

PUBLIC REDACTED VERSION ANNEX B

TABLE A: INFERRING A SPEAKER'S MEANING

INFERENCE MADE BY TRIAL CHAMBER ¹	PARAGRAPH OF JUDGMENT	IS INFERENCE ACKNOWLEDGED?	TYPE OF INFERENCE: A. CIRCULAR; B. NOT SUPPORTED BY EVIDENCE C. NOT THE ONLY REASONABLE INFERENCE D. NON-SEQUITUR	DOES THE CHAMBER CONSIDER OTHER REASONABLE CONCLUSIONS?
1. Intercept dated 12.09.2013				
(a) The Chamber infers from an Intercept between Mr. Bemba (Bemba) and Me. Kilolo (Kilolo) concerning questions that will be put to D-15 in court that Kilolo was reporting back to Bemba on his illicit coaching activities concerning D-15.	568, 729	No.	B. C.	No. See Defence Final Brief (DFB), paras.277,279.
i. The Chamber therefore infers from the Intercept that Bemba knew about Kilolo's illicit coaching activities concerning D-15.		No.		
(b) The Chamber infers from the Intercept that Bemba expressly approved Kilolo's three questions, on the basis that they had been rehearsed with D-15.	568, 721, 729	No.		
i. The Chamber therefore infers from the Intercept that Bemba approved of Kilolo's illicit coaching activities concerning D-15.		No.		
(c) The Chamber infers from the Intercept that Bemba corrected Kilolo's approach with witness D-15, and provided feedback as to how better to address specific issues.	568, 729	No.		
i. The Chamber therefore infers from the Intercept that Bemba was directly involved in planning Kilolo's illicit coaching activities concerning D-15.		No.		

¹ Heading applies throughout Tables A-D.

2. Intercept dated 17.10.2013 and 01.11.2013				
(a) The Chamber concedes that it cannot conclude from an Intercept to which Bemba is party, that Bemba knew about, approved and directed (through Mr Mangenda (Magenda)) Kilolo's illicit coaching of D-54. To reach the conclusion that Bemba knew about, approved and directed (through Mangenda) on these illicit coaching activities, the Chamber relies on Intercepts to which Bemba is not a party.	616	Yes. (see para 616)	B. C. D.	No. See DFB paras.294-314.
	598-614, 617-645			
i. Conversations between Kilolo and D-54 The Chamber infers from these two Intercepts that Bemba knew about, approved and directed Kilolo's illicit coaching activities concerning D-54.	653		C.	
ii. Conversations between Kilolo and Mangenda The Chamber infers from these six Intercepts that Bemba knew about, approved and directed (through Mangenda) Kilolo's illicit coaching activities concerning D-54.	652, 653, 729, 731, 732			

The Chamber infers from this Intercept that Bemba knew that the Defence had been engaged in illicit coaching activity and illicit payments. The Chamber relies on the following: i. Kilolo’s reference to KILO ECHO NOVEMBER YANKEE, inferred to mean the Barasa Case; ii. The unacknowledged inference that when Bemba says to Kilolo, “at worst for you... it is to deny it all, it is lies”,² he was advising Kilolo that “in the worst-case scenario, Kilolo would have to deny everything.”³	784, 820, 855	Yes ⁴	C.	No. <i>See</i> DFB, paras.85, 88-89, 227, 233 (and fn. 274).
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⁴ Paras.784, 820.

