** told **MANGENDA**: “*le problème [...] que j’ai toujours dit au Client [BEMBA], de faire encore LA COULEUR [u]n ou deux jours avant que la personne passe, [...] parce que les gens ne se souviennent pas de tout avec précision*”.⁸²

⁷³ Related to D-25: [CAR-OTP-0074-0996](#) (Audio); [CAR-OTP-0079-1732](#) at 1735-1736 (Translation); see Annex A, “[REDACTED]” as D-25, Section III.K.; Related to D-15: [CAR-OTP-0074-1006](#) (Audio); [CAR-OTP-0079-1744](#) at 1746-1748 (Translation); Related to D-54: [CAR-OTP-0080-1138](#) at 1243-1244; [CAR-OTP-0080-1372](#) (Audio); [CAR-OTP-0082-0669](#) at 0671-0673 (Translation); [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0133, lns.15-30 (Translation) Annex A, “[REDACTED]” as D-54, Section III.J.; [CAR-OTP-0080-1317](#) (Audio); [CAR-OTP-0082-1293](#) at 1300, ln.211; at 1301, ln.234 (Translation).

⁷⁴ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0135, lns.80-81 (Translation).

⁷⁵ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0137, lns.151-152 (Translation).

⁷⁶ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0134, lns.46-50 (Translation).

⁷⁷ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0134, lns.54-55 (Translation).

⁷⁸ D-54, paras.84-85.

⁷⁹ [CAR-OTP-0074-0993](#) (Audio); [CAR-OTP-0079-0122](#) at 0126 (Translation); [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0118-0119 (Translation).

⁸⁰ [CAR-OTP-0074-0993](#) (Audio); [CAR-OTP-0079-0122](#) at 0126 (Translation); [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0118-0119 (Translation).

⁸¹ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0248, lns.50-52 (Translation). See D-29, para.200.

⁸² [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0248, lns.50-52 (Translation); Annex A, “*la couleur*” as illicit coaching, Section IV.B.

40. **KILOLO** gave witnesses precise instructions on what to say when questioned in court.⁸³ He scripted, rehearsed with, and/or dictated to witnesses the answers they were expected to provide in response to questions to be posed by him and other parties and participants in the Main Case.⁸⁴ He improperly shared with testifying witnesses the LRV's questions required by the Chamber to be furnished to the parties confidentially in advance.⁸⁵ **KILOLO** kept close contact with witnesses before and during their testimony to ensure their compliance with his illicit coaching, to correct unfavourable answers in the following hearing and to align their testimony with other witnesses' testimony.⁸⁶ Not only did **KILOLO** instruct the witnesses on the substance of their testimony but he also instructed the witnesses on the manner in which they should testify in order to make their false testimony appear credible. For instance, he instructed D-15 to answer the question about the language used by BEMBA when addressing his troops "*avec beaucoup d'hésitation pour montrer que ça date de longtemps [...] pas spontanément, pas trop vite*".⁸⁷

41. In implementing **BEMBA**'s directions and in furtherance of the Overall Strategy, **KILOLO** planned and executed the illicit coaching of witnesses with the assistance of the other Accused, including **MANGENDA** and **ARIDO**, and other persons involved in the Overall Strategy, including **KOKATE**.⁸⁸ **MANGENDA** reported to **KILOLO** on the presentation of the false testimony in court when **KILOLO** was absent,⁸⁹ and provided him with the LRV's questions used in witness's

⁸³ D-15, paras.67, 69-74,78; D-54, paras.94-104; D26, paras.110-112.

⁸⁴ D-15, paras.67, 69-74,78; D-54, paras.94-104; D26, paras.110-112.

⁸⁵ See D-15,para.79; D-54,para.95.

⁸⁶ See D-15 paras.66-67, 69-74; D-54, paras.92-94; D-26, paras.108-113, 115-116; D-23, paras.125-127 ; D-3, paras.134-135 ; D-6, para.161 ; D57, para.171-172 ; D29, para.202 ; D13 paras.209-210.

⁸⁷ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0169, lns.501-502, 514-519 (Translation).

⁸⁸ See D-15, paras.75, 79, 81; D-54, paras.83-87, 89-90, 106; D-26, para.109; D-23, paras.120-121; D-3, paras.133-139; D-2, 144-148; D-6, paras.156-157; D-4, para.165-167; D-57, paras.172-174; D-64, paras.179-180; D-55, paras.185-191; D-29, paras.199-201; D-13, paras.207-208; D-25, paras.214, 216-217.

⁸⁹ D-25, paras.217, 219and D-29, paras.199-201, 203. See also [CAR-OTP-0079-0122](#), at 0124; [CAR-OTP-0079-0114](#), at 0116; [CAR-OTP-0080-0245](#), at 0247; [CAR-OTP-0080-0228](#), at 0231 (Mr Kilolo: "*Mais ma question est maintenant de savoir si la personne a suivi les enseignements*"; Mr Mangenda: "*Ah ... oui, oui, il a bien suivi, il a bien suivi*").

illicit coaching.⁹⁰ **ARIDO** and **KOKATE** also illicitly coached witnesses directly.⁹¹

42. **KILOLO** informed **BEMBA** and **MANGENDA** about his illicit coaching of witnesses,⁹² and the latter provided **KILOLO** advice on how to best carry this out.⁹³ **BABALA** knew about **KILOLO**'s illicit coaching, including through **BEMBA**.⁹⁴ **KILOLO** at times sought advice on the script from the witnesses themselves.⁹⁵ **KILOLO** endeavoured to ensure that witnesses' testimonies aligned.⁹⁶ He organised meetings with witnesses to instruct them on their respective testimonies.⁹⁷

43. **KILOLO** and **MANGENDA** knew the importance of illicitly coaching witnesses on the eve of their appearances in court, and the importance of keeping witnesses from straying from the instructions they were given, in order to ensure the success of their false testimony.⁹⁸ As such, **KILOLO** sought to be, and was, in contact with witnesses as shortly prior to their testimonies as possible, as well as during the course of their sworn appearance before the Court, in violation of the Unified

⁹⁰ See D-15, para.79; D-54, para.95.

⁹¹ [CAR-OTP-0078-0184-R01](#) at 0189, 0192; [CAR-OTP-0078-0206-R01](#) at 0210, 0211, 0213-0214; [CAR-OTP-0080-0069](#) at 0074, 0078; [CAR-OTP-0080-0021](#) at 0030-0032; [CAR-OTP-0080-0043](#) at 0051-0052, 0057-0058; [CAR-OTP-0080-0100-R01](#) at 0114; see also D-2, paras.144-146; D-3, paras.133, 135-136; D-4, para.165; D-6, para.156.

⁹² [CAR-OTP-0074-1004](#) (Audio); [CAR-OTP-0080-0254](#) at 0257-0258 (Translation); [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0247-0253 (Translation); [CAR-OTP-0074-0994](#) (Audio); [CAR-OTP-0080-0238](#) at 0240 (Translation); [CAR-OTP-0080-1419](#) (Audio); [CAR-OTP-0082-1140](#) at 1142-1149 (Translation); [CAR-OTP-0074-0993](#) (Audio); [CAR-OTP-0079-0122](#) at 0129 (Translation); [CAR-OTP-0074-0999](#) (Audio); [CAR-OTP-0077-1383](#) at 1384 (Transcript).

⁹³ [CAR-OTP-0074-1001](#) (Audio); [CAR-OTP-0079-1737](#) at 1739-1743 (Translation); [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0247-0253 (Translation); [CAR-OTP-0074-0998](#) (Audio); [CAR-OTP-0082-0107](#) at 0110 (Translation); [CAR-OTP-0080-1361](#) (Audio); [CAR-OTP-0082-0644](#) at 0647, lns.57-59, 67 (Translation); [CAR-OTP-0080-1374](#) (Audio); [CAR-OTP-0082-1368](#) at 1373 lns.125-127 (Translation); Annex A, [REDACTED], Section III.H.

⁹⁴ [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0543-546 (Transcript); [CAR-OTP-0074-0576](#) (Audio); [CAR-OTP-0077-1069](#) at 1071-1072 (Translation); [CAR-OTP-0074-0574](#) (Audio); [CAR-OTP-0077-1063](#) at 1066-1068 (Translation); [CAR-OTP-0074-0586](#) (Audio); [CAR-OTP-0077-1081](#), at 1083, lns. 16-26 (Mr Bemba: "*Signalez le collègue d'en haut, tout de suite*"; Mr Babala: ("*OK. Je vais lui signaler tout de suite*").

⁹⁵ Related to D-15: [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0160 (Translation); [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1420 (Transcript); Related to D-54: [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0873-0874, lns.219-229 (Translation).

⁹⁶ D-15, para.72; D-26, paras.108, 110-111; D-29, para.203.

⁹⁷ D-3, para.138; D-2, para.148; D-6, para.157; D-4, para.166; D-55, paras.186-188.

⁹⁸ D-15, paras.67-80; D-54, paras.93-94; D-26, para.109; D-25, para.213; D-13, para.209. See also, D-29, para.200.

Protocol prohibiting such contact.⁹⁹ **BEMBA** approved and supported this conduct.¹⁰⁰

44. **KILOLO** made decisions about witnesses coming to testify according to their willingness to follow the script.¹⁰¹ As directed by **BEMBA**, **KILOLO** illicitly coached witnesses to testify falsely about the substance of their evidence, including key facts bearing on the Defence's case theory.¹⁰² The witnesses also lied about matters bearing directly on their credibility, including payments received from, and the nature and extent of their previous contacts with, members or individuals associated with **BEMBA** or the *Bemba* Defence.¹⁰³

iv. Circumventing the Detention Centre's monitoring system

45. **BEMBA** orchestrated and directed the implementation of the Overall Strategy from the Detention Centre. **BEMBA** called third parties through **KILOLO** by using a line designated as "privileged" by the Registry for contact with his Counsel. In doing so, **BEMBA** and **KILOLO** conspired to circumvent, and circumvented, the Detention Centre's monitoring system, allowing **BEMBA** to instruct the Accused and other persons involved in implementing the Overall Strategy, and to improperly communicate with witnesses.¹⁰⁴

⁹⁹ See paras D-25, para.213-215; D-13, para.209-210; D-64, para.178; D-57, para.171; D-54, para.93-94; see also D-18, who was contacted on 8 June 2013, and testified from 5 to 11 June 2013. See [CAR-OTP-0072-0391](#), rows 38071, 38114, 38119. D-18 used the numbers "[REDACTED]" and "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0072-0116](#) at 0116; [CAR-OTP-0077-0942](#) at 0942; [CAR-OTP-0073-0275](#), tab 61 J L [REDACTED], column Y; [CAR-OTP-0070-0006](#), tab 61 [REDACTED], column AA.

¹⁰⁰ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0134-0138 (Translation); [CAR-OTP-0074-1000](#) (Audio); [CAR-OTP-0079-0141](#) at 0143-0147 (Translation); [CAR-OTP-0074-1006](#) (Audio); [CAR-OTP-0079-1744](#) at 1746-1748 (Translation); [CAR-OTP-0080-1372](#) (Audio); [CAR-OTP-0082-0669](#) at 0671, ln.21 (Translation).

¹⁰¹ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0250-0252 (Translation).

¹⁰² D-54, paras.84, 95-106. See also D-15, paras.69-81; D-26, paras.110-117.

¹⁰³ See D-15, para.80; D-54, para.105; D-26, paras.115-117; D-23, paras.128, 130; D-3, para.141; D-2, para.151; D-6, paras.159, 161; D-4, para.168; D-57, para.176; D-64, paras.182-183; D-55, para.192; D-29, paras.202-203; D-13, paras.210-211; D-25, para.218.

¹⁰⁴ Modern mobile telephones allow the user to communicate with multiple parties at the same time. This is termed a multi-party conference call or multi-party call.

46. Exploiting the privilege in order to conceal the Common Plan, **BEMBA** would initiate a call with **KILOLO** on one of the numbers designated as “privileged” by the Registry.¹⁰⁵ While on the line with **BEMBA**, **KILOLO** would facilitate contact with third parties, including witnesses¹⁰⁶ and other Accused,¹⁰⁷ allowing **BEMBA**’s direct communication with them without the Registry’s knowledge.

v. Using third parties to transfer money to witnesses

47. The Accused frequently used third parties to transfer money to witnesses, to avoid **BEMBA** and/or members of his Defence being suspected of bribing or corruptly influencing witnesses.

¹⁰⁵ See [CAR-OTP-0074-0067](#) (listing the privileged numbers for **KILOLO**, including “[REDACTED]”). Note that the DRC number “[REDACTED]”, though linked to **KILOLO** in 2012 and 2013 on the Detention Centre’s list of privileged numbers (see [CAR-OTP-0074-0067](#) at 0071-0072), was actually **BABALA**’s number, as recorded by **KILOLO** himself. See [CAR-OTP-0090-1872](#) at 1873; see also [CAR-OTP-0088-0398](#) at 0405.

¹⁰⁶ Witness D-55: On 5 October 2012, **BEMBA** called **KILOLO**, and then **KILOLO** called D-55, while still on the line with **BEMBA**. [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0879-0880 (Translation); [CAR-OTP-0072-0391](#), rows 709, 710; [CAR-OTP-0074-0065](#), row 681. **KILOLO** used the number “[REDACTED]”; D-55 used “[REDACTED]”, while **BEMBA** used the Detention Unit number “[REDACTED]”. For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0836. D-55 stated that **KILOLO** told him that his contact with **BEMBA** on this occasion was “*quelque chose d’inhabituel et que cela ne devrait pas être révélé au public.*” [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0880 (Translation). **KILOLO** admits facilitating a call between **BEMBA** and D-55 on **BEMBA**’s Detention Centre privileged line (see ICC-01/05-01/13-674-Conf-Anx3, p.21, row 69). Witness D-51: **KILOLO** called D-51, and then **BEMBA** called **KILOLO**, while **KILOLO** was still in contact with D-51. The call between D-51 and **KILOLO** ended, but then **KILOLO** called D-51 again, while still on the line with **BEMBA**. [CAR-OTP-0072-0391](#), rows 356-357, 364; [CAR-OTP-0074-0065](#), row 678. **KILOLO** used the number “[REDACTED]”; D-51 used the number “[REDACTED]” (see [CAR-OTP-0077-0942](#) at 0942, row 10) while **BEMBA** used the Detention Unit number “[REDACTED]”. Witness D-19: **BEMBA** called **KILOLO**, and then **KILOLO** called D-19, while still on the line with **BEMBA**. [CAR-OTP-0072-0391](#), rows 16728, 16732; [CAR-OTP-0074-0066](#), row 21. D-19 used the number “[REDACTED]”. See [CAR-OTP-0077-0942](#) at 0942, row 16. Witness D-64: On 27 October 2012, **BEMBA** called **KILOLO**, and then **KILOLO** called D-64 three times, all while still on the line with **BEMBA**. [CAR-OTP-0072-0391](#), row 3842, 3846-3849; [CAR-OTP-0074-0065](#), row 732. **KILOLO** used the number “[REDACTED]”; D-64 used the number “[REDACTED]” (see [CAR-OTP-0077-0942](#) at 0942, row 9) while **BEMBA** used the Detention Unit number “[REDACTED]”.

¹⁰⁷ Witness D-55: On 5 October 2012, **BABALA** joined a multiparty call with **BEMBA** and **KILOLO** shortly after **BEMBA** and **KILOLO** spoke with D-55. [CAR-OTP-0072-0391](#), rows 709, 710, 716; [CAR-OTP-0074-0065](#), row 681. **KILOLO** sent **BABALA** an SMS just before **BABALA** called **KILOLO**. [CAR-OTP-0072-0391](#), row 714. **BABALA** used the number “[REDACTED]”. [CAR-OTP-0090-1872](#) at 1873. Witness D-51: On 4 October 2012, **BABALA** joined a multiparty call with **BEMBA** and **KILOLO** shortly after **BEMBA** and **KILOLO** spoke with D-51. About four minutes after **BABALA** joined this multiparty call, **KILOLO** called D-51 again. [CAR-OTP-0072-0391](#), rows 356-357, 363-364. **BABALA** used the number “[REDACTED]”. [CAR-OTP-0090-1872](#) at 1873. For further information about these examples, see the footnote above. **MANGENDA** was also involved in multi-party calls involving the Registry’s “privileged line”. See e.g., [CAR-OTP-0072-0391](#), rows 16728-16729; [CAR-OTP-0074-0066](#), row 21.

48. For example, **KILOLO** asked D-3 to provide the name of someone not easily identifiable by the Court, to receive a transfer for him.¹⁰⁸ **KILOLO** rejected D-3's suggestion to send the money to his fiancée, saying "*la Cour connaît le nom de [s]a fiancée*".¹⁰⁹ D-3 thus provided **KILOLO** the name of his [REDACTED], to whom **KILOLO** sent the money.¹¹⁰ **KILOLO** used a third party, [REDACTED], to transmit the payment.¹¹¹ **KILOLO** sent D-3 an SMS confirming the money-transfer and providing the details required for its collection.¹¹² D-3, using the transaction details sent by **KILOLO**, collected the money with [REDACTED]¹¹³ and confirmed its receipt to **KILOLO**.¹¹⁴

49. Additional examples of the use of third parties include the following:

- (a) **KILOLO** used a third party, Jean Paul MOKULA, to send a previously promised payment of the amount of CFA 300,000 (about USD 500) to D-29,¹¹⁵
- (b) **BABALA** sent D-57 a payment of USD 665 through D-57's [REDACTED].¹¹⁶ **BABALA** admits having transferred the payment at **KILOLO**'s request.¹¹⁷ **KILOLO** admits that the money was sent to D-57 through [REDACTED];¹¹⁸

¹⁰⁸ [CAR-OTP-0080-0165](#) at 0168 lns.106-113; [CAR-OTP-0078-0264-R01](#) at 0275-0276, lns.390-397.

¹⁰⁹ [CAR-OTP-0080-0165](#) at 0168 lns.106-113; [CAR-OTP-0078-0264-R01](#) at 0275-0276, lns.390-397; [CAR-OTP-0088-0370](#) at 0377-0378.

¹¹⁰ [CAR-OTP-0080-0165](#) at 0168 lns.91-113; [CAR-OTP-0079-1541](#) at 1542.

¹¹¹ [CAR-OTP-0078-0264-R01](#) at 0276, lns.395-397, lns.417-419; [CAR-OTP-0083-1291-R02](#) at 1298, paras.27-29; [CAR-OTP-0079-1541](#) at 1542; [CAR-OTP-0080-0165](#) at 0169, lns.117-133; [CAR-OTP-0088-0370](#) at 0377-0378.

¹¹² The SMS **KILOLO** sent to D-3 contains the following details "*Borderau: [REDACTED] expéditeur. [REDACTED] agence:[REDACTED], express union*", see [CAR-OTP-0088-0370](#) at 0377-0378, which corresponds to the information included in the receipt provided by D-3, see [CAR-OTP-0079-1541](#) at 1542. See also [CAR-OTP-0080-0165](#) at 0169 lns.119-123.

¹¹³ [CAR-OTP-0080-0165](#) at 0169 lns.136-143.

¹¹⁴ [CAR-OTP-0080-0165](#) at 0170 lns.170-172.

¹¹⁵ See D-29, para.198.

¹¹⁶ See D-57, para.172.

¹¹⁷ See ICC-01/05-01/13-596-Conf, paras.20, 43, 82, 123, 148; ICC-01/05-01/13-671-Conf, paras.33, 56. See also: ICC-01/05-01/13-678-Conf, para.8.

¹¹⁸ ICC-01/05-01/13-674-Conf, para.275.

- (c) Caroline BEMBA, **BEMBA's** sister, transferred USD 1,335.16 to D-6 through his [REDACTED], who handed it over to D-6 on collection;¹¹⁹
- (d) **BABALA's** chauffeur NGINAMAU transferred USD 700 to D-64 [REDACTED], in two money transfers.¹²⁰ **BABALA** admits having transferred the payment at **KILOLO's** request.¹²¹ **KILOLO** admits that the money was sent to D-64 through [REDACTED].¹²²

vi. Giving witnesses phones to enable illicit contact after the VWU cut-off date and during their testimony

50. Consistent with the Accused's pattern to keep close contact with the witnesses during or immediately before their testimony in order to keep their answers on the stand precise and consistent with the coaching instructions, **KILOLO** and **MANGENDA** provided cell phones to witnesses to ensure a line of communication with them after their handover to the VWU and during their testimony, without VWU's knowledge.

51. In or around May 2013, D-3 met **KILOLO, MANGENDA, D-2, D-4, D-6, and D-9** in Yaoundé, Cameroon, where **MANGENDA** distributed phones to the witnesses.¹²³ **KILOLO** informed D-3 that the VWU would take away his [D-3's] phone and instructed the witness to "*fa[ire] tout pour garder notre telephone*" so that they could continue to communicate after the VWU handover."¹²⁴

¹¹⁹ See D-6 section, para.158.

¹²⁰ See D-57 section, para.180.

¹²¹ ICC-01/05-01/13-596-Conf, paras.20, 43, 82, 124, 148; ICC-01/05-01/13-671-Conf, para.56. See also ICC-01/05-01/13-678-Conf, para.8.

¹²² ICC-01/05-01/13-674-Conf, para.280.

¹²³ [CAR-OTP-0078-0248-R01](#) at 0252-0253, lns.145-160; [CAR-OTP-0078-0198-R01](#) at 0200-0201, lns.75-79; [CAR-OTP-0078-0264-R01](#) at 0266-0269, lns.67-92, 111-125, 150-176; see also D-2's statement: [CAR-OTP-0080-0100-R01](#) at 0116-0120, lns.574, 670, 697-741.

¹²⁴ [CAR-OTP-0078-0264-R01](#) at 0268 lns.111-113.

52. Likewise, **KILOLO** gave D-23 a phone before he was handed over to the VWU to be used to “*rester en communication*” after the VWU handover.¹²⁵

vii. Use of coded language

53. To conceal the Overall Strategy, the Accused and others involved in the Overall Strategy used codes in their communications. For example:

- (a) On 18 January 2013, while discussing issues related to the Main Case, **BEMBA** reminds **BABALA** of the importance of using codes, so that “*nous soyons les seuls à comprendre*”.¹²⁶
- (b) On 23 August 2013, when asking **KILOLO** to confirm that he has received a message from “*la maman*” [Caroline BEMBA], **BEMBA** reminds him: “*nous savons comment nous nous parlons par des codes*”.¹²⁷
- (c) On 7 October 2012, when Caroline BEMBA begins to mention “Me [Maître]”, **BEMBA** stresses to her: “*je ne (sic) demande de ne pas citer de noms ici ; [n]e cite pas de noms ici.*”¹²⁸
- (d) On 17 October 2013, **MANGENDA** insists that **KILOLO** brief “le client” (**BEMBA**) “*en code, qu’il comprenne*”,¹²⁹ “*briefez-le en codes*”.¹³⁰

54. Annex A to this Pre-Trial Brief presents an analysis of codes and terms used by the Accused to conceal the implementation of the Overall Strategy.

¹²⁵ [CAR-OTP-0087-2486](#) at 2502-2505, lns.606-622.

¹²⁶ [CAR-OTP-0074-0100](#) (Audio); [CAR-OTP-0077-1035](#) at 1038, ln.69, *more generally*, lns.68-70 (Translation).

¹²⁷ [CAR-OTP-0074-0986](#) (Audio); [CAR-OTP-0079-0102](#) at 0110, lns.210-211 (Translation).

¹²⁸ [CAR-OTP-0074-1468](#) (Audio); [CAR-OTP-0078-0390](#) at 0393-0394, lns.103-110 (Transcript).

¹²⁹ [CAR-OTP-0080-1317](#) (Audio); [CAR-OTP-0082-1293](#) at 1303, ln.327 (Translation).

¹³⁰ [CAR-OTP-0080-1317](#) (Audio); [CAR-OTP-0082-1293](#) at 1303, ln.332 (Translation).

D. Cover-up of the Overall Strategy

55. On 11 October 2013, a little over a month before the Defence case concluded,¹³¹ **MANGENDA** told **KILOLO** that he had received information from a source whose spouse worked at the Court that *“il y a une enquête qui est en train de se faire”* concerning **KILOLO**’s and **MANGENDA**’s involvement in witnesses’ bribery.¹³²

56. On 16 October 2013, **KILOLO** informed **BEMBA** of the article 70 investigation and the consequences it may have on them including (i) losing all the work they have done so far: *“si tel est le cas ça veut dire que tous les efforts qu’on a fournis sont tombés dans l’eau”*;¹³³ and (ii) that **BEMBA** would be facing a possible 5 years prison sentence, which would be separate from other sentences in the Main Case: *“Ils vont vous poursuivre et vous pouvez, peut-être écoper d’une condamnation de 5 ans, donc ce qui n’a même rien à avoir (sic) avec l’autre [...] Là, ça commence à compter à 0 à partir de ce jour-là [...] Ça n’a rien à avoir (sic) avec les 5 ans déjà purgés [...] Parce que c’est pour d’autres faits”*.¹³⁴ **KILOLO** also informed **BEMBA** that **MANGENDA** *“a peur de la PRISON”*.¹³⁵

57. **BEMBA** sought to frustrate the investigation and conceal the Overall Strategy. He instructed **KILOLO** to *“faire le tour d’horizon”*—which, as **KILOLO** explained to **MANGENDA**—meant to call their witnesses one by one right away: *“[q]ue j’appelle toutes ces personnes l’une après l’autre, cette même nuit. Tout ça”*.¹³⁶ Intercepted communications show that **BEMBA** directed what he believed to be a cover-up of the Overall Strategy and the offences carried out thereunder. During this time, **BABALA** continued to act as a link between the other Accused, facilitating transfers to

¹³¹ The last witness of the Defence in the Main Case was heard from 12-14 November 2013.

¹³² [CAR-OTP-0074-1029](#) (Audio); [CAR-OTP-0079-0198](#) at 0200, lns.31and 4-32 (Translation).

¹³³ [CAR-OTP-0074-1032](#) (Audio); [CAR-OTP-0079-1762](#) at 1766, lns.82-83 (Translation).

¹³⁴ [CAR-OTP-0074-1032](#) (Audio); [CAR-OTP-0079-1762](#) at 1766, lns.88-98 (Translation).

¹³⁵ [CAR-OTP-0074-1032](#) (Audio); [CAR-OTP-0079-1762](#) at 1766, lns.80-83 (Translation).

¹³⁶ [CAR-OTP-0074-1032](#) (Audio); [CAR-OTP-0079-1762](#) at 1764, lns.19-20 (Translation).

KILOLO and **MANGENDA**, also in the belief that the money would be used to bribe witnesses to conceal the Overall Strategy. For instance, on 17 October 2013, **BABALA** and **KILOLO** discussed the leak and the investigation.¹³⁷ When **KILOLO** spoke about the difficulty of “plugging the leak”,¹³⁸ **BABALA** responded that, “*pour le côté finances, c’est pas son problème. [...] Moi, je sais de toute façon ce que je dois faire*”.¹³⁹ **KILOLO** suggested that the leak occurred because the Accused had neglected to stay in contact with the witnesses,¹⁴⁰ with which **BABALA** agreed, noting that it was necessary “*[d]’assurer le [...] service après-vente*”.¹⁴¹ In a demonstration of their awareness of the legal implications of the Overall Strategy, **KILOLO** and **BABALA** further discussed the Article 70 case of Walter Barasa and the fact the he is targeted by a warrant of arrest “*tout simplement parce que ... il est soupçonné d’avoir fait pression sur des témoins*”.¹⁴²

58. In a conversation that same day, **KILOLO** assured **BEMBA** that “*on va redresser ça*”.¹⁴³ **BEMBA** responded that in the worst case scenario, **KILOLO** can “*nier tout cela c’est du mensonge*”¹⁴⁴ which **KILOLO** reaffirmed, stating “*Ah oui bien sûr, là il n’y a pas de choix*”.¹⁴⁵ **KILOLO** brought to **BEMBA**’s attention the similar article 70 proceedings in the Kenya case:¹⁴⁶ “*Tu as écouté une histoire similaire qui s’est passée à ... à Kilo ECHO ... NOVEMBER hein ... un truc similaire ... KILO ECHO NOVEMBRE YANKEE ... Voilà*”¹⁴⁷ and told him that “*[j]e ne voudrais même pas que ... qu’on en arrive à ce genre de choses*”.¹⁴⁸

¹³⁷ [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0543-0544, lns.15-50 (Translation).

¹³⁸ [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0543-0544, lns.21-29, 42-56 (Translation).

¹³⁹ [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0544, lns.63-64 (Translation).

¹⁴⁰ [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0545, lns.77-83 (Translation).

¹⁴¹ [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0545, lns.81-84 (Translation).

¹⁴² [CAR-OTP-0080-1319](#) (Audio); [CAR-OTP-0082-0542](#) at 0543-0544, lns.31-36 (Translation).

¹⁴³ [CAR-OTP-0080-1320](#) (Audio); [CAR-OTP-0082-1309](#) at 1325, ln.537 (Translation).

¹⁴⁴ [CAR-OTP-0080-1320](#) (Audio); [CAR-OTP-0082-1309](#) at 1325, ln.538 (Translation).

¹⁴⁵ [CAR-OTP-0080-1320](#) (Audio); [CAR-OTP-0082-1309](#) at 1325, ln.539 (Translation).

¹⁴⁶ See *The Prosecutor v. Walter Osapiri Barasa*, ICC-01/09-01/13-1-Red2.

¹⁴⁷ [CAR-OTP-0080-1320](#) (Audio); [CAR-OTP-0082-1309](#) at 1325, lns.545-546 (Translation).

¹⁴⁸ [CAR-OTP-0080-1320](#) (Audio); [CAR-OTP-0082-1309](#) at 1325, ln.548 (Translation).

59. **BEMBA**'s acute awareness of the need to take measures to conceal the Overall Strategy by conducting a "*tour d'horizon*" is evidenced by his follow up conversation with **KILOLO** on the evening of 17 October 2013 to check on the status of implementing his instructions with respect to the witnesses from Cameroon: "[t]u n'as eu personne du côté de CHARLY [Cameroon], alors?"¹⁴⁹

60. Later that night, **MANGENDA** told **KILOLO** that **BEMBA** had asked him what effect the article 70 investigation could have on the Main Case,¹⁵⁰ to which **MANGENDA** responded:

*Ça va maintenant détruire tous les témoins que nous avons. Et quand ça... ça les anéantit, on ne peut plus contrer les éléments de preuves du procureur pour dire que ce ... ce n'est pas établi au-delà du doute raisonnable quoi. Ces faits sont sensés prouvés.*¹⁵¹

The above reference to "*tous les témoins*", together with **BEMBA**'s earlier instruction to contact all the witnesses one by one,¹⁵² reveals the broad scope of the Overall Strategy, which must have extended to all Defence witnesses.

61. Cognisant of the illegal activities in which the Accused engaged the witnesses, **BEMBA** directed **KILOLO**, on 18 October 2013, to warn witnesses who leaked the

¹⁴⁹ [CAR-OTP-0080-1321](#) (Audio); [CAR-OTP-0082-0614](#) at 0616, ln.13 and lns.9-17 (Translation). Annex A, "Charly" as Cameroon, Section V.E. The assertion that **BEMBA** and **KILOLO** were referring to witnesses from Cameroon (Charly) is further supported by a conversation on 16 October 2013 where **MANGENDA** and **KILOLO** agreed to falsely represent to **BEMBA** that the leak originated with three Cameroonian witnesses: see [CAR-OTP-0074-1032](#) (Audio); [CAR-OTP-0079-1762](#) at 1767-1768, lns.122-157 (Translation). In this conversation, the Cameroonian witnesses were referred to as "*le groupe de Yankee*" (witnesses from Yaounde – Cameroon). See Annex A, "Yankee" as Yaoundé, Section V.G.; Accordingly, the next day **KILOLO** told **BEMBA** that the source of the leak was from Cameroon: see [CAR-OTP-0080-1325](#) (Audio); [CAR-OTP-0082-1065](#) at 1067, lns.15-20; at 1068, lns.49-63; at 1070, lns.115-131 (Translation); [CAR-OTP-0080-1320](#) (Audio); [CAR-OTP-0082-1309](#) at 1312, ln.40; at 1313, ln.114 (Translation). Annex A, "Homonyme" as the Office of the Prosecutor, Section III.N.

¹⁵⁰ [CAR-OTP-0080-1324](#) (Audio); [CAR-OTP-0082-1326](#) at 1336, lns.330-332 (Translation).

¹⁵¹ [CAR-OTP-0080-1324](#) (Audio); [CAR-OTP-0082-1326](#) at 1336, lns.333-337 (Translation) (emphasis added).

¹⁵² See para.59; [CAR-OTP-0074-1032](#) (Audio); [CAR-OTP-0079-1762](#) at 1764, lns.19-20 (Translation).

Overall Strategy to the Prosecution that they (the witnesses) could themselves be arrested.¹⁵³ In addition to the threat of potential arrest, **BEMBA** also sought to buy the witnesses off. He negotiated the amount of bribes he was willing to pay to the witnesses, and directed **KILOLO** to tell those who have leaked the Overall Strategy the maximum payment **BEMBA** would give them.¹⁵⁴

62. On 21 October 2013, **KILOLO** discussed with **BABALA** an urgent money transfer for the witnesses who allegedly leaked the Overall Strategy. **BABALA** asked if **KILOLO** had spoken to **BEMBA** (“[t]u as parlé avec le client”),¹⁵⁵ with **KILOLO** responding that **BEMBA** was in agreement: “[j]’ai parlé avec le client, oui. On a convenu ça hier soir”.¹⁵⁶ **BABALA** told **KILOLO** to collect the money from **BABALA**’s bank in France.¹⁵⁷ As agreed with **BABALA**, **KILOLO** then sent a text message to **BABALA** listing the payments they discussed over the phone: “Budget urgent: 17. 100 usd (charly) + 2. 500 eur (kilolo) + 2.000 usd (standby a kinhasa)”.¹⁵⁸

63. Although **KILOLO** and **MANGENDA** seized this opportunity to extract money from **BEMBA**,¹⁵⁹ the devised cover-up plan reveals: (i) the Accused’s consciousness of guilt; (ii) the Accused’s pattern of bribing witnesses to distort the truth; (iii) **BEMBA**’s role in overseeing the Overall Strategy, authorising and coordinating its implementation; (iv) the role of **BABALA** as the financier; and (v) the role of **KILOLO** who, with **MANGENDA**’s assistance, implements the Overall Strategy on

¹⁵³ [CAR-OTP-0080-1326](#) (Audio); [CAR-OTP-0082-0626](#) at 0628, lns.23-29 (Translation).

¹⁵⁴ On 16 October 2013, **KILOLO** told **MANGENDA** that he would initially request from **BEMBA** the amount of 30000 as payment to witnesses, subject to negotiation with **BEMBA** it could be reduced to 15000. See [CAR-OTP-0074-1031](#) (Audio); [CAR-OTP-0080-0322](#) at 0326, lns.102-111 (Translation). On 19 October 2013, **BEMBA** directed **KILOLO** to tell the witnesses that the maximum he was willing to pay is 15000, see [CAR-OTP-0080-1328](#) (Audio); [CAR-OTP-0082-0630](#) at 0632, lns.5-11 (Translation).

¹⁵⁵ [CAR-OTP-0080-1330](#) (Audio); [CAR-OTP-0082-0547](#) at 0548, ln.24 (Transcript).

¹⁵⁶ [CAR-OTP-0080-1330](#) (Audio); [CAR-OTP-0082-0547](#) at 0548, ln.25 (Transcript); [CAR-OTP-0080-1138](#) at 1191-1192.

¹⁵⁷ [CAR-OTP-0080-1330](#) (Audio); [CAR-OTP-0082-0547](#) at 0560, lns.406-418 (Transcript).

¹⁵⁸ [CAR-OTP-0080-1331](#); **KILOLO** used the number “[REDACTED]”. For material supporting the attribution of this number, see [CAR-OTP-0090-0831](#) at 0831; **BABALA** used the number “[REDACTED]”. For the material supporting the attribution of this numbers, see [CAR-OTP-0074-0059](#) at 0062; [CAR-OTP-0074-0075](#) at 0075, row 34; [CAR-OTP-0074-0182](#) (Audio); [CAR-OTP-0082-2108](#) at 2111, lns.46-54 (Translation).

