

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and
6 Narcisse Arido - ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and Judge Raul
8 Pangalangan
9 Trial Hearing
10 Tuesday, 29 September 2015
11 (The trial hearing starts in open session at 9.30 a.m.)
12 THE COURT USHER: All rise.
13 The International Criminal Court is now in session.
14 Please be seated.
15 PRESIDING JUDGE SCHMITT: Good morning. I would like to welcome
16 everybody in the courtroom.
17 Would the court officer please call the case.
18 THE COURT OFFICER: Thank you, Mr President.
19 The situation in the Central African Republic in the case of The Prosecutor versus
20 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
21 Fidèle Babala Wandu and Narcisse Arido, case reference ICC-01/05-01/13.
22 We are in open session.
23 PRESIDING JUDGE SCHMITT: Thank you.
24 Counsel, please introduce yourselves and your clients for the record.
25 Perhaps we start with the Prosecution, please.

1 MS BENSOUA: (Microphone not activated) ... Kweku Vanderpuye, senior trial
2 lawyer; Ms Olivia Struyven, trial lawyer; Mr Hesham Mourad, trial lawyer;
3 Ms Frolich, trial lawyer; Mr Nema Milaninia, trial lawyer; Ms Colleen Gilg, associate
4 trial lawyer; Ms Sylvie Wakchom, assistant trial lawyer; and Ms Sylvie Vidinha, case
5 manager; and myself, Fatou Bensouda, Prosecutor.

6 PRESIDING JUDGE SCHMITT: Thank you very much.
7 Counsel, please.

8 We start with counsel for Mr Bemba.

9 MS TAYLOR: Good morning, Mr President, your Honours. My name is
10 Melinda Taylor and I'm appearing this morning on behalf of Mr Jean-Pierre Bemba
11 and I'm appearing together with Ms Natacha Lebaindre and Ms
12 Ines Pierre de la Brière. Thank you.

13 PRESIDING JUDGE SCHMITT: Thank you.
14 And I especially want to thank the Defence of Mr Bemba to facilitate the seating plan
15 today. We want to accommodate everybody, but the impossible we cannot reach, so
16 you helped us with that. Thank you very much insofar.
17 Then we continue with counsel for Mr Kilolo.

18 MR DJUNGA: (Interpretation) Good morning, your Honour. The Defence of
19 Mr Kilolo Musamba is carried out by myself, Maître Paul Djunga, lawyer at the Bar in
20 Paris; Mr Steven Powles, lawyer in the Bar of London; Ms Grogan, case manager.
21 Thank you.

22 PRESIDING JUDGE SCHMITT: Thank you.
23 We continue with Mr Mangenda's counsel.

24 MR GOSNELL: Thank you very much, Mr President. Good morning to you.
25 Good morning, your Honours. My name is Christopher Gosnell, I represent

1 Mr Mangenda in these proceedings this morning. I am accompanied by Maître
2 Arthur Vercken, by Nicky Sethi and by Mr Mangenda himself. Thank you.

3 PRESIDING JUDGE SCHMITT: Thank you.

4 Counsel for Mr Babala.

5 MR KILENDA: (Interpretation) Thank you very much, your Honour. Good
6 morning. Good morning all of the Court. I am Jean-Pierre Kilenda Kakengi Basila.
7 I'm a lawyer at the Brussels Bar and also in Kinshasa. And I am accompanied by
8 Azama Shalie Rodoma, a lawyer in the Brussels Bar and Adriana-Maria Manolescu,
9 who is our case manager. And we also have Fidèle Babala Wandu seated right of me.
10 Thank you very much.

11 PRESIDING JUDGE SCHMITT: Thank you. Finally, counsel for Mr Arido.

12 MR LAROCHELLE: (Interpretation) Good morning, your Honour. Good
13 morning, your Honours. My name is Philippe Larochelle from the Quebec Bar.
14 And I'm accompanied by Mr Arido and Michael Rowse and Tibor Bajnovic. Good
15 morning.

16 PRESIDING JUDGE SCHMITT: Thank you very much.

17 For the members of the public and also for the parties and participants, since not
18 everybody may know us yet, meaning the Bench, my name is Bertram Schmitt. I am
19 the Presiding Judge of this Trial Chamber. On my right is Judge Marc
20 Perrin de Brichambaut and on my left Judge Raul Pangalangan.

21 As you are aware and you have heard from the Court officer we are here today for the
22 opening of the trial of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba,
23 Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala and Mr Narcisse Arido.
24 Today before the charges are read to the accused, the Chamber will provide further
25 guidance as to the proper conduct of the proceedings and we will render a couple of

1 oral decisions on requests still pending that you probably were awaiting or are
2 awaiting.

3 Finally we will hear the opening statement of the Prosecution. Later in the trial,
4 when it is time for the presentation of any defence evidence to begin, the Defence will
5 be given an opportunity to make its own opening statements.

6 First as I have said some preliminary remarks. On the conduct of the present
7 proceedings, first item, so to speak, is the no relitigation of the main case, which is
8 very important for this case for the further proceedings to clarify.

9 The Chamber emphasises again that the purpose of these proceedings is not to
10 relitigate the main case, namely, the case of The Prosecutor versus Jean-Pierre Bemba
11 Gombo. Submissions which attempt to do so or evidence presented solely for these
12 purposes will not be entertained. This has been said before, but the Chamber wishes
13 to take a moment to explain what it means when it says that the main case is not to be
14 relitigated.