4. Inferred meaning of intercepted “coded” conversations

(a) The Chamber infers that Bemba, Kilolo and Mangenda used coded language to conceal the bribing or illicit coaching of witnesses. The Chamber relies on the following: i. references to individuals by acronyms; or ii. use of particular expressions such as ‘faire la couleur’, or variants thereof.	109 109, 659, 660, 663, 664, 703, 756, 760-763, 870	No.	B. C.	Yes, partially (para.751). <i>However, see DFB,</i> para.277, ICC-01/05- 01/13-1794-Conf-AnxA items 17-25, ICC-01/05- 01/13-1074-Conf, para. 38. <i>See ICC-01/05-01/13-</i> 1199-Conf, para. 20-21.
(b) The Chamber infers that Mangenda conveyed messages from Bemba and made Kilolo aware of what Bemba wished to implement.	721	No.	B. C.	No. <i>See DFB, para.234.</i>

TABLE B: INFERRING KNOWLEDGE FROM MR. BEMBA'S POSITION AS DEFENDANT

1. Inference Bemba possessed knowledge and intent regarding acts and conduct of Kilolo and Mangenda				
The Chamber relied on Bemba's position to infer that he possessed knowledge and intent as concerns acts and conduct of Kilolo and Mangenda. In particular, the Chamber relied on a discussion Bemba had with his legal team about the existence of similar proceedings in the Barasa Case,⁵ and infers from questions about Article 70 that Bemba was engaged in illegal actions, and was aware that they were illegal.⁶	805, 806	Yes. ⁷	B. C.	No. <i>See DFB, paras.83-84.</i>

⁵ Para.820.⁶ Para.820.⁷ Para.850.

TABLE C: INFERRING MR BEMBA’S INTENT TO VIOLATE ARTICLE 70

1. Innocent / neutral /irrelevant contributions				
(a) The Chamber infers Bemba’s intent to violate Art.70 from improper use of the ICC Detention Unit telephone regime. ⁸	109,735, 737-738	No.	B. C. D.	No. <i>See</i> DFB, paras.144-162
i. The Chamber relied on the above inference to further infer that “although no direct evidence proves that in these telephone conversations Mr Bemba urged or asked these witnesses about the specifics of their testimony,” ⁹ the fact that Bemba “spoke to them on his privileged line in the ICC Detention Centre indicates that he urged them to cooperate and follow the instructions given by Mr Kilolo.” ¹⁰	856	Yes. ¹¹	B. C. D.	No. <i>See</i> DFB, paras.144-162. <i>See</i> ICC-01/05-01/13-1245-Conf, paras.71-75
(b) The Chamber infers the common plan from the concerted action of the three co-perpetrators, in connection with that of other co-accused, and relies on a series of factors that, taken together, prove the existence of the common plan, including the use of the privileged telephone line from the ICC Detention Unit. ¹²	109, 735, 803	Yes. ¹³	C.	No. <i>See</i> DFB, paras.128-134.

⁸ Paras.737-738.⁹ Para.856.¹⁰ Para.856.¹¹ Para.856.¹² Para.803.¹³ Para.803.

i. In finding that Bemba and Kilolo breached the detention regulations by conducting several multi-party calls with witnesses, the Chamber finds that although it is a reasonable conclusion that a party may put another on hold for a period of not more than 10 minutes, ¹⁴ a period of 17 minutes ¹⁵ is considered too long not to infer that a multi-party call had been effected.	109, 735, 741-745		D.	No. See DFB, paras.136-142. See ICC-01/05-01/13-1402-Conf, paras.7-15.
ii. The Chamber also infers on the basis of an undated contact list that uses unclear contact names, that the '[REDACTED]' number ¹⁶ did not belong to Kilolo, but rather to Mr. Babala (Babala), and infers that its misappropriation was an intentional means of achieving unmonitored calls between Babala (who was not entitled to a privileged line) with Bemba. ¹⁷	109,735,738		B. D.	No. See DFB, paras.129-133. See ICC-01/05-01/13-1402-Conf, paras.10-11, 48
(c) The Chamber infers Bemba's knowledge of an existing violation, or intent to violate Article 70 from his communication of thanks/gratitude to witnesses. ¹⁸	123, 298, 305	No.	C.	No. See DFB, paras. 146-148, 285.
(d) The Chamber infers Bemba's knowledge of an existing violation, or intent to violate Article 70 from third persons reporting that Bemba was pleased with witness testimony. ¹⁹	161, 406, 495, 692	No.	B.	No. See DFB, paras.284-85.