¹⁵⁹ [CAR-OTP-0074-1031](#) (Audio); [CAR-OTP-0080-0322](#) at 0326, lns.102-111 (Translation).

the ground.

VII. THE CHARGED INCIDENTS OF ARTICLE 70 OFFENCES

64. The Accused participated in the Overall Strategy, resulting in the corrupt influencing of witnesses in the Main Case, the solicitation and/or inducement of their false evidence contrary to the witnesses' obligation under article 69(1) to testify truthfully, and the presentation of such false testimony in court, all in violation of article 70 of the Statute, as follows:

i. Witness D-15 – [REDACTED]

65. Witness D-15 testified in the Main Case from 11 to 13 September 2013.¹⁶⁰

66. **KILOLO** maintained frequent contact with D-15 in the year preceding his testimony.¹⁶¹ He spoke on the phone with the witness at least 37¹⁶² times after the 11 July 2013 VWU contact cut-off date,¹⁶³ including four times during the witness's testimony.¹⁶⁴ During at least some conversations conducted immediately preceding and during D-15's testimony, **KILOLO** illicitly coached D-15 at length. Even though D-15 had previously given a statement to the *Bemba* Defence in 2012,¹⁶⁵ his account did not always contain the same information on which **KILOLO** later instructed

¹⁶⁰ ICC-01/05-01/08-T-343-CONF-ENG ET, 11 September 2013, ICC-01/05-01/08-T-343-CONF-FRA ET, 11 septembre 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 septembre 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 septembre 2013.

¹⁶¹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0675-0682.

¹⁶² Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0677-0682, rows 50, 51-54, 57-62, 65, 68-75, 77-80, 87-92, 94-95, 96, 99, 102, 106-107. Corresponding to row 99: [CAR-OTP-0074-1002](#) (Audio); [CAR-OTP-0079-0148](#) (Translation); Corresponding to row 102: [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) (Translation); Corresponding to row 107: [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) (Transcript); Corresponding to row 108: [CAR-OTP-0074-1011](#) (Audio); [CAR-OTP-0077-1407](#) (Transcript).

¹⁶³ [CAR-OTP-0078-0290](#) at 0297.

¹⁶⁴ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0682, rows 102, 106-107, at 0683, row 108. **KILOLO** used the numbers "[REDACTED]" and "[REDACTED]" while D-15 used "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0835.

¹⁶⁵ [CAR-D21-0004-0709-R01](#).

him.¹⁶⁶ Some issues were not mentioned in the statement.¹⁶⁷

67. On 10 September 2013, the eve of D-15's testimony, **KILOLO** called the witness multiple times,¹⁶⁸ including in the late evening at 22:54 (for over 41 minutes)¹⁶⁹ and 23:29 (for almost 11 minutes).¹⁷⁰ During a call at 23:55,¹⁷¹ which was intercepted,¹⁷² **KILOLO** and D-15 discussed his contacts with the Defence.¹⁷³ **KILOLO** gave D-15 detailed instructions to testify in court that he had only three phone communications with **KILOLO**.¹⁷⁴ The last of those communications, **KILOLO** highlighted, took place in January 2013, when **KILOLO** called the witness to tell him that the Prosecution wanted to see him.¹⁷⁵ **KILOLO** emphasised to D-15 that the impression to leave was: "[...] nous ne nous connaissons pas bien [...]".¹⁷⁶

¹⁶⁶ For example, while BOMBAYAKE is mentioned in the statement as one of the CAR officers in the field at the relevant time, no specifics are provided as to his actual role or function. See [CAR-D21-0004-0709-R01](#) at 0733, 0742.

¹⁶⁷ For example, the statement makes no mention of the following: troops under MOBUTU and their whereabouts after his [MOBUTU's] fall; languages they [MOBUTU's troops] spoke; the term "shoe-shiners" ("cireurs"); **BEMBA**'s visit to the Camp PK12 and language he used in addressing the troops; the names of MAZI and LENGBE or their roles and functions; or the details of the MLC operations in CAR, particularly in the area of Mongoumba. See [CAR-D21-0004-0709-R01](#).

¹⁶⁸ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0680-0681, rows 90-99. **KILOLO** used the numbers "[REDACTED]" and "[REDACTED]" while D-15 used "[REDACTED]" and "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0835. **KILOLO** also had phone contact with D-15 for over an hour on the prior day, 9 September 2013. See Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0679-0680, rows 80-89.

¹⁶⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0680, row 95.

¹⁷⁰ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0681, row 96.

¹⁷¹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0681, row 99; **KILOLO** used the number "[REDACTED]" while D-15 used "[REDACTED]".

¹⁷² [CAR-OTP-0074-1002](#) (Audio); [CAR-OTP-0079-0148](#) (Translation).

¹⁷³ In this call, the only issue left for **KILOLO** and D-15 to discuss was contacts with the Defence because, with respect to the rest, "[...] on a terminé." [CAR-OTP-0074-1002](#) (Audio); [CAR-OTP-0079-0148](#) at 0150, lns.10-11 (Translation); See more generally at 0153, lns.115-119.

¹⁷⁴ [CAR-OTP-0074-1002](#) (Audio); [CAR-OTP-0079-0148](#) at 0150, lns.26-34 (Translation).

¹⁷⁵ [CAR-OTP-0074-1002](#) (Audio); [CAR-OTP-0079-0148](#) at 0152, lns.86-94 (Translation).

¹⁷⁶ [CAR-OTP-0074-1002](#) (Audio); [CAR-OTP-0079-0148](#) at 0152, lns.103-104 (Translation).

68. The following day, 11 September 2013, D-15 took the stand. **KILOLO** examined him in-chief.

69. **KILOLO** called D-15 that evening at 20:31.¹⁷⁷ During the 35 minute call, **KILOLO** coached D-15 extensively, instructing him on the answers he wanted to the questions he would pose in court the following day, or anticipated that the Prosecution would ask. Among other things, **KILOLO** coached D-15 on the whereabouts of the DRC military units after the fall of former president MOBUTU Sese Seko; the fact that some of them crossed into the CAR and became “shoe-shiners” and the languages they spoke;¹⁷⁸ the commanders over the MLC troops in the CAR;¹⁷⁹ the dates of the arrival of the troops in the CAR in relation to the date that **BEMBA** put in a letter to the United Nations (“UN”);¹⁸⁰ the [REDACTED] in the CAR;¹⁸¹ the [REDACTED];¹⁸² and **BEMBA**’s command and control over the MLC troops operating in the CAR.¹⁸³

¹⁷⁷ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0682, row 102; [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) (Translation). **KILOLO** used the number “[REDACTED]” while D-15 used “[REDACTED]”.

¹⁷⁸ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0156, lns.10-34 (Translation). The 2012 Defence statement makes no mention of these issues. See [CAR-D21-0004-0709-R01](#).

¹⁷⁹ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0157, lns.54-61, at 0158-0159, lns.84-137 (Translation). In the 2012 Defence statement, the witness simply stated it was the Chief of Main Staff who gave orders to MUSTAPHA, and **BEMBA** who was the Commander-in-Chief, without specifying any other names. Later he mentions the CAR authorities. See [CAR-D21-0004-0709-R01](#) at 0712, 0716, 0736. The witness never mentioned the generals MAZI or LENGBE in the 2012 statement. While BOMBAYAKE is mentioned in the statement as one of the CAR officers in the field at the relevant time, no specifics are provided as to his actual role or function. See [CAR-D21-0004-0709-R01](#) at 0733, 0742.

¹⁸⁰ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0165-0166, lns.349-394 (Translation). The 2012 Defence statement makes no direct mention of the letter or the date of arrival of MLC troops in the CAR. In response to a question why there was materiel in Zongo on 29 October 2002, the witness stated it was destined for the CAR government. See [CAR-D21-0004-0709-R01](#) at 0718.

¹⁸¹ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0162-0163, lns.242-285 (Translation). The 2012 Defence statement makes no mention of the dates of such a mission except to say that the witness visited Bangui at **BEMBA**’s request sometime in October, November or December 2002 and states that the witness [REDACTED] in Bangui. See [CAR-D21-0004-0709-R01](#) at 0743-0744.

¹⁸² [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0163-0165, lns.287–341 (Translation). In his 2012 Defence statement, the witness only makes a brief mention of [REDACTED], without specifying the length of his stay there or the exact period. See [CAR-D21-0004-0709-R01](#) at 0710.

¹⁸³ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0157, lns.41-45, 71; at 0158, ln.83 (Translation). Whereas the 2012 Defence statement discusses this issue, the witness’s answers are more vague than what he is instructed on. See [CAR-D21-0004-0709-R01](#).

70. With respect to the latter, **KILOLO** told D-15 to offer “[...] *plusieurs arguments qui montrent que c’était impossible*”.¹⁸⁴ On this issue, **KILOLO** wanted more details than the witness had included in court that day.¹⁸⁵

71. **KILOLO** also told D-15 that he would again ask him the names of the CAR military leaders who exercised command and control of MLC troops in the CAR, and gave the answers he wanted: “[G]AMBI, MAZI, BOMBAYAKE, LENGBE”.¹⁸⁶ As D-15 still did not know the functions of these military leaders, **KILOLO** repeated the information for D-15 to memorise:

GM : MAZI était de la logistique ?

AK : Non, non, non, non. Logistique, c’était la garde présidentielle, pour le simple motif que tout... l’armement lourd était conservé dans des containers à la présidence de la République.

GM : Oui. Oui.

[...]

GM : BOMBAYAKÉ ... BOMBAYAKÉ était ... était adjoint [...] au chef de l’état-major ?

AK : Non. Il était le ... le chef de la garde présidentielle. Il était un peu ...

GM : Ah BOMBAYAKÉ, chef de la garde présidentielle.¹⁸⁷

¹⁸⁴ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0157, lns.42-43, *see also* at 0158, lns.78-81 (Translation).

¹⁸⁵ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0157, lns.41-45 (Translation).

¹⁸⁶ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0157, lns.54-61 (Translation). In the 2012 Defence statement, there is no mention of the names of officers exercising control over Mustapha’s brigade in the CAR or MAZI, GAMBI, LENGBE and BOMBAYAKE (except for a brief mention of BOMBAYAKE in passing at the end of the statement, *see* [CAR-D21-0004-0709-R01](#) at 0742, *see also* 0733). Earlier that day the witness had mentioned these names in court, but without specifying their respective functions: *see* ICC-01/05-01/08-T-343-CONF-ENG ET, 11 September 2013, p.92, lns.7-17, ICC-01/05-01/08-T-343-CONF-FRA ET, 11 septembre 2013, p.84, lns.4-16.

¹⁸⁷ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0158, lns.97-108 (Translation).

72. To harmonise D-15's testimony with that of [REDACTED], Defence Witness D-19, and avoid involving either [REDACTED] or [REDACTED], Defence Witness D-45, who had both already testified in the Main Case, **KILOLO** also asked D-15 to state that he did not encounter either of them in Bangui.¹⁸⁸

73. On the issue of the date of arrival of the MLC troops, an important contentious issue in the case, **KILOLO** asked D-15 to say that the date mentioned in a letter sent to the UN and signed by **BEMBA** (27 October 2002) was written in error.¹⁸⁹ **KILOLO** instructed D-15 that, if the Prosecution asked about the town of Mongoumba, he should say: *"nos soldats ne sont pas arrivés là-bas"*, to avoid the implication that they committed crimes there.¹⁹⁰

74. **KILOLO** further instructed D-15 to testify falsely that he could not remember the language **BEMBA** used when talking to his troops.¹⁹¹ D-15 responded that if he followed **KILOLO**'s instruction, *"ça paraîtra quand même suspect"*,¹⁹² to which **KILOLO** replied that *"le problème de langue pour nous est capital"*¹⁹³ and suggested instead that D-15 only discuss language under the following circumstances:

[...] *Ou alors, tu réponds, mais avec beaucoup d'hésitation pour montrer que ça date de longtemps [...]. Tu peux en parler uniquement si on te pose la question, mais [...] [p]as spontanément, pas trop vite.*¹⁹⁴

¹⁸⁸ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0160, lns.161-176 (Translation). In his 2012 Defence statement, the witness stated that he did encounter [REDACTED] in [REDACTED] when he went there at BEMBA's request. See [CAR-D21-0004-0709-R01](#) at 0743.

¹⁸⁹ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0165, lns.349-352 (Translation). The 2012 Defence statement makes no mention of this issue.

¹⁹⁰ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0168, lns.463-469 (Translation). The 2012 Defence statement makes no mention of this issue.

¹⁹¹ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0168, lns.479-482 (Translation). The 2012 Defence statement makes no mention of this issue, nor does it mention that BEMBA was in the CAR to visit the troops.

¹⁹² [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0169, lns.498-500 (Translation). The witness said: "GM : Ah, mais non, mais ça, ça paraîtra quand même suspect de dire que je n'en sais rien. Parce que bon, ben ... parce que si je dis que c'est pas ce que [...] m'avait rapporté, on sait exactement que bon, ben, il s'adresse aux troupes souvent en lingala".

¹⁹³ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0169, lns.507-508 (Translation).

¹⁹⁴ [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0169, lns.501-502, 513-515 (Translation).

75. Later that evening, **KILOLO** called **MANGENDA** to update him on what he instructed D-15 to say.¹⁹⁵ On 12 September 2013 at 7:58,¹⁹⁶ before D-15 resumed his testimony, **KILOLO** reported to **BEMBA** on what D-15 would testify about that day.¹⁹⁷

76. The next day, in court, **KILOLO** asked the rehearsed questions eliciting the false responses on which D-15 had been instructed the night before, including about the names and functions of the officers commanding the MLC troops in the CAR, the whereabouts of MOBUTU's troops after his fall, and whether **BEMBA** exercised command and control over his troops.¹⁹⁸

77. At 21:00 on 12 September 2013, **KILOLO** spoke to D-15 again,¹⁹⁹ expressing his satisfaction with his testimony thus far.²⁰⁰ He also conveyed **BEMBA**'s satisfaction with the witness: *"lui-même aussi [...] t'a découvert davantage [...] il a dit que tu étais le meilleur témoin de toute l'affaire [...] il était vraiment dans une joie inhabituelle."*²⁰¹

¹⁹⁵ [CAR-OTP-0074-1005](#) (Audio); [CAR-OTP-0080-0604](#) at 0607-0608, lns.61-75 (Translation); [CAR-OTP-0074-0926](#) at 0945. **KILOLO** used the number "[REDACTED]" while **MANGENDA** used "[REDACTED]". See [CAR-OTP-0090-0831](#) at 0831, 0833.

¹⁹⁶ [CAR-OTP-0074-1006](#) (Audio); [CAR-OTP-0079-1744](#) (Translation); [CAR-OTP-0074-0926](#) at 0946-0947.

¹⁹⁷ [CAR-OTP-0074-1006](#) (Audio); [CAR-OTP-0079-1744](#) (Translation).

¹⁹⁸ ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, p.3, ln.24; p.5, ln.1; ICC-01/05-01/08-T-344-CONF-FRA ET, 12 septembre 2013, p.3, ln.18; p.4, ln.17 (names of MLC military commanders and functions); ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, p.13, ln.25-p.19, ln.4 ; ICC-01/05-01/08-T-344-CONF-FRA ET, 12 septembre 2013, p.12, ln.12-p.16, ln.27 (whether **BEMBA** had command and control over the MLC); ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, p.6, ln.3-p.7, ln.13; ICC-01/05-01/08-T-344-CONF-FRA ET, 12 septembre 2013, p.5, ln.15-p.6, ln.20 (whereabouts and size of MOBUTU's guards); ICC-01/05-01/08-T-344-CONF-ENG ET, 12 September 2013, p.19, ln.18-p.20, ln.17; ICC-01/05-01/08-T-344-CONF-FRA ET, 12 septembre 2013, p.17, ln.14-p.18, ln.8 ([REDACTED]).

¹⁹⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0682, row 107; [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) (Transcript); [CAR-OTP-0074-0926](#) at 0947.). **KILOLO** used the number "[REDACTED]" while D-15 used "[REDACTED]".

²⁰⁰ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1391, lns.41-45 (Transcript).

²⁰¹ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1391, lns.51-61, 68 (Transcript).

78. **KILOLO** also told D-15 the questions he would ask the next day in re-direct examination, as well as the expected answers.²⁰² For example, concerning the alleged crimes of MLC forces, he specifically directed the witness to provide answers to “réduire l’élément ‘connaissance’”.²⁰³ **KILOLO** instructed D-15 that, on this subject, his evidence should demonstrate that “il y avait aucune information précise... c’étaient [sic] des simples rumeurs”.²⁰⁴ Concerning the types of crimes rumoured to have been committed, **KILOLO** told D-15 not to mention rapes or murders, and to “limite [...] ça vraiment au strict minimum, en parlant simplement des biens volés”.²⁰⁵ When D-15 did not immediately understand the instructions, **KILOLO** patiently repeated them in detail.²⁰⁶ **KILOLO** also explained to the witness the Defence position on the coaching topics to make him understand how to testify more effectively.²⁰⁷

79. Later, at 21:49,²⁰⁸ **KILOLO** called **MANGENDA**, asking him to send the questions that the LRV had provided to the parties confidentially, as required.²⁰⁹ **MANGENDA** did so.²¹⁰ **KILOLO** then informed D-15 of the LRV’s questions and the answers he expected.²¹¹

²⁰² [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1395-1405 (Transcript). For example, **KILOLO** discussed with D-15 the issues of command and control over the MLC troops in the CAR, decision to deploy Mustapha to the CAR, alleged crimes of the MLC troops.

²⁰³ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1397, ln.269 (Transcript).

²⁰⁴ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1396, ln.236; *see more generally* lns.214-238 (Transcript).

²⁰⁵ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1397, lns.265-267; *see more generally* lns.249-270, at 1404, ln.529-1405, ln.542 (Transcript).

²⁰⁶ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1404-1405, lns.514-544 (Transcript).

²⁰⁷ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1400-1404, lns.381-513 (Transcript).

²⁰⁸ [CAR-OTP-0074-1009](#) (Audio); [CAR-OTP-0079-1754](#) (Translation); [CAR-OTP-0074-0926](#) at 0949. **KILOLO** used the number “[REDACTED]” while **MANGENDA** used “[REDACTED]”. *See* [CAR-OTP-0072-0173](#) at 0173-0174, 0177; [CAR-OTP-0073-0274](#), tab BABALA, rows 2, 4, 6, 12; tab NGINAMAU, row 2; tab **MANGENDA**, rows 2-9, 11-56, 58-79, 81-126; [CAR-OTP-0070-0007](#), tab NGINAMAU, rows 4, 9, 19; tab **MUSAMBA**.

²⁰⁹ [CAR-OTP-0074-1009](#) (Audio); [CAR-OTP-0079-1754](#) at 1756-1757 (Translation).

²¹⁰ [CAR-OTP-0077-1407](#) at 1408, ln.4 (Transcript); [CAR-OTP-0074-1009](#) (Audio); [CAR-OTP-0079-1754](#) at 1756-1757; [CAR-OTP-0074-1011](#) (Audio); [CAR-OTP-0088-0504](#) at 0505-0507; *See* ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.

²¹¹ [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1393-1394 (Transcript); [CAR-OTP-0074-1011](#) (Audio); [CAR-OTP-0077-1407](#) at 1408-1413 (Transcript).

80. On 13 September 2013, **KILOLO** led D-15's evidence, posing the questions rehearsed during their prior conversation.²¹² D-15 testified falsely according to **KILOLO**'s instructions.²¹³ The LRV posed the questions **KILOLO** had informed the witness of in detail.²¹⁴ On 13 September, D-15 also falsely testified, as originally instructed, that his last contact with **KILOLO** was in "*janvier de cette année*".²¹⁵

81. On 13 September, at 20:47, **KILOLO** called D-15 with **BEMBA**'s thanks.²¹⁶ **KILOLO** also sought D-15's input on how best to instruct the next witness (D-54). D-15 advised **KILOLO** that D-54 needed "*une très très bonne préparation*"²¹⁷ otherwise he could be destroyed.²¹⁸

²¹² ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p.93, lns.3-7, p.97, lns.16-19; ICC-01/05-01/08-T-345-CONF-FRA ET, 13 septembre 2013, p.82, lns.14-19, p.86, lns.20-23.

²¹³ ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p.5, lns.11-17, pp.9-14; ICC-01/05-01/08-T-345-CONF-FRA ET, 13 septembre 2013, p.4, ln.28-p.5, ln.12, p.8, ln.11-p.14, ln.1 (contacts with the Defence); ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p. 97, ln.16-p. 98, ln. 14; ICC-01/05-01/08-T-345-CONF-FRA ET, 13 septembre 2013, p.86, ln.20-p.87, ln.17 (control over the MLC troops).

²¹⁴ ICC-01/05-01/08-T-345-CONF-ENG, p.57, ln.22-p.79, ln.1; p.80, ln.4-p.92, ln.17; ICC-01/05-01/08-T-345-CONF-FRA, p.52, ln.11-p.69, ln 28; p.71, ln.2-p.82, ln.2. See also ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.

²¹⁵ ICC-01/05-01/08-T-345-CONF-FRA ET, 13 septembre 2013, p.9, lns.11-17; ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p.10, lns.1-5; ICC-01/05-01/08-T-345-CONF-ENG ET, 13 September 2013, p.5, lns.8-20, p.9, lns.5-17 ; ICC-01/05-01/08-T-345-CONF-FRA ET, 13 septembre 2013, p.4, ln.26-p. 5, ln.12, p.8, ln.15-p.9, ln.1. See also [CAR-OTP-0079-0148](#) at 0152, lns.86-90.

²¹⁶ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0684, row 113; [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1415, lns.8-23 (Transcript); [CAR-OTP-0074-0926](#) at 0951. **KILOLO** used the number "[REDACTED]" while D-15 used "[REDACTED]".

²¹⁷ [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1421, lns.234-269 (Transcript).

²¹⁸ [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1422, lns.255-257 (Transcript). D-15 tells **KILOLO** "*Parce que, bon, bien, s'il n'a pas la ... si la personne n'a pas le verbe facile, s'il n'a pas ... s'il n'est pas intelligent et malin, et puis ces personnes-là peuvent le déstabiliser, le ... le détruire automatiquement, quoi.*" Having asked for D-15's advice for the Defence, **KILOLO** indicated that the witness would be the last – which at the time was D-54, see [CAR-OTP-0077-1414](#) at 1418, lns.196-197, see more broadly at 1418, lns.132-133, at 1421, ln.237; at 1422, ln.257. However, the *Bemba* Defence in fact called one additional witness, namely D-13, but only after filing a request to this effect on 4 November 2013. See ICC-01/05-01/08-2862-Red, para.10).

ii. Witness D-54 – [REDACTED]²¹⁹

82. Witness D-54 testified in the Main Case from 30 October to 1 November 2013,²²⁰ via video link from [REDACTED].

Between 30 August and 20 October 2013

83. On 29 August 2013, when Trial Chamber III further inquired on the Defence's intention whether or not to call D-54,²²¹ **KILOLO** told **MANGENDA**, that **BEMBA** was pressuring him to call D-54, but that he was hesitant because he had not interviewed him thoroughly and that he was not going to take any chances—*"comme ça parler aux nuages"*.²²²

84. The following day, **MANGENDA** called **KILOLO**²²³ and passed on **BEMBA**'s detailed instruction for **KILOLO** to illicitly coach D-54²²⁴ on what and how to testify.²²⁵ Specifically, **MANGENDA** relayed **BEMBA**'s instructions that D-54 be instructed not to answer questions *"du tic au tac"*²²⁶ and that D-54 testify to certain specific matters. This included that D-54 (i) deny knowing anything about events at

²¹⁹ The code for this witness was "[REDACTED]". See Annex A, "[REDACTED]" as D-54, Section III.J.

²²⁰ ICC-01/05-01/08-T-347-CONF-ENG ET, 30 October 2013; ICC-01/05-01/08-T-347-CONF-FRA ET, 30 octobre 2013 ; ICC-01/05-01/08-T-348-CONF-ENG ET, 31 October 2013; ICC-01/05-01/08-T-348-CONF-FRA ET, 31 octobre 2013; ICC-01/05-01/08-T-349-CONF-ENG ET, 1 November 2013 ; ICC-01/05-01/08-T-349-CONF-FRA ET, 1 novembre 2013.

²²¹ ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013, p.67, lns.10-19 ; ICC-01/05-01/08-T-339-CONF-FR ET, 29 août 2013, p.71, lns.14-26.

²²² [CAR-OTP-0074-0998](#) (Audio); [CAR-OTP-0082-0107](#) at 0110, lns.70-72 (Translation) **KILOLO** told **MANGENDA**: *"Même [pour] [REDACTED], [le client] est en train de me presser pour que je dise que [REDACTED] va venir. Mais [REDACTED] je ne l'ai pas encore interrogé en profondeur. Je vais l'interviewer sur base de quoi, je ne vais pas comme ça parler aux nuages"*. See also [CAR-OTP-0079-1509](#) at 1509, row 3. **KILOLO** used the number "[REDACTED]". See [CAR-OTP-0074-0855](#), tab **KILOLO**, row 7. **MANGENDA** used the number "[REDACTED]". See [CAR-OTP-0072-0173](#) at 0173-0174, 0177; [CAR-OTP-0073-0274](#), tab **BABALA**, rows 2, 4, 6, 12; tab **NGINAMAU**, row 2; tab **MANGENDA**, rows 2-9, 11-56, 58-79, 81-126; [CAR-OTP-0070-0007](#), tab **NGINAMAU**, rows 4, 9, 19; tab **MUSAMBA**.

²²³ [CAR-OTP-0077-1026](#), row 252; [CAR-OTP-0079-1507](#) at 1508. **KILOLO** used the number "[REDACTED]" while **MANGENDA** used "[REDACTED]", which is attributed to **KILOLO**. See [CAR-OTP-0074-0067](#) at 0070. For the attribution of "[REDACTED]" to **MANGENDA**, see [CAR-OTP-0074-0897](#) at 0917.

²²⁴ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0133, lns.15-30 (Translation) [D-54 is referred to as "[REDACTED]"] See Annex A, "[REDACTED]" as D-54, Section III.J.

²²⁵ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0134-0138, lns.35-190 (Translation).

²²⁶ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0135, lns.70-72, *more generally* lns.70-79 (Translation).

“Mongoumba”;²²⁷ (ii) deny having any powers (“*clairement, qu’il n’avait pas de pouvoir*”) although a member of [REDACTED],²²⁸ and that they had “*mélangé [REDACTED]*”;²²⁹ (iii) pretend (“*ce qu’il doit faire c’est de prétendre*”) that he went to visit family members at a certain location;²³⁰ and (iv) state that he crossed over from [REDACTED] to [REDACTED] after [REDACTED] arrived in PK12 and joined “[REDACTED]” until December 2002, [REDACTED].²³¹ **BEMBA** also directed that D-54 explain that a “*grand groupe*” of soldiers crossed over to CAR because “*il fallait quand même qu’ils soient [...] en mesure de riposter*”.²³² Finally, **BEMBA** insisted that D-54 be told not to forget to mention “[REDACTED]” as well as “*les deux grands véhicules qu’ils avaient vus*”.²³³

85. **MANGENDA** also told **KILOLO** of **BEMBA**’s expectation that **KILOLO** finish instructing D-54 before the witness spoke with another member of the *Bemba* Defence team.²³⁴

²²⁷ In the conversation, **MANGENDA** conveys **BEMBA**’s message that D-54 has to testify that he doesn’t know anything about “*l’endroit qui nous a causé beaucoup d’ennuis hier*”. *Tu comprends ? Donc lui ne connaît rien par rapport à cet endroit-là.* : [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0134, lns.63-66. The place concerned is MONGUMBA: in a conversation of the previous day, **MANGENDA** reported to **KILOLO** that D-29 provided damaging evidence for the Defence by testifying that MLC troops committed crimes in MONGUMBA, see [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0247, lns.7-28 (Translation). See also D-29, para.199.

²²⁸ The [REDACTED]. See ICC-01/05-01/08-T-182-FRA, 4 November 2011, p.18, lns.8-19 ; ICC-01/05-01/08-T-182-ENG ET, 4 November 2011, p.17, ln.20-p.18, lns.4 ; ICC-01/05-01/08-T-183-Red-FRA, 7 novembre 2011, p.16, lns.20-28; ICC-01/05-01/08-T-183-ENG CT, 7 November 2011, p.16, lns.1-8. See also D-54, ICC-01/05-01/08-T-347-CONF-ENG ET, 30 October 2013, p.40, ln.11-p.42, ln.16; D-54, ICC-01/05-01/08-T-347-CONF-FRA ET, 30 octobre 2013, p.42, ln.28-p.45, ln.12.

²²⁹ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0137, lns.151-153 (Translation). On 30 and 31 October 2013, **KILOLO** convey this instruction to D-54. See [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0888-0889, lns.384-409 (Translation); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1129, lns.652-655 (Translation).

²³⁰ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0137, lns.172-173 (Translation).

²³¹ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0136-0137, lns.127-146 (Translation).

²³² [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0136, lns.116-122 (Translation).

²³³ [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0134, lns.46-55 (Translation)

²³⁴ Namely “*notre blanc*” i.e, Peter HAYNES. See Annex A, Section III.M.; [CAR-OTP-0074-0995](#) (Audio); [CAR-OTP-0079-0131](#) at 0133-0134, lns.15-39 (Translation).

86. On 1 September 2013, **KILOLO** confirmed to **MANGENDA**²³⁵ that he had spoken to D-54, who agreed to testify falsely according to **BEMBA**'s instructions, except in respect of [REDACTED].²³⁶ **KILOLO** told **MANGENDA** that he would try to convince D-54 to testify that he was at least an "[REDACTED], *ne fussent que quelques jours*" as his alleged connection to it would lend credence to his false testimony.²³⁷

87. On 9 September 2013 at 11:49,²³⁸ **KILOLO** and **MANGENDA** discussed how to shape D-54's testimony to align it with the rest of the evidence and not to give the Prosecution an opportunity to discredit him.²³⁹ They paid close attention to keeping the instructions for D-54 logical and simple to avoid possible contradictions on D-54's part.²⁴⁰

88. On 12 September 2013, the Defence requested that D-54's testimony be moved to 30 September, which was granted.²⁴¹ The next day, on 13 September, **KILOLO** sought D-15's input on how best to instruct the next witness, D-54.²⁴² D-15 advised **KILOLO** that D-54 needed "*une très très bonne préparation*"²⁴³ otherwise he might damage the Defence's case.²⁴⁴ **KILOLO** told D-15 that D-54 would be the last Defence witness.²⁴⁵

²³⁵ [CAR-OTP-0079-1509](#) at 1509. **KILOLO** used the number "[REDACTED]" while **MANGENDA** used the number "[REDACTED]".

²³⁶ [CAR-OTP-0074-0999](#) (Audio); [CAR-OTP-0077-1383](#) at 1384, lns.33, 1385, lns.69-71, 1386, lns.101-102 (Transcript).

²³⁷ [CAR-OTP-0074-0999](#) (Audio); [CAR-OTP-0077-1383](#) at 1386, lns.77-80, 1387, lns.109-112 (Transcript).

²³⁸ [CAR-OTP-0072-0078](#), row 2020. **KILOLO** used the number "[REDACTED]" while **MANGENDA** used "[REDACTED]".

²³⁹ [CAR-OTP-0074-1001](#) (Audio); [CAR-OTP-0079-1737](#) at 1739-1743, lns.32-161 (Translation).

²⁴⁰ [CAR-OTP-0074-1001](#) (Audio); [CAR-OTP-0079-1737](#) at 1740, lns.72-74 (Translation). D-54 was originally scheduled to testify on 24 September 2013, see ICC-01/05-01/08-2796, para. 2.

²⁴¹ ICC-01/05-01/08-2806-Conf, para.8; approved in decision ICC-01/05-01/08-2818.

²⁴² [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1420, lns.192-200 (Transcript).

²⁴³ [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1420, lns.192-202-1422 (Transcript).

²⁴⁴ [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1421-1422, lns.237-257 (Transcript). At that time, **KILOLO** indicated to D-15 that D-54 was the last defence witness left (*see* lns.196-197). D-15's suggestions in respect of the preparation are thus solely in respect of D-54.

²⁴⁵ [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1421-1422, lns.192-197. In the end, the Defence called one additional witness, namely D-13, but only after the Defence filed a request to this effect on 4 November 2013. *See* ICC-01/05-01/08-2862-Red, para.10.

89. On 1 October 2013, the Chamber noted that “[d]ue to the unavailability of D-54 on the scheduled date, the commencement of the witness's testimony was postponed until further notice”.²⁴⁶ On 17 October 2013, at 16:24,²⁴⁷ **KILOLO** spoke to **BEMBA** about his ongoing illicit coaching of D-54, reminding **BEMBA** of the hours of work already put in—“*n’oubliez pas, nous avons beaucoup arrangé avec [...] [REDACTED] et vraiment c’est des heures*”.²⁴⁸

90. In a 19 October 2013 intercepted conversation at 12:36, **KILOLO** and **MANGENDA** discussed a payment to a witness soon to testify whom **KILOLO** was trying to reach.²⁴⁹ In a later conversation that day, **KILOLO** told **MANGENDA** that he had just spoken to D-54.²⁵⁰ At trial, D-54 denied receiving any money from the Defence while under an obligation to tell the truth.²⁵¹ However, given the scheduling of his testimony and **KILOLO**’s 13 September 2013 statement to D-15 that D-54 would be the last Defence witness,²⁵² the only reasonable inference is that the payment **KILOLO** and **MANGENDA** discussed concerned D-54.²⁵³

91. Between 5 September and 21 October 2013, **KILOLO** was in phone contact with D-54 at least 34 times, totalling at least five hours and 31 minutes.²⁵⁴ Nevertheless, on

²⁴⁶ ICC-01/05-01/08-2824, p.4, fn.7.

²⁴⁷ [CAR-OTP-0080-1286](#), at 1293, row 45. **BEMBA** used the number “[REDACTED]”; see [CAR-OTP-0090-0831](#) at 0831, while **KILOLO** used “[REDACTED]”, see [CAR-OTP-0090-0831](#) at 0831.

²⁴⁸ [CAR-OTP-0080-1323](#) (Audio); [CAR-OTP-0082-0618](#) at 0623, lns.128-130 (Translation); [CAR-OTP-0080-1286](#) at 1293, row 45.

²⁴⁹ [CAR-OTP-0080-1416](#) (Audio); [CAR-OTP-0082-1349](#) at 1352, lns.54-64 (Translation); [CAR-OTP-0080-1138](#) at 1184.

²⁵⁰ [CAR-OTP-0080-1329](#) (Audio); [CAR-OTP-0082-0814](#) at 0818, lns.81-83 (Translation)

²⁵¹ ICC-01/05-01/08-T-349-CONF-ENG ET, 1 November 2013, p.44, ln.19-p.45, ln.6; ICC-01/05-01/08-T-349-CONF-FRA ET, 1 novembre 2013, p.46, ln.24-p.47, ln.15.

²⁵² See *supra*, para.88.

²⁵³ D-15 finished his testimony on 13 September 2013. The next witness was D-54, who started his testimony on 30 October 2013. D-13 testified after D-54, but only after the Defence filed a request to this effect on 4 November 2013 (see ICC-01/05-01/08-2862-Red, para. 10). See also the conversation between **KILOLO** and D-15 on 13 September 2013 in which **KILOLO** tells D-15 that D-54 will be the last witness: [CAR-OTP-0074-1012](#) (Audio); [CAR-OTP-0077-1414](#) at 1421-1422, lns.196-197 (Transcript).

²⁵⁴ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0710-0714, rows 8-1. **KILOLO** used the numbers “[REDACTED]”, “[REDACTED]”, “[REDACTED]” and “[REDACTED]”, while D-54 used “[REDACTED]”, “[REDACTED]” and “[REDACTED]”. For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0836.