¹⁴ Paras.742-745.

¹⁵ Para.741.

¹⁶ Para.738.

¹⁷ Para.238.

¹⁸ Para. 298.(D-55)

¹⁹ Regarding D-6, *see* Judgment, paras 406, 692. For D-25, *see* Judgment, paras.161, 495.

(e) The Chamber infers an intentional contribution to false testimony from licit instructions to Counsel regarding potential evidence. The Chamber notes that no direct evidence exists that Bemba also directed or instructed false testimony regarding: i. the nature and number of prior contacts of the witnesses with the ICC-01/05-0/8 Defence, ii. payments and material or non-monetary benefits received from or promised by the ICC-01/05-0/8 Defence, and/or iii. acquaintances with other individuals.²⁰ In the absence of direct evidence, the Chamber “makes the inference that Bemba at least implicitly knew about these instructions to the witnesses and expected Mr Kilolo to give them.”²¹	818, 819	Yes. ²²	B. C. D.	No. <i>See</i> DFB, paras. 29-33, 64-67, 233, 271-283.
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²⁰ Para.818.

²¹ Para.818.

²² Para.818.

(f) The Chamber infers Bemba's knowledge, intent, and control over illegitimate payments to witnesses from evidence concerning his knowledge of payments which were not <i>prima facie</i> illicit (i.e. payments to the Defence in connection with missions).	250, 278, 302, 700,		B. C	No. See DFB, paras.166-200. See ICC-01/05-01/13-1245-Conf, para.43
2. Inferring Bemba's intent to commit Art.70 offences from the inference that he intended to frustrate the Art.70 Investigation				
(a) The Chamber infers that Bemba intended to commit Art.70 offences from its inferred conclusion that Bemba intended to frustrate a fictional Art.70 investigation.	774-776, 787, 801, 819,	Yes ²³	A. B. D.	No.
i. Despite the existence of intercepts in which Kilolo and Mangenda agree to inform Bemba of a false scenario, the Chamber infers that Bemba had knowledge of an actual Art.70 investigation, as opposed to the false scenario.	774-776, 784-785, 787, 928	Yes. ²⁴	B. C.	No. See DFB, paras.87-89, 214-240.
ii. As there is insufficient evidence to support such a conclusion, the Chamber infers that Bemba's reaction to the news of the false scenario/Art.70 investigation was further evidence of his guilt.	774-776	Yes. ²⁵	B. C.	No. See DFB, paras. 87-89, 214-240.

²³ Para.787.

²⁴ Para.803.

²⁵ Para.774.

TABLE D: RELIANCE ON SIMILAR FACT EVIDENCE TO INFER INTENT, KNOWLEDGE AND ILLICIT ACTS

a) instructions to lie about number of contacts				
1. The Chamber infers the existence of a common plan to instruct witnesses to lie about the instances of contact they had with the ICC-01/05-0/8 Defence, and contacts with third persons, on the basis of what it describes as a similar fact pattern of evidence between witnesses D-2, D-3, D-4 and D-6, D-15, D-23, D-26, D-54, D-55, D-57 and D-64.	135,249-251, 264, 276-277, 299, 307, 311-312, 315-316, 318. 360, 364, 404, 434, 439, 464, 466, 582, 640	Yes D-4 ³³ , D6 ³⁴ , D-57 ³⁵ , D-64 ³⁶ , No D-2, D-3, D-15, D-23, D-26, D-54, D-55	A. B. C. D.	No.
2. Under oath, D-64 denied that he was instructed to lie about the number of contacts. ²⁶				
3. The Chamber acknowledges that there is no direct evidence that D-4, ²⁷ D-6, ²⁸ D57 ²⁹ , D-64, ³⁰ were instructed to lie about the number of contacts they had with the ICC-01/05-0/8 Defence.				
4. The Chamber does not cite direct evidence that D-23, D-26, D-55 were instructed to lie about the number of contacts they had with the ICC-01/05-0/8 Defence, ³¹ but includes them in the “similar fact pattern”. ³²				

²⁶ Paras.264, 276.²⁷ Para.394.²⁸ Para.404.²⁹ Para.250.³⁰ Paras.251, 277.³¹ Paras.434 (D-23); 464 (D-26), 299 (D-55), 582. (D-15) 640,(D-54).³² Paras.251, 277, 366.³³ Para.394.³⁴ Para.404.³⁵ Para.251.³⁶ Paras.251, 277.

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| <p>5. For D-2, the Chamber infers that when Kilolo instructed him to respond, if asked, that there had been two meetings and four contacts with the ICC-01/05-0/8 Defence, that this was false,³⁷ even though D-2 testified that it was correct,³⁸ and the number approximated the number of substantive contacts that had occurred.³⁹</p> <p>6. For D-3, the Chamber infers that he was instructed to lie about contacts with the Defence from his testimony that D-3 was instructed to deny knowing some of his acquaintances.⁴⁰ For D-55, the Chamber infers that he was instructed not to reveal this meeting from an instruction not to reveal the information <i>to the public</i>.⁴¹</p> <p>7. The Chamber includes D-54 and D-15 in the “similar fact” pattern without giving weight to the fact that as members of DRC military, they were prohibited from contacting the Defence without prior authorisation from their supervisors.⁴²</p> <p>8. The Chamber’s overall finding of a similar fact pattern of evidence between witnesses D-2, D-3, D-4 and D-6, D-15, D-23, D-26, D-54, D-55, D-57 and D-64 is thus based purely on inferences, conjecture, and dissimilar evidence.</p> | | | | |
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³⁷ Paras.360.

³⁸ T-19-CONF-ENG, p.6, lns.8-16.

³⁹ Paras.307. *See also*, CAR-OTP-0090-0630, pg 2.

⁴⁰ Paras.360, 366.

⁴¹ Para.582. *See also*, CAR-OTP-0074-0872-R03, at 0880-R03.

⁴² ICC-01/05-01/13-1902-Conf-Corr2, fn. 119.

b) instructions to lie about payment

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| 1. The Chamber infers the existence of a common plan to instruct witnesses to lie about receipt of money or non-monetary benefits on the basis of what it describes as a similar fact pattern of evidence between witnesses D-2, D-3, D-4 and D-6, D-15, D-23, D-25, D-29, D-54, D-55, D-57 and D-64. | 245, 250-251, 276-278, 302, 366, 401, 404, 439-444, 486, 496-497, 499, 501, 526-527, 619, 638, 647 | Yes.
D-4 and D-6, ⁵⁰ D-23 ⁵¹ , D-29 ⁵² , D-55 ⁵³ , D-57 ⁵⁴ , D-64 ⁵⁵

No
D-2, D-3, D-15, D-25, D-54 | A.
B.
C.
D. | No. |
| 2. Under oath, D-23 and D-25 denied that they were instructed to lie about receipt of money or non-monetary benefits. ⁴³ | | | | |
| 3. The Chamber acknowledges that there is no direct evidence that D-4 and D-6, ⁴⁴ D-23 ⁴⁵ , D-29 ⁴⁶ , D-55 ⁴⁷ , D-57 ⁴⁸ , D-64 ⁴⁹ were instructed to lie about receipt of money or non-monetary benefits. | | | | |

⁴³ Paras.439, 501.⁴⁴ Para.404.⁴⁵ Para.439.⁴⁶ Para.526.⁴⁷ Para.302.⁴⁸ Para.439.⁴⁹ Para.277.⁵⁰ Para.404.⁵¹ Paras.439.⁵² Para.526.⁵³ Para.302.⁵⁴ Para.439.⁵⁵ Para.277.