21 October 2013, **KILOLO** led the Chamber to believe that the Defence had not been in contact with the witness prior to the Chamber's present autorisation: "*Mais puisque, maintenant, vous nous informez que l'autorisation, après un an, vient d'être donnée, nous allons bien entendu prendre les dispositions nécessaires pour prendre contact avec lui [D-54], puisque cette fois-ci, au moins, il va accepter de nous prendre au téléphone.*"²⁵⁵

Between 21 October and 28 October 2013 (the VWU cut-off date)

92. Between 21 October and 28 October 2013, **KILOLO** and D-54 communicated at least another seven times, for a total duration of at least one hour and six minutes.²⁵⁶

On 29 October 2013 (the VWU cut-off date)

93. On 29 October 2013, the VWU contact cut-off date,²⁵⁷ **KILOLO** and D-54 spoke at least five times between 20:00 and 22:41, totalling over one hour and 16 minutes.²⁵⁸

During D-54's testimony (from 30 October to 1 November 2013)

94. During D-54's testimony, **KILOLO** and D-54 were in phone contact at least 16 times, for a total duration of at least three hours and 43 minutes.²⁵⁹ In the evening of 30 October 2013 alone, between 19:31 and 22:14, **KILOLO** called D-54 at least four

²⁵⁵ ICC-01/05-01/08-346-CONF-Red-ENG, 21 October 2013, p.25, lns.13-17 ; ICC-01/05-01/08-346-CONF-Red-FRA, 21 October 2013, p.25, lns.8-11.

²⁵⁶ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0714-0715, rows 53-60. **KILOLO** used the number "[REDACTED]" while D-54 used "[REDACTED]". **KILOLO** also used an unidentified number. See [CAR-OTP-0088-0398](#) at 0427-0428, 0430, 0431.

²⁵⁷ [CAR-OTP-0078-0290](#) at 0297.

²⁵⁸ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0715, rows 61-65. **KILOLO** used the number "[REDACTED]" while D-54 used the number "[REDACTED]". A telephone conversation between **KILOLO** and D-54 on 30 October suggests that the number "[REDACTED]" was kept for special contacts between **KILOLO** and D-54 during his testimony. See [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0875, lns.278-284 (Translation).

²⁵⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0715-0716, rows 66-81.

times for approximately one hour and 21 minutes.²⁶⁰ On the morning of 31 October, at 06:22, **KILOLO** called D-54 for 46 minutes.²⁶¹ On the evening of the same day, during the overnight adjournment of D-54's testimony, **KILOLO** spoke again with the witness at least 11 times for approximately one hour and 35 minutes in total.²⁶²

95. During some of these phone conversations, **KILOLO** dictated to D-54 the substance of his testimony in detail, including **BEMBA**'s arrival in Bangui,²⁶³ **BEMBA**'s command of troops,²⁶⁴ **BEMBA**'s military role,²⁶⁵ the languages spoken by the MLC troops,²⁶⁶ D-54's prior contacts with the *Bemba* Defence,²⁶⁷ the motives for the MLC's intervention in CAR,²⁶⁸ the date of **BEMBA**'s troop movements,²⁶⁹ D-54's awareness of military communications, the identity of the perpetrators of the crimes,²⁷⁰ investigations into the crimes, and D-54's role and conduct.²⁷¹ **KILOLO** also

²⁶⁰ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0715, rows 66-69. **KILOLO** used the number "[REDACTED]" while D-54 used the number "[REDACTED]".

²⁶¹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0715, row 70. **KILOLO** used the number "[REDACTED]" while D-54 used "[REDACTED]".

²⁶² Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0715-0716, rows 71-81. **KILOLO** used the numbers "[REDACTED]" and "[REDACTED]" while D-54 used "[REDACTED]".

²⁶³ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0886-0887, lns.298-357 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1093-1094, lns.193-200 (Translation).

²⁶⁴ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0880, lns.53-56, 0891, lns.502-517 (Translation); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1112-1113, lns.38-99, 1116, lns.206-211, 1128, lns.607-635, 1131-1132, lns.746-758 (Translation).

²⁶⁵ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0871, lns.121-135 (Translation); [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0879, lns.15-16 (Translation); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1127, lns.586-595 (Translation).

²⁶⁶ [CAR-OTP-0080-1367](#) (audio); [CAR-OTP-0082-1109](#) at 1133-1134, lns.813-832 (Translation).

²⁶⁷ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0869-0870, lns.45-.94 (Translation).

²⁶⁸ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0890-0891, lns.482-492 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1097-1098, lns.315-356 (Translation).

²⁶⁹ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0872, lns.156-161 (Translation); [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0879, lns.19-29 (Translation); [CAR-OTP-0080-1368](#) (Audio); [CAR-OTP-0082-0659](#) at 0661, lns.19-23 (Translation).

²⁷⁰ [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1098, lns.356-379, 1099, ln.397, 424-427 (Translation); [CAR-OTP-0080-1368](#) (Audio); [CAR-OTP-0082-0659](#) at 0661, lns.9-28 (Translation).

²⁷⁰ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0896-0897, lns.713-763 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1098, lns.385-386, 1101, lns.490-496, 1103-1104, lns.583-627, (Translation); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1125-1126, lns.527-550 (Translation).

²⁷¹ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0887, ln.329 (Translation); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1136, lns.914-918 (Translation).

dictated to D-54 the answers to the expected questions from the Prosecution,²⁷² the Judges,²⁷³ and the LRV.²⁷⁴

96. True to his illicit preparation, D-54 volunteered the scripted information at times, without even being asked the relevant question.²⁷⁵

97. Furthermore, on 30 October 2013, **KILOLO** insisted that D-54 falsely testify that **BEMBA**'s troops arrived in Bangui on 7 or 8 November, even though D-54 suggested the end of November or beginning of December.²⁷⁶ The next morning, on 31 October, D-54 asked **KILOLO** to go through these dates once more, expressing concern about possibly forgetting the scripted answers in court.²⁷⁷

98. [REDACTED],²⁷⁸ and for that reason **BEMBA** was unaware of the crimes.²⁷⁹

99. Concerning the important issue of the language spoken by MLC troops, which ostensibly could identify them as such, **KILOLO** prevailed on D-54 to falsely testify that *"la plupart parlait le Swahili, [...] parce que le plus grand nombre était de la brigade de MUSTAPHA, il venait de l'est. (...) un petit group parlait Lingala [...] d'autres encore parlaient français [...] le ngbandi"*.²⁸⁰

²⁷² [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0869-0675, lns.45-274 (Translation); [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0879-0901, lns.15-911 (Translation); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1112-1113, lns.43-99 (Translation).

²⁷³ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0869, lns.35-43 (Translation).

²⁷⁴ [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1113, lns.101-106, 1123-1139, lns.439-1024 (Translation); **MANGENDA** sent the LRV questions to **KILOLO** via email on 31 October 2013: see [CAR-OTP-0088-0504](#) at 0516-0518.

²⁷⁵ For example, in court, when asked if there were any other ALC liaison officers at the FACA main staff, D-54 volunteered that **BEMBA** arrived in Bangui and spoke with the troops in French and Lingala. See ICC-01/05-01/08-T-347-CONF-ENG ET, 30 October 2013, p.42, ln.17-p.43, ln.2, p.46, lns.1-16 ; ICC-01/05-01/08-T-347-CONF-FRA ET, 30 octobre 2013, p.45, lns.13-23, p.48, ln21-p.49, ln.13; [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0883-0884, lns.191-200 (Translation).

²⁷⁶ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0886-0887, lns.303-333 (Translation).

²⁷⁷ [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1093-1094, lns.183-211(Translation).

²⁷⁸ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0897, lns.756-760 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1103, lns.558-583 (Translation).

²⁷⁹ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0899, lns.837-853 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1102, lns.506-510, 1104, lns.612-626 (Translation).

²⁸⁰ [CAR-OTP-0080-1367](#) (audio), [CAR-OTP-0082-1109](#) at 1133, lns.821-827, *more generally*, at 1133-1134, lns.813-832 (Translation).

100. To bolster the witness's credibility, **KILOLO** also provided D-54 with back-up information on the physical appearance of the people he was instructed to mention in his testimony.²⁸¹

101. Regarding his contacts with the *Bemba* Defence, **KILOLO** coached D-54 to testify that he and **KILOLO** had spoken five to six times,²⁸² and their last contact had been about a month before D-54's testimony.²⁸³ **KILOLO** also directed D-54 to say that he had never met **KILOLO**,²⁸⁴ and that he only met his predecessor NKWEBE once in 2011.²⁸⁵ **KILOLO** reminded D-54: "*personne de la Défense ne vous a appelé la nuit pour vous préparer, en disant faites attention demain, dites ceci, dites cela, jamais, jamais, jamais*".²⁸⁶

102. **KILOLO** encouraged D-54 to liaise with other Defence witnesses to align their fabricated testimonies, including with D-15, who testified just prior to D-54,²⁸⁷ and instructed D-54 to lie about it.²⁸⁸

²⁸¹ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0882-0883, lns.143–190 (Translation).

²⁸² [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0870, lns.80-86 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1090, lns.63-65 (Translation). See also [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0894, lns.646-649 (Translation).

²⁸³ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0869, lns.47-48 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1092, ln.121 (Translation).

²⁸⁴ [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1093, lns.163-164 (Translation).

²⁸⁵ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0869, lns.61-69 (Translation). See also [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1093, lns.164-167 (Translation).

²⁸⁶ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0899, lns.820-822 (Translation).

²⁸⁷ [CAR-OTP-0080-1365](#) (Audio); [CAR-OTP-0082-0655](#) at 0657, ln.23 (Translation); [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0873-0874, lns.219-229 (Translation). In this conversation [REDACTED] refers to [REDACTED], D-15, see, for example: ICC-01/05-01/08-T-343-CONF-ENG ET; ICC-01/05-01/08-T-343-CONF-FRA ET; see also [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0871, ln.142 (Translation). For suggested contacts with other witnesses, see [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1115-1120 (Translation); [CAR-OTP-0080-1368](#) (Audio); [CAR-OTP-0082-0659](#) at 0661-06652, lns.27-58 (Translation); [CAR-OTP-0080-1369](#) (Audio); [CAR-OTP-0082-0663](#) at 0665-0668, lns.8112 (Translation); [CAR-OTP-0080-1371](#) (Audio); [CAR-OTP-0082-0903](#) at 0906-0908, lns.60-123 (Translation).

²⁸⁸ [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1092-1093, lns.157-159 (Translation). D-54 did, in fact, contact D-15, in relation to, *inter alia*, the details of [REDACTED]. [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0873-0874, lns.223-233 (Translation). See also [CAR-OTP-0080-1417](#) (Audio); [CAR-OTP-0082-0609](#) at 0610, lns.12-22 (Transcript).

103. D-54 objected to some of **KILOLO's** instructions because they did not make sense from a [REDACTED] point of view. Nevertheless, **KILOLO** emphasised that : *“Mon... mon frère, ça c'est une théorie [REDACTED], mais moi je suis en train de vous parler du procès, ici nous n'avons pas de théorie [REDACTED], nous avons un procès, c'est une lutte [...] Alors, dans le cadre de la lutte en question, il faudra que ça sorte comme s'ils étaient mélangés, et vous n'êtes pas le seul, [REDACTED] aussi sont passés ici et ils ont soutenu la même thèse ”*.²⁸⁹

104. **KILOLO** vetted any suggestions from D-54 against their potential to further the Defence case. For example, **KILOLO** strongly objected to D-54's suggestion that he had been receiving [REDACTED] because *“il ne faut pas que ça sonne comme si ce [REDACTED] opérait à BANGUI [...]”*.²⁹⁰ **KILOLO** informed the witness he would not ask in court any questions that were not previously rehearsed.²⁹¹ Moreover, **KILOLO** instructed D-54 to pretend that he did not know or had forgotten the answer to any question that had not been touched upon in their conversations, discouraging any unrehearsed answers.²⁹²

105. On 30 and 31 October 2013, D-54 testified falsely as instructed.²⁹³ In accordance with **KILOLO's** instructions, he testified that the [REDACTED] crimes committed by MLC troops from the CAR population.²⁹⁴ D-54 also delivered the scripted answer on languages spoken in Court.²⁹⁵ On 1 November, D-54 testified that his last contact with

²⁸⁹ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0889, lns.424-429, more generally at 0888-0889, lns.377-445 (Translation).

²⁹⁰ [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0892, lns.536-537, more generally at 0891, ln.533-0892, ln.543 (Translation).

²⁹¹ [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0874, lns.241-247 (Translation).

²⁹² [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0901, lns.909-911 (Translation); [CAR-OTP-0080-1366](#) (Audio); [CAR-OTP-0082-1087](#) at 1106-1107, lns.697-712 (Translation).

²⁹³ See e.g., ICC-01/05-01/08-T-347-CONF-ENG, 30 October 2013, p.40, ln.11-p.42, ln.8; ICC-01/05-01/08-T-347-CONF-FRA ET, 30 octobre 2013, p.42, ln.27-p.45, ln.1; ICC-01/05-01/08-T-348-CONF-ENG, 31 October 2013, p.33, ln.20-p.35, ln.19; ICC-01/05-01/08-T-348-CONF-FRA ET, 31 octobre 2013, p.35, ln.6-p.37, ln.8.

²⁹⁴ ICC-01/05-01/08-T-348-CONF-ENG ET, 31 October 2013, p.50, ln.24-p.52, ln.13 ; ICC-01/05-01/08-T-348-CONF-FRA ET, 31 octobre 2013, p.53, ln.5-p.54, ln.20.

²⁹⁵ ICC-01/05-01/08-T-349-CONF-ENG ET, 1 November 2013, p.50, ln.21-p.51, lns.18 ; ICC-01/05-01/08-T-349-CONF-FRA ET, 1 novembre 2013, p.53, ln.23-p.54, ln.23.

KILOLO or anyone else from the *Bemba* Defence took place two months prior to his testimony.²⁹⁶ When asked about his contacts with **KILOLO**, D-54's denied even knowing him.²⁹⁷ As instructed, D-54 added that his only personal contact with **BEMBA**'s Defence team was with his deceased lawyer NKWEBE in 2011.²⁹⁸ D-54 denied receiving any money from the Defence.²⁹⁹

106. On 1 November 2013 at 07:47,³⁰⁰ **KILOLO** informed **BEMBA** that he had not been able to respond to **BEMBA**'s call the previous day because he was on the phone with D-54, whose illicit coaching exhausted him: "*ça ma beaucoup épuisé*".³⁰¹

iii. Witness D-26 – [REDACTED]

107. Witness D-26 testified in the Main Case from 20 to 23 August 2013, during the afternoon sessions.³⁰²

108. D-26 met the *Bemba* Defence in 2012 and provided a witness statement on the 2002 events in the CAR.³⁰³ In 2013, D-26 had more than 20 phone contacts with

²⁹⁶ ICC-01/05-01/08-T-349-CONF-ENG ET, 1 November 2013, p.39, ln.9-p.45, ln.9; ICC-01/05-01/08-T-349-CONF-FRA ET, 1 novembre 2013, p.40, ln.14-p.47, ln.18.

²⁹⁷ ICC-01/05-01/08-T-349-CONF-ENG ET, 1 November 2013, p.44, lns.5-8 ; ICC-01/05-01/08-T-349-CONF-FRA ET, 1 novembre 2013, p.46, lns.8-9.

²⁹⁸ ICC-01/05-01/08-T-349-CONF-ENG ET, 1 November 2013, p.39, ln.12-p.40, ln.3, p.42, ln.23-p.43, ln.3 ; ICC-01/05-01/08-T-349-CONF-FRA ET, 1 novembre 2013, p.40, ln.18-p.41, ln.11, p.44, lns.22-28.

²⁹⁹ ICC-01/05-01/08-T-349-CONF-ENG ET, p.44, ln.19-p.45, ln.6; ICC-01/05-01/08-T-349-CONF-FRA ET, p.46, ln.24-p.47, ln.15.

³⁰⁰ [CAR-OTP-0080-1286](#), at 1289, row 7. **BEMBA** used the number "[REDACTED]" while D-54 used the number "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831.

³⁰¹ [CAR-OTP-0080-1372](#) (Audio); [CAR-OTP-0082-0669](#) at 0671, lns.14-21 (Translation); [CAR-OTP-0080-1138](#) at 1243-1244. **KILOLO** similarly complained about D-13, see *supra*, para. 208.

³⁰² D-26, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, pp.55-83; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, pp.61-91; D-26, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, pp.60-88; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, pp.67-97; D-26, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013 pp.52-80; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, pp.54-82; D-26, ICC-01/05-01/08-T-335-CONF-ENG ET, 23 August 2013; ICC-01/05-01/08-T-335-CONF-FRA ET, 23 août 2013.

³⁰³ **KILOLO** disclosed the draft transcript of this interview on 15 July 2014 ([CAR-D21-0004-0546](#)) and claimed that D-26's interview was conducted in Brazzaville between 17 March and 5 April 2012. See ICC-01/05-01/13-600-Conf-Corr2, para.214. See also [CAR-D21-0001-0106](#); [CAR-D21-0003-0219](#).

KILOLO, including after the VWU contact cut-off date,³⁰⁴ which was 16 August 2013.³⁰⁵ **KILOLO** used some of these contacts to illicitly coach D-26 to provide false testimony in court. The scheduling of the testimony of D-23, who testified in the mornings from 20 to 22 August 2013,³⁰⁶ further enabled **KILOLO** to tailor his illicit coaching of D-26 to ensure consistency with D-23's testimony.³⁰⁷

109. On 20 August 2013, the morning of the first day of D-26's testimony, **KILOLO** spoke with D-26 several times for approximately nine minutes between 08:43 and 08:59.³⁰⁸ On the same day, during the 11:00 court recess,³⁰⁹ **KILOLO** again spoke to D-26, using **MANGENDA's** phone³¹⁰, which **MANGENDA** provided to **KILOLO**. **KILOLO** told the witness: *"je voudrais un peu répéter les choses-là, si tu peux me suivre attentivement"*.³¹¹

110. **KILOLO** supplied the witness with the following information during this telephone conversation: (i) the timing of François BOZIZÉ's rebellion;³¹² (ii) the

³⁰⁴ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0704-0706. **KILOLO** used the numbers "[REDACTED]", "[REDACTED]" and "[REDACTED]". **KILOLO** also used "[REDACTED]", which is attributed to **MANGENDA**. D-26 used the numbers "[REDACTED]", "[REDACTED]" and "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0833, 0835.

³⁰⁵ [CAR-OTP-0078-0290](#) at 0295. **KILOLO** was not authorized to speak to D-26 during the overnight adjournment of his testimony. See [CAR-OTP-0072-0172](#) at 0172.

³⁰⁶ D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, pp.6-54; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, pp.6-60; D-23, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, pp.1-59; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, pp.1-66; D-23, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013 pp.2-51; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, pp.2-54.

³⁰⁷ ICC-01/05-01/08-2222-Conf-anxa, pp.16-18, submitted by the Defence in the Main Case. The "Subject Matter of Testimony" of D-26 and D-23, respectively, cover essentially the same points. See also D-23: [CAR-D04-0003-0168](#); [CAR-D04-0004-0057](#); D-26: [CAR-D04-0003-0170](#); [CAR-D04-0004-0060](#).

³⁰⁸ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0705, rows 19-23. **KILOLO** used the numbers "[REDACTED]" and "[REDACTED]" while D-26 used the number "[REDACTED]".

³⁰⁹ ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.30, lns.5-6; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.32, ln.14.

³¹⁰ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0705, rows 25-26. **KILOLO** used the number "[REDACTED]" while D-26 used the number "[REDACTED]".

³¹¹ [CAR-OTP-0074-0976](#) (Audio), [CAR-OTP-0077-1356](#) at 1357, lns.6-7 (Transcript). See also call Sequence Tables, [CAR-OTP-0090-0630](#) at 0705, row 25.

³¹² [CAR-OTP-0074-0976](#) (Audio); [CAR-OTP-0077-1356](#) at 1357, lns.13-16 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.16, lns.18-p.17, ln.1; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.16, ln.23-p.17, ln.6. In his 2012 statement, D-26 does not speak of the beginnings of the BOZIZE's rebellion. See [CAR-D21-0004-0546](#).

numbers of BOZIZÉ's troops;³¹³ and (iii) the BOZIZÉ troops' composition, including *Forces Armées Centrafricaines* ("FACA") deserters, Central African volunteers, and former military troops from Zaire who had arrived as refugees, among them the so-called "shoe-shiners".³¹⁴ He recited to the witness the crimes allegedly committed by the rebels' troops³¹⁵ and the reasons the witness should provide in court for their occurrence.³¹⁶ **KILOLO** even divulged the specific questions he would ask in court, telling the witness:

*[...] je vais aussi te demander pourquoi il y a eu des pillages [...] Pourquoi il y avait eu des viols de femmes? [...] je vais te demander : est-ce que c'est possible de distinguer un Centrafricain et un Congolais quand ils parlent Lingala.*³¹⁷

111. **KILOLO** also coached D-26 on issues deviating from his 2012 statement³¹⁸ or in direct contradiction with it,³¹⁹ including: (i) BOZIZÉ's troops occupying the northern areas of Bangui until 30 October 2002,³²⁰ (ii) BOZIZÉ's troops, based at Moyenne

³¹³ [CAR-OTP-0074-0976](#) (Audio); [CAR-OTP-0077-1356](#) at 1357-1358, lns.18-19, 35 (Transcript); D-23, 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 août 2013, p.19, lns.2-8.

³¹⁴ [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1360, lns.14-22 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.18, ln.19-p.22, ln.24; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.19, ln.9-p.24, ln.12. In Court, D-23 mentioned the shoe shiners, but did not stress that they were former military troops from Zaire.

³¹⁵ [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1361, lns.41-45, *see also more generally* lns.41-50 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.44, ln.15-p.46, ln.4, p.49, ln.11-p.50, ln.5, p.51, ln.23-p.52, ln.19; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.49, lns.1-p.50, ln.21, p.54, ln.20-p.55, ln.15, p.57, ln.12-p.58, ln.11.

³¹⁶ [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1361-1362, lns.54-58, 84-86 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.44, ln.15-p.45, ln.12, p.49, ln.11-p.50, ln.5; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.48, lns.18-p.49, ln.9, p.54, ln.20-p.55, ln.15. In his 2012 statement, D-26, when asked why BOZIZÉ's troops were raping civilians, stated that the soldiers, who did not have money, wanted to take advantage of the civilians and flee before the arrival of BEMBA's troops. See [CAR-D21-0004-0546](#) at 0564.

³¹⁷ [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1362, lns.84-88 (Transcript).

³¹⁸ [CAR-OTP-0074-0976](#) (Audio); [CAR-OTP-0077-1356](#) at 1358, lns.45-51 (Transcript); [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1360, lns.6-12 (Transcript); *See also* D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.28, ln.6-p.30, ln.1; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.30, ln.5-p.32, ln.7. Compare with [CAR-D21-0004-0546](#) at 0550, 0555 and 0570.

³¹⁹ In his 2012 statement, D-26 stated that BOZIZÉ's troops were based in Sido, a location in Chad. See [CAR-D21-0004-0546](#) at 0549, 0556. D-26 mentioned Moyenne-Sido, a location in CAR, when listing the areas where BOZIZÉ's troops were deployed. See [CAR-D21-0004-0546](#) at 0550. He had also stated that the troops had arrived on 25 November 2002, and that they left Bangui two days after their arrival. See [CAR-D21-0004-0546](#) at 0559, 0566-0567.

³²⁰ [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1361-1362, lns.36-40, 76-80 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.31, ln.16-p.34, ln.23, p.35, ln.20-p.36, ln.4, p.41,

SIDO, CAR,³²¹ attacking Bangui on 25 October 2002,³²² and (iii) detailed information on the creation and composition of BOZIZÉ's Main Staff and the individual roles of its various officers. **KILOLO** stressed that D-26 should remember to tell the Court that: "[...] *les militaires centrafricains qui parlaient le Lingala étaient très nombreux*",³²³ and further explained the importance of showing that it was impossible to "*distinguer un Centrafricain et un Congolais quand ils parlaient le lingala*".³²⁴

112. Finally, **KILOLO** told D-26 to say that the last time they spoke to each other was when he was handed over to the VWU and agreed with D-26's suggestion to say that they spoke on the phone only six times:

KILOLO: la dernière fois que tu m'as parlé c'est [...] pour que je te présente ces gens là, depuis lors tu n'as plus jamais eu de mes nouvelles évidemment

INI : [...] Sachant en fait que vous m'avez appelé 6 fois seulement... 6 fois

*KILOLO : Voilà*³²⁵

113. During the same court recess, **KILOLO** called D-26 again at 11:20 for about four minutes.³²⁶

lns.7-16 ; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.34, lns.4-p.38, ln.8, p.39, lns.12-21, p.45, lns.8-19.

³²¹ [CAR-OTP-0074-0976](#) (Audio); [CAR-OTP-0077-1356](#) at 1357, lns.13-21 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.17, lns.6-9, p.18, lns.7-8; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.17, lns.13-17, p.18, lns.20-21.

³²² [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1360-1361, lns.33-37 (Transcript); D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.31, lns.12-15; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.33, ln.26-p.34, ln.3.

³²³ [CAR-OTP-0077-1359](#) at 1361, lns.60-61; D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.26, lns.18-25 ; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.28, lns.18-25. Compare that with [CAR-D21-0004-0546](#) at 0554-0555.

³²⁴ [CAR-OTP-0077-1359](#) at 1362, lns.87-88, *also more generally* lns.84-88; D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.25, ln.21-p.26, ln.11; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.27, lns.20-p.28, ln.9.

³²⁵ See [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#), at 1362, lns.95-98 (Transcript).

³²⁶ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0705, row 27. **KILOLO** used the number "[REDACTED]" while D-26 used "[REDACTED]".

114. That afternoon, D-26 testified falsely, providing—for the most part—the answers rehearsed with **KILOLO** during the recess.³²⁷ On several occasions, D-26 deviated from the script **KILOLO** gave him, including on the date of the arrival of BOZIZÉ's troops to Bangui.³²⁸

115. **KILOLO** called D-26 on the evening of 20 August 2013 at 23:23 and spoke with him for 23 minutes.³²⁹ The next day in court, **KILOLO** revisited the date BOZIZÉ's troops arrived in Bangui and elicited the scripted response that the witness had failed to deliver the previous day.³³⁰ When cross-examined about his change in story, D-26 falsely claimed that he had no contact with anyone since his previous day's testimony.³³¹

116. On 22 August 2013 between 21:22 and 21:57, **KILOLO** spoke to D-26 twice for approximately 27 minutes.³³² When questioned by the Prosecution the following day, D-26 testified falsely that he had contact with the *Bemba* Defence only twice,³³³ and that he had not had any recent contacts with them.³³⁴

³²⁷ D-26, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, pp.54 *et seq*, in particular at p.65, ln.11-p.71, ln.16, p.79, ln.7-p.80, ln.22; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, pp.60 *et seq*, in particular at p.71, ln.25-78, ln.6, p.86, ln.21-p.88, ln.14.

³²⁸ On the issue of the arrival of BOZIZÉ's troops to Bangui, D-26 answered in accordance with his 2012 statement. *See* D-26, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.79, lns.5-7, p.80, lns.2-7, p.81, lns.11-13; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.86, lns.18-21, p.87, lns.16-22, p.89, lns.2-5. *Contra* to [CAR-OTP-0074-0977](#) (Audio); [CAR-OTP-0077-1359](#) at 1360-1361, lns.33-34, 36-37; and consistent with [CAR-D21-0004-0546](#) at 0559.

³²⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0705, row 28. **KILOLO** used the number “[REDACTED]” while D-26 used “[REDACTED]”.

³³⁰ D-26, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p.61, lns.10-17, p.66, lns.10-23; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, p.68, lns.16-25; p.73, ln.27-p.74, ln.16.

³³¹ D-26, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p.68, ln.17-p.69, ln.15; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, p.76, lns.12-p.77, ln.12.

³³² Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0705, rows 29-31. **KILOLO** used the number “[REDACTED]” while D-26 used “[REDACTED]”.

³³³ D-26, ICC-01/05-01/08-T-335-CONF-ENG ET, 23 August 2013, p.14, ln.25-p.19, ln.7; ICC-01/05-01/08-T-335-CONF-FRA ET, 23 août 2013, p.15, ln.24-p.20, ln.11.

³³⁴ D-26, ICC-01/05-01/08-T-335-CONF-ENG ET, 23 August 2013, p.19, lns.5-7; ICC-01/05-01/08-T-335-CONF-FRA ET, 23 août 2013, p.20, lns.8-11.

117. In court, D-26 also denied knowing KOKATE personally,³³⁵ a claim contradicted by Western Union records showing two transfers between him and KOKATE.³³⁶ Finally, D-26 falsely denied knowing D-23.³³⁷

iv. Witness D-23 – [REDACTED]

118. D-23 testified in the Main Case from 20 to 22 August 2013, during the morning sessions.³³⁸

119. D-23 was never a soldier,³³⁹ left the CAR after the 2001 *coup d'état*,³⁴⁰ and did not witness the events about which he testified.³⁴¹

120. KOKATE approached D-23 about testifying on behalf of **BEMBA** and told him that if he testified in the Main Case he could be relocated to Europe.³⁴² [REDACTED]³⁴³ and knew that D-23 was not a soldier.³⁴⁴

³³⁵ D-26, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p.62, ln.21-p.64, ln.16; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, p.65, ln.14-p.67, ln.4.

³³⁶ On 23 October 2006, D-26 received USD 63.08 from KOKATE. See [CAR-OTP-0070-0005](#), tab 4 Joachim Kokate, row 23. On 14 November 2008, D-26 transferred USD 290.52 to KOKATE. See [CAR-OTP-0070-0005](#), tab 4 Joachim Kokate, row 41.

³³⁷ D-26, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p.65, lns.4-5; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, p.67, lns.19-20; [CAR-OTP-0087-2542](#) at 2545, lns.94, 110, 2547, ln.163, *more generally* at 2545-2547, ln.87-163; [CAR-OTP-0088-1456](#) at 1463, lns.257-259.

³³⁸ D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, pp.6-54; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, pp.6-60; D-23, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, pp.1-59; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, pp.1-66; D-23, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, pp.2-51; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, pp.2-54.

³³⁹ [CAR-OTP-0087-2409](#) at 2414, lns.176-177; [CAR-OTP-0082-1961-R01](#) at 1968, para.23, 1969, para.27, 1970, para.32.

³⁴⁰ [CAR-OTP-0087-2409](#) at 2413, lns.115-125; [CAR-OTP-0082-1961-R01](#) at 1967, para. 20, 1968, para.23.

³⁴¹ [CAR-OTP-0087-2426](#) at 2437, lns.408-409, 425-428; [CAR-OTP-0082-1961-R01](#) at 1970, para.33.

³⁴² [CAR-OTP-0087-2426](#) at 2434-2435, lns.284-305, 2441, lns.560-571, 2442, lns.592-603, 2443, lns.623-635, 2446, lns.748-772; [CAR-OTP-0082-1961-R01](#) at 1970, para.31.

³⁴³ [REDACTED]. [CAR-OTP-0087-2426](#) at 2434, lns.269-276, 2437, lns.393-394, 2439, lns.492-493. D-23 and KOKATE later had regular contact [REDACTED]. [CAR-OTP-0087-2426](#) at 2434, lns.269-282, 2438, lns.463-465, 2441, lns.576-579, 2449, lns.886-888. D-23 and KOKATE [REDACTED]. [CAR-OTP-0087-2426](#) at 2437, lns.393-398, 2439, lns.470-490.

³⁴⁴ [CAR-OTP-0087-2426](#) at 2449, lns.880-894.

121. KOKATE facilitated contact between D-23 and **KILOLO**.³⁴⁵ In early 2012,³⁴⁶ **KILOLO** (accompanied by Kate GIBSON,³⁴⁷ then the *Bemba* Defence's legal assistant³⁴⁸) interviewed D-23 in Brazzaville at the Hotel [REDACTED].³⁴⁹ After the interview, **KILOLO** gave USD 100 to D-23, telling him that "*c'est pas la corruption, mais comme je t'ai dérangé, paye le taxi et va*".³⁵⁰

122. Subsequently, **KILOLO** gave D-23 an additional 600 dollars;³⁵¹ this occurred shortly before he testified.³⁵² **KILOLO** again told D-23 that the money was not "*une corruption*" but rather was to "help him"³⁵³ while he was away from his family.³⁵⁴

123. **KILOLO** also gave D-23 a new laptop,³⁵⁵ at some point prior to D-23's testimony.³⁵⁶

124. **KILOLO** told D-23 not to make an error during his testimony and admit that **KILOLO** had given him money, since that money was not "official".³⁵⁷ Both KOKATE and **KILOLO** also told D-23 not to reveal during his testimony that KOKATE was the one who put him in contact with **KILOLO**.³⁵⁸

³⁴⁵ [CAR-OTP-0087-2426](#) at 2434-2436, lns.284-353, 2452-2454, lns.982-1017; [CAR-OTP-0082-1961-R01](#) at 1969-1970, paras.28-31; *see also* [CAR-OTP-0087-2426](#) at 2461, lns.1337-1345 (indicating that KOKATE was on location during the time of D-23's first interview with **KILOLO**).

³⁴⁶ *See* [CAR-D21-0001-0106](#) (receipt showing **KILOLO** stayed at the Hotel [REDACTED] in Brazzaville in late March 2012); [CAR-D21-0003-0219](#) at 0219 (recording reimbursements for a mission conducted by **KILOLO** and GIBSON to the DRC and Brazzaville between 17 March and 5 April 2012).

³⁴⁷ [CAR-OTP-0087-2426](#) at 2435-2436, lns.339-347, 2455, lns.1092-1094, 1461-2462, lns.1342-1377.

³⁴⁸ [CAR-OTP-0074-0067](#) at 0071, row 6; ICC-01/05-01/13-600-Conf-Corr2, para.121.

³⁴⁹ [CAR-OTP-0087-2426](#) at 2455, lns.1092-1096. The **KILOLO** Defence disclosed a transcript of this interview.

See [CAR-D21-0004-0640](#) (French original); [CAR-D21-0004-0601](#) (English translation).

³⁵⁰ [CAR-OTP-0087-2467](#) at 2468, lns.29-31.

³⁵¹ [CAR-OTP-0087-2486](#) at 2492, lns.239-241.

³⁵² [CAR-OTP-0087-2486](#) at 2492, lns.241-254 (stating that the transfer occurred the day before D-23 was presented to the "*les gens de LA HAYE*", that is, the VWU).

³⁵³ [CAR-OTP-0087-2486](#) at 2492, lns.237-239 ("*Bon, moi, à mon niveau ... moi, à mon niveau, je vais te trouver quelque chose qui va t'aider, qui va t'aider. Peut-être, tu vas laisser à ta famille, et tout et tout.*").

³⁵⁴ [CAR-OTP-0087-2486](#) at 2492-2494, esp. lns.250-254 ("*Bon, c'est pas une corruption, je t'ai beaucoup dérangé et tout, et tout. Tu prends, ça peut permettre que tu laisses [REDACTED] tout le temps, parce que tu seras immobilisé, tout et tout. Voilà, pour ne pas que ...*").

³⁵⁵ [CAR-OTP-0087-2521](#) at 2534-2535, esp. lns.450-453, 504-505.

³⁵⁶ [CAR-OTP-0087-2521](#) at 2534, lns.469-476.

³⁵⁷ [CAR-OTP-0087-2521](#) at 2529, lns.281-295.

³⁵⁸ [CAR-OTP-0087-2542](#) at 2544, lns.47-78.