4. The Chamber makes no finding that D-15 received, was promised, or was instructed to lie about receipt of money or non-monetary benefits, yet includes it in the pattern of evidence.⁵⁶ The Chamber also does not cite any direct evidence that D-25 and D-54 were instructed to lie about receipt of money or non-monetary benefits.⁵⁷ But also includes them in the “demonstrable pattern”.⁵⁸
5. For D-2, the Chamber infers from the witness testifying that he received payments and denied them while testifying in ICC-01/05-0/8 in order to appear more credible,⁵⁹ that Kilolo must have instructed him to lie about it.⁶⁰ Notably, D-2 did not testify that he was promised money by the Defence in exchange for his testimony.⁶¹
6. For D-3, the Chamber relies on his testimony that he was instructed to deny payments (a detail not included in any prior statements, and only given after D-2 testified) ⁶² to infer that “the only reasonable conclusion available on the evidence, that Mr Kilolo also instructed D-4 and D-6 at the time to lie about payments and any non-monetary benefits.”⁶³ They also further infer that Kilolo gave the same instructions to various other ICC-01/05-0/8 Defence witnesses, including D-15, D-23, D-26, D-54 and D-55, on the basis that there is a demonstrable pattern.

⁵⁶ Para.250, 278, 499.

⁵⁷ Paras.501 (D-25). 638 (D-54)

⁵⁸ Paras.250, 278, 366, 526, 527

⁵⁹ Para.308

⁶⁰ Para.366

⁶¹ D-2 testified that he was promised money from Mr Arido, and also believed that if he testified, he would get money from the Court, not Mr Bemba: T-20-CONF-ENG,p.82, lns.16-17, T-21-Red3-ENG,p.25, lns.11-18.

⁶² Para.364

⁶³ Para.366.

7. The Chamber's overall finding of a similar fact pattern of evidence between witnesses D-2, D-3, D-4 and D-6, D-15, D-23, D-25, D-29, D-54, D-55, D-57 and D-64 is thus based purely on inferences, conjecture, unreliable testimony, and dissimilar evidence.				
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c) coaching on matters that were false

1. The Chamber infers the existence of a common plan to instruct witnesses to testify according to a script, regardless of the truth or contents, on the basis of what it describes as a similar fact pattern of evidence between witnesses D-2, D-3, D-13, D-15, D-23, and D-54.
2. D-23 did not testify expressly that Kilolo coached him to provide false testimony on issues concerning the merits; the Chamber infers it from vague evidence.⁶⁴
3. D-2 claimed to have been coached in May 2013 to add an issue, which was already in the statement he gave in February 2012,⁶⁵ and then conceded that Kilolo put his case to him, rather than coaching him to provide false testimony.⁶⁶
4. Although D-2 and D-3's claim to have been contacted by Kilolo after the cut-off point was contradicted by the call records of the numbers claimed to have been used,⁶⁷ the Chamber infers that contacts must have taken place on other unknown numbers.⁶⁸

663

Yes.⁶⁹

A.
B.
C.
D.

No.

⁶⁴ Para.449, relying on an extract of an unadmitted statement put to the witness, rather than his sworn testimony.

⁶⁵ T-21-Red3-ENG, p.69, lns. 16-21.

⁶⁶ T-21-Red3-ENG, p.79, lns. 4-12.

⁶⁷ CAR-OTP-0090-0630 at 0631-2, 0636-8, p.19-20.

⁶⁸ Paras.384-5.

⁶⁹ Para.663.

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| <p>5. The Chamber acknowledges that there is no direct evidence that Kilolo illicitly prepared and coached D-13,⁷⁰ but nonetheless infers from its finding of fact pertaining to witnesses D-2, D-3, D-23, D-15 and D-54, that when Kilolo refers to his occupation with ‘les couleurs’ the only reasonable conclusion is that Kilolo illicitly prepared and coached D-13.⁷¹</p> <p>6. The Chamber’s overall finding of a similar fact pattern of evidence between witnesses D-2, D-3, D-13, D-15, D-23, and D-54 is thus based heavily on circular inferences and conjecture.</p> | | | | |
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⁷⁰ Para.654.

⁷¹ Para.663.