125. **KILOLO** gave D-23 a phone before he was handed over to the VWU.³⁵⁹ **KILOLO** explained to D-23 that he wanted to stay in contact with him after VWU took the witness's phone.³⁶⁰ After the VWU cut-off date,³⁶¹ **KILOLO** had unauthorised phone contact with D-23, including on the night before his testimony and during overnight breaks in his testimony.³⁶²

126. During a call lasting over 41 minutes on 19 August 2013,³⁶³ the eve of D-23's testimony, **KILOLO** illicitly coached D-23.³⁶⁴ **KILOLO** told D-23 about a man killed by the *libérateurs* in PK12³⁶⁵ and that Sambate was a member of BOZIZÉ's military staff.³⁶⁶ **KILOLO** also asked D-23 if he knew the composition of BOZIZÉ's troops and whether they included Chadian soldiers.³⁶⁷

127. **KILOLO** spoke with D-23 at least six other times while he was testifying,³⁶⁸ for a total duration of over 25 minutes after his first day of testimony³⁶⁹ and over 19 minutes after his second day of testimony.³⁷⁰

128. D-23 testified falsely that he had been a former FACA soldier³⁷¹ who joined BOZIZÉ's rebellion³⁷² and was seconded to the intelligence section.³⁷³ D-23 also falsely

³⁵⁹ [CAR-OTP-0087-2486](#) at 2502-2505.

³⁶⁰ [CAR-OTP-0087-2486](#) at 2502, lns.606-622, 2505, lns.724-727.

³⁶¹ The VWU cut-off date for D-23 was 16 August 2013. [CAR-OTP-0078-0290](#) at 0295.

³⁶² Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0689, rows 46-55. **KILOLO** used the numbers "[REDACTED]" and "[REDACTED]" while D-23 used "[REDACTED]" and "[REDACTED]." For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0835.

³⁶³ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0689, row 47.

³⁶⁴ See e.g., [CAR-OTP-0087-2521](#) at 2522, lns.16-31; [CAR-OTP-0087-2486](#) at 2516-2520.

³⁶⁵ [CAR-OTP-0087-2486](#) at 2516-2517, lns.1157-1176, 2519, lns.1256-1258.

³⁶⁶ [CAR-OTP-0087-2486](#) at 2518-2519, lns.1221-1235.

³⁶⁷ [CAR-OTP-0087-2486](#) at 2519-2520, lns.1264-1271.

³⁶⁸ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0689, rows 48, 51-55.

³⁶⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0689, rows 48-54.

³⁷⁰ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0689, row 55. The VWU has confirmed that **KILOLO** did not have a specific authorisation to contact D-23 during the overnight adjournment in his testimony. [CAR-OTP-0072-0172](#).

³⁷¹ D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.14, ln.13; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.14, ln.17.

³⁷² D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.18, lns.7-12; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.18, lns.20-p.19.ln.1.

³⁷³ D-23, ICC-01/05-01/08-T-332-CONF-ENG ET, 20 August 2013, p.30, lns.20-22; ICC-01/05-01/08-T-332-CONF-FRA ET, 20 août 2013, p.33, lns.3-6; D-23, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p.57, lns.5-6; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, p.64, lns.1-3.

testified that he had not received any payment in exchange for his testimony,³⁷⁴ despite having already received significant sums of money and a new laptop from **KILOLO**.³⁷⁵

129. D-23 further testified falsely when he stated that he had never spoken with KOKATE.³⁷⁶

130. Having lied to the Court, the witness became disconcerted and evasive when asked if anyone had contacted him from Europe and promised him relocation to Europe if he testified in the Main Case. In his denial, D-23 offered a rambling, elaborate response that culminated with a curse word:

Q: Sir, has anyone contacted you from Europe and promised you relocation to Europe if you testify in this case?

*A: No. And to begin with, I had a wife and first I said, "No," quite forcibly to this question, and to start - you have to understand my vision. Where I am now, I'm fine. I have my job. I have a wife. I have children. My first child [REDACTED] of age, the second is [REDACTED]. Well, my first child is [REDACTED] and then the second child is [REDACTED]. I cannot venture off and leave them and go to Europe. That's not my objective. I'm working and with the little money I make, I can support my family. Thank you. No one was in touch with me from Europe. No one at all. I cannot. Please, I beg of you. I cannot leave my family and go off on some kind of mysterious adventure. No one has been in touch with me and that - thank you. Shit.*³⁷⁷

³⁷⁴ D-23, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p.17, lns.23-25; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, p.19, lns.19-21.

³⁷⁵ In addition to the 700 dollars mentioned above, KILOLO also transferred EUR 99.09 to D-23 on 9 August 2013. [CAR-OTP-0074-0855](#), tab 40 Aimé Kilolo Musamba, row 12 (presumably travel expenses).

³⁷⁶ D-23, ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p.59, lns.15-16; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, p.66, lns.18-19; *see also* D-23, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p.14, ln.20–p.15, ln.15; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, p.16, ln.13–p.17, ln.8.

³⁷⁷ D-23, ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p.15, ln.16–p.16, ln.3; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, p.17, lns.9-23.

v. Witness D-3 – [REDACTED]

131. Witness D-3 testified from 18 to 25 June 2013.³⁷⁸

132. D-3 testified to events as an ostensible FACA soldier in CAR between October 2002 and March 2003. In fact, D-3 has never been in the military.³⁷⁹ He left the CAR following the 28 May 2001 *coup d'état* in Bangui.³⁸⁰ He held various jobs³⁸¹ and did not return to the CAR until 2006.³⁸²

133. In January 2012, pursuant to KOKATE's instruction to "*regrouper des gens qu'on va payer*" to testify for the Bemba Defence,³⁸³ **ARIDO** contacted D-3 and offered him the opportunity to earn some money if he testified in the Main Case.³⁸⁴ D-3 said he "*ne connais[sait] rien de l'armée*".³⁸⁵ **ARIDO** reassured D-3 that "[c]'est pas grave, [...] moi, je suis militaire, je connais comment ça fonctionne."³⁸⁶ and that he, **ARIDO**, "*peut lui dire ce qu'il faut aller dire là-bas.*"³⁸⁷

³⁷⁸ D-3, ICC-01/05-01/08-T-325-CONF-ENG ET, 18 June 2013, ICC-01/05-01/08-T-325bis-CONF-ENG ET, 18 June 2013; ICC-01/05-01/08-T-325-CONF-FRA ET, 18 juin 2013; ICC-01/05-01/08-T-326-CONF-ENG ET, 19 June 2013, ICC-01/05-01/08-T-326bis-CONF-ENG ET, 19 June 2013, ICC-01/05-01/08-T-326-CONF-FRA ET, 19 juin 2013; ICC-01/05-01/08-T-330-CONF-ENG ET, 25 June 2013, ICC-01/05-01/08-T-330-CONF-FRA ET, 25 juin 2013.

³⁷⁹ [CAR-OTP-0078-0206-R01](#) at 0210, ln.126; at 0213, lns.244-247.

³⁸⁰ [CAR-OTP-0078-0178-R01](#) at 0181, lns.78-90; *See also* [CAR-D04-0003-0398](#) at 0405.

³⁸¹ [CAR-OTP-0078-0178-R01](#) at 0181-0182, lns.89-141.

³⁸² [CAR-OTP-0078-0178-R01](#) at 0182, lns.129-131; [CAR-OTP-0078-0184-R01](#) at 0185, lns.11-16.

³⁸³ [CAR-OTP-0078-0184-R01](#) at 0189, lns.157-163; [CAR-OTP-0078-0206-R01](#) at 0210, lns.118-124; [CAR-OTP-0078-0218-R01](#) at 0219, lns.33-35.

³⁸⁴ [CAR-OTP-0078-0184-R01](#) at 0189, lns.157-160; [CAR-OTP-0078-0206-R01](#) at 0207, lns.30-37, at 0210, lns.118-120; *see also* at 0213, lns.229-240; [CAR-OTP-0078-0218-R01](#) at 0224, lns.188-200.

³⁸⁵ [CAR-OTP-0078-0206-R01](#) at 0210, lns.126-127, *see also* at 0213, lns.244-247.

³⁸⁶ [CAR-OTP-0078-0206-R01](#) at 0214, lns.256-261.

³⁸⁷ [CAR-OTP-0078-0206-R01](#) at 0211, ln.148-149, *more generally*, at 0210-0211, lns.139-149.

134. Per **ARIDO**'s request to help him look for other prospective witnesses, D-3 communicated to him the phone number of [REDACTED].³⁸⁸ In January 2012, D-3 personally introduced [REDACTED] to **ARIDO**.³⁸⁹ During this meeting, **ARIDO** briefly spoke to **KILOLO** over the phone.³⁹⁰ **ARIDO** reiterated to D-3 that **KOKATE** had asked him to find "*éléments*" to testify in **BEMBA**'s favour,³⁹¹ and informed D-3 and [REDACTED] that he would introduce them to **KILOLO** in Douala shortly, once **KILOLO** sent funds to cover the associated expenses.³⁹² **ARIDO** promised them money in exchange for their testimony, and indicated that the amount would be specified when the group of prospective witnesses would meet in Douala with **KILOLO**.³⁹³

135. At the end of February 2012, **ARIDO** organised a meeting in Douala³⁹⁴ to coach the prospective witnesses he had contacted—in advance of meeting members of **BEMBA**'s Defence, including **KILOLO** and **GIBSON**—so that their stories would have "*du moins, l'apparence de ce qui est vrai*".³⁹⁵ D-2, D-3, D-4, D-6, D-7 and [REDACTED] were in attendance.³⁹⁶ **KOKATE**, who, on **KILOLO**'s instruction, was checking upon "*les éléments qu'ARIDO préparait sur le terrain*", was also present.³⁹⁷

³⁸⁸ [CAR-OTP-0078-0184-R01](#) at 0189, lns.168-170; [CAR-OTP-0078-0206-R01](#) at 0210, lns.123-134, at 0215, lns.295-306. [REDACTED], a former militiaman under [REDACTED], eventually did not testify in the Main Case.

³⁸⁹ [CAR-OTP-0078-0218-R01](#) at 0219, lns.11-26; 0220, lns.48-53.

³⁹⁰ [CAR-OTP-0078-0218-R01](#) at 0219, lns.29-30.

³⁹¹ [CAR-OTP-0078-0218-R01](#) at 0219, lns.33-35.

³⁹² [CAR-OTP-0078-0218-R01](#) at 0219-0220, lns.33-47.

³⁹³ [CAR-OTP-0078-0218-R01](#) at 0220, lns.51-58, at 0224, lns.178-194.

³⁹⁴ [CAR-OTP-0080-0043](#) at 0059, lns.593-595.

³⁹⁵ [CAR-OTP-0084-0442-R01](#) at 0456, lns.506-509.

³⁹⁶ [CAR-OTP-0078-0218-R01](#) at 0221, ln.92 – 0223, ln.161; at 0225, lns.220-234; [CAR-OTP-0080-0021](#) at 0034, lns.430-439.

³⁹⁷ [CAR-OTP-0078-0218-R01](#) at 0233, ln.527-at 0234, ln.534. See more generally, [CAR-OTP-0078-0184-R01](#) at 0190, ln.201; [CAR-OTP-0080-0021](#) at 0034, lns.461-462; [CAR-OTP-0080-0043](#) at 0059, lns.593-0060, ln.600; [CAR-D21-0001-0041](#); [CAR-D21-0003-0176](#) at 0176, 0177, 0179, 0180, 0181, 0182; [CAR-D20-0001-0004](#) at 0005-at 0006.

136. **ARIDO** instructed the witnesses to stick to the narrative rehearsed during the briefing with him and [REDACTED].³⁹⁸ **ARIDO** further told them to put the conditions on which they would testify on paper, including their preferred relocation destination, which he would relay to **KILOLO**.³⁹⁹ **ARIDO** indicated that they would have the possibility of staying in the location where they testified, because “*même si nous mentons dans notre déposition, nous serons assistés d’un avocat qui va nous défendre.*”⁴⁰⁰

137. The following day, **ARIDO** introduced D-2, D-3 and [REDACTED] to **KILOLO** and **GIBSON**, who interviewed the witnesses.⁴⁰¹ D-3 left Douala immediately thereafter.⁴⁰²

138. At the end of May 2013, **KILOLO** and **MANGENDA** travelled to Yaoundé to meet with witnesses D-2, D-3, D-4 and D-6,⁴⁰³ prior to their scheduled hand-over to the VWU.⁴⁰⁴ At this meeting, **KILOLO** coached D-3 on the content of his prospective testimony.⁴⁰⁵ For instance, **KILOLO** told D-3 to testify that D-3 personally took part in pillaging and to mention killings of Muslims by the men of **MISKINE** at the cattle market.⁴⁰⁶

³⁹⁸ [CAR-OTP-0078-0184-R01](#) at 0192, lns.264-266; [CAR-OTP-0078-0236-R01](#) at 0246, lns.343-346.

³⁹⁹ [CAR-OTP-0078-0218-R01](#) at 0234, lns.560-561; at 0225-0226, lns.249-252.

⁴⁰⁰ [CAR-OTP-0078-0218-R01](#) at 0234, lns.551-553.

⁴⁰¹ [CAR-OTP-0078-0184-R01](#) at 0190, lns.201-203; [CAR-OTP-0078-0236-R01](#) at 0237, lns.29-33; 0238, lns.51-52, 61-67, 0242-0243, lns.201-224, 0246, ln.343; [CAR-OTP-0078-0248-R01](#) at 0254, ln.189; [CAR-OTP-0080-0069](#) at 0071-0072, lns.66-79. [CAR-D21-0001-0007](#); [CAR-D21-0001-0051](#); [CAR-D21-0001-0065](#).

⁴⁰² [CAR-OTP-0078-0184-R01](#) at 0192, lns.268-273.

⁴⁰³ [CAR-D21-0003-0187](#) at 0188; [CAR-OTP-0080-0021](#) at 0041, lns.706-709; [CAR-OTP-0080-0494](#) at 0515, lns.780-783; [CAR-OTP-0078-0198-R01](#) at 0200, lns.59-72, 0202, lns.123-128; [CAR-OTP-0078-0248-R01](#) at 0254, lns.192-193.

⁴⁰⁴ See for D-3, [CAR-OTP-0078-0290](#) at 0294.

⁴⁰⁵ [CAR-OTP-0078-0198-R01](#) at 0201, lns.110-111, 0202, lns.117-119; D-6 was also present for at least one instance of coaching: see [CAR-OTP-0078-0248-R01](#) at 0262, lns.501-508.

⁴⁰⁶ [CAR-OTP-0078-0248-R01](#) at 0261-0262, ln.446–, ln.477, 0262, lns.502-508.

139. Anticipating that the VWU would take custody of D-3's cell phone, **KILOLO** and **MANGENDA** provided D-3, as well as the other witnesses,⁴⁰⁷ with a new phone, to be able to stay in contact after their handover to the VWU.⁴⁰⁸

140. In relation to the Douala and Yaoundé meetings, D-3 received amounts totalling CFA 30,000 (EUR 46) and EUR 300 from **KILOLO**, or from **ARIDO** on **KILOLO**'s behalf.⁴⁰⁹ D-3 was also given CFA 540,000⁴¹⁰ (EUR 821) of the CFA 600,000 (EUR 912) **KILOLO** promised him before testifying.⁴¹¹

141. D-3 subsequently falsely testified about the events he claimed he witnessed as a FACA soldier in the CAR between October 2002 and March 2003⁴¹²—coinciding with the period of the charges laid in the Main Case.⁴¹³ At trial, D-3's testimony reproduced **KILOLO**'s Yaoundé instructions to him exactly.⁴¹⁴ He further, like other witnesses,⁴¹⁵ falsely denied having been reimbursed for any legitimate expenses in

⁴⁰⁷ [CAR-OTP-0080-0100-R01](#) at 0117, lns.624-625, 0118, lns.649-661, 0119, lns.697-702, 0120, lns.724-727; [CAR-OTP-0078-0264-R01](#) at 0268, lns.122-145, 0269, lns.151-171; [CAR-OTP-0084-0442-R01](#) at 0462, lns.707-716; [CAR-OTP-0080-0135](#) at 0147, ln.431; [CAR-OTP-0080-0043](#) at 0066, lns.832-833; [CAR-OTP-0080-0069](#) at 0090, ln.769.

⁴⁰⁸ [CAR-OTP-0078-0198-R01](#) at 0200-0201, lns.76-79; [CAR-OTP-0078-0264-R01](#) at 0266-0268, lns.67-113, 122-137.

⁴⁰⁹ Around February 2012, **ARIDO** gave D-3 CFA 1,000, see [CAR-OTP-0078-0218-R01](#) at 0221-0222, lns.100-108, **ARIDO** gave D-3 CFA 4,000, see [CAR-OTP-0078-0218-R01](#) at 0230, ln.413; [CAR-OTP-0078-0264-R01](#) at 0280, lns.565-566; **ARIDO** gave D-3 CFA 10,000, see [CAR-OTP-0078-0184-R01](#) at 0190, lns.201-209, **KILOLO** gave D-3 EUR 50, see [CAR-OTP-0078-0184-R01](#) at 0192, lns.268-269; [CAR-OTP-0078-0236-R01](#) at 0241, lns.158, 0245, lns.287-305; [CAR-OTP-0078-0248-R01](#) at 0258, lns.346-365; around April 2012, **ARIDO** gave D-3 CFA 10,000, see [CAR-OTP-0078-0184-R01](#) at 0192, lns.284-286; [CAR-OTP-0078-0248-R01](#) at 0251, lns.107-108; in May 2013 in Yaoundé, **KILOLO** gave D-3 EUR 250, see [CAR-OTP-0078-0248-R01](#) at 0253, lns.169-178, 0259, lns.388-395; [CAR-OTP-0078-0198-R01](#) at 0201, lns.81-82, lns.113-114; [CAR-OTP-0088-2917](#) at 2918; **KILOLO** paid for D-3's taxi CFA 5,000, see [CAR-OTP-0078-0198-R01](#) at 0200, lns.64-70.

⁴¹⁰ In May 2013, in Yaoundé **KILOLO** gave D-3 CFA 540,000, see [CAR-OTP-0078-0198-R01](#) at 0202-0203, lns.150-158; [CAR-OTP-0078-0248-R01](#) at 0256, lns.273-278, 0260, lns.414-424.

⁴¹¹ [CAR-OTP-0078-0198-R01](#) at 0202, lns.132-147; [CAR-OTP-0078-0248-R01](#) at 0256-0257, lns.257-263, 318.

⁴¹² ICC-01/05-01/08-T-325-CONF-ENG ET, 18 June 2013, ICC-01/05-01/08-T-325bis-CONF-ENG ET, 18 June 2013; ICC-01/05-01/08-T-325-CONF-FRA ET, 18 juin 2013; ICC-01/05-01/08-T-326-CONF-ENG ET, 19 June 2013, ICC-01/05-01/08-T-326-CONF-FRA ET, 19 juin 2013; ICC-01/05-01/08-T-330-CONF-ENG ET, 25 June 2013, ICC-01/05-01/08-T-330-CONF-FRA ET, 25 juin 2013.

⁴¹³ See ICC-01/05-01/08-593-Anx-Red, esp. paras.13-21.

⁴¹⁴ About D-3 personally taking part in pillaging, see ICC-01/05-01/08-T-325-CONF-ENG ET, 18 June 2013, p.19, lns.6-12; ICC-01/05-01/08-T-325-CONF-FRA ET, 18 juin 2013, p.19, lns.18-25; about the killings of Muslims at the cattle market, see ICC-01/05-01/08-T-325-CONF-ENG ET, 18 June 2013, p.21, lns.9-17; ICC-01/05-01/08-T-325-CONF-FRA ET, 18 juin 2013, p.21, lns.16-24.

⁴¹⁵ **D-2** denied having been reimbursed in any way any expenses he incurred in relation to his meetings with the Bemba Defence, see ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.26, lns.19-23; ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.26, lns.6-10. He further denied having been promised anything for

relation to the Douala meeting⁴¹⁶ or having received any money at all from the Defence or on behalf of the Defence.⁴¹⁷ Finally, D-3, like other witnesses,⁴¹⁸ denied knowing **ARIDO**, **KOKATE** or D-7.⁴¹⁹ **KILOLO** called D-3 during his testimony on the phone he had illicitly provided him, telling him, among other things, that he had done well when testifying.⁴²⁰

142. On 26 October 2013, pursuant to the “*système en mains propres*” designed by **MANGENDA** and **KILOLO** to conceal the transfer of funds to witnesses from the article 70 investigation,⁴²¹ **KILOLO** invited D-3 to pick up CFA 100,000 (EUR 152) cash personally in Douala.⁴²² As D-3 was unable to travel, **KILOLO** alternatively sought to cover up the payment by telling D-3 to nominate a recipient for a money

participating in the proceedings or giving testimony, see ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.26, ln.24 – p.27, ln.9; ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.26, lns.11-23. **D-6** denied that Kilolo had offered him money to testify in Bemba’s favour, see ICC-01-05-01-08-T-328-CONF-FRA ET, 21 juin 2013, p.29, lns.25-27; ICC-01-05-01-08-T-328-CONF-ENG ET, 21 June 2013, p.28, ln.25 to p.29, lns.1-2. This pattern extended to other witnesses who are not the subject of the charged incidents. For example, **D-7** denied having been paid to testify before the Court, see ICC-01/05-01/08-T-249-CONF-ENG ET, 20 September 2012, p.10, ln.15 – p.11, ln.2; ICC-01/05-01/08-T-249-CONF-FRA ET, 20 septembre 2012, p.11, lns.2-14.

⁴¹⁶ ICC-01/05-01/08-T-330-CONF-ENG ET, 25 June 2013, p.22, lns.1-4; ICC-01/05-01/08-T-330-CONF-FRA ET, 25 juin 2013, p.23, lns.18-21.

⁴¹⁷ ICC-01/05-01/08-T-330-CONF-ENG ET, 25 June 2013, p.21, lns.23-25; ICC-01/05-01/08-T-330-CONF-FRA ET, 25 juin 2013, p.23, lns.15-17.

⁴¹⁸ **D-2** denied knowing **ARIDO**, **KOKATE** and D-7. He subsequently testified that he knew **KOKATE**’s name, but had never met him, see ICC-01/05-01/08-T-322-CONF-ENG, 13 June 2013, p.7, lns.22-23, p.8, lns.10-11, 17-18, p.10, ln.25-p.11, ln.5, p.12, lns.8-15, p.15, lns.4-6; ICC-01/05-01/08-T-322-CONF-FRA, 13 juin 2013, p.7, lns.12-13, 25-26, p.8, lns.4-5, p.10, lns.12-17, p.11, lns.21-28, p.14, lns.17-19. **D-4** denied knowing **ARIDO**, **KOKATE** and D-7 see ICC-01/05-01/08-T-326bis-CONF-ENG ET, 19 June 2013, p.28, ln.23–p.29, ln.14; ICC-01/05-01/08-T-326-CONF-FRA ET, 19 juin 2013, p.72, ln.21–p.73, ln.8. **D-23** denied ever speaking with **ARIDO**, **KOKATE** and D-7, see ICC-01/05-01/08-T-333-CONF-ENG ET, 21 August 2013, p.59, lns.15-16; ICC-01/05-01/08-T-333-CONF-FRA ET, 21 août 2013, p.66, lns.8-9; ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p. 14, ln.20–p.15, ln.15, p.18, lns.9-16; ICC-01/05-01/08-T-334-CONF-FRA ET, 22 août 2013, p.16, ln.13 – p.17, ln.8, p.20, lns.2-9. This pattern extended to other witnesses who are not the subject of the charged incidents, including D-7 and D-9. For example, **D-7** denied knowing **KOKATE** and testified to having met **ARIDO** in the army but not having any contact with him in 2012, see ICC-01/05-01/08-T-249-CONF-ENG, 20 September 2012, p.11, ln.17-p.12, ln.11, p.12, ln.12-p.15, ln.22; ICC-01/05-01/08-T-249-CONF-FRA, 20 septembre 2012, p.12, lns.2-14, ln.15-p.16, ln.13; ICC-01/05-01/08-T-250-CONF-ENG, 21 September 2012, p.13, lns.14-15, p.14, lns.2-3; ICC-01/05-01/08-T-250-CONF-FRA, 21 septembre 2012, p.14, lns.3-4. **D-9** denied knowing **ARIDO** and testified to having heard the name **KOKATE**, but never meeting or seeing him, see ICC-01/05-01/08-T-323bis-Red2-ENG, 14 June 2013, p.12, ln.25-p.13, ln.3, lns.13-25.

⁴¹⁹ ICC-01/05-01/08-T-330-CONF-ENG ET, 25 June 2013, p.20, ln.22–p.21, ln.2-3, see also lns.21-22; ICC-01/05-01/08-T-330-CONF-FRA ET, 25 juin 2013, p.22, lns.15-23; see also p.23, lns.13-14.

⁴²⁰ [CAR-OTP-0078-0264-R01](#) at 0265-0266, lns.11-22, lns.36–66, 0267-0268, lns.75–113.

⁴²¹ [CAR-OTP-0079-1762](#) at 1782, lns.637-656; [CAR-OTP-0082-1326](#) at 1347, lns.768-795.

⁴²² [CAR-OTP-0078-0264-R01](#) at 0275, lns.365-371, 385-391; [CAR-OTP-0080-0165](#) at 0168, lns.106-107.

transfer whom the Court would not associate with D-3.⁴²³ D-3 first suggested his fiancée, which **KILOLO** rejected because the Court would know D-3's fiancée's name.⁴²⁴ D-3 then designated his [REDACTED].⁴²⁵ To further distance himself from the transfer, **KILOLO** made the payment through his associate [REDACTED].⁴²⁶

vi. Witness D-2 – [REDACTED]

143. Witness D-2 testified in the Main Case from 12 to 13 June 2013.⁴²⁷

144. D-2 has never been a soldier or received military training.⁴²⁸ In 2001, D-2 settled in [REDACTED],⁴²⁹ before returning to [REDACTED] in 2003 due to [REDACTED].⁴³⁰ Despite this, **ARIDO** told D-2 to falsely represent himself as a soldier for the purpose of testifying for the *Bemba* Defence.⁴³¹

145. In early 2012, **KOKATE** recommended that **ARIDO** recruit D-2 to testify for the *Bemba* Defence.⁴³² **ARIDO**, [REDACTED] D-2,⁴³³ knew about D-2's civilian background.⁴³⁴ Nevertheless, **ARIDO** reached out to D-2, offering him the prospect of asylum in Europe and CFA 10,000,000 for testifying,⁴³⁵ presenting it as an

⁴²³ [CAR-OTP-0078-0198-R01](#) at 0203, lns.185-189, 0204, lns.215-217; [CAR-OTP-0078-0264-R01](#) at 0275, lns.392-394, 0280, ln.569; [CAR-OTP-0080-0165](#) at 0168, lns.107-110.

⁴²⁴ [CAR-OTP-0080-0165](#) at 0168-0169, lns.91-110.

⁴²⁵ [CAR-OTP-0080-0165](#) at 0168-0169, lns.91-143.

⁴²⁶ [CAR-OTP-0078-0264-R01](#) at 0276, lns.395-397, 417-419; [CAR-OTP-0083-1291-R02](#) at 1298, paras.27-29; [CAR-OTP-0079-1541](#) at 1542; [CAR-OTP-0080-0165](#) at 0169, lns.117-133; [CAR-OTP-0088-0370](#) at 0377.

⁴²⁷ ICC-01/05-01/08-T-321-CONF-ENG ET, 12 June 2013, ICC-01/05-01/08-T-321bis-CONF-ENG ET, 12 June 2013, ICC-01/05-01/08-T-321-CONF-FRA ET, 12 juin 2013; ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013.

⁴²⁸ [CAR-OTP-0080-0021](#) at 0029, lns.249-253, 265-266; [CAR-OTP-0080-0043](#) at 0049, ln.214.

⁴²⁹ [CAR-OTP-0080-0021](#) at 0023-0024, lns.56-79.

⁴³⁰ [CAR-OTP-0080-0021](#) at 0024, lns.84-99; [CAR-OTP-0080-0043](#) at 0053, lns.348-350.

⁴³¹ [CAR-OTP-0080-0021](#) at 0029, lns.260-264.

⁴³² [CAR-OTP-0080-0043](#) at 0066-0067, lns.859-865.

⁴³³ [CAR-OTP-0080-0135](#) at 0156, lns.771-774; [CAR-OTP-0088-0504](#) at 0509; [CAR-OTP-0080-0043](#) at 0045, lns.58-62.

⁴³⁴ [CAR-OTP-0080-0043](#) at 0051, lns.261-263.

⁴³⁵ [CAR-OTP-0080-0021](#) at 0030-0031, lns.290-327; [CAR-OTP-0080-0043](#) at 0050, lns.250-256.

opportunity to improve his precarious situation.⁴³⁶ **ARIDO** told D-2 that the *Bemba* Defence needed soldiers that could testify about the events in the CAR and made up details of what D-2 should state regarding his military training, grade and experience.⁴³⁷

146. At the February 2012 meeting in Douala, referred to above at paragraphs 135 and 137, **ARIDO** refined the false details concerning D-2's participation in the relevant events⁴³⁸ in a discussion with KOKATE and other witnesses.⁴³⁹ D-2 took notes to help him memorise the key dates, names of military commanders, abbreviations and organisational structure of the actors involved in the 2002 -2003 events in the CAR.⁴⁴⁰

147. The following day, D-2, D-3 and [REDACTED] met with **KILOLO** and GIBSON for an interview.⁴⁴¹ After the meeting, D-2 revisited some aspects of his script with **ARIDO**, KOKATE and other witnesses, in light of the issues that arose during the interview.⁴⁴²

148. At the May 2013 meeting in Yaoundé, referred to above at paragraph 138, D-2 received further instructions, including what to testify regarding the number and

⁴³⁶ [CAR-OTP-0080-0043](#) at 0048, lns.172-177; see also [CAR-OTP-0080-0135](#) at 0158, lns.829-835; [CAR-OTP-0080-0043](#) at 0049, lns.214-218.

⁴³⁷ [CAR-OTP-0080-0021](#) at 0031, lns.337-339; [CAR-OTP-0080-0043](#) at 0051, lns.282-295, 0052, lns.299-303; [CAR-OTP-0080-0494](#) at 0499, lns.187-188; see also [CAR-OTP-0080-0100-R01](#) at 0110, lns.350-353; [CAR-OTP-0080-0043](#) at 0057, lns.504-510, 0058, lns.519-520.

⁴³⁸ [CAR-OTP-0080-0100-R01](#) at 0110, lns.328-357; at 0114, lns.510-512; [CAR-OTP-0084-0412-R01](#) at 0423-0424, lns.429-434.

⁴³⁹ [CAR-OTP-0080-0021](#) at 0034-0035, lns.461-495; [CAR-OTP-0080-0043](#) at 0063-0064, lns.738-763; [CAR-OTP-0080-0494](#) at 0505, lns.385-386; [CAR-OTP-0084-0412-R01](#) at 0423, lns.397-407, 0424, lns.434-439; [CAR-OTP-0084-0442-R01](#) at 0450, lns.280-285.

⁴⁴⁰ [CAR-OTP-0079-1522](#); [CAR-OTP-0079-1526](#); [CAR-OTP-0079-1530](#); see [CAR-OTP-0080-0494](#) at 0499, lns.166-175 0503, lns.320-333, 0508, lns.519-529, 0509-0510, lns.545-547, 567-604, 0516-0518, lns.803-850, 859-897; [CAR-OTP-0084-0412-R01](#) at 0418, lns.213-219, 0421-0422, lns.340-356, 372-378, 0427, lns.570-572, 0430, lns.680-692, 0439, lns.1026-1028.

⁴⁴¹ [CAR-OTP-0080-0069](#) at 0071, ln.66-0072, ln.79; [CAR-OTP-0084-0412-R01](#) at 0429, lns.655-657; [CAR-OTP-0084-0442-R01](#) at 0444, lns.69-75; [CAR-OTP-0078-0236-R01](#) at 0238, lns.51-63; [CAR-D21-0001-0007](#); [CAR-D21-0001-0051](#); [CAR-D21-0001-0065](#).

⁴⁴² [CAR-OTP-0084-0412-R01](#) at 0429, lns.645-662; [CAR-OTP-0084-0442-R01](#) at 0446, lns.129-136, 0452, lns.334-341.

circumstances of D-2's contacts with the *Bemba* Defence team.⁴⁴³ **KILOLO** provided D-2 with a document supposedly reflecting his prior statement.⁴⁴⁴ However, this document contained additional information that D-2 had not previously provided, while other information that he had provided was missing.⁴⁴⁵ **KILOLO** further developed the instructions by drawing D-2's attention to apparent mistakes in his prior narrative and providing corrections.⁴⁴⁶ D-2 modified his prior notes in accordance with the instructions **KILOLO** gave him.⁴⁴⁷

149. Also in May 2013, **KILOLO** provided D-2 with a cell phone⁴⁴⁸ to be able to communicate with the witness⁴⁴⁹ after the VWU handover.⁴⁵⁰

150. Before the VWU handover, D-2 protested to **KILOLO** about testifying from Cameroon, reminding him that the deal was to go to The Hague and to receive CFA 10,000,000 before entering the courtroom.⁴⁵¹ D-2 further threatened he would not testify, unless the deal was honoured.⁴⁵² The next day, **KILOLO** gave him CFA 500,000 (EUR 760) as "*un cadeau de la part de Jean-Pierre BEMBA*".⁴⁵³ D-2 received in total CFA 565,000⁴⁵⁴ (EUR 859) and EUR 400⁴⁵⁵ from **KILOLO** and CFA 35,000 (EUR

⁴⁴³ [CAR-OTP-0079-1530](#), at 1533; [CAR-OTP-0084-0442-R01](#) at 0461-0462, lns.690–705.

⁴⁴⁴ [CAR-OTP-0084-0412-R01](#) at 0434-0435, lns.845–869; [CAR-OTP-0084-0442-R01](#) at 0443, lns.20-26, 0446, lns.138-141; [CAR-OTP-0084-0442-R01](#) at 0463-0464, lns.745–798; [CAR-OTP-0084-0472-R02](#) at 0473, lns.9-13.

⁴⁴⁵ [CAR-OTP-0084-0442-R01](#) at 0443, lns.20-26, 0463-0465, lns.768–828. For example, **KILOLO**'s document contained information that on 30 October 2002 a joint MLC-FACA operation against Bozizé began, see [CAR-OTP-0084-0442-R01](#) at 0468, lns.921-922. D-2 took notes, see [CAR-OTP-0079-1530](#) at 1531. Also, D-2 did not previously mention several instances of pillaging and murders of people refusing to give up their property that occurred between 25 and 30 October, see [CAR-OTP-0084-0442-R01](#) at 0468, lns.922-929. He similarly took notes, see [CAR-OTP-0079-1530](#) at 1531.

⁴⁴⁶ [CAR-OTP-0084-0442-R01](#) at 0465, lns.832-833, 0466, lns.845-851.

⁴⁴⁷ [CAR-OTP-0084-0442-R01](#) at 0463- 0466, lns.768-858.

⁴⁴⁸ [CAR-OTP-0080-0100-R01](#) at 0119, lns.697-702, 0120, lns.724-727, 0117, lns.624-625, 0118, lns.649-661; [CAR-OTP-0080-0043](#) at 0066, lns.832-833; [CAR-OTP-0080-0069](#) at 0090, ln.769; [CAR-OTP-0084-0442-R01](#) at 0462, lns.707-716.

⁴⁴⁹ [CAR-OTP-0080-0100-R01](#) at 0120, lns.729-730.

⁴⁵⁰ [CAR-OTP-0080-0135](#) at 0137, lns.71-78, 0138, lns.81-105.

⁴⁵¹ [CAR-OTP-0080-0135](#) at 0148, lns.475-485, 0149, lns.488-498.

⁴⁵² [CAR-OTP-0080-0135](#) at 0149, lns.488-500.

⁴⁵³ [CAR-OTP-0080-0135](#) at 0149, lns.506-516, see also at 0142, lns.259-260.

⁴⁵⁴ In May 2013, **KILOLO** transferred CFA 65,000 to D-2, see [CAR-OTP-0074-0855](#), tab 40 Aime Kilolo Musamba, row 32; [CAR-OTP-0084-0055](#) at 0056; [CAR-OTP-0074-0854](#), tab 18 [REDACTED], row 7; [CAR-](#)

53) from **ARIDO** on **KILOLO**'s behalf.⁴⁵⁶

151. However, in court D-2 falsely denied having been reimbursed for any legitimate expenses⁴⁵⁷ or promised anything in exchange for testifying.⁴⁵⁸

152. D-2 also falsely denied having been provided with any document to "refresh his recollection" during the meetings with the Bemba Defence.⁴⁵⁹

153. D-2 followed **ARIDO**'s and **KILOLO**'s instructions in testifying falsely, as his notes demonstrate. For example, his notes state: "*[i]l faut dire que durant cette période J. Pierre Mbemba [sic] n'a jamais été présent à Bangui*".⁴⁶⁰ In court, he testified: "*Maître, je n'ai aucune information que l'accusé Bemba était venu à Bangui [pendant les événements]*".⁴⁶¹

154. In October 2013, **KILOLO** and **MANGENDA** described D-2 to **BEMBA** as a possible Prosecution insider in the context of the article 70 investigation against them,⁴⁶² causing **BEMBA** to become concerned and enquire whether **ARIDO** still had control over the witness.⁴⁶³

[OTP-0084-0487-R01](#) at 0488-0489, lns.9-17, 26–45. **KILOLO** gave D-2 CFA 500,000, see [CAR-OTP-0080-0135](#) at 0142, lns.248-251, 259-260, 0144, lns.314-315, 0145, lns.373-374.

⁴⁵⁵ In February 2012, **KILOLO** gave D-2 EUR 50, see [CAR-OTP-0080-0021](#) at 0037, lns.549-559; [CAR-OTP-0080-0069](#) at 0072, lns.111-112, see also [CAR-D20-0001-0004](#) at 0007. In May 2013, **KILOLO** gave D-2 EUR 350, see [CAR-OTP-0088-2936](#); [CAR-OTP-0088-2915](#) at 2916.

⁴⁵⁶ In February 2012, **ARIDO** gave D-2 CFA 15,000, see [CAR-OTP-0080-0021](#) at 0032, lns.390-391, 0033, ln.408; [CAR-OTP-0080-0043](#) at 0055, lns.415-423. **ARIDO** gave D-2 CFA 10,000, see [CAR-OTP-0080-0021](#) at 0036, lns.519-521. **ARIDO** further gave D-2 CFA 10,000, see [CAR-OTP-0080-0021](#) at 0038, lns.604-606; [CAR-OTP-0080-0069](#) at 0077, lns.290-291, 0080, lns.387-397.

⁴⁵⁷ ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.26, lns.19-23; ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.26, lns.6-10.

⁴⁵⁸ ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.26, ln.24 – p.27, ln.9; ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.26, lns.11-23.

⁴⁵⁹ ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.26, lns.13-15; ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.25, ln.27–p.26, ln.2.

⁴⁶⁰ [CAR-OTP-0079-1530](#) at 1533.

⁴⁶¹ ICC-01/05-01/08-T-322-CONF-FRA ET, 13 juin 2013, p.43, lns.16-17; ICC-01/05-01/08-T-322-CONF-ENG ET, 13 June 2013, p.44, lns.10-13.

⁴⁶² [CAR-OTP-0082-1065](#) at 1068-1069, lns.61–83, 1069, lns.101-111, 1070, lns.131-140; [CAR-OTP-0082-1293](#) at 1307, lns.451-461, 472-482; [CAR-OTP-0082-1309](#) at 1312, lns.40-47, 1313-1314, ln.116–129. D-2 is referred to as "*l'homme (l'autre) du [REDACTED]*" or "*l'homme du [REDACTED]*", as he used to [REDACTED]. See Annex A, "*l'homme du [REDACTED]*" or "*l'homme du [REDACTED]*" as D-2, Section III.L.

⁴⁶³ [CAR-OTP-0082-1065](#) at 1084, lns.618-620.

vii. Witness D-6 – [REDACTED]

155. D-6 testified *via* video-link in the Main Case on 21 and 24 June 2013.⁴⁶⁴

156. At the February 2012 Douala meeting, referred to at paragraphs 135 to 137, **ARIDO** and **KOKATE** promised D-6 a chance to live in Europe in exchange for falsely testifying.⁴⁶⁵ Like the other witnesses, **ARIDO** and **KOKATE** briefed D-6 at this meeting on what he should testify to.⁴⁶⁶ Like the others, D-6 also met individually with **KILOLO** and **GIBSON** for an interview.⁴⁶⁷ After the meeting with **KILOLO**, the witnesses' prepared scripts were adjusted in light of the issues that arose in the interviews.⁴⁶⁸ D-6 received CFA 10,000 (EUR 15) and EUR 50 from **KILOLO** and from **ARIDO** on **KILOLO**'s behalf, respectively, during the Douala meeting.⁴⁶⁹

157. At the May 2013 Yaoundé meeting, referred to at paragraph 138, **KILOLO** provided D-6 and some of the other witnesses with documents purportedly containing their February 2012 accounts.⁴⁷⁰ D-6 met individually with **MANGENDA**, and then with **KILOLO**⁴⁷¹ who illicitly coached D-6 and D-3 together on the names of important individuals during events in the CAR in 2002-2003.⁴⁷² **KILOLO** promised D-6 and the other witnesses CFA 600,000 (EUR 912) in exchange for testimony,⁴⁷³ and

⁴⁶⁴ ICC-01/05-01/08-T-328-CONF-ENG-ET, 21 June 2013 ; ICC-01/05-01/08-T-328bis-CONF-ENG-ET, 21 June 2013; ICC-01/05-01/08-T-328-CONF-FRA-ET, 21 juin 2013; ICC-01/05-01/08-T-329-CONF-ENG-ET, 24 June 2013; ICC-01/05-01/08-T-329bis-CONF-ENG-ET, 24 June 2013 ; ICC-01/05-01/08-T-329-CONF-FRA-ET 2, 24 juin 2013.

⁴⁶⁵ [CAR-OTP-0080-0043](#) at 0067, lns.870-897; [CAR-OTP-0078-0218-R01](#) at 0234-0235, lns.533-575.

⁴⁶⁶ [CAR-OTP-0080-0043](#) at 0065, lns.781-806, 850-851; [CAR-OTP-0080-0069](#) at 0080, lns.398-411; [CAR-OTP-0078-0218-R01](#) at 0225-0227, lns.241-298.

⁴⁶⁷ [CAR-OTP-0080-0069](#) at 0070-0072, lns.31-79; [CAR-OTP-0078-0236-R01](#) at 0242-0243, lns.210-229.

⁴⁶⁸ [CAR-OTP-0084-0412-R01](#) at 0429, lns.645-646,652-655, 660-662; [CAR-OTP-0084-0442-R01](#) at 0446, lns.129-130, 0452, lns.334-341, 346-358, 0453, lns.371-372, 394-396, 0454, lns.407-412.

⁴⁶⁹ **ARIDO** gave D-6 CFA 10,000, see [CAR-OTP-0080-0021](#) at 0036, lns.519-522; [CAR-OTP-0078-0184-R01](#) at 0190, lns.201-209. **KILOLO** gave D-6 EUR 50, see [CAR-D20-0001-0004](#) at 0007.

⁴⁷⁰ [CAR-OTP-0078-0248-R01](#) at 0255, lns.228-245; [CAR-OTP-0080-0494](#) at 0512, lns.649-650, 665-667, 0513, lns.714-715, 0515, lns.761-762, 0516, lns.803-809; [CAR-OTP-0084-0412-R01](#) at 0435, lns.848-869; [CAR-OTP-0084-0442-R01](#) at 0463-0464, lns.768-798. See also D-2, para. 148, D-4, para. 166.

⁴⁷¹ [CAR-OTP-0080-0100-R01](#) at 0107, lns.228-230, 0108-0109, lns.262-265, 281-295.

⁴⁷² [CAR-OTP-0078-0248-R01](#) at 0262, lns.501-508.

⁴⁷³ [CAR-OTP-0078-0248-R01](#) at 0256, lns.257-263, 0257, lns.313-325.

the witnesses subsequently received all or part of this sum.⁴⁷⁴ D-6 was also given EUR 250 by **KILOLO** at this meeting.⁴⁷⁵ In addition, as with other witnesses, **KILOLO** gave D-6 a cell phone to keep in contact with him after the VWU handover.⁴⁷⁶ After the meeting, D-6 was placed in VWU custody during the lead-up to his testimony in the Main Case.⁴⁷⁷

158. On 20 June 2013, the day before D-6 began testifying, Caroline BEMBA paid D-6 USD 1,335.16 through his [REDACTED]⁴⁷⁸ [REDACTED].⁴⁷⁹ D-6 was with [REDACTED] when she collected the money and immediately took the money from her and counted it.⁴⁸⁰

159. During his direct examination, *Bemba* Defence Co-Counsel Peter HAYNES asked D-6 if **KILOLO** had offered him “any money to come and give evidence for Jean-Pierre Bemba”, to which D-6 responded “[j]amais”.⁴⁸¹ D-6 testified that **KILOLO** had only reimbursed him CFA 50,000 (EUR 76) for transport costs⁴⁸² and “[c]’est tout. [...] Il m’a rien donné, rien. C’est tout.”⁴⁸³ He denied having received any other money from anyone.⁴⁸⁴

⁴⁷⁴ [CAR-OTP-0078-0248-R01](#) at 0256-0257, lns.279-299.

⁴⁷⁵ [CAR-OTP-0078-0290](#) at 0294.

⁴⁷⁶ [CAR-OTP-0078-0264-R01](#) at 0269, lns.158-171; [CAR-OTP-0080-0100-R01](#) at 0119, lns.697-702, 0117, lns.624-625, 0118, lns.649-661.

⁴⁷⁷ [CAR-OTP-0078-0198-R01](#) at 0201, lns.110-111, at 0202, lns.123-126. See also [CAR-OTP-0078-0290](#) at 0294.

⁴⁷⁸ [CAR-OTP-0085-0523-R01](#), at 0529, lns.199-215. See also [REDACTED] and D-6 together [CAR-OTP-0082-0288](#), [CAR-OTP-0082-0289](#), [CAR-OTP-0082-0290](#), [CAR-OTP-0082-0291](#), [CAR-OTP-0082-0292](#). See also [REDACTED], [CAR-OTP-0082-0265](#), [CAR-OTP-0082-0266](#), [CAR-OTP-0082-0267](#), [CAR-OTP-0082-0268](#).

⁴⁷⁹ [CAR-OTP-0074-0856](#), tab 68 Caroline Bemba Wale, row 7. Caroline BEMBA made another payment to **KILOLO** at the same time (see row 8) with the same Question and Answer (see column AQ, AR). See also [CAR-OTP-0085-0523-R01](#) at 0532-0535, lns.315-444.

⁴⁸⁰ [CAR-OTP-0085-0523-R01](#) at 0534, lns.380-398, 401-406.

⁴⁸¹ ICC-01-05-01-08-T-328-CONF-FRA, 21 juin 2013, p.29, lns.25-27; ICC-01-05-01-08-T-328-CONF-ENG, 21 June 2013, p.28, ln.25 to p.29, lns.1-2.

⁴⁸² ICC-01-05-01-08-T-329-CONF-FRA, 24 juin 2013, p.23, ln.28- p.24, ln.7; ICC-01-05-01-08-T-329-CONF-ENG, 24 June 2013, p.22, lns.19-24.

⁴⁸³ ICC-01-05-01-08-T-328-CONF-FRA, 21 juin 2013, p.30, lns.13-15; ICC-01-05-01-08-T-328-CONF-ENG, 21 June 2013, p.29, lns.14-17. See also ICC-01-05-01-08-T-329-CONF-FRA, 24 juin 2013, p.23, lns.6-12; ICC-01-05-01-08-T-329-CONF-ENG, 24 June 2013, p.22, lns.3-7.

⁴⁸⁴ ICC-01-05-01-08-T-329-CONF-FRA ET, 24 juin 2013, p.23, lns.6-12; ICC-01-05-01-08-T-329-CONF-ENG ET, 24 June 2013, p.22, lns.3-7.

160. When asked if he was “introduced to Maître Kilolo by a committee designed to harmonise the evidence for him”, D-6 responded “[j]amais du tout. Ce n’est pas « une » comité. Je suis devant la Cour pour dire la vérité, et rien que la vérité.”⁴⁸⁵ D-6 also testified that: (i) he had not discussed anything in relation to the events in the CAR with the Bemba Defence,⁴⁸⁶ (ii) nobody had put him in touch with the Bemba Defence,⁴⁸⁷ and (iii) he had not spoken to any person he knew to be a witness in the Main Case.⁴⁸⁸

161. This false evidence was further compounded by D-6’s testimony that he had no contact at all with the Bemba Defence as of his 28 May 2013 placement in the charge of the VWU⁴⁸⁹ because he did not have his own telephone while in the VWU’s care.⁴⁹⁰ CDRs show that D-6 contacted **KILOLO** on 4 June 2013 using⁴⁹¹ the phone number [REDACTED].⁴⁹² D-6 again used this number to twice contact **KILOLO** on the final day of his testimony.⁴⁹³ Finally, D-6 was also in possession of the phone **KILOLO** had given him in Yaoundé.⁴⁹⁴

⁴⁸⁵ ICC-01/05-01/08-T-328-CONF-FRA ET, 21 juin 2013, p.29, ln.28-p.30, ln.3; ICC-01-05-01-08-T-328-CONF-ENG ET, 21 June 2013, p.29, lns.3-6.

⁴⁸⁶ ICC-01/05-01/08-T-329-CONF-ENG ET, 24 June 2013, p.21, lns.19-p.22, ln.22, p.19, ln.17-p.20, ln.9; ICC-01/05-01/08-T-329-CONF-FRA ET, 24 juin 2013, p.22, ln.24-p.23, ln.5, p.20, ln.19-p.21, ln.10.

⁴⁸⁷ ICC-01/05-01/08-T-329-CONF-FRA ET, 24 juin 2013, p.16, lns.17-20; ICC-01/05-01/08-T-329-CONF-ENG ET, 24 June 2013, p.16, lns.23-25.

⁴⁸⁸ ICC-01/05-01/08-T-329-CONF-ENG ET, 24 June 2013, p.16, lns.1-2; ICC-01/05-01/08-T-329-CONF-FRA ET, 24 juin 2013, p.16, lns.21-23.

⁴⁸⁹ ICC-01/05-01/08-T-328-CONF-FRA ET, 21 juin 2013, p.29, lns.17-19; ICC-01-05-01-08-T-328-CONF-ENG ET, 21 June 2013, p.28, lns.13-16. See also [CAR-OTP-0078-0290](#) at 0294.

⁴⁹⁰ ICC-01/05-01/08-T-329-CONF-ENG ET 2, 24 June 2013, p.21, lns.13-18; ICC-01/05-01/08-T-329-CONF-FRA ET, 24 juin 2013, p.22, lns.17-23.

⁴⁹¹ [CAR-OTP-0072-0391](#), row 37555.

⁴⁹² For material supporting the attribution of this number to D-6, see [CAR-OTP-0074-0854](#), tab 15 [REDACTED] Send, row 2, columns F; [CAR-OTP-0080-1138](#) at 1193. The same phone number is attributed to [REDACTED] through a Western Union transfer she received on behalf of D-6. See [CAR-OTP-0074-0855](#), tab 68 Caroline Bemba Wale, row 7, column Y. See also [CAR-OTP-0085-0523-R01](#) at 0532-0535, lns.315-444. It should also be noted that [REDACTED] stated that [REDACTED] had to register D-6’s SIM card under [REDACTED] because D-6 did not have any ID card. See [CAR-OTP-0085-0523-R01](#) at 0531, lns.271-273, 0532, lns.308-312.

⁴⁹³ [CAR-OTP-0072-0391](#), row 39950 ([CAR-OTP-0072-0391](#), row 39951 is consistent with this call from D-6 to **KILOLO** diverting to voicemail); [CAR-OTP-0072-0391](#), row 40055 ([CAR-OTP-0072-0391](#), row 40056 is consistent with this call from D-6 to **KILOLO** diverting to voicemail). **KILOLO** used the number “[REDACTED]” while D-6 used “[REDACTED]”.

⁴⁹⁴ [CAR-OTP-0078-0264-R01](#), at 0268, lns.158-171.

162. On 21 October 2013, D-6 called **KILOLO** regarding a payment of CFA 500,000 (EUR 760) promised to him and others.⁴⁹⁵ **KILOLO** said that he did not have the money available,⁴⁹⁶ but confirmed that D-6, D-4 and others would receive CFA 100,000 (EUR 152) each by the end of the week, “[...] *juste symbolique, à chacun, quoi*”.⁴⁹⁷ A few days later, on 24 October 2013, **KILOLO** travelled to Cameroon.⁴⁹⁸

163. In the same 21 October 2013 conversation, D-6 also asked “[e]t le sénateur [BEMBA], comment il va ?”⁴⁹⁹ **KILOLO** replied:

*Qui, oui, lui-même, ça va, ça va. En tout cas, il est vraiment [...] content de tout ce qui a été fait, parce qu’il sait que ... quand il sortira, il doit vraiment compter sur vous et il doit aussi vous rencontrer chacun personnellement [...] Parce que ... il sait que vous avez fait [...]. Ce que vous avez fait est énorme.*⁵⁰⁰

⁴⁹⁵ [CAR-OTP-0080-1332](#) (Audio); [CAR-OTP-0082-0562](#) (Transcript) at 0563, lns.11-15.

⁴⁹⁶ [CAR-OTP-0080-1332](#) (Audio); [CAR-OTP-0082-0562](#) (Transcript) at 0563, lns.18-19.

⁴⁹⁷ [CAR-OTP-0080-1332](#) (Audio); [CAR-OTP-0082-0562](#) (Transcript) at 0564, lns.42-44. See also [CAR-OTP-0080-1332](#) (Audio); [CAR-OTP-0082-0562](#) (Transcript) at 0569, lns.209-217 (Reference to ‘[REDACTED]’–D-4).

⁴⁹⁸ [CAR-D21-0001-0091](#); see also [CAR-D21-0001-0109](#).

⁴⁹⁹ [CAR-OTP-0080-1332](#) (Audio); [CAR-OTP-0082-0562](#) (Transcript) at 0568, ln.193. See also [CAR-OTP-0071-0057](#); [CAR-OTP-0071-0049](#). See Annex A, “le Sénateur” as BEMBA, Section III.A.(5.).

⁵⁰⁰ [CAR-OTP-0080-1332](#) (Audio); [CAR-OTP-0082-0562](#) (Transcript) at 0568, lns.194-202.

viii. Witness D-4 – [REDACTED]

164. Witness D-4 testified from 18 to 20 June 2013 *via* video-link.⁵⁰¹

165. D-4 attended the February 2012 meeting in Douala, referred to at paragraphs 135 to 137, where the various elements of the witnesses' prospective accounts were discussed and coordinated.⁵⁰² On the following day, after **KILOLO** and GIBSON had interviewed D-2, D-3 and [REDACTED],⁵⁰³ the witnesses again met with **ARIDO** and KOKATE and further discussed their scripts in light of the issues that arose in the interviews.⁵⁰⁴

166. At the May 2013 meeting in Yaoundé, referred to in paragraph 138, **KILOLO** provided D-4 and others with documents purportedly containing their February 2012 accounts.⁵⁰⁵

167. Also in Yaoundé, as with other witnesses, **KILOLO** and **MANGENDA** provided D-4 with a cell phone to maintain contact after the VWU handover.⁵⁰⁶

⁵⁰¹ ICC-01/05-01/08-T-325bis-CONF-ENG ET, 18 June 2013 ; ICC-01/05-01/08-T-325-CONF-FRA ET, 18 juin 2013; ICC-01/05-01/08-T-326-CONF-ENG ET, 19 June 2013 ; ICC-01/05-01/08-T-326bis-CONF-ENG ET, 19 June 2013 ; ICC-01/05-01/08-T-326-CONF-FRA ET, 19 juin 2013; ICC-01/05-01/08-T-327-CONF-ENG ET, 20 June 2013; ICC-01/05-01/08-T-327-CONF-FRA ET, 20 juin 2013; ICC-01/05-01/08-T-327bis-CONF-ENG ET, 20 June 2013.

⁵⁰² [CAR-OTP-0084-0412-R01](#) at 0421, lns.349-354, 0423, lns.397-407, 0424, lns.434-437, 0429, lns.637-638; [CAR-OTP-0084-0442-R01](#) at 0450, lns.280-284; [CAR-OTP-0080-0043](#) at 0059-0060, lns.593-606, 0063-0064, lns.738-745; [CAR-OTP-0080-0494](#) at 0505, lns.385-386.

⁵⁰³ [CAR-OTP-0080-0043](#) at 0061, lns.647-659; [CAR-OTP-0084-0412-R01](#) at 0429, lns.656-659; [CAR-OTP-0078-0236-R01](#) at 0238, lns.51-52, 0242-0243, lns.210-224.

⁵⁰⁴ [CAR-OTP-0084-0412-R01](#) at 0429, lns.645-646, 652-655, 660-662; [CAR-OTP-0084-0442-R01](#) at 0446, lns.129-130, 0452, lns.334-341, 346-358, 0453, lns.371-372, 394-396, at 0454, lns.407-412.

⁵⁰⁵ [CAR-OTP-0078-0248-R01](#) at 0255, lns.228-245; [CAR-OTP-0080-0494](#) at 0512, lns.649-650, lns.665-667, 0513, lns.714-715, 0515, lns.761-762, 0516, lns.803-809; [CAR-OTP-0084-0412-R01](#) at 0435, lns.848-869; [CAR-OTP-0084-0442-R01](#) at 0463-0464, ln.768 -798. *See also* D-2, para.148; D-6, para.157.

⁵⁰⁶ [CAR-OTP-0080-0100-R01](#) at 0117, lns.624-625, 0118, lns.649-650; [CAR-OTP-0078-0264-R01](#) at 0268, lns.122-145, 0269, lns.151-171; [CAR-OTP-0084-0442-R01](#) at 0462, lns.707-716; [CAR-OTP-0080-0135](#) at 0147, ln.431; [CAR-OTP-0080-0043](#) at 0066, lns.832-833.

168. In court, similar to other witnesses,⁵⁰⁷ D-4 denied knowing **ARIDO**, D-7 or **KOKATE**.⁵⁰⁸

169. **KILOLO** gave D-4 EUR 400 during the Douala and Yaoundé meetings.⁵⁰⁹ **KILOLO** also promised D-4 CFA 600,000 (EUR 912) before testifying.⁵¹⁰ D-4 received this money at least in part.⁵¹¹ Further, on 21 October 2013, D-6 called **KILOLO** regarding a promised payment of CFA 500,000 (EUR 760) to him and others.⁵¹² **KILOLO** assured D-6 that he would give him, D-4 and others a token ("*juste symbolique*") of CFA 100,000 (EUR 152) during his upcoming trip to Cameroon.⁵¹³ **KILOLO** travelled to Cameroon on 24 October 2013.⁵¹⁴

⁵⁰⁷ See *supra*, para.141, fn. 418.

⁵⁰⁸ ICC-01/05-01/08-T-326bis-CONF-ENG ET, 19 June 2013, p.28, ln.23-p.29, ln.14; ICC-01/05-01/08-T-326-CONF-FRA ET, 19 juin 2013, p.72, ln.21-p.73, ln.8.

⁵⁰⁹ **KILOLO** gave D-4 EUR 50 in February 2012. See [CAR-D20-0001-0004](#) at 0007. See also [CAR-OTP-0080-0021](#) at 0037, lns.549-559; [CAR-OTP-0080-0069](#) at 0072, lns.111-112; [CAR-OTP-0078-0236-R01](#) at 0241, lns.157-159, 0245, lns.287-292, [CAR-OTP-0078-0184-R01](#) at 0192, lns.268-269; D-4 also received EUR 350 from **KILOLO** in May 2013. See [CAR-OTP-0088-2911](#) at 2912; [CAR-D21-0004-0310](#) at 0319, lns.316-327.

⁵¹⁰ [CAR-OTP-0078-0198-R01](#) at 0202, lns.132-147; [CAR-OTP-0078-0248-R01](#) at 0256, lns.257-263.

⁵¹¹ [CAR-OTP-0078-0248-R01](#) at 0256-0257, lns.279-299.

⁵¹² [CAR-OTP-0082-0562](#) at 0563, lns.11-15.

⁵¹³ [CAR-OTP-0082-0562](#) at 0564-0565, lns.37-44, 56– 83, 0567-0568, ln.156–183, 0569, ln.214.

⁵¹⁴ [CAR-D21-0001-0091](#); see also [CAR-D21-0001-0109](#).

ix. Witness D-57 – [REDACTED]

170. Witness D-57 testified in the Main Case from 17 to 19 October 2012.⁵¹⁵

171. **KILOLO** and D-57 called and texted each other regularly in the three weeks leading up to his testimony.⁵¹⁶ One of the calls made by **KILOLO** to D-57 on 15 October 2012—two days before D-57’s testimony—lasted for 70 minutes.⁵¹⁷

172. On the morning of 16 October 2012, prior to D-57’s departure for The Hague,⁵¹⁸ **KILOLO** called D-57 at 11:11, and the call lasted for approximately 11 minutes.⁵¹⁹ Less than one hour later, at 11:56,⁵²⁰ D-57’s [REDACTED],⁵²¹ collected USD 665 that **BABALA** sent *via* Western Union.⁵²²

173. D-57 admitted that he had given [REDACTED] name to **KILOLO**⁵²³ because **KILOLO** had asked for it in order to send “*un peu de choses aux enfants*.”⁵²⁴ On the same day that money was sent to [REDACTED], “a brother from Kinshasa” called D-57 to confirm the transfer.⁵²⁵ The sender also called D-57’s [REDACTED] to ensure

⁵¹⁵ ICC-01/05-01/08-T-256-CONF-ENG ET, 17 October 2012 ; ICC-01/05-01/08-T-256-CONF-FRA ET, 17 octobre 2012; ICC-01/05-01/08-T-257-CONF-ENG ET, 18 October 2012, ICC-01/05-01/08-T-257-CONF-FRA ET, 18 octobre 2012; ICC-01/05-01/08-T-258-CONF-ENG CT, 19 October 2012 ; ICC-01/05-01/08-T-258-CONF-FRA CT, 19 octobre 2012.

⁵¹⁶ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0719-0720. **KILOLO** used the numbers “[REDACTED]” and “[REDACTED]” while D-57 used “[REDACTED]”. For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0836.

⁵¹⁷ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0720, row 14. **KILOLO** used the number “[REDACTED]” while D-57 used “[REDACTED]”.

⁵¹⁸ See ICC-01/05-01/08-255-Red2-ENG, 16 October 2012, p.47, lns.14-16; ICC-01/05-01/08-255-Red-FRA, 16 octobre 2012, p.51, lns.11-13.

⁵¹⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0720, row 20, **KILOLO** used the number “[REDACTED]” while D-57 used “[REDACTED]”. See also for the same pattern, D-64, para. 178.

⁵²⁰ See [CAR-OTP-0084-0039](#) at 0042, para.18 (explaining that time of any transaction entered into Western Union database is automatically recorded as Eastern Standard Time of the United States).

⁵²¹ [CAR-OTP-0074-0805-R01](#) at 0808, para.8.

⁵²² [CAR-OTP-0073-0274](#), tab 31 Fidele Babala, row 14; [CAR-OTP-0070-0004](#), tab 31 Fidele Babala, row 19; [CAR-OTP-0075-0009-R01](#) at 0011-0012, paras.9-12. Note that **BABALA** admits transfer of money to D-57 at **KILOLO**’s request: see ICC-01/05-01/13-596-Conf-Corr2, paras.20, 43, 82, 124, 148 and ICC-01/05-01/13-671-Conf, para.56.

⁵²³ [CAR-OTP-0074-0712](#) (Audio), [CAR-OTP-0077-0088](#) at 0105, lns.586-587 (Transcript).

⁵²⁴ [CAR-OTP-0074-0712](#) (Audio), [CAR-OTP-0077-0088](#) at 0106, lns.627-628 (Transcript).

⁵²⁵ [CAR-OTP-0074-0712](#) (Audio); [CAR-OTP-0077-0088](#) at 0110, lns.766-770, 0111, lns.809-811, 0113, lns.859-861 (Transcript). Note that **BABALA** admits having contacted D-57 about the money transfer: see ICC-01/05-01/13-596-Conf-Corr2, para.126, 148 and ICC-01/05-01/13-671-Conf, para.40.

she had received it.⁵²⁶ On the day of the money transfer, **KILOLO** and **BABALA** were in contact with each other.⁵²⁷

174. **BEMBA** was informed of the money transferred to D-57. On 16 October 2012, **BABALA** and **BEMBA** discussed a payment to D-64, stating that it should be “*la même chose comme pour aujourd’hui*”, referring to D-57’s payment earlier that day.⁵²⁸ Further, the notes seized upon the search of **BEMBA**’s cell contain information on D-57’s “management costs”, including “*soutien*”, amounting to EUR 500.⁵²⁹

175. In addition to the payment of USD 665, on 14 June 2012, **KILOLO** sent USD 106.14 to D-57 *via* Western Union.⁵³⁰

176. In court, D-57 testified falsely that he had had only three prior contacts with **KILOLO**: (i) a phone conversation in May or June 2012 to discuss D-57’s willingness to provide a statement to the *Bemba* Defence;⁵³¹ (ii) a meeting with **KILOLO** in late June 2012;⁵³² and (iii) in late September 2012, a telephone contact concerning the Prosecution request to meet with D-57 (which D-57 subsequently refused).⁵³³ D-57

⁵²⁶ [CAR-OTP-0075-0009-R01](#) at 0012, para.14. See also for the same pattern, D-64, para.180.

⁵²⁷ [CAR-OTP-0072-0082](#), rows 222, 262. **KILOLO** used the number “[REDACTED]” while **BABALA** used “[REDACTED]”. [CAR-OTP-0090-0831](#) at 0831, 0833.

⁵²⁸ [CAR-OTP-0074-0610](#) (Audio), [CAR-OTP-0077-1299](#) at 1301, lns.29-30 (Translation): “*C’est la même chose comme pour aujourd’hui*”; The conversation between **BEMBA** and **BABALA** was at 19:49 (see [CAR-OTP-0074-0609](#). **BABALA** transferred the money to D-57 [REDACTED] at 11:56. In the same conversation, **BEMBA** and **BABALA** discussed a payment of 2 kg to “*l’enfant*” (**MANGENDA**) (see [CAR-OTP-0077-1299](#) at 1301, lns.9-22), which **NGINAMAU** made the next day, and **MANGENDA** received USD 1866 (2,000 minus the Western Union commission), see [CAR-OTP-0073-0274](#), tab 38 Jean J K Mangenda, row 37. See Annex A, “kilogram” as 1,000 units of money, Section VI.G.; see also D-64, para.179.

⁵²⁹ ICC-01/05-01/13-373-Conf-Anx5-Red, p.2, disclosed by the *Bemba* Defence without redactions in this case as [CAR-D20-0001-0008](#) at 0009.

⁵³⁰ [CAR-OTP-0070-0007](#), tab 32, row 23; [CAR-OTP-0074-0855](#), tab 40, row 52; see also [CAR-OTP-0077-0003](#) at 0010, lns.225-240. See also D-64, para.182.

⁵³¹ ICC-01/05-01/08-T-257-CONF-ENG ET, 18 October 2012, p.20, lns.6-17, p.21, lns.23-24, p.24, ln.23; ICC-01/05-01/08-T-257-CONF-FRA ET, 18 octobre 2012, p.21, ln.18-p.22, ln.2.

⁵³² ICC-01/05-01/08-T-257-CONF-ENG ET, 18 October 2012, p.20, lns.6-17, p.24, lns.19-20; ICC-01/05-01/08-T-257-CONF-FRA ET, 18 octobre 2012, p.21, ln.18-p.22, ln.2 p.26, lns.19-20.

⁵³³ ICC-01/05-01/08-T-257-CONF-ENG ET, 18 October 2012, p.24, lns.19-23; ICC-01/05-01/08-T-257-CONF-FRA ET, 18 octobre 2012, p.26, lns.21-24. See also D-64, para.183.

withheld the fact that he had other contacts with **KILOLO**, including a phone call on the same day that money was sent to [REDACTED],⁵³⁴ as well as the multiple contacts in October 2012, shortly before his testimony.⁵³⁵ He further denied receiving any money from the *Bemba* Defence or from anyone acting on their behalf.⁵³⁶

⁵³⁴ See *supra*, para. 172; see also D-64, para.183.

⁵³⁵ See *supra*, para. 171; see also D-64, para.182.

⁵³⁶ 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 octobre 2012, p.2, ln.27-p.3, ln.12.

x. Witness D-64 – [REDACTED]

177. Witness D-64 testified in the Main Case from 22 to 23 October 2012.⁵³⁷

178. **KILOLO** was in phone contact with D-64 at least five times in the weeks before his testimony and exchanged two text messages.⁵³⁸ In particular, on 16 October 2012, the day before the witness travelled to The Hague for his testimony, **KILOLO** called D-64 three times.⁵³⁹ One call lasted for 48 minutes.⁵⁴⁰

179. On 16 October 2012, at 19:49, **BEMBA** and **BABALA** discussed on the phone from the Detention Centre the importance of payments to “people”, meaning witnesses.⁵⁴¹ **BABALA** told **BEMBA** that, “*il faut que cela se fasse quand même parce que c’est très important. C’est la même chose comme pour aujourd’hui*”,⁵⁴² meaning that the payment to D-64 should be the same as his [**BABALA**’s] payment of USD 665 to D-57 [REDACTED], made earlier that day.⁵⁴³

180. The following day, on 17 October 2012, D-64’s VWU cut-off date,⁵⁴⁴ **BABALA**’s chauffeur **NGINAMAU** paid D-64 [REDACTED], a total of USD 700 *via* Western Union.⁵⁴⁵ The transfers were made at 11:48 and 12:41, and collected by [REDACTED] at 14:47 and 14:50.⁵⁴⁶ Shortly after the transfers were made, but before their collection,

⁵³⁷ ICC-01/05-01/08-T-259-CONF-ENG CT, 22 October 2012 ; ICC-01/05-01/08-T-259-CONF-FRA ET, 22 octobre 2012; ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012 ; ICC-01/05-01/08-T-260-CONF-FRA ET, 23 octobre 2012.

⁵³⁸ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0721. **KILOLO** used the number “[REDACTED]” while D-64 used “[REDACTED]”. See [CAR-OTP-0090-0831](#) at 0831, 0836.

⁵³⁹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0721, rows 3, 4, 7.

⁵⁴⁰ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0721, row 7.

⁵⁴¹ [CAR-OTP-0074-0610](#) (Audio), [CAR-OTP-0077-1299](#) at 1301, lns.29-30 (Translation).

⁵⁴² [CAR-OTP-0074-0610](#) (Audio), [CAR-OTP-0077-1299](#) at 1301, lns.29-30 (Translation).

⁵⁴³ [CAR-OTP-0070-0004](#), tab 31 Babala, row 19. See also *infra*, D-57, para.174.

⁵⁴⁴ [CAR-OTP-0078-0290](#) at 0292.

⁵⁴⁵ [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 2, 3; see also [CAR-OTP-0074-0707-R01](#) (Audio), [CAR-OTP-0074-1169](#) at 1185, lns.567-570 (Transcript). Note that **BABALA** admits transfer of money to D-64 at **KILOLO**’s request: see ICC-01/05-01/13-596-Conf-Corr2, paras.20, 43, 82, 124, 148 and ICC-01/05-01/13-671-Conf, para.56.

⁵⁴⁶ [CAR-OTP-0070-0007](#), tab 34 Nginamau, rows 2, 3, columns C, F, G, Y, AB and AC. See also [CAR-OTP-0084-0039](#), at 0042, para.18 (explaining that time of any transaction entered into Western Union database is automatically recorded as Eastern Standard Time of the United States).

KILOLO called D-64 at 13:17 and 13:27.⁵⁴⁷

181. D-64 admitted his [REDACTED] receipt of the money while he was in The Hague.⁵⁴⁸ He claims that he was unaware of the payment until he returned home after his testimony.⁵⁴⁹ D-64 [REDACTED] told him that she remembered that someone calling from “l’Afrique”⁵⁵⁰ had told her: “*je vous envoie un peu d’argent pour que vous viviez avec en l’absence de [REDACTED]*”.⁵⁵¹ D-64 acknowledged that the sender’s name showing on the Western Union receipt that [REDACTED] showed to him upon his return, sounded Congolese.⁵⁵² For that reason, he thought of asking **KILOLO** who that person was since **KILOLO** was the first and only Congolese he knew at the time.⁵⁵³ Later, D-64 confirmed that the money that [REDACTED] received must have come from **KILOLO** or his “*compagnons*”.⁵⁵⁴

182. In addition to the payment of USD 700, on 14 June 2012, **KILOLO** sent USD 106.14 to D-64 *via* Western Union.⁵⁵⁵ D-64 admitted collecting a payment of about 400 or 800 Swedish Krona from **KILOLO** ostensibly for travel costs to meet with **KILOLO** in Sweden.⁵⁵⁶ In court, D-64 denied receiving any money from **BEMBA** or from anyone on his behalf in relation to the case, including for travel expenses.⁵⁵⁷ He also denied that any promises had been made to him in exchange for his

⁵⁴⁷ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0721, rows 9-10. *See also* for the same pattern, D-57, para. 173.

⁵⁴⁸ [CAR-OTP-0074-1169](#) at 1172, lns.98-100, at 1186, lns.594-611;

⁵⁴⁹ [CAR-OTP-0074-1169](#) at 1172, lns.97-111.

⁵⁵⁰ [CAR-OTP-0074-1229-R01](#) at 1251, ln.815 – 1252, ln.845.

⁵⁵¹ [CAR-OTP-0074-1169](#) at 1187, lns.630-631. Note that **BABALA** admits having contacted D-64 about the money transfer: see ICC-01/05-01/13-596-Conf-Corr2, para.126, 148 and ICC-01/05-01/13-671-Conf, para.40. *See also* for the same pattern, D-57, para.173.

⁵⁵² [CAR-OTP-0074-1189-R01](#) at 1194, lns.1193-1194, lns.142-179.

⁵⁵³ [CAR-OTP-0074-0707-R01](#) (Audio), [CAR-OTP-0074-1189-R01](#) at 1194, lns.174-185 (Transcript).

⁵⁵⁴ [CAR-OTP-0074-1259](#) at 1262, lns.100-105; [CAR-OTP-0074-1229-R01](#) at 1252, lns.855-1253, ln.869, 1256, lns.986-991.

⁵⁵⁵ [CAR-OTP-0070-0007](#), tab 32, row 24; [CAR-OTP-0074-0855](#), tab 40, row 53. *See also* D-57, para. 175.

⁵⁵⁶ [CAR-OTP-0074-1169](#) at 1183, lns.482-496; [CAR-OTP-0074-1229-R01](#) at 1250-1251, lns.789-809; at 254, lns.911-914.

⁵⁵⁷ ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012, p.6, lns.14-20; ICC-01/05-01/08-T-260-CONF-FRA ET, 23 octobre 2012, p.6, ln.25-p.7, ln.3. *See also* D-57, para.176.

testimony.⁵⁵⁸

183. D-64 testified falsely that he had had only three prior contacts with **KILOLO**: (i) a phone call with **KILOLO** in June 2012;⁵⁵⁹ (ii) a meeting with **KILOLO** in June 2012;⁵⁶⁰ and (iii) a contact with **KILOLO** *via* telephone about D-64 meeting with the Prosecution.⁵⁶¹ D-64 withheld the fact that he had other contacts with **KILOLO**, including two contacts on the same day that money was sent to [REDACTED],⁵⁶² as well as multiple contacts in October 2013, shortly before his testimony.⁵⁶³

⁵⁵⁸ ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012, p.6, lns.21-23; ICC-01/05-01/08-T-260-CONF-FRA ET, 23 octobre 2012, p.6, lns.4-6.

⁵⁵⁹ ICC-01/05-01/08-T-259-CONF-ENG CT, 22 October 2012, p.61, ln.5 ; ICC-01/05-01/08-T-259- CONF-FRA ET, 22 octobre 2012, p.63, ln.1.

⁵⁶⁰ ICC-01/05-01/08-T-259-CONF-ENG CT, 22 October 2012, p.61, lns.8-11, ICC-01/05-01/08-T-259-CONF-FRA ET, 22 octobre 2012, p.63, lns.5-8.

⁵⁶¹ ICC-01/05-01/08-T-260-CONF-ENG ET, 23 October 2012, p.5, lns.13-17, p.6, lns.2-6; ICC-01/05-01/08-T-260- CONF-FRA ET, 23 octobre 2012, p.5, lns.22-27; p.6, lns.11-15. *See also* for the same pattern, D-57, para.176.

⁵⁶² *See supra*, para. 180. *See also* D-57, para.176.

⁵⁶³ *See supra*, para. 178; *See also* D-57, para.176.

xi. Witness D-55 – [REDACTED]

184. Witness D-55 testified in the Main Case from 29 to 31 October 2012.⁵⁶⁴

185. In 2009, D-55 [REDACTED] setting out alleged crimes committed by troops under **BEMBA**'s command in the CAR,⁵⁶⁵ which he felt obliged to report as [REDACTED].⁵⁶⁶ After D-55's early refusal to testify for the *Bemba* Defence,⁵⁶⁷ **KILOLO** contacted him by phone in the beginning of 2011.⁵⁶⁸ Between the end of 2011 and mid-2012, **KILOLO** made repeated unsuccessful attempts to convince D-55 to testify in **BEMBA**'s favour.⁵⁶⁹

186. On 5 June 2012, **KILOLO** met D-55 in Amsterdam, The Netherlands, to convince him to testify for **BEMBA**.⁵⁷⁰ **KILOLO** emailed D-55 a round trip ticket from [REDACTED]⁵⁷¹ to Amsterdam and paid for his hotel stay.⁵⁷² **KILOLO** also promised to reimburse D-55's expenses for a change of flight and taxi.⁵⁷³ **KILOLO** instructed D-

⁵⁶⁴ ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012 ; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 October 2012; ICC-01/05-01/08-T-265-CONF-ENG ET, 30 October 2012 ; ICC-01/05-01/08-T-265-CONF-FRA ET, 30 octobre 2012; ICC-01/05-01/08-T-266-CONF-ENG ET, 31 October 2012 ; ICC-01/05-01/08-T-266-CONF-FRA ET, 31 octobre 2012.

⁵⁶⁵ [CAR-OTP-0062-0094-R01](#). See also, ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.19, lns.22-25; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 octobre 2012, p.22, lns.11-13; ICC-01/05-01/08-T-265-CONF-ENG ET, 30 October 2012, p.29, lns.4-13; ICC-01/05-01/08-T-265-CONF-FRA ET, 30 octobre 2012, p.32, lns.3-14; ICC-01/05-01/08-T-266-CONF-ENG ET, 31 October 2012, p.14, ln.24-p.15, ln.1; ICC-01/05-01/08-T-266-CONF-FRA ET, 31 octobre 2012, p.15, lns.21-22.

⁵⁶⁶ ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.20, lns.17-23; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 octobre 2012, p.23, lns.6-14. D-55 worked for [REDACTED] from [REDACTED]: see, ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.13, ln.23-p.14, ln.4; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 octobre 2012, p.15, lns.23-28.

⁵⁶⁷ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0877 (Translation); ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.62, ln.22-p.63, ln.5; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 octobre 2012, p.72, lns.7-17.

⁵⁶⁸ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0877 (Translation). See also ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.63, ln.21-p.64, ln.7, p.66, ln.8-14; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 octobre 2012, p.73, lns.3-17, p.75, lns.21-p.76.ln.2.

⁵⁶⁹ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation).

⁵⁷⁰ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation). **KILOLO** admits meeting D-55 in Amsterdam, see ICC-01/05-01/13-600-Conf-Corr2, para.339.

⁵⁷¹ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation). See also [CAR-D21-0003-0036](#) at 0036-0038.

⁵⁷² [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation). See also [CAR-D21-0003-0056](#) at 0056.

⁵⁷³ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation). See also [CAR-D21-0004-0579](#) at 0580.

55 not to reveal the meeting in Amsterdam, explaining that “*le voyage à Amsterdam avait été fait à titre privé*”.⁵⁷⁴

187. During the meeting, **KILOLO** instructed D-55 to testify that [REDACTED] was false [REDACTED].⁵⁷⁵ D-55 was reluctant to follow **KILOLO**’s instruction on this point. He refused to present **KILOLO**’s version, since [REDACTED].⁵⁷⁶ In addition, D-55 had not retracted [REDACTED] during the more than two years since he had [REDACTED]. He revised his position only after **KILOLO**’s persistent approaches, as specified below.

188. In the meeting, D-55 told **KILOLO** that “*il avait peur de Bemba*” and expressed concern of the consequences that his testimony may have for him and his family.⁵⁷⁷ In response, **KILOLO** promised D-55 that “*Bemba le traiterait bien*”.⁵⁷⁸ Protection was important to D-55, as the fact that he had [REDACTED] and, significantly, among **BEMBA**’s supporters, who had contacted him several times, provoking concern for his security.⁵⁷⁹

189. After the June 2012 meeting, **KILOLO** contacted D-55 several times, reiterating his request for D-55 to recant [REDACTED] in court.⁵⁸⁰ In fact, CDRs show that **KILOLO** was in contact with D-55 five times in October 2012, including on the VWU cut-off date.⁵⁸¹

⁵⁷⁴ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0880 (Translation).

⁵⁷⁵ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation).

⁵⁷⁶ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation).

⁵⁷⁷ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation).

⁵⁷⁸ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0878 (Translation).

⁵⁷⁹ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0877, 0878 (Translation).

⁵⁸⁰ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0879 (Translation).

⁵⁸¹ See Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0718. The VWU’s contact cut-off date was 23 October 2012. See [CAR-OTP-0078-0290](#) at 0292).

190. D-55 told **KILOLO** that he would testify only if he spoke directly to **BEMBA**, as he did not trust **KILOLO** to reimburse his travel expenses.⁵⁸² On 5 October 2012, at about 19:49, **KILOLO** organised and facilitated a multi-party call on **BEMBA**'s ICC Detention Centre "privileged" line to effect his direct communication with the witness.⁵⁸³ **KILOLO** instructed D-55 not to reveal his contact with **BEMBA**, explaining that it was "*quelque chose d'inhabituel*".⁵⁸⁴

191. During their conversation, **BEMBA** thanked D-55 for his having accepted to testify in his favour.⁵⁸⁵ On the same day, **KILOLO** reimbursed D-55's Amsterdam expenses in the amount of USD 130.⁵⁸⁶ Following the payment, D-55 agreed to testify⁵⁸⁷ to "*cesser d'avoir peur de Bemba, car celui-ci était encore très puissant et avait de nombreux amis hors de la prison*".⁵⁸⁸

192. On 29 October 2012, D-55 testified in accordance with **KILOLO**'s instructions, that [REDACTED].⁵⁸⁹ When asked about contacts with the *Bemba* Defence, D-55 declared only three phone calls and, as per **KILOLO**'s instructions, he withheld the fact of his unmonitored phone contact with **BEMBA** and meeting with **KILOLO** in Amsterdam.⁵⁹⁰ Like several other Defence witnesses, D-55 falsely denied receiving

⁵⁸² [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0879 (Translation).

⁵⁸³ **BEMBA** called **KILOLO** on 5 October 2012 at 19:48 and spoke for 1962 seconds (about 32 minutes); at 20:05 **KILOLO** called D-55 and spoke for 223 seconds (note the time overlap between the two calls); see [CAR-OTP-0072-0391](#), row 709, 710; [CAR-OTP-0074-0065](#), row 681. See also [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0879-0880 (Translation). **KILOLO** used the number "[REDACTED]"; D-55 used "[REDACTED]", while **BEMBA** used the Detention Unit number "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0836. Note that **KILOLO** admits facilitating a call between **BEMBA** and D-55 on **BEMBA**'s Detention Centre privileged line (see ICC-01/05-01/13-674-Conf-Anx3, p.21, row 69).

⁵⁸⁴ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0880 (Translation).

⁵⁸⁵ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0879 (Translation).

⁵⁸⁶ [CAR-OTP-0070-0007](#), tab 32 A Kilolo Musamba, row 25. **KILOLO** admits making the payment, see ICC-01/05-01/13-600-Conf-Corr2, para.340.

⁵⁸⁷ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0880 (Translation).

⁵⁸⁸ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0879 (Translation).

⁵⁸⁹ ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.21, ln.18-p.22, ln.4; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 October 2012, p.24, lns.14-28- p.25, ln.1.

⁵⁹⁰ ICC-01/05-01/08-T-264-CONF-ENG ET, 29 October 2012, p.62, ln.22 to p.66, ln.23; ICC-01/05-01/08-T-264-CONF-FRA ET, 29 October 2012, p.72, ln.18 to p.76, ln.13; For **KILOLO**'s instructions, see [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0880 (Translation).

any payment, including any reimbursement of expenses, from the Defence.⁵⁹¹ Finally, D-55 testified that no promises were made to him in exchange for his testimony,⁵⁹² though he had been promised the benefit of being in **BEMBA's** good graces regarding his security concerns.⁵⁹³

193. In his 2014 statement to the Prosecution, D-55 confirmed that “[il] a menti à la Cour conformément aux instructions de M^e Kilolo”.⁵⁹⁴

⁵⁹¹ ICC-01/05-01/08-T-265-CONF-ENG ET, 30 October 2012, p.15, lns.1-18; ICC-01/05-01/08-T-265-CONF-FRA ET, 30 octobre 2012, p.16, lns.6-26.

⁵⁹² ICC-01/05-01/08-T-265-CONF-ENG ET, 30 October 2012, p.15, lns.13-18; ICC-01/05-01/08-T-265-CONF-FRA ET, 30 octobre 2012, p.16, lns.20-26.

⁵⁹³ See *supra*, paras.88, 191.

⁵⁹⁴ [CAR-OTP-0074-0860-R02](#) (Original); [CAR-OTP-0074-0872-R02](#) at 0881 (Translation).

xii. Witness D-29 – [REDACTED]

194. Witness D-29 testified in the Main Case from 28 to 29 August 2013⁵⁹⁵ via video link.⁵⁹⁶

195. In 2012, KOKATE, [REDACTED], contacted D-29.⁵⁹⁷ After D-29 expressed interest in testifying before the Court, KOKATE communicated D-29's phone number to **KILOLO**.⁵⁹⁸

196. In April 2012, **KILOLO** had an introductory meeting in Brazzaville with D-29 and his wife (D-30).⁵⁹⁹ On 13 August 2013, the witness was introduced to and had a meeting with the VWU where the Defence was also present.⁶⁰⁰

197. During that meeting, D-29 requested funds to bring one of his children from [REDACTED] to Brazzaville, which the VWU refused.⁶⁰¹ D-29 told **KILOLO** of his request and the VWU refusal,⁶⁰² who responded that although his budget was limited, he would try to contact “[...] *des gens qui soutiennent le Sénateur*.”⁶⁰³ **KILOLO** told D-29 that “*il [BEMBA] a des amis... au sein du parti, de leur parti là bas*” and that he

⁵⁹⁵ ICC-01/05-01/08-T-338-CONF-ENG ET, 28 August 2013 ; ICC-01/05-01/08-T-338-CONF-FRA ET, 28 août 2013; ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013 ; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 août 2013.

⁵⁹⁶ ICC-01/05-01/08-T-338-CONF-ENG ET, 28 August 2013 p.55, ln.24- p.56, ln.1; ICC-01/05-01/08-T-338-CONF-FRA ET, 28 août 2013 p.57, lns.11-13.

⁵⁹⁷ [CAR-OTP-0085-0628-R01](#) at 0655, lns.911-915; [CAR-OTP-0085-0628-R01](#) at 0655-0656, lns.911-959, 0660, lns.1085-1086. D-29 refers to KOKATE as DJOKI: see [CAR-OTP-0085-0780](#) at 0781, lns.12-24 and [CAR-OTP-0084-0129](#). See also Annex A, “Djoki” as KOKATE, Section III.I.(2.).

⁵⁹⁸ [CAR-OTP-0085-0628-R01](#) at 0656, lns.970-973; at 0658, lns.1025-1042.

⁵⁹⁹ ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013, p.20, lns.2-12; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 août 2013, p.20, ln.18 to p.21, ln. 3; [CAR-OTP-0085-0628-R01](#) at 0663-0664, lns.1204-1233. D-30 is D-29's wife: see ICC-01/05-01/08-T-338-CONF-ENG ET, 28 August 2013 p.61, lns.1-2. ICC-01/05-01/08-T-338-CONF-FRA ET, 28 août 2013 p.62, lns.22-23.

⁶⁰⁰ [CAR-OTP-0085-0628-R01](#) at 0666-0667, lns.1307-1354; ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013, p.35, lns.18 to p.37, ln.4; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 août 2013, p.37, ln.7-p.38, ln.26. The Defence was present at the meeting with the VWU. See [CAR-OTP-0078-0290](#) at 0296.

⁶⁰¹ [CAR-OTP-0085-0707-R01](#) at 0714-0715, lns.247-264; [CAR-OTP-0085-0628-R01](#) at 0647-0648, lns.649-672.

⁶⁰² [CAR-OTP-0085-0707-R01](#) at 0715, lns.274-289.

⁶⁰³ [CAR-OTP-0085-0628-R01](#) at 0669, lns.1443-1444; more generally, at 0669, lns.1424-1444. See also Annex A, “le Sénateur” as BEMBA, Section III.A.(5.).

could ask for money to send to D-29.⁶⁰⁴

198. On or around the same day that he spoke to **KILOLO**, D-29 received a call from Jean Paul MOKULA, informing D-29 that **KILOLO** had asked MOKULA to send him CFA 300,000 (about USD 500).⁶⁰⁵ On 28 August 2013, on the first day of his testimony, D-29 collected USD 649.43 that MOKULA sent him from Kinshasa at the request of Jacques LUNGUANA, a close **BEMBA** associate and Member of Parliament in charge of MLC finances.⁶⁰⁶ The day after collecting the money, D-29 falsely testified that he was never promised anything in exchange for his testimony.⁶⁰⁷

199. On 29 August 2013, D-29 testified that the town of Mongoumba in the CAR was attacked and that crimes were committed by MLC troops,⁶⁰⁸ a fact undermining the *Bemba* Defence theory.⁶⁰⁹ During the court recess, at 13:55,⁶¹⁰ **MANGENDA** reported to **KILOLO**, then on mission in Cameroon⁶¹¹, that unlike other Defence witnesses,⁶¹²

⁶⁰⁴ [CAR-OTP-0085-0628-R01](#) at 0670-0671, lns.1474-1482.

⁶⁰⁵ [CAR-OTP-0085-0628-R01](#) at 0671, lns.1483-1506. D-29 explains that the name of the person on the Western Union document is the person who called him. From the Western Union record, it is clear that the person is MOKULA: [CAR-OTP-0074-0855](#), tab 28 [REDACTED], row 2.

⁶⁰⁶ [CAR-OTP-0074-0855](#), tab 28 [REDACTED], row 2. See also [CAR-OTP-0085-0707-R01](#) at 0757-0758, lns.1749-1772; [CAR-OTP-0088-0105](#) at 0114, lns.278-309. Telephone directory of the DRC Parliament, [DRC-OTP-0148-0002](#) at 0011, identifying one of LUNGUANA's telephone numbers as "[REDACTED]", which is the same telephone number as the one identified in the BKA Report, Extraction of data from **BEMBA**'s SIM card, 25/03/09: [CAR-OTP-0044-0071](#) at 0086, 0097. **KILOLO** is in contact with LUNGUANA about money transfers using this number: [CAR-OTP-0074-0897](#), at 0908-0909. Among the documents seized from **BEMBA**'s cell at the Detention Union, the document titled "*Dépenses mission Brazzaville août 2013 pour une semaine*" indicates amounts of money received from BABALA, LUNGUANA and Françoise BEMBA. Furthermore, **BABALA** and **BEMBA** discuss the fact that only LUNGUANA should be in charge of finances: [CAR-OTP-0074-0452](#) (Audio); [CAR-OTP-0080-0939](#) at 0941, lns.25-26 (Translation).

⁶⁰⁷ ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013, p.43, lns.6-20; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 août 2013, p.45, lns.7-23.

⁶⁰⁸ See e.g., ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013, p.17, ln.13-p.20, ln.1; p.53, lns.1-9; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 août 2013, p.18, ln.2-p.20, ln.17; p.55, lns.4-17.

⁶⁰⁹ See, for example, the discussion on the matter between **KILOLO** and D-15: [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0154](#) at 0168, lns.463-469 (Translation).

⁶¹⁰ ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2014, p.56, lns.5-6; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 août 2014, p.58, ln.25. The call occurred at 13:55:55: see [CAR-OTP-0074-0926](#) at 0931.

⁶¹¹ **KILOLO** was in Cameroon from 27 August 2013 to 3 September 2013: see [CAR-D21-0001-0102](#) at 0102; **KILOLO** was using his Cameroon phone number "[REDACTED]" to call **MANGENDA**: see [CAR-OTP-0074-0926](#) at 0931.

⁶¹² [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0249, lns.75-81 (Translation) ("[...] tu vois pour les autres c'était si on lui pose la question sur ce qu'on n'avait pas évoqué, il reste calme il ne va pas répondre à la question. Mais avec lui, même sur les histoires qu'on n'a pas évoquées, tout d'un coup il donne des explications (...)").

D-29 did not abide by his instructions;⁶¹³ he had “*vraiment déconné*”.⁶¹⁴ **KILOLO** told **MANGENDA** that if D-29’s testimony did not conclude that day, he would contact the witness to ensure that the next morning “*il rectifie au moins deux, trois choses*”.⁶¹⁵

200. **KILOLO** emphasised that he had previously discussed problems encountered while illicitly coaching witnesses with **BEMBA**: “*le problème que j’ai toujours dit au Client, de faire encore LA COULEUR un ou deux jours avant que la personne passe, parce que les gens ne se souviennent pas de tout avec précision*”.⁶¹⁶

201. **MANGENDA** agreed, saying that co-Counsel (HAYNES) must be satisfied that “*il y a un témoin qui dit la vérité*”⁶¹⁷ and that he (HAYNES) can now see how the witnesses would testify if not prepared: “*qu’il voie maintenant comment les témoins allaient se comporter s’il n’y avait pas de préparation, parce qu’il allait avoir ce genre de scènes [...] car à un certain moment la personne oublie la préparation qu’on avait faite*”.⁶¹⁸

202. On that same day, D-29 testified falsely about his contacts with the *Bemba* Defence,⁶¹⁹ stating that he only spoke to the *Bemba* Defence four times,⁶²⁰ contrary to the evidence showing that **KILOLO** was in contact with D-29 twelve times before the VWU cut-off date.⁶²¹

⁶¹³ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0249, lns.75-81 (Translation).

⁶¹⁴ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0247, lns.6-20 (Translation).

⁶¹⁵ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0252, lns.212-214 (Translation).

⁶¹⁶ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0248, lns.50-52 (Translation).

⁶¹⁷ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0252, lns.182-190 (Translation).

⁶¹⁸ [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0253, lns.236-241 (Translation).

⁶¹⁹ Other witnesses—such as D-15, D-26, D-54, D-64, D-57, and D-13—also testified falsely about their contacts with the *Bemba* Defence; their testimony about the number of contacts is contradicted by CDRs. See, e.g. D-15, paras. 66, 80; D-26, paras. 108, 116; D-54, paras. 91- 94, 105; D-64, para. 178, 183 ; D-57, paras. 171, 176 ; D-13, paras. 207, 211.

⁶²⁰ ICC-01/05-01/08-T-339-CONF-ENG ET, 29 August 2013, p.36, ln.11-p.37, ln.4; ICC-01/05-01/08-T-339-CONF-FRA ET, 29 August 2013, p.38, lns.4-26.

⁶²¹ Namely between 19 October 2012 and 10 August 2013: Call Sequence Tables, [CAR-OTP-0090-0630](#) at 07007. **KILOLO** used the number “[REDACTED]” while D-29 used the number “[REDACTED]”. For the material supporting the attributions of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0836.

203. At the end of D-29's testimony, **KILOLO** asked **MANGENDA** whether the Prosecution examined D-29 about any payments so that **KILOLO** would know "*comment se préparer par rapport à sa femme*" [referring to D-29's wife—D-30—who would testify next].⁶²² He also asked whether D-29 had answered the questions on contacts with the Defence;⁶²³ **MANGENDA** reported to **KILOLO** that there had been no problems in this area.⁶²⁴

⁶²² [CAR-OTP-0074-0998](#) (Audio); [CAR-OTP-0082-0107](#) at 0109, ln.19, *more generally* lns.10-19 (Translation). *See also* [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0252, lns.191-208. D-30 started her testimony on 30 August 2013, the day after D-29's testimony ended.

⁶²³ [CAR-OTP-0074-0998](#) (Audio); [CAR-OTP-0082-0107](#) at 0109, lns.19-23 (Translation).

⁶²⁴ [CAR-OTP-0074-0998](#) (Audio); [CAR-OTP-0082-0107](#) at 0109, lns.19-23 (Translation).

xiii. Witness D-13 – [REDACTED]

204. Witness D-13 testified in the Main Case from 12 to 14 November 2013.⁶²⁵

205. D-13 was initially scheduled to testify between 19 November and 13 December 2012,⁶²⁶ and later rescheduled to testify between 21 and 24 May 2013.⁶²⁷ On 28 May 2013, the Defence informed the Chamber that D-13 could not testify, for lack of authorisation.⁶²⁸ In June 2013, the Defence sought leave from the Chamber to remove D-13 from its witness list.⁶²⁹

206. On 7 November 2013, the Chamber granted⁶³⁰ the *Bemba* Defence's 4 November request for leave to present D-13's testimony *in lieu* of another witness.⁶³¹

207. In the period from notification of the decision authorising D-13's testimony on 7 November 2013 at 15:38 through 10 November 2013, **KILOLO** communicated with D-13 at least 35 times, totalling over seven hours and 57 minutes.⁶³²

208. On 10 November 2013, at 19:04,⁶³³ **KILOLO** explained to **MANGENDA** that he [**KILOLO**] had to rehearse his illicit coaching with D-13 due to the change in the witness' schedule:

⁶²⁵ ICC-01/05-01/08-T-350-CONF-ENG ET, 12 November 2013 ; ICC-01/05-01/08-T-350-CONF-FRA ET, 12 novembre 2013; ICC-01/05-01/08-T-351-CONF-ENG ET, 13 November 2013 ; ICC-01/05-01/08-T-351-CONF-FRA ET, 13 novembre 2013; ICC-01/05-01/08-T-352-CONF-ENG ET, 14 November 2013; ICC-01/05-01/08-T-352-CONF-FRA ET, 14 novembre 2013.

⁶²⁶ ICC-01/05-01/08-T-269-Red-ENG, p.2, lns.3-13; ICC-01/05-01/08-T-269-Red-FRA, p.2, lns.1-13.

⁶²⁷ Defence request on the order of witnesses: ICC-01/05-01/08-2628, paras.8 and 12; Trial Chamber's decision: ICC-01/05-01/08-2630, paras.5 and 7.

⁶²⁸ Defence request: ICC-01/05-01/08-2638, para.6, and the Trial Chamber's decision: ICC-01/05-01/08-2646, paras.2 and 13.

⁶²⁹ [REDACTED]: see ICC-01/05-01/08-2731, para.15.

⁶³⁰ The Chamber ordered that D-13's testimony start on 12 November 2013 and finish no later than 15 November 2013. See ICC-01/05-01/08-2865-Red, para.19.

⁶³¹ ICC-01/05-01/08-2862-Red, para.10.

⁶³² Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0662-0667 (including contacts from 7 November 2013 through 10 November 2013). **KILOLO** used phone numbers "[REDACTED]", "[REDACTED]" and "[REDACTED]", while D-13 used phone numbers "[REDACTED]", "[REDACTED]" and "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0834.

⁶³³ [CAR-OTP-0080-1419](#) (Audio); [CAR-OTP-0082-1140](#) (Translation). See also [CAR-OTP-0080-1138](#) at 1262.

*Moi, par exemple, je suis occupé avec LES COULEURS de cette personne parce que tu vois le type... comme ça faisait déjà longtemps, dans sa tête il savait qu'il n'allait plus venir, donc il avait... il n'avait plus ces choses-là dans sa tête. Donc j'ai juste essayé avec lui comme ça ... même ce qu'il nous avait dit lors de notre rencontre avec KATE, il n'en peut plus [...]. Donc j'ai dû tout recommencer à zéro, donc ça m'a pris du temps [...].*⁶³⁴

209. On 11 November 2013, the eve of his testimony and the day of the VWU cut-off date,⁶³⁵ **KILOLO** and D-13 communicated at least 10 times, totalling over one hour.⁶³⁶

210. During D-13's testimony (on 12, 13 and 14 November 2013), **KILOLO** and D-13 were in phone contact at least 13 times, totalling over one hour and 24 minutes.⁶³⁷ Based on the length of these communications and their similarity to what transpired with other witnesses who testified just before D-13,⁶³⁸ the only reasonable inference is that **KILOLO** illicitly coached D-13 during their conversations after the VWU cut-off date and during D-13's testimony.

211. On 14 November 2013, D-13 testified falsely in court that his last telephone contact with **KILOLO** dated back several weeks before his testimony.⁶³⁹

⁶³⁴ [CAR-OTP-0080-1419](#) (Audio); [CAR-OTP-0082-1140](#) at 1142, lns.10-28 (Translation). See also [CAR-OTP-0080-1138](#) at 1262-1263.

⁶³⁵ [CAR-OTP-0078-0290](#) at 0297.

⁶³⁶ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0667-0668.

⁶³⁷ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0669-0671.

⁶³⁸ D-15, paras.66-67, 69, 77; D-54, paras.91, 94.

⁶³⁹ ICC-01/05-01/08-T-352-CONF-ENG ET, 14 November 2013, p.35, ln.4-20-p.36, ln.2 ; ICC-01/05-01/08-T-352-CONF-FRA ET, 14 novembre 2013, p.31, ln.28-p.32, ln.20.

xiv. Witness D-25 – [REDACTED]

212. Witness D-25 testified in the Main Case from 26 to 27 August 2013.⁶⁴⁰

213. **KILOLO** and D-25 were in constant phone contact before, during and after the witness' testimony.⁶⁴¹ After the 15 August 2013 VWU contact cut-off date,⁶⁴² **KILOLO** and D-25 were in phone contact nine times, including three times on the eve of his testimony and three times during its course.⁶⁴³

214. On the first day of D-25's testimony, during a court recess,⁶⁴⁴ at 14:14,⁶⁴⁵ **MANGENDA** updated **KILOLO** (who was not present at the hearing)⁶⁴⁶ on D-25's progress.⁶⁴⁷ **KILOLO** asked **MANGENDA** if D-25 had followed his instructions, to which **MANGENDA** replied, "*il a bien suivi [les enseignements]*".⁶⁴⁸ **KILOLO** did not fully agree with **MANGENDA**'s assessment because he found that D-25 had failed to follow his instructions regarding "*un autre détail très important*"⁶⁴⁹ by not naming and describing the three CAR officers who, according to the Defence case, had commanded the MLC troops in CAR.⁶⁵⁰ **KILOLO** also complained that D-25 should have mentioned that **BEMBA** had informed his troops at PK12 that they were placed

⁶⁴⁰ ICC-01/05-01/08-T-336-CONF-ENG ET, 26 August 2013 ; ICC-01/05-01/08-T-336-CONF-FRA ET, 26 août 2013; ICC-01/05-01/08-T-337-CONF-ENG ET, 27 August 2013 ; ICC-01/05-01/08-T-337-CONF-FRA ET, 27 août 2013.

⁶⁴¹ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0697-0701. **KILOLO** used the numbers "[REDACTED]", "[REDACTED]", and "[REDACTED]" while D-25 used "[REDACTED]" and "[REDACTED]". For the material supporting the attribution of these numbers, see [CAR-OTP-0090-0831](#) at 0831, 0835.

⁶⁴² [CAR-OTP-0078-0290](#) at 0295.

⁶⁴³ Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0700-0701.

⁶⁴⁴ ICC-01/05-01/08-T-336-CONF-ENG ET, 26 August 2013, p.48, lns.17-18; ICC-01/05-01/08-T-336-CONF-FRA ET, 26 août 2013, p.49, ln.26.

⁶⁴⁵ [CAR-OTP-0074-0897](#) at 0913; [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) (Translation).

⁶⁴⁶ ICC-01/05-01/08-T-336-CONF-ENG, 26 August 2013, p.1, lns.19-20, p.3, lns.14-17 ; ICC-01/05-01/08-T-336-CONF-FRA, 26 août 2013, p.1, lns.21-24, p.3, lns.18-22.

⁶⁴⁷ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) (Translation).

⁶⁴⁸ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0231, lns.59-60 (Translation).

⁶⁴⁹ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0232, lns.80-81 (Translation).

⁶⁵⁰ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0232, lns.80-85 (Translation). **KILOLO** illicitly coached other witnesses who testified after D-25 on the same issue, notably D-15 and D-54. See [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0030](#) at 0032-0034, lns.54-137 (transcript); [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0883, lns.169-188 (Translation); [CAR-OTP-0080-1364](#) (Audio); [CAR-OTP-0082-0877](#) at 0891, lns.499-504 (Translation).

under the command of these three CAR officers and that they should obey them.⁶⁵¹ **MANGENDA** reassured **KILOLO** that it was better that D-25 did not mention it because he was not specifically asked about this point by Co-Counsel “PETER” (HAYNES) who examined him in Court.⁶⁵² Otherwise “*ça peut paraître un peu suspect*”.⁶⁵³

215. Later that night, at 23:42, **KILOLO** spoke to D-25 for about half an hour in two consecutive calls.⁶⁵⁴ The following morning, 27 August 2013 at 6:59am, **KILOLO** called D-25 again just before his second and final day of testimony.⁶⁵⁵

216. The same day at 19:05⁶⁵⁶ after the conclusion of D-25’s testimony, **KILOLO** again asked **MANGENDA** if D-25 managed to mention the CAR officers he had failed to mention the previous day,⁶⁵⁷ **MANGENDA** answered that D-25 did not because he only answered the questions posed.⁶⁵⁸ He informed **KILOLO** that D-25 testified that he did not meet Jacques SEARA, the Defence military expert⁶⁵⁹—a fact that contradicts SEARA’s report.⁶⁶⁰ **MANGENDA** explained that they had forgotten to “[...] *lui rappeler par rapport avec sa rencontre avec SEARA*”.⁶⁶¹ **KILOLO** acknowledged the problem as “*une erreur grave*”⁶⁶² but told **MANGENDA** that he

⁶⁵¹ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0232, lns.80-85 (Translation).

⁶⁵² [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0230, lns.9-11 (Translation).

⁶⁵³ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0232, lns.95-96 (Translation).

⁶⁵⁴ On 26 August 2013 at 23:42:05, **KILOLO** called D-25 for one minute and 23 seconds. See Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0701, row 70. Approximately three minutes after the end of this call, **KILOLO** called D-25 again for 27 minutes and 55 seconds. See Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0701, row 71. **KILOLO** used the number “[REDACTED]” while D-25 used “[REDACTED]”

⁶⁵⁵ On 27 August 2013 at 06:59:25 am **KILOLO** called D-25 for four minutes and 46 seconds. Call Sequence Tables, [CAR-OTP-0090-0630](#) at 0701, row 72. **KILOLO** used the number “[REDACTED]” while D-25 used “[REDACTED]”

⁶⁵⁶ [CAR-OTP-0074-0897](#) at 0914; [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) (Translation).

⁶⁵⁷ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0116, ln.32 (Translation).

⁶⁵⁸ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0116-0117, lns.33-39 (Translation).

⁶⁵⁹ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0119-0120, lns.134-157 (Translation). [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0119-0120, lns.134-157 (Translation). On that day (27 August 2013), D-25 indeed testified that he never met SEARA. See ICC-01/05-01/08-T-337-CONF-ENG, 27 August 2013, p.39, lns.6-9, ICC-01/05-01/08-T-337-CONF-FRA ET, 27 août 2013, p.41, lns.8-12.

⁶⁶⁰ Contrary to D-25’s testimony, SEARA stated in his Report that he met several individuals, including D-25. See [CAR-D04-0003-0342](#) at 0350.

⁶⁶¹ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0119, lns.136-137 (Translation).

⁶⁶² [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0120, ln.158 (Translation).

was relieved that D-25 had not revealed that an illicit coaching meeting had taken place: *“Ce 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 ?”*.⁶⁶³ **KILOLO** emphasised that he had given D-25 clear instructions to stay on script: *“c’est-à-dire que tout ce qui n’est pas clair, vraiment qu’il ne s’engage pas dans cette discussion-là”*.⁶⁶⁴

217. In the same phone call, **MANGENDA** reported to **KILOLO** on **BEMBA**’s satisfaction with the results: *“[le client] a vu vraiment que [...] un véritable travail de couleurs a été effectivement fait [...] lui-même il a vraiment senti cela”*.⁶⁶⁵ **KILOLO** confirmed that **BEMBA** had to realise it because of the precision with which the witness had testified.⁶⁶⁶ It was the only witness that finally *“[REDACTED] [phon.], ça c’était clair”*.⁶⁶⁷

218. D-25’s manner of testimony was consistent with his having been coached. He denied any payment from the Defence, including legitimate reimbursement of travel or other expenses, during his 27 August 2013 testimony.⁶⁶⁸ However, **KILOLO** transferred money to D-25 on 9 August 2013.⁶⁶⁹ Furthermore, other records suggest that D-25 was paid by the Defence during a mission to Brazzaville from 9 to 17 August 2013 shortly before his appearance in court.⁶⁷⁰

⁶⁶³ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0120, lns.158-160, more generally 0119-0121, lns.135-183 (Translation).

⁶⁶⁴ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0121, lns.179-180 (Translation).

⁶⁶⁵ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0118, lns.103-107 (Translation).

⁶⁶⁶ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0119, ln.117 (Translation).

⁶⁶⁷ [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0119, lns.108-117 (Translation).

⁶⁶⁸ ICC-01/05-01/08-T-337-CONF-ENG, 27 August 2013, p.40, lns.3-20, ICC-01/05-01/08-T-337-CONF-FRA ET, 27 août 2013, p.42, lns.5-25.

⁶⁶⁹ [CAR-OTP-0074-0855](#), tab 40 Aimé Kilolo Musamba, row 11.

⁶⁷⁰ Documents seized from **BEMBA**’s detention cell show that EUR 3,850 were allocated to be paid to different witnesses including D-25 during a mission to Brazzaville on 9-17 August 2013. See [CAR-D21-0003-0162](#) at 0164; [CAR-OTP-0082-0334](#) at 0334. In this document D-25 was referred to by his code “[REDACTED]”. See Annex A, “[REDACTED]” as D-25, Section III.K.

219. Similarly, when asked in court “[w]hat happened during the time Mr **BEMBA** was in PK-12?”,⁶⁷¹ D-25 volunteered that “[**BEMBA**] spoke to the troops in Lingala, but he also spoke to them in French.”⁶⁷² **MANGENDA** reported to **KILOLO** that the judges appeared to suspect that the witness had been illicitly coached, but had no means to verify their suspicion.⁶⁷³ He described the scene in the courtroom as follows : “*cela a fait bouger les dames-là (the judges) avec quelques sourires, [rire, 00:01:29] parce qu’à ce moment-là ils savaient que de ce côté-là si ça corroborait, cela veut dire qu’un entretien s’était tenu secrètement [...] Mais il n’y avait pas moyen pour qu’ils établissent [...] il y a même du côté du Bureau du Procureur, tu vois, il y avait aussi des sourires.*”⁶⁷⁴

⁶⁷¹ ICC-01/05-01/08-T-336-CONF-ENG, 26 August 2013, p.31, ln.17 (emphasis added); ICC-01/05-01/08-T-336-CONF-FRA, 26 août 2013, p.32, ln.15.

⁶⁷² ICC-01/05-01/08-T-336-CONF-ENG, 26 August 2013, p.31, ln.18; ICC-01/05-01/08-T-336-CONF-FRA, 26 août 2013, p.32, lns.16-17. **KILOLO** illicitly coached other witnesses who testified after D-25 on the same issue, notably D-15 and D-54. See [CAR-OTP-0074-1003](#) (Audio); [CAR-OTP-0079-0030](#) at 0043-0045, lns.479-523 (Transcript); [CAR-OTP-0080-1367](#) (Audio); [CAR-OTP-0082-1109](#) at 1133, lns.813-817.

⁶⁷³ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0230, lns.14-35 (Translation).

⁶⁷⁴ [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0230, lns.28-35 (Translation) (emphasis added).

VIII. LEGAL ELEMENTS OF THE CRIMES AND MODES OF LIABILITY

A. Article 70(1)(a): giving false testimony

i. *Actus reus*

220. The offence is committed when a person testifies falsely when under an obligation to tell the truth pursuant to article 69(1).⁶⁷⁵ Testimony is false where it affirms a false fact, or negates, withholds or partially accounts for a true fact.⁶⁷⁶ It is not required that the falsehood bears upon a material issue in the case.⁶⁷⁷

ii. *Mens rea*

221. The person must give false testimony intentionally and be aware that (i) he or she has an obligation to be truthful pursuant to article 69(1); and (ii) that his or her testimony is false.⁶⁷⁸

⁶⁷⁵ Article 69(1) of the Statute provides that “[b]efore testifying, each witness shall [...] give an undertaking as to the truthfulness of the evidence to be given by that witness.”

⁶⁷⁶ See ICC-01/05-01/13-749, para.28; rule 66(1) of the rules (requiring that every witness, before testifying, make a solemn undertaking to “speak the truth, the *whole* truth and *nothing* but the truth”) (emphasis added).

⁶⁷⁷ “False – untrue <a false statement>; deceitful lying <a false witness>; not genuine, inauthentic”; “False testimony – testimony that is untrue. This term is broader than perjury, which has a state-of-mind element”, Garner, B. (ed.), *Black’s Law Dictionary – Eighth Edition* (West Publishing Company, 2004), pp.635, 1515; see also ICC-01/05-01/13-749, para.28.

⁶⁷⁸ The *mens rea* of this crime must be read in conjunction with the subjective elements of the respective modes of liability discussed below.

B. Article 70(1)(b): presenting evidence that the party knows is false or forged

i. *Actus reus*

222. The offence is committed where a person presents evidence to the Court that is false or forged. Evidence is presented when it is laid before the Court in any guise.⁶⁷⁹ The falseness of evidence is defined in the same manner as article 70(1)(a) above.⁶⁸⁰

223. The inconsistent use of the term “party” in the six authentic statutory texts,⁶⁸¹ read in light of the Statute’s object and purpose⁶⁸² and in the context of the statutory framework as a whole, undercuts any basis for limiting the scope of possible perpetrators to the Prosecution and Defence. Thus, the term “party” includes any person who knowingly and intentionally presents false or forged evidence before the Court.

ii. *Mens rea*

224. The person must intentionally present evidence before the Court, and know, or be aware, that the evidence presented is false or forged.⁶⁸³

⁶⁷⁹ See the definition of “present” in, The New International Webster’s Dictionary Thesaurus (Trident Press International, 2002), p.766.

⁶⁸⁰ As forgery has not been charged in this case, no definition has been provided.

⁶⁸¹ Only the English and Arabic texts—out of six equally authentic versions of article 70(1)(b)—use the term “party”: “Presenting evidence that the party knows is false or forged” (English); تقديم أدلة يعرف الطرف أنها زائفة أو مزورة (Arabic). The other four versions do not contain such limitation: “Production d’éléments de preuve faux ou falsifiés en connaissance de cause” (French); “Presentar pruebas a sabiendas de que son falsas o han sido falsificadas” (Spanish); “Представление заведомо ложных или сфальсифицированных доказательств” (Russian); “提出自己明知是不实的或伪造的证据” (Chinese).

⁶⁸² The Statute’s preamble guarantees lasting respect for and the enforcement of international justice regarding the most serious crimes of concern to the international community. On the relevance of a treaty’s preamble to establish its object and purpose, see “Asylum” (*Colombia v. Peru*), Judgment, 20 November 1950, I.C.J. Reports 1950, p.282; “Rights of Nationals of the United States of America in Morocco” (*France v. United States of America*), Judgment, 27 August 1952, I.C.J. Reports 1952, p.196; “Sovereignty over Pulau Ligitan and Pulau Sipadan” (*Indonesia v. Malaysia*), Judgment, 17 December 2002, I.C.J. Reports 2002, p.625, para.51.

⁶⁸³ The *mens rea* of this crime must be read in conjunction with the subjective elements of the respective modes of liability discussed below.

C. Article 70(1)(c): corruptly influencing a witness

i. *Actus reus*

225. The offence is committed when a person acts corruptly to influence a witness directly or indirectly, and encompasses conduct which in any manner may have, or that the person expects to have, a corrupting impact or influence on a witness, including, but not limited to, by seeking to persuade a witness to testify falsely or interfere with the administration of justice, bribing, intimidating, or scripting the witness's evidence. Corruptly influencing a witness is a conduct crime, not a result crime.⁶⁸⁴ Therefore, it need not produce a result or be objectively or otherwise capable of influencing the witness.

ii. *Mens rea*

226. The person must know that the individual whom they seek to influence is a witness and intentionally seek corruptly to influence that witness.⁶⁸⁵

D. Article 25(3)(a) direct co-perpetration

227. The elements of this mode of liability are: (i) the existence of an agreement or common plan between two or more persons to commit a crime or to engage in conduct which, in the ordinary course of events, will result in the commission of a crime;⁶⁸⁶ (ii) the accused must provide an essential contribution to the common plan;⁶⁸⁷ and (iii) the accused must hold the requisite intent and knowledge with

⁶⁸⁴ See ICC-01/05-01/13-749, para.30.

⁶⁸⁵ The *mens rea* of this crime must be read in conjunction with the subjective elements of the respective modes of liability discussed below.

⁶⁸⁶ ICC-01/04-01/06-2842, para.1018; ICC-02/11-02/11-186, para.137; ICC-02/11-01/11-656-Red, para.230.

⁶⁸⁷ ICC-01/04-01/06-2842, para.1018; ICC-02/11-02/11-186, para.137.

respect to the crimes charged.⁶⁸⁸

i. Existence of an agreement or common plan

228. An agreement or common plan between co-perpetrators may be express or implied, previously arranged, or materialise extemporaneously⁶⁸⁹ and can be inferred from the subsequent concerted action of the co-perpetrators.⁶⁹⁰ A common plan need not be specifically directed at the commission of a crime, but must involve a “critical element of criminality”, such that the accused is aware that its implementation will result in the commission of a crime in the ordinary course of events.⁶⁹¹ Although the co-perpetrators must intend a particular offence or range of offences (or be aware that they will occur in the ordinary course of events), they need not intend or know the specific instances in which those offences will be carried out.⁶⁹²

ii. Essential contribution to the common plan

229. Co-perpetrators must each “[provide] an essential contribution to the *common plan* that result[s] in the commission of the relevant crime[s]”,⁶⁹³ meaning that some or all of the crimes resulting from the common plan “would not have been committed or would have been committed in a significantly different way” without the contribution.⁶⁹⁴ Co-perpetration “requires that the offence [is] the result of the

⁶⁸⁸ ICC-02/11-02/11-186, para.137; ICC-02/11-01/11-656-Red, para.230.

⁶⁸⁹ ICC-01/04-01/06-3121-Red, para.445.

⁶⁹⁰ ICC-01/04-01/06-803-tEN, para.345; ICC-01/04-01/07-717, para.523.

⁶⁹¹ ICC-01/04-01/06-3121-Red, para.446.

⁶⁹² See, ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Judgment, 3 April 2007, paras.418; 420-425; SCSL, *Prosecutor v. Brima et al*, SCSL-2004-16-A, Judgment, 22 February 2008, para.76.

⁶⁹³ ICC-01/04-01/06-2842, paras.1006, 1018(ii) (emphasis added). See also ICC-01/04-01/06-3121-Red, para.469. At paras.488 and 491, the Appeals Chamber refers to the “essential nature of his contribution to the common plan” and “Mr Lubanga’s [essential role] to the implementation of the common plan”. In addition, at paras.455 and 499, the Appeals Chamber endorsed the findings and the approach of the Trial Chamber on this issue. See further, ICC-02/11-02/11-186, paras.135-136.

⁶⁹⁴ ICC-02/11-01/11-656-Red, para.230; ICC-02/11-02/11-186, para.135. As to the assessment of the essential nature of a contribution, see ICC-01/04-01/06-2842, paras.1000-1001.

combined and coordinated contributions of those involved”.⁶⁹⁵ Consequently, “the responsibility of the co-perpetrators for the crimes resulting from the execution of the common plan arises from mutual attribution, based on the joint agreement or common plan.”⁶⁹⁶ The mutual attribution of the respective conduct of co-perpetrators who share a common plan means that an individual co-perpetrator who provides an essential contribution to the common plan resulting in certain crimes can be held responsible for other crime(s) to which he did not directly contribute, as long as these latter crimes were committed by his co-perpetrators in the implementation of the common plan.⁶⁹⁷

iii. Intent and knowledge with respect to the crimes charged

230. To establish intent, the accused must mean to engage in the relevant conduct.⁶⁹⁸ In relation to a consequence, they must either (a) mean to cause the consequence; or (b) be aware that the implementation of their common plan would, in the ordinary course of events, result in the commission of a crime or crimes within its scope.⁶⁹⁹ The accused need not have been aware of the *specific* criminal incidents that resulted from the implementation of their common plan.⁷⁰⁰

231. To establish knowledge, the accused must be aware (a) that the common plan or agreement involves an element of criminality;⁷⁰¹ and (b) of the factual circumstances that enable him or her, together with other co-perpetrators, to jointly exercise functional control over at least one of the crimes.⁷⁰²

⁶⁹⁵ ICC-01/04-01/06-2842, para.994.

⁶⁹⁶ ICC-01/04-01/06-2842, para.994.

⁶⁹⁷ ICC-01/04-01/06-2842, paras.1000, 1004. *See also* ICC-01/05-01/13-922, paras.6-8.

⁶⁹⁸ Article 30(2)(a) of the Statute.

⁶⁹⁹ ICC-01/04-01/07-717, para.533.

⁷⁰⁰ *See Prosecutor v. Brđanin*, IT-99-36-A, Judgment, 3 April 2007, paras.418, 420-425; *Prosecutor v. Brima et al*, SCSL-2004-16-A, Judgment, 22 February 2008, para.76.

⁷⁰¹ ICC-01/04-01/06-803, paras.361-365.

⁷⁰² ICC-01/04-01/06-803, paras.366-367; ICC-01/04-01/07-717, para.538.

E. Article 25(3)(b) solicitation and inducement

232. The modes of liability of soliciting and inducing share the following requisite legal elements: (a) the person exerts influence over an individual to either commit a crime which in fact occurs or is attempted, or to perform an act or omission as a result of which a crime is carried out; (b) the solicitation or inducement has a direct effect on the commission or attempted commission of the crime; and (c) the person is at least aware that a crime will be committed in the ordinary course of events, as a consequence of the realisation of the act or omission.⁷⁰³ The person can exert influence through an intermediary and need not influence the physical perpetrator directly.⁷⁰⁴

F. Article 25(3)(c) aiding, abetting or otherwise assisting

233. The *actus reus* of article 25(3)(c) requires that a person “aids, abets or otherwise assists” in the commission or attempted commission of a crime within the jurisdiction of the Court, “including providing the means for its commission.” This includes conduct by the person which, *inter alia*, facilitates, helps, encourages, or supports the commission or attempted commission of a crime. Such conduct need not have a substantial effect on the commission or attempted commission of the crime⁷⁰⁵ and can include “moral support” as well as material assistance.⁷⁰⁶

⁷⁰³ ICC-01/04-02/06-309, para.153 (setting out the elements for article 25(3)(b) inducement liability); ICC-01/05-01/13-749, para.34 (holding that the legal requirements for article 25(3)(b) “soliciting” and “inducing” are the same).

⁷⁰⁴ ICC-01/04-01/12-1-Red, para.63 (stating that, in the context of ordering liability under article 25(3)(b), “[t]he person can give the order through an intermediary and need not give the order directly to the physical perpetrator”); ICC-02/11-01/11-656-Red, para.243 (stating that the elements of article 25(3)(b) “ordering” are equally applicable to “soliciting” and “inducing” with the exception of the requirement of a position of authority).

⁷⁰⁵ ICC-01/05-01/13-749, para.35.

⁷⁰⁶ ICTY, *Prosecutor v. Šainović et al*, IT-05-87-A, Judgement, 23 January 2014, paras.1626, 1649; ICTY, *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgement, 10 December 1998, paras.233-235; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para.484.

234. The *mens rea* requires that the person's conduct is "[f]or the purpose of facilitating the commission of such a crime".⁷⁰⁷ This, if interpreted in conjunction with article 30, requires some form of *intent* in addition to knowledge.⁷⁰⁸ However, the term "purpose" does not relate to the commission of the crime⁷⁰⁹ but to the person's act of facilitation. The person need not intend the commission of the crime, but only intend or mean that his conduct facilitate its commission by others.⁷¹⁰ The *knowledge* requirement for aiding and abetting requires proof that the person was aware that the crime will be committed in the ordinary course of events by the direct perpetrators. The person need not share the direct perpetrators' intent.⁷¹¹

⁷⁰⁷ Article 25(3)(c) of the Statute.

⁷⁰⁸ ICC-01/04-01/10-465-Red, para.274; ICC-01/04-02/12-4, Concurring Opinion of Judge van den Wyngaert, para.25.

⁷⁰⁹ *Contra* Eser in Cassese et al (eds.), *The Rome Statute of the International Criminal Court: a commentary* (Oxford: OUP, 2002), pp.801, 901-902; Cryer et al, *An Introduction to International Criminal Law and Procedure* (Cambridge: CUP, 2007), p.312; Ambos in Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2 Ed. (München and Oxford: C.H. Beck and Hart, 2008) ("Triffterer"), p.757; Schabas, *The International Criminal Court: a Commentary on the Rome Statute* (Oxford: OUP, 2010), p.435. *But see* Piragoff and Robinson in Triffterer, pp.855-857.

⁷¹⁰ *See e.g.* USA, *Rosemond v. United States*, No.12-895, slip op, 572 U.S. ____ (2014), Justice Kagan for the Court, p.14; Canada, *R. v. Hibbert*, [1995] 2 S.C.R. 973, para.39; England and Wales, *DPP for Northern Ireland v. Lynch* [1975] AC 653, 678; England and Wales, *R. v. Bryce* [2004] 2 Cr. App. R. 35, 603; England and Wales, *National Coal Board v. Gamble* [1959] 1 QB 11, 23.

⁷¹¹ ICTY, *Prosecutor v. Blagojević & Jokić*, IT-02-60-A, Judgement, 9 May 2007, para.221; ICTY, *Prosecutor v. Simić*, IT-95-9-A, Judgement, 28 November 2006, para.86. *Contra* ICC-01/04-01/10-465-Red, para.281.

IX. INDIVIDUAL CRIMINAL LIABILITY

235. The charges, as confirmed by the Pre-Trial Chamber, involve the following modes of liability: direct perpetration and direct co-perpetration under article 25(3)(a); soliciting or inducing under article 25(3)(b); and aiding and abetting under article 25(3)(c). The relevant facts in relation to each mode of liability and each Accused is summarised below.

A. Liability as direct co-perpetrators under article 25(3)(a)

236. **BEMBA, KIOLOLO, and MANGENDA** are liable as direct co-perpetrators under article 25(3)(a).

i. Existence of a Common Plan between two or more persons

237. As set out above, from the end of 2011 to 14 November 2013, **BEMBA, KIOLOLO** and **MANGENDA**, participated in and contributed to an Overall Strategy to defend **BEMBA** against charges of crimes against humanity and war crimes in the Main Case by means which included the commission of offences against the administration of justice in violation of article 70(1)(a), (b) and (c) of the Statute. By its terms the Overall Strategy is properly legally characterised as a common plan, and is thus referred to as such in the text following (“Common Plan”).

238. The existence of the Common Plan, its espousal and implementation by the Accused and other persons is demonstrated by the actions of the Accused and other persons, who, individually and/or collectively participated in: (i) planning the acts of corruptly influencing witnesses and presenting their false testimony;⁷¹² (ii)

⁷¹² See e.g., D-29, para.200; D-15, para.72; D-54, paras.84-87, 101; D-23, paras.124,126.

identifying potential witnesses and offering them money for false testimony;⁷¹³ (iii) making payments to witnesses and/or their relatives and close associates, through each other and through others to implement the Common Plan,⁷¹⁴ (iv) otherwise soliciting and improperly inducing witnesses to testify falsely;⁷¹⁵ (v) planning the implementation of the Common Plan;⁷¹⁶ (vi) manufacturing the testimony of witnesses *via* telephone, scripting and improperly instructing witnesses' evidence;⁷¹⁷ (vii) concealing the Common Plan,⁷¹⁸ including by communicating in coded language,⁷¹⁹ and circumventing the Registry's Detention Centre monitoring system through abuse of the Registry's privileged line to facilitate communication between the Accused and witnesses;⁷²⁰ (viii) knowingly and intentionally presenting witnesses in court to testify falsely;⁷²¹ and (ix) knowingly and intentionally taking actions designed to cover-up the crimes committed pursuant to the Common Plan.⁷²²

ii. Essential Contributions to the Common Plan

239. **BEMBA, KILOLO and MANGENDA** each made essential contributions to the Common Plan, the execution of which resulted in article 70 offences.

⁷¹³ See *e.g.*, D-2, paras.145, 150; D-3, paras.133, 140, 142; D-6, paras.156-158; D-4, paras.165, 169.

⁷¹⁴ See *e.g. supra*, para. 28; D-26, para.121-123; D-3, para.140; D-2, para.150; D-6, para.157; D-4, para.169; D-57, para.172; D-64, para.179; D-29, para.198 For money transfers through third parties, see: D-57, para.172; D-64, para.180; D-6, para.158; D-3, para.142.

⁷¹⁵ See *e.g., supra*, paras.37-44.

⁷¹⁶ See *e.g.*, D-29, para.200; D-25, para.216; D-54, paras.83-84.

⁷¹⁷ See *supra*, paras.37-44.

⁷¹⁸ See *supra*, paras.45-54.

⁷¹⁹ See *supra*, paras.53-54.

⁷²⁰ See *supra*, paras.45-46, 190.

⁷²¹ See D-15, paras.65-81; D-54, paras.82-106; D-26, paras.107-117; D-23, paras.118-130; D-3, paras.131-142; D-2, paras.143-154; D-6, paras.155-169; D-4, paras.164-169; D-57, paras.170-176; D-64, paras.177-183; D-55, paras.184-193; D-29, paras.194-203; D-13, paras.204-211; D-25, paras.212-219.

⁷²² See *supra*, paras.55-63.

a) **BEMBA**

240. **BEMBA** was the main beneficiary of the Common Plan, which involved subverting the judicial process. He was the planner of the activities relating to the corrupt influencing of witnesses and their resulting false testimonies. **BEMBA's** authorisation was sought before actions were taken to implement the Common Plan,⁷²³ and the Accused were concerned to ensure that **BEMBA** was satisfied with their activities.⁷²⁴

241. **BEMBA's** essential contribution to the Common Plan comprised at least one of the following acts: (i) orchestrating, directing, and/or coordinating the implementation of the Common Plan;⁷²⁵ (ii) directing, approving, and/or authorising the other co-perpetrators and other persons to pay witnesses and/or their relatives and close associates in exchange for false testimony;⁷²⁶ (iii) directing and/or organising transfers of money to the other co-perpetrators and other persons to facilitate the implementation of the Common Plan;⁷²⁷ (iv) directing and/or authorising the other co-perpetrators and other persons to illicitly coach, and/or to corruptly influence witnesses;⁷²⁸ (v) providing specific instructions to the other co-perpetrators on what witnesses should testify about;⁷²⁹ (vi) authorising the presentation of false

⁷²³ See e.g., [CAR-OTP-0074-0490](#) (Audio), [CAR-OTP-0079-1724](#) at 1726, lns.9-20 (Translation); [CAR-OTP-0074-0478](#) (Audio), [CAR-OTP-0080-0466](#) at 0468, lns.7-11 (Translation); [CAR-OTP-0074-0590](#) (Audio), [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0628](#) (Audio), [CAR-OTP-0077-1316](#) at 1318, lns.5-6 (Translation); [CAR-OTP-0079-0420](#) (Audio), [CAR-OTP-0087-2258](#) at 2260, lns.23-29, at 2262, lns.82-83 (Translation).

⁷²⁴ See e.g., [CAR-OTP-0074-0993](#) (Audio); [CAR-OTP-0079-0122](#) at 0126, lns.108-109 (Transcript); [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0118, lns.104-105 (Translation).

⁷²⁵ See e.g., paras.38-44, 55-63, 75, 77, 84-86, 89.

⁷²⁶ See e.g., [CAR-OTP-0074-0610](#) (Audio), [CAR-OTP-0077-1299](#) at 1301, lns.29-30 (Translation).

⁷²⁷ See e.g., [CAR-OTP-0074-0478](#) (Audio), [CAR-OTP-0080-0466](#) at 0468, lns.7-11 (Translation); [CAR-OTP-0074-0590](#) (Audio), [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0624](#) (Audio), [CAR-OTP-0077-1307](#) at 1309, lns.29-34 (Translation); [CAR-OTP-0074-0628](#) (Audio), [CAR-OTP-0077-1316](#) at 1318, lns.5-6 (Translation); [CAR-OTP-0074-0490](#) (Audio), [CAR-OTP-0079-1724](#) at 1726, lns.9-20 (Translation); [CAR-OTP-0074-0514](#) (Audio), [CAR-OTP-0086-1597](#) at 1730, lns.58 – 1731, ln.73 (Translation).

⁷²⁸ See e.g., [CAR-OTP-0074-1006](#) (Audio), [CAR-OTP-0079-1744](#) at 1746-1748, lns.21-74 (Translation); [CAR-OTP-0074-0995](#) (Audio), [CAR-OTP-0079-0131](#) at 0134-0138, lns.46-189 (Translation). See also paras.27-32.

⁷²⁹ See e.g., [CAR-OTP-0074-1006](#) (Audio), [CAR-OTP-0079-1744](#) at 1746-1748, lns.21-74 (Translation); [CAR-OTP-0074-0995](#) (Audio), [CAR-OTP-0079-0131](#) at 0134-0138, lns.46-189 (Translation).

evidence;⁷³⁰ and (vii) devising, authorising, ensuring and/or implementing means to conceal the Common Plan,⁷³¹ including by circumventing the Registry's monitoring system,⁷³² using coded communication,⁷³³ and conspiring to bribe and/or corruptly influence potential witnesses in the article 70 case.⁷³⁴

b) KILOLO

242. **KILOLO**, as lead Counsel in the Main Case, was the main principal in charge of implementing the Common Plan.

243. **KILOLO**'s essential contribution to the Common Plan comprised at least one of the following acts or omissions: (i) paying witnesses in exchange for false testimony;⁷³⁵ (ii) planning and executing the illicit coaching of witnesses;⁷³⁶ (iii) instructing witnesses to lie in court, including to falsify aspects of their testimony to benefit the *Bemba* Defence case, and to lie about payments by, and contacts with, the co-perpetrators, including himself;⁷³⁷ (iv) instructing **MANGENDA** to facilitate the illicit coaching and/or corrupt influencing of witnesses;⁷³⁸ (v) deciding whether to call a witness to testify based on their willingness and ability to testify falsely as instructed;⁷³⁹ (vi) reporting to **BEMBA** about actions taken pursuant to the Common Plan, including the contents of false testimony to be given by witnesses and the

⁷³⁰ See e.g., D-15, paras.75, 81; D-54, paras.83-86, 89; D-25, para.217.

⁷³¹ See e.g., *supra*, paras.28, 30, 33-34, 38, 44, 45-46, 53, 61, 190-191.

⁷³² See e.g., *supra*, paras.45-46, 190-191.

⁷³³ See e.g., *supra*, paras.53-54.

⁷³⁴ See e.g., *supra*, paras.57, 61, *more generally*, paras.55-63; [CAR-OTP-0080-1326](#) (Audio); [CAR-OTP-0082-0626](#) at 0628, ln.28 (Translation).

⁷³⁵ See e.g., D-23, paras.121-124; D-3, paras.140, 142; D-2, para.150; D-6, paras.156, 158, 162; D-4, paras.169; D-57, paras.172-173; D-64, paras.180-181; D-29, paras.197-198.

⁷³⁶ See e.g., [CAR-OTP-0074-0992](#) (Audio), [CAR-OTP-0079-0114](#) at 0120, lns.144-160 (Translation); [CAR-OTP-0074-0999](#) (Audio), [CAR-OTP-0077-1383](#) at 1384-1387, lns.33-112 (Transcript); [CAR-OTP-0074-1004](#) (Audio), [CAR-OTP-0080-0254](#) at 0257-0258, lns.61-75 (Translation); [CAR-OTP-0080-1419](#) (Audio), [CAR-OTP-0082-1140](#) at 1142, lns.10-16 (Transcript); D15, paras. 65-81; D-54, paras. 83-106; D-26, paras.108-117.

⁷³⁷ See e.g., D-15, paras.67, 69-71, 73-80; D-54, paras.94-106; D-26, 108-116; D-23, paras.124, 126, 128; D-3, para.138; D-2, para.148 ; D-6, para.157 ; D-4, para.166 ; D-55, paras.186, 190.

⁷³⁸ See e.g., [CAR-OTP-0074-1009](#) (Audio), [CAR-OTP-0079-1754](#) at 1756-1757, esp. lns.5-7, 35-36 (Translation).

⁷³⁹ See e.g., [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0251, lns.161-172 (Translation). See Annex A, Section H "[REDACTED]".

process of obtaining and facilitating such false testimony;⁷⁴⁰ (vii) presenting evidence he knew to be false in court;⁷⁴¹ (viii) concealing the Common Plan and its implementation, including by using codes;⁷⁴² (ix) organising and facilitating conference calls by abusing the Registry's "privileged line" to allow **BEMBA** to contact third parties, including witnesses, without the Registry's knowledge;⁷⁴³ and (x) with knowledge of the Common Plan and its implementation, failing to inform the Court of its existence and the offences carried out thereunder, while under a professional duty to do so as a lawyer.⁷⁴⁴

c) MANGENDA

244. **MANGENDA**, as case manager in the Main Case, liaised and coordinated between **BEMBA** and **KILOLO** in the implementation of the Common Plan.

245. **MANGENDA**'s essential contribution to the Common Plan comprised at least one of the following acts or omissions: (i) participating in the planning and execution of illicitly coaching witnesses;⁷⁴⁵ (ii) transmitting **BEMBA**'s instructions to **KILOLO** on the content of the illicit coaching;⁷⁴⁶ (iii) reporting to **KILOLO** on the witnesses' ability to follow instructions to testify falsely when **KILOLO** was not present in court, in order to facilitate the latter's illicit coaching of witnesses;⁷⁴⁷ (iv) reporting to **BEMBA** on the implementation of the Common Plan in order to ensure he was kept

⁷⁴⁰ See e.g., [CAR-OTP-0074-1006](#) (Audio); [CAR-OTP-0079-1744](#) at 1746-1748, lns.20-74 (Translation).

⁷⁴¹ See *supra*, D-15, paras.65-81; D-54, paras.82-106; D-26, paras.107-117; D-23, paras.118-130; D-3, paras.131-142; D-2, paras.143-154; D-6, paras.155-169; D-4, paras.164-169; D-57, paras.170-176; D-64, paras.177-183; D-55, paras.184-193; D-29, paras.194-203; D-13, paras.204-211; D-25, paras.212-219.

⁷⁴² See e.g., *supra*, paras. 53-54.

⁷⁴³ See e.g., *supra*, paras. 45-46, 190-191 and sources cited therein.

⁷⁴⁴ Code of Professional Conduct for counsel, Resolution ICC-ASP/4/Res.1, article 32(1)(b); see also articles 7(3) and (4), 8(1) and (4), 14(2)(a), 24(1) to (3), 25(1), 31(a) and (b), and 32(1)(a).

⁷⁴⁵ See e.g., [CAR-OTP-0074-1005](#) (Audio); [CAR-OTP-0080-0604](#) at 0607-0608, lns.61-75 (Translation); [CAR-OTP-0074-1025](#) (Audio); [CAR-OTP-0082-0116](#) at 0125, lns.267-285 (Translation) together with [CAR-OTP-0074-1026](#) (Audio); [CAR-OTP-0080-0299](#) at 0301, lns.4-5, 22-30 (Translation).

⁷⁴⁶ See D54, paras.84-85.

⁷⁴⁷ See e.g., [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0116 (Translation); [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0247-0249 (Translation); [CAR-OTP-0074-0993](#) (Audio); [CAR-OTP-0079-0122](#) at 0124 (Translation); [CAR-OTP-0074-0991](#) (Audio); [CAR-OTP-0080-0228](#) at 0231 (Translation).

well informed and satisfied;⁷⁴⁸ (v) providing practical assistance, including preparing and sending to **KILOLO** documents to be used in falsifying witnesses' testimony, and providing **KILOLO** the use of his phone to facilitate **KILOLO**'s illicit coaching of witnesses;⁷⁴⁹ (vi) concealing the Common Plan, including by using codes;⁷⁵⁰ and (vii) with knowledge of the Common Plan and its implementation, failing to inform the Court of its existence and the offences carried out thereunder, while under a professional duty to do so as a lawyer.⁷⁵¹

iii. The Accused held the requisite intent and knowledge with respect to the crimes charged

a) **BEMBA**

246. **BEMBA**'s intent and knowledge are demonstrated by his contributions to the Common Plan, set out in paragraph 241. **BEMBA**'s *mens rea* as a co-perpetrator is also shown by his (i) directing, planning and organising of the Common Plan;⁷⁵² (ii) expressing his satisfaction with the results of the other co-perpetrators illicit activities;⁷⁵³ and (iii) conspiring with the co-perpetrators to conceal the Common Plan and prevent its exposure upon becoming aware of the article 70 investigation.⁷⁵⁴

⁷⁴⁸ See e.g., [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0118 (Translation); [CAR-OTP-0074-0993](#) (Audio); [CAR-OTP-0079-0122](#) at 0126 (Translation).

⁷⁴⁹ See e.g., [CAR-OTP-0074-1009](#) (Audio); [CAR-OTP-0079-1754](#) at 1756-1757, esp. lns.5-7, 35-36 (Translation); [CAR-OTP-0088-0504](#) at 0505-0507, 0516-0518; See also, D-15, para.79; D-54, para.95; D-26, para.109.

⁷⁵⁰ See e.g., *supra*, paras.53-54, 55-63.

⁷⁵¹ [CAR-OTP-0074-0717](#) at 0756, lns.1355-1359; at 1367, lns.1367-1372; see also ICC-01/05-01/13-288, para.8 (“*L’appelant est avocat, inscrit au Barreau de Kinshasa-Matete*”); ICC-01/05-01/13-1072-Conf-Corr, para.12; ICC-01/05-01/13-1072-Conf-AnxB-Corr, p.4; ICC-01/05-01/13-1072-Conf-AnxA, p.6.

⁷⁵² See e.g., [CAR-OTP-0080-1360](#) (Audio), [CAR-OTP-0082-0596](#) (Transcript); [CAR-OTP-0079-1286](#) (Audio), [CAR-OTP-0082-1930](#) (Translation); [CAR-OTP-0074-1032](#) (Audio), [CAR-OTP-0079-1762](#), at 1764 (Translation); [CAR-OTP-0080-1324](#) (Audio); [CAR-OTP-0082-1326](#) at 1341, 1347 (Translation). See also *supra*, paras.38-44.

⁷⁵³ See e.g., [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0118, lns.103-105 (Translation); [CAR-OTP-0077-1414](#), at 1415; D-25, para.217.

⁷⁵⁴ See e.g., *supra*, paras.57, 61, more generally, *supra*, paras.55-63.

247. **BEMBA**'s contributions demonstrate that he intended to engage in the relevant conduct and either meant to cause or was aware that the implementation of the Common Plan would, in the ordinary course of events, result in the commission of article 70 offences in the Main Case. This is shown, *inter alia*, by: (i) his directing, authorising, and giving orders and/or instructions to the co-perpetrators;⁷⁵⁵ (ii) his knowledge that the other co-perpetrators espoused the Common Plan, and were willing to implement it;⁷⁵⁶ (iii) his knowledge – through regular communication – of the roles that the other co-perpetrators were assigned within the Common Plan and/or about specific actions they and other persons took in implementing it;⁷⁵⁷ (iv) his knowledge of the means the co-perpetrators had at their disposal to implement the Common Plan, particularly financial, which they often obtained from each other;⁷⁵⁸ (v) his coordination of the implementation of the Common Plan with the other co-perpetrators;⁷⁵⁹ and (vi) his awareness that his respective contribution to the Common Plan furthered its implementation.⁷⁶⁰

248. **BEMBA**'s actions and conduct also demonstrate that he was aware that the Common Plan involved an element of criminality, namely the commission of article 70 offences in the Main Case; and of the factual circumstances that enabled him, together with the co-perpetrators, to jointly exercise functional control over at least one of the crimes within the scope of the Common Plan. This is shown, *inter alia*, by (i) his central role in the Common Plan and position as its ultimate beneficiary, through his relationship with the co-perpetrators, the lead Counsel and case manager for the *Bemba* Defence;⁷⁶¹ (ii) his ability to frustrate or enable the commission of the offences;⁷⁶² (iii) his direct provision of instructions, approval, authorisation and

⁷⁵⁵ See e.g., *supra*, paras.27-32, 38; D-15, paras.75, 81; D-54, paras.83-86, 89; D-25, para.217.

⁷⁵⁶ See e.g., D-54, paras.106; D-29, para.200; D-25, para.217; D-25, para.217; [CAR-OTP-0080-1138](#) at 1175; [CAR-OTP-0080-1324](#) (Audio).

⁷⁵⁷ See e.g., *supra*, paras.27-32, 37-44.

⁷⁵⁸ See e.g., *supra*, paras.27-32.

⁷⁵⁹ See e.g., *supra*, paras.27-32, 37-44.

⁷⁶⁰ See e.g., *supra*, paras.53-62.

⁷⁶¹ See e.g., D-54, paras.84, 106; D-29, para.200; D-25, para.217.

⁷⁶² See e.g., *supra*, paras.28, 57, 60, 61.

support for the activities necessary to the implementation of the Common Plan;⁷⁶³ (iv) his knowledge that the other co-perpetrators espoused the Common Plan and were actively involved in its implementation;⁷⁶⁴ and (v) his knowledge of the illegality of the Common Plan and its potential legal implications as demonstrated in his discussions of the pending Article 70 charges in the Kenya situation, and by his participation in the cover-up plan, his warnings that witnesses who were involved in the Common Plan may also be arrested, and his discussion with other members of the Common Plan of the law penalizing their conduct and of the arrest warrant issued by the Court for similar conduct.⁷⁶⁵

b) KILOLO

249. **KILOLO's** intent and knowledge are demonstrated by his contributions to the Common Plan, set out in paragraph 243. **KILOLO's** *mens rea* as a co-perpetrator is also shown by his (i) discussing illicit coaching of witnesses with **MANGENDA**;⁷⁶⁶ (ii) explaining the purpose of his instructions to witnesses;⁷⁶⁷ (iii) considering withdrawing witnesses unwilling or unable to follow his direction to testify falsely;⁷⁶⁸ (iv) refraining from asking questions to a witness without having already scripted the witness's answers;⁷⁶⁹ (v) acting to conceal the Common Plan;⁷⁷⁰ and, (vi) failing to

⁷⁶³ See e.g., *supra*, paras.28, 45-46; D-54, paras.83-84, 106; D-15, para.75; D-29, paras.197-198; D-25, paras.217 ; D-57, paras.173-174; D-64, para.179; D-55, para.190.

⁷⁶⁴ See e.g., D-29, para.200; D-25, para.217; D-15, paras.75, 77; D-54, paras.89, 106; D-57, para.174; D-64, para.179.

⁷⁶⁵ See *supra*, paras.56-61. For instance, on 2 October 2013, the day the *Barasa* arrest warrant for Article 70 offences was unsealed (see ICC-01/09-01/13-1-Red2) **BEMBA**, expressing concern, inquired explicitly whether the Accused in the Kenya case (the “vice-président”, i.e. William Samoei RUTO), could be held responsible for the alleged bribery and corrupt influencing of witness carried out by a third person on his behalf. [CAR-OTP-0074-1027](#) (Audio), [CAR-OTP-0079-0191](#) at 0195, ln.77-0197, ln.162 (Translation)—“Bon maintenant, est-ce que, si c'est ça le cas, par exemple le Vice-président, est-ce que ça peut pas arriver jusqu'au Vice-président, c'est-à-dire que maintenant ils vont commencer à...déranger le Vice-président ? Non hein ?” at, lns.152-153.

⁷⁶⁶ See e.g., *supra*, paras.199-201, 203, 214, 216-217; [CAR-OTP-0074-0992](#) (Audio); [CAR-OTP-0079-0114](#) at 0116-0121, lns.6-183 (Translation); see also [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0247-0250, lns.6-114 (Translation).

⁷⁶⁷ See e.g., *supra*, paras.74, 78, 103; [CAR-OTP-0074-1008](#) (Audio); [CAR-OTP-0077-1389](#) at 1397, lns.249-253 (Translation).

⁷⁶⁸ See e.g., [CAR-OTP-0074-0997](#) (Audio); [CAR-OTP-0080-0245](#) at 0251, lns.161-172 (Translation). See Annex A, Section H “[REDACTED]”.

⁷⁶⁹ See e.g., [CAR-OTP-0080-1363](#) (Audio); [CAR-OTP-0082-0866](#) at 0874, lns.246-247 (Translation).

⁷⁷⁰ See e.g., *supra*, para.53.

correct the trial record despite knowing that witnesses had falsely testified.⁷⁷¹

250. **KILOLO**'s contributions demonstrate that he intended to engage in the relevant conduct and either meant to cause, or was aware that the implementation of the Common Plan would, in the ordinary course of events result in, the commission of article 70 offences in the Main Case. This is shown, *inter alia*, by **KILOLO**'s: (i) devising and adopting the Common Plan with **BEMBA**'s direction, authority, and pursuant to his orders, directions and/or instructions;⁷⁷² (ii) knowledge that the other co-perpetrators espoused the Common Plan, and were willing to implement it;⁷⁷³ (iii) knowledge—through regular communication—of the roles that the other co-perpetrators were assigned within the Common Plan and/or about specific actions they and other persons took in implementing it;⁷⁷⁴ (iv) knowledge of the means the co-perpetrators had at their disposal to implement the Common Plan, particularly financial, which they often obtained from each other;⁷⁷⁵ (v) coordination of the implementation of the Common Plan with the other co-perpetrators;⁷⁷⁶ and (vi) awareness that his respective contribution to the Common Plan furthered its implementation.⁷⁷⁷

251. **KILOLO**'s actions and conduct also demonstrate that he was aware that the Common Plan involved an element of criminality, namely the commission of article 70 offences in the Main Case; and of the factual circumstances that enabled him, together with the co-perpetrators, to jointly exercise functional control over at least one of the crimes within the scope of the Common Plan. This is shown, *inter alia*, by (i) his role as **BEMBA**'s lead Counsel, which made him ultimately responsible for the

⁷⁷¹ See e.g., *supra*, individual incident sections of D-57, D-64, D-55, D-23, D-26, D-15, D-54, D-13.

⁷⁷² See e.g., *supra*, paras.28-29, 32, 34, 44; D-26, para.108; D-15, para.81.

⁷⁷³ See e.g., D-25, para.217; D-54, paras.84-87; D-29, para.201.

⁷⁷⁴ See e.g., *supra*, paras.45-49, 57, 84, 217.

⁷⁷⁵ See e.g., *supra*, paras.28, 32; D-15, para.79.

⁷⁷⁶ See e.g., *supra*, paras.21, 31, 57; D-15, para.79; D-54, para.87; D-29, para.199; D-25, para.214.

⁷⁷⁷ See e.g., D-29, para.200; D-25, para.216.

preparation of the case and presentation of evidence in court;⁷⁷⁸ (ii) his role as **MANGENDA**'s supervisor;⁷⁷⁹ (iii) his ability, by virtue of his position, to facilitate the unlawful activities of his co-perpetrators;⁷⁸⁰ (iv) his direct participation in the illicit coaching and bribing of witnesses and in the planning and presenting of evidence he knew to be false;⁷⁸¹ (v) his knowledge that the other co-perpetrators espoused the Common Plan and were actively involved in its implementation;⁷⁸² and (vi) his participation in the cover-up plan and his discussion with other members of the Common Plan of the law penalizing their conduct and of the arrest warrant issued by the Court for similar conduct.⁷⁸³

c) **MANGENDA**

252. **MANGENDA**'s intent and knowledge are demonstrated by his contributions to the Common Plan, set out in paragraph 245. **MANGENDA**'s *mens rea* as a co-perpetrator is also shown by his (i) being present at meetings where **KILOLO** illicitly coached and paid witnesses;⁷⁸⁴ (ii) discussing with **KILOLO** the effectiveness of instructions given to a witness to testify falsely;⁷⁸⁵ (iii) reporting to **KILOLO** on the testimony of illicitly coached witnesses, including whether witnesses followed the instructions they had been given,⁷⁸⁶ and displaying frustration with witnesses who were not following the script;⁷⁸⁷ (iv) actively concealing, together with **KILOLO**, their instructing and scripting witnesses' false testimony;⁷⁸⁸ and, (v) his understanding of

⁷⁷⁸ See ICC-01/05-01/08-67-Anx2; ICC-01/05-01/08-2150-Anx; ICC-01/05-01/08-36, ICC-01/05-01/08-43; see also ICC-01/05-01/08-2893, p.6 ("Aimé Kilolo Musamba Lead Counsel").

⁷⁷⁹ See ICC-01/05-01/08-67-Anx2; ICC-01/05-01/08-2150-Anx; ICC-01/05-01/08-36, ICC-01/05-01/08-43, ICC-01/05-01/08-2149; see also ICC-01/05-01/08-2893, p.6 ("Aimé Kilolo Musamba Lead Counsel").

⁷⁸⁰ See *e.g.*, *supra*, paras.45-46.

⁷⁸¹ See *e.g.*, *supra*, paras.34, 43, 44.

⁷⁸² See *e.g.*, D-25, para.217; D-54, paras.84-87 (**BEMBA**); D-29, para.201 (**MANGENDA**).

⁷⁸³ See *e.g.*, *supra*, paras.56-60, 62-63.

⁷⁸⁴ See *e.g.*, *supra*, para.138.

⁷⁸⁵ See *e.g.*, D-15, paras.75, 79; D-54, paras.84, 86-87; D-29, para.199.

⁷⁸⁶ See *e.g.*, D-29, paras.199, 201, 203; D-25, paras.214, 216.

⁷⁸⁷ See *e.g.*, D-29, para.199.

⁷⁸⁸ See *e.g.*, *supra*, paras.53,57,142.

the significance of the co-perpetrators actions in implementing the Common Plan,⁷⁸⁹ and the implications of an article 70 investigation.⁷⁹⁰

253. **MANGENDA**'s contributions demonstrate that he intended to engage in the relevant conduct and either meant to cause, or was aware that the implementation of the Common Plan would, in the ordinary course of events result in, the commission of article 70 offences in the Main Case. This is shown, *inter alia*, by **MANGENDA**'s: (i) participation in planning the acts carried out in furtherance of the Common Plan with **BEMBA**'s direction, authority, and pursuant to his orders, directions and/or instructions;⁷⁹¹ (ii) knowledge that the other co-perpetrators espoused the Common Plan, and were willing to implement it;⁷⁹² (iii) knowledge—through regular communication—of the roles that the other co-perpetrators were assigned within the Common Plan and/or about specific actions they and other persons took in implementing it;⁷⁹³ (iv) knowledge of the means the co-perpetrators had at their disposal to implement the Common Plan, particularly financial, which they often obtained from each other;⁷⁹⁴ (v) coordination of the implementation of the Common Plan with the other co-perpetrators;⁷⁹⁵ (vi) awareness of the effect on witnesses' credibility if the Court discovered the co-perpetrators' contact with witnesses;⁷⁹⁶ and (vii) awareness that his respective contribution to the Common Plan furthered its implementation.⁷⁹⁷

⁷⁸⁹ See e.g., [CAR-OTP-0080-1324](#) (Audio), [CAR-OTP-0082-1326](#) at 1341 (Translation). **MANGENDA** had detailed knowledge of the Rules and Statute – both from his position in the *Bemba* Defence and his former position as a member of the OPCD; see [CAR-OTP-0074-0717](#) at 0735, 0759-0760.

⁷⁹⁰ See e.g., *supra*, para.60.

⁷⁹¹ See e.g., *supra*, para.53, D-54, para.85; D-3, para.139; D-4, para.167; D-29, paras.199, 201, 203; D-25, paras.214, 216.

⁷⁹² See e.g., D-25, para.217; D-54, para.84; (**BEMBA**); D-54, paras.84, 86-87; D-29, paras.199, 201, 203; D-25, paras.214, 216 (**KILOLO**).

⁷⁹³ See e.g., D-54, paras.84, 85; D-25, para.217 (**BEMBA**); D-54, paras.84, 86-87; D-29, paras.199, 201, 203; D-25, paras.214, 216. (**KILOLO**).

⁷⁹⁴ See e.g., *supra*, paras.21, 31, 53, 57; D-15, para.79; D-54, para.87; D-29, para.199; D-25, paras.214.

⁷⁹⁵ See e.g., D-54, paras.84-85; D-29, para.199.

⁷⁹⁶ See e.g., *supra*, paras.57, 60.

⁷⁹⁷ See e.g., *supra*, paras.57, 60.

⁷⁹⁷ See e.g., [CAR-OTP-0080-1324](#) (Audio); [CAR-OTP-0082-1326](#) at 1341 (Translation).

254. **MANGENDA**'s actions and conduct also demonstrate that he was aware that the Common Plan involved an element of criminality, namely the commission of article 70 offences in the Main Case; and of the factual circumstances that enabled him, together with the co-perpetrators, to jointly exercise functional control over at least one of the crimes within the scope of the Common Plan. This is shown, *inter alia*, by his (i) ability, by virtue of his position, to facilitate or thwart the unlawful activities of his co-perpetrators;⁷⁹⁸ (ii) direct participation in activities aimed at illicitly coaching and bribing witnesses and in the planning and presenting of evidence he knew to be false;⁷⁹⁹ (iii) knowledge that the other co-perpetrators espoused the Common Plan and were actively involved in its implementation;⁸⁰⁰ and (iv) participation in the cover-up plan and discussion with other members of the Common Plan of the law penalizing their conduct and of the arrest warrant issued by the Court for similar conduct.⁸⁰¹

B. Liability as a Direct Perpetrator under 25(3)(a)

255. **ARIDO** is criminally responsible pursuant to article 25(3)(a) as a direct perpetrator for corruptly influencing witnesses pursuant to article 70(1)(c) through at least one of the following acts: (i) instructing the witnesses to either provide false information or withhold true information during their testimony in court;⁸⁰² and (ii) encouraging or inducing the witnesses' false testimony with money transfers, promising the betterment of their circumstances, or the possibility of their relocation to Europe.⁸⁰³

⁷⁹⁸ See *e.g.*, D-15, para.79; D-26, para.109.

⁷⁹⁹ See *e.g.*, D-54, paras.84, 85, 86-87; D-29, para.203, D-3, para.139; D-4, para.167.

⁸⁰⁰ See *e.g.*, D-54, paras.84, 85; D-25, para.217 (**BEMBA**); D-54, paras.84, 86-87; D-29, paras.199, 201, 203; D-25, paras.214, 216 (**KILOLO**).

⁸⁰¹ See *e.g.*, *supra*, paras.55, 60, 63; [CAR-OTP-0074-1027](#) (Audio), [CAR-OTP-0079-0191](#) at 0195, ln.77-0197, ln.162 (Translation).

⁸⁰² See *e.g.*, *supra*, paras.133, 135-136, 144-147, 156, 165.

⁸⁰³ See *e.g.*, *supra*, paras.133-134, 136, 140, 145, 150, 156.

256. **ARIDO** intended to commit the offences with which he is charged, or was aware that they would occur in the ordinary course of events. **ARIDO**'s intent and knowledge are evidenced by his recruiting witnesses to testify falsely in the Main Case with the promise of financial reward and relocation;⁸⁰⁴ and his exploiting the precarious personal situation of these witnesses with the view to leading them to falsely testify under the illusion that this would result in a better future for them.⁸⁰⁵

257. In addition, **ARIDO**'s intent and knowledge are demonstrated, *inter alia*, by his (i) illicitly coaching witnesses to prepare them to testify falsely in the Main Case;⁸⁰⁶ (ii) cautioning witnesses about how they communicated with him, advising against using social media because it would be viewable by others;⁸⁰⁷ (iii) knowledge of **KILOLO**'s role as **BEMBA**'s lead Counsel;⁸⁰⁸ (iv) denial of having received payments from **KILOLO** in 2012, contrary to the evidence;⁸⁰⁹ (v) military background,⁸¹⁰ enabling him to appreciate the importance of the information given as false testimony by witnesses; (vi) awareness that witnesses who he had introduced to the Defence and who testified to having been members of the CAR armed forces did not have the military background claimed, as admitted in his statement;⁸¹¹ and (vii) arranging for **KILOLO** to meet witnesses that he recruited knowing that they would be illicitly coached on what to say when testifying in court and paid in exchange for their false testimony.⁸¹²

⁸⁰⁴ See *e.g.*, *supra*, paras.133-134, 136, 156.

⁸⁰⁵ See *e.g.*, *supra*, para.145.

⁸⁰⁶ See *e.g.*, *supra*, paras.133, 135-136, 144-147, 156, 165.

⁸⁰⁷ See [CAR-OTP-0075-0762](#) at 0762.

⁸⁰⁸ See *e.g.*, [CAR-OTP-0080-0021](#) at 0031, lns.336-350; see also [CAR-OTP-0074-1065-R01](#) at 1066, Section 1.

⁸⁰⁹ See [CAR-OTP-0074-1065-R01](#) at 1067, Section 2; see, however, [CAR-OTP-0070-0005](#), tab 1 Narcisse Arido, rows 73-75, 77.

⁸¹⁰ See ICC-01/05-01/13-1072-Conf-Corr, para.14; ICC-01/05-01/13-1072-Conf-AnxB-Corr, p.5; ICC-01/05-01/13-1072-Conf-AnxA, p.9.

⁸¹¹ See [CAR-OTP-0074-1065-R01](#) at 1066, Section 1.

⁸¹² See *e.g.*, *supra*, paras.134-135, 137, 146, 147, 156, 157, 165, 166.

C. Article 25(3)(b)

a) BEMBA

258. **BEMBA** is individually criminally responsible pursuant to article 25(3)(b) based on the facts described in paragraphs 241 and 246 to 248 for soliciting the giving of false testimony pursuant to article 70(1)(a); the presentation of false evidence pursuant to article 70(1)(b); and, corruptly influencing witnesses pursuant to article 70(1)(c). Responsibility under article 25(3)(b) is supported by each of the above facts underpinning liability under article 25(3)(a) because: (i) **BEMBA** exerted influence over others, directly or indirectly, to perform an act or omission leading to the commission, or attempted commission, of the charged offences against the administration of justice;⁸¹³ (ii) the solicitation had a direct effect on the commission or attempted commission of these offences;⁸¹⁴ and (iii) he was at least aware that the offences would be committed in the ordinary course of events as a consequence of the realisation of the act or omission.⁸¹⁵

b) KILOLO

259. **KILOLO** is individually criminally responsible pursuant to article 25(3)(b) based on the facts described in paragraphs 243 and 249 to 251 for soliciting or inducing the giving of false testimony pursuant to article 70(1)(a). Responsibility under article 25(3)(b) is supported by each of the above facts underpinning liability under article 25(3)(a) because: (i) **KILOLO** exerted influence over others, directly or indirectly, to perform an act or omission leading to the leading to the commission, or attempted commission, of the charged offences against the administration of justice;⁸¹⁶ (ii) the solicitation or inducement had a direct effect on the commission or

⁸¹³ See e.g., *supra*, paras.28, 37-44, 75, 84.

⁸¹⁴ See e.g., *supra*, paras.28, 84.

⁸¹⁵ See e.g., *supra*, paras.38, 77, 217, 240.

⁸¹⁶ See e.g., *supra*, paras.67, 69-74, 78-79, 95, 97-101, 103-104.

attempted commission of these offences;⁸¹⁷ and (iii) he was at least aware that the offences would be committed in the ordinary course of events as a consequence of the realisation of the act or omission.⁸¹⁸

D. Article 25(3)(c)

a) MANGENDA

260. **MANGENDA** is individually criminally responsible pursuant to article 25(3)(c) based on the facts described at paragraphs 245 and 252 to 254 for aiding, abetting or otherwise assisting the giving of false testimony pursuant to article 70(1)(a); the presentation of false evidence pursuant to article 70(1)(b); and, the corrupt influencing of witnesses pursuant to article 70(1)(c). In particular, **MANGENDA** is responsible for: (i) transmitting **BEMBA**'s instructions in furtherance of the Common Plan and reporting back to **BEMBA** information received from the Accused and other persons implementing the Common Plan;⁸¹⁹ and (ii) taking steps together with other Accused and other persons to conceal the Common Plan.⁸²⁰

261. **MANGENDA** aided, abetted or otherwise assisted the commission of the offences under article 70(1)(a)(b) and (c) aware that the offences would occur in the ordinary course of events and for the purpose of facilitating the commission of such offences, as evidenced by, *inter alia*, his (i) participating in meetings where **KILOLO** illicitly coached and paid witnesses;⁸²¹ (ii) discussing with **KILOLO** the effectiveness of **KILOLO**'s instructions to a witness to testify falsely,⁸²² (iii) reporting to **KILOLO** on the testimony of illicitly coached witnesses, including by confirming to **KILOLO**

⁸¹⁷ See e.g., *supra*, paras.75-76, 80, 95-96, 105.

⁸¹⁸ See e.g., *supra*, paras.39, 55-63, 200.

⁸¹⁹ See e.g., *supra*, paras.84-85.

⁸²⁰ See e.g., *supra*, paras.53, 142.

⁸²¹ See e.g., *supra*, para.138.

⁸²² See e.g., D-15, paras.75,79; D-54, paras.84, 86-87; D-29, para.199.

whether witnesses followed the instructions they had been given;⁸²³ and displaying frustration with witnesses who were not following the script;⁸²⁴ (iv) preparing and sending to **KILOLO** documents to be used in falsifying witnesses' testimony;⁸²⁵ and (v) actively concealing, together with **KILOLO**, their instructing and scripting witnesses' false testimony.⁸²⁶

b) **BABALA**

262. **BABALA** is individually criminally responsible pursuant to article 25(3)(c) for aiding, abetting or otherwise assisting the giving of false testimony pursuant to article 70(1)(a); the presentation of false evidence pursuant to article 70(1)(b); and, corruptly influencing witnesses pursuant to article 70(1)(c). In particular, **BABALA**'s responsibility is demonstrated by his: (i) serving as **BEMBA**'s link to the Accused and others in the implementation of the Common Plan, including by communicating to **BEMBA** requests for money made by the Accused to implement the Common Plan⁸²⁷ and passing on **BEMBA**'s instructions to the other Accused;⁸²⁸ (ii) arranging payments to the Accused, including **KILOLO** and **ARIDO**, who both subsequently corruptly paid witnesses;⁸²⁹ (iii) paying witnesses and their families through direct money transfers⁸³⁰ in implementing the Common Plan, or using others to do so, such as **NGINAMAU**,⁸³¹ and (iv) concealing the Common Plan by using codes during

⁸²³ See e.g., D-29, paras.199, 201, 203; D-25, paras.214, 216.

⁸²⁴ See e.g., D-29, para.199.

⁸²⁵ See e.g., D-15, para.79; Annex A, "[REDACTED]" as D-54, Section III.J, para.78.

⁸²⁶ See e.g., *supra*, paras.50, 51, 53, 55, 56, 57, 60, 63, 139, 142, 167, 214. see also Annex A, paras. 5, 34, 39, 49, 63, 76, 77.

⁸²⁷ See e.g., paras.28-31, 57; see also [CAR-OTP-0074-0478](#) (Audio); [CAR-OTP-0080-0466](#) at 0468, lns.7-11 (Translation); [CAR-OTP-0074-0594](#) (Audio); [CAR-OTP-0086-1738](#) at 1741, ln.58 – 1742, ln.72 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation).

⁸²⁸ See e.g., [CAR-OTP-0074-0304](#) (Audio); [CAR-OTP-0080-0458](#) at 0464, lns.151-153 (Translation); [CAR-OTP-0074-0598](#) (Audio); [CAR-OTP-0080-0961](#) at 0963-0964, ln.34-45 (Translation); [CAR-OTP-0074-0672](#) (Audio); [CAR-OTP-0077-1336](#) at 1340, lns.84-85 (Translation); [CAR-OTP-0079-0511](#) (Audio); [CAR-OTP-0089-0515](#) at 0527, lns.384-385 (Translation).

⁸²⁹ See e.g., *supra*, para.57; [CAR-OTP-0074-0636](#) (Audio); [CAR-OTP-0077-1324](#) at 1327-1328, lns.66-67, 72, 79-80 (Translation). [CAR-OTP-0074-0697](#) (Audio); [CAR-OTP-0077-1341](#) at 1343, lns.7-18 (Translation), see also [CAR-OTP-0070-0005](#), tab 1 Narcisse Arido, row 78; Annex A, Section E "Cameroon referred to as 'Charly'".

⁸³⁰ See e.g., D-57, para.172.

⁸³¹ See e.g., D-64, para.180.

conversations with **BEMBA**.⁸³²

263. **BABALA** aided, abetted or otherwise assisted the commission of offences under article 70(1)(a)(b) and (c) aware that the offences would occur in the ordinary course of events and for the purpose of facilitating the commission of such offences, as evidenced, *inter alia*, by his: (i) paying witnesses in exchange for their testimony;⁸³³ (ii) advising **BEMBA** of the importance of paying certain witnesses, namely “*donner du sucre aux gens . . . c’est bien*”;⁸³⁴ (iii) requesting **BEMBA**’s authorisation for money transfers to be made⁸³⁵ and telling him about executed transfers; (iv) knowledge of internal case matters relating to the *Bemba* Defence, including the identity of witnesses;⁸³⁶ (v) paying the Accused knowing that the money was intended to further the Common Plan and knowing **KILOLO** was **BEMBA**’s lead Counsel;⁸³⁷ (vi) acting as **BEMBA**’s link to the other Accused and the other persons involved in implementing the Common Plan to carry out orders and instructions to implement the Common Plan;⁸³⁸ (vii) using coded language with other Accused when dealing with payments to witnesses or other persons involved in the Common Plan, illustrating his knowledge of the reason for these transfers as well as the status of the

⁸³² See *e.g.*, *supra*, paras.29,53.

⁸³³ See *e.g.*, *supra*, paras.28, 57, 174.

⁸³⁴ See [CAR-OTP-0074-0610](#) (Audio); [CAR-OTP-0077-1299](#) at 1301, lns.29-32 (Translation).

⁸³⁵ See *e.g.*, [CAR-OTP-0074-0478](#) (Audio), [CAR-OTP-0080-0466](#) at 0468, lns.7-11 (Translation); [CAR-OTP-0074-0590](#) (Audio), [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation).

⁸³⁶ See *e.g.*, *supra*, para. 46 (see footnote detailing **BABALA**’s participation in a multiparty call on the Registry’s privileged line involving D-51 as well as **BEMBA** and **KILOLO**); [CAR-OTP-0077-0214](#) (Audio); [CAR-OTP-0082-2405](#) at 2409, lns.82-95 (Translation); [CAR-OTP-0074-0568](#) (Audio); [CAR-OTP-0086-1688](#) at 1690, lns.5-31 (Translation); [CAR-OTP-0079-0252](#) (Audio); [CAR-OTP-0087-2140](#) at 2143, lns.41-63 (Translation); [CAR-OTP-0074-0096](#) (Audio); [CAR-OTP-0086-0921](#) at 0926, lns.140-145 (Translation); [CAR-OTP-0074-0106](#) (Audio), [CAR-OTP-0086-0942](#) at 0944, lns.31-37, at 0945, lns.50-63 (Translation).

⁸³⁷ See *e.g.*, *supra*, paras.28, 57; see also [CAR-OTP-0074-0478](#) (Audio); [CAR-OTP-0080-0466](#) at 0468, lns.7-11 (Translation); [CAR-OTP-0074-0594](#) (Audio); [CAR-OTP-0086-1738](#) at 1741, lns.58–1742, ln.72 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation).

⁸³⁸ See *e.g.*, *supra*, para.28; see also [CAR-OTP-0074-0478](#) (Audio); [CAR-OTP-0080-0466](#) at 0468, lns.7-11 (Translation); [CAR-OTP-0074-0594](#) (Audio); [CAR-OTP-0086-1738](#) at 1741, lns.58–1742, ln.72 (Translation); [CAR-OTP-0074-0590](#) (Audio); [CAR-OTP-0077-1084](#) at 1087, ln.58 (Translation); [CAR-OTP-0074-0304](#) (Audio); [CAR-OTP-0080-0458](#) at 0464, lns.151-153 (Translation); [CAR-OTP-0074-0598](#) (Audio); [CAR-OTP-0080-0961](#) at 0963-0964, ln.34-45 (Translation); [CAR-OTP-0074-0672](#) (Audio); [CAR-OTP-0077-1336](#) at 1340, lns.84-85 (Translation); [CAR-OTP-0079-0511](#) (Audio); [CAR-OTP-0089-0515](#) at 0527, lns.384-385 (Translation).

recipients (specifically, their status as *Bemba* Defence witnesses);⁸³⁹ (viii) discussing with **KILOLO** the risks being taken to implement the Common Plan⁸⁴⁰ and acknowledging his role, stating “*en tant que financier, c’est moi qui prend des risques*”;⁸⁴¹ and (ix) participating in the cover-up of the Common Plan.⁸⁴²

c) **ARIDO**

264. **ARIDO** is individually criminally responsible pursuant to article 25(3)(c) based on the facts described at paragraphs 255 to 257 for aiding, abetting or otherwise assisting the giving of false testimony pursuant to article 70(1)(a); the presentation of false evidence pursuant to article 70(1)(b); and corruptly influencing witnesses pursuant to article 70(1)(c). In particular, **ARIDO**: (i) instructed the witnesses to either provide false information or withhold true information during their testimony in Court;⁸⁴³ (ii) encouraged their testimony with money transfers and inducements of the possibility of relocation in Europe;⁸⁴⁴ and (iii) introduced them to **KILOLO** knowing that they would be illicitly coached on what to say when testifying in court and paid in exchange for their false testimony.⁸⁴⁵

265. **ARIDO** aided, abetted or otherwise assisted the commission of offences under article 70(1)(a) and (b) aware that the offences would occur in the ordinary course of events and for the purpose of facilitating the commission of such offences by the Accused.⁸⁴⁶ **ARIDO**’s intent and knowledge are evidenced, among other things, by the facts described in paragraphs 256 to 257.

⁸³⁹ See e.g., *supra*, paras.28, 29, 30, 31, 32, 42, 53, 62, 63, 174, 179; see also Annex A, paras.5, 10, 26, 27, 28, 30, 31; see also [CAR-OTP-0077-0214](#) (Audio); [CAR-OTP-0082-2405](#) at 2409, lns.82-95 (Translation); [CAR-OTP-0074-0568](#) (Audio); [CAR-OTP-0086-1688](#) at 1690, lns.5-31 (Translation); [CAR-OTP-0079-0252](#) (Audio); [CAR-OTP-0087-2140](#) at 2143, lns.41-63 (Translation); [CAR-OTP-0074-0096](#) (Audio); [CAR-OTP-0086-0921](#) at 0926, lns.140-145 (Translation).

⁸⁴⁰ See e.g., [CAR-OTP-0080-1360](#) (Audio); see [CAR-OTP-0082-0596](#) at 0599, lns.74-80 (Transcript).

⁸⁴¹ See e.g., [CAR-OTP-0080-1360](#) (Audio); see [CAR-OTP-0082-0596](#) at 0599, ln.76 (Transcript).

⁸⁴² See e.g., *supra*, paras.55-63.

⁸⁴³ See e.g., *supra*, paras.133, 135, 145-147, 156, 165.

⁸⁴⁴ See e.g., *supra*, paras.145, 136.

⁸⁴⁵ See e.g., *supra*, paras.133-134, 136.

⁸⁴⁶ See e.g., *supra*, paras.133, 135-136, 145-147, 156, 165.

X. CONCLUSION

266. On the basis of the above, the Prosecution will prove that the Accused are guilty of the charges confirmed by Pre-Trial Chamber II,⁸⁴⁷ specifically that:

BEMBA is criminally responsible for:

- **giving false testimony**, contrary to article 70(1)(a), by soliciting the crimes of others in the meaning of article 25(3)(b) (counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, 40 of the Document Containing the Charges (“DCC”));
- **presenting false evidence**, contrary to article 70(1)(b), a co-perpetrator in the meaning of article 25(3)(a) and/or a person soliciting the crimes of others in the meaning of article 25(3)(b) (counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41 of the DCC); and/or
- **corruptly influencing witnesses**, contrary to article 70(1)(c), as a co-perpetrator in the meaning of article 25(3)(a) and/or by soliciting the crimes of others in the meaning of article 25(3)(b) (counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42 of the DCC).

KILOLO is criminally responsible for:

- **giving false testimony**, contrary to article 70(1)(a), by soliciting or inducing the crimes of others in the meaning of article 25(3)(b) (counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, 40 of the DCC);
- **presenting false evidence**, contrary to article 70(1)(b), as a co-perpetrator in the meaning of article 25(3)(a) (counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41 of the DCC); and/or

⁸⁴⁷ ICC-01/05-01/13-749, pp.47-55.

- **corruptly influencing witnesses**, contrary to article 70(1)(c), as a co-perpetrator in the meaning of article 25(3)(a) (counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42 of the DCC).

MANGENDA is criminally responsible for:

- **giving false testimony**, contrary to article 70(1)(a), by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, 40 of the DCC);
- **presenting false evidence**, contrary to article 70(1)(b), as a co-perpetrator in the meaning of article 25(3)(a) and/or by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41 of the DCC); and/or
- **corruptly influencing witnesses**, contrary to article 70(1)(c), as a co-perpetrator in the meaning of article 25(3)(a) and/or by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42 of the DCC).

BABALA is criminally responsible for:

- **giving false testimony**, contrary to article 70(1)(a), by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, 40 of the DCC);
- **presenting false evidence**, contrary to article 70(1)(b), by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41 of the DCC); and/or
- **corruptly influencing witnesses**, contrary to article 70(1)(c), by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42 of the DCC).

ARIDO is criminally responsible for:

- **giving false testimony**, contrary to article 70(1)(a), by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 10, 13, 16, 40 of the DCC);
- **presenting false evidence**, contrary to article 70(1)(b), by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 11, 14, 17, 41 of the DCC); and/or
- **corruptly influencing witnesses**, contrary to article 70(1)(c), as a perpetrator in the meaning of article 25(3)(a) and/or by aiding, abetting or otherwise assisting the crimes of others in the meaning of article 25(3)(c) (counts 12, 15, 18, 42 of the DCC).



Fatou Bensouda, Prosecutor

Dated this 14th Day of July 2016

At The Hague, The Netherlands