15 The Pre-Trial Chamber in this case explained explicitly that it was, and I quote,
16 "Obviously not in a position to assess the reliability and truthfulness of the witnesses'
17 testimony on issues pertaining to the merits of the main case." End of quote.

18 This assessment of the Pre-Trial Chamber has not changed. This Chamber is
19 similarly incapable of making such assessments. The evidence on the merits of the
20 main case was presented before Trial Chamber III, not before this Chamber.

21 Main case witnesses may have falsely testified on issues pertaining to the merits of
22 the main case, including for example whether they were members of certain groups
23 or entities, the structure of these groups or entities, their movements on the ground
24 and the names of officials. However, this Chamber cannot assess the truth or falsity
25 of these statements without command over the evidence in the main case, which

1 would necessitate a partial rehearing of the evidence before this Chamber. The
2 result of such a course would be to litigate an Article 70 case and relitigate part of an
3 Article 5 case before another Chamber in the course of this hearing.

4 The Chamber considers this result to be untenable. There is a division of
5 responsibilities between Chambers, meaning that Trial Chamber III and not this
6 Chamber is the judicial entity responsible for the findings in the main case.

7 That said, and in these particular circumstances, the Chamber finds that it is not
8 necessary to extend its inquiry as to whether or not the witnesses testified falsely to
9 the merits of the main case. Rather, whether or not the witness falsely testified can
10 be ascertained in relation to other information given.

11 Moreover, broadening the scope of this trial to such a degree would dramatically
12 compromise the expeditiousness of proceedings and the right of the accused to be
13 tried without undue delay. It is also to be noted that this case could have been
14 joined to the main case under Rule 165(4) of the Rules to resolve all case overlap
15 issues, but no such joinder has been made or even been attempted.

16 So, when the Chamber says that this case is not about relitigating the main case, what
17 this means is that this case is about alleged false testimony of witnesses in respect of
18 issues like: First, their previous contacts with the Defence, including those where
19 witnesses were coached before testifying; their meetings with other prospective
20 witnesses; their acquaintance with some of the accused or other persons associated
21 with them; the fact that promises had been made to them in exchange for their
22 testimony; and the fact that they had received reimbursements or transferred by
23 Mr Bemba on his behalf for the purpose of unduly influencing the witness.

24 Statements pertaining to the merits of the main case could perhaps have some
25 relevance in some contexts, such as to show if alleged pre-testimony witness coaching

1 was in fact repeated during testimony. However, these statements will not be
2 considered for their truth or falsity, and evidence submitted solely for the purpose of
3 proving the truth or falsity of such statements at trial will not be considered by the
4 Chamber in its judgment.

5 The main case, to make it clear, and this case are conducted independently. They are
6 on independent tracks, so to speak, looking at evidence for different purposes.

7 I conclude this item and continue with the next one, what is some remarks on the
8 conduct of proceedings.

9 I want to direct your attention now to the conduct of proceedings. First of all,
10 proceedings will be conducted with full respect for the rights of the Defence. The
11 accused are presumed innocent until proven guilty, pursuant to Article 66(1) of the
12 Statute. The burden of proof lies upon the Prosecutor. It is her obligation to prove
13 the charges beyond reasonable doubt. And the Defence has the last word.

14 Second, the trial will be conducted in an expeditious manner. Proceedings against
15 the five accused were initiated in November 2013 almost two years ago. The accused
16 are entitled to a final determination of this Court. Four accused are provisionally
17 released and are active in their private and professional lives. They have legitimate
18 expectations to spend a limited amount of time away from their families and other
19 commitments. Mr Bemba is entitled to know whether he must spend further time in
20 detention.

21 Third, on 2 September 2015, directions on the conduct of proceedings were given to
22 the parties. This decision regulated certain aspects of the conduct of the proceedings,
23 but also, as you may have noticed, intentionally left certain matters unaddressed
24 which would be subject to oral determinations in the course of the trial.

25 The reason for this is the following: A trial hearing is a dynamic process which

1 evolves constantly. If it was not so we could limit ourselves to written procedure.
2 The conduct of proceedings has to be adjusted as need be during the course of the
3 hearing, particularly in accordance with Article 64(8)(b) which describes the powers
4 of the Presiding Judge. This has to be done in accordance with the legal provisions
5 given to us, namely, the Rome Statute, the Rules of Procedure and Evidence and the
6 regulations of the Court. And if need be it has to be done immediately and not
7 following a previously composed script.

8 The Chamber is of the opinion that trying to regulate in detail the conduct of
9 proceedings beforehand and thus putting the parties and also the Judges in a sort of
10 procedural corset is at least futile.

11 As you have noted in particular, any items relating to the modalities of questioning
12 were excluded from this ruling.

13 I wish to make clear at the outset that the Chamber has not set strict regulations on
14 questioning so that appropriate limitations can be set on a case-by-case basis.

15 Despite this I want to point out that any unfocused questioning of witnesses will not
16 be allowed. Repetitious questions should be avoided. This rule so to speak does
17 not only apply to any single party, it also applies to the Defence as a whole, meaning
18 that questions should not be repeated by different Defence teams.

19 If parties object to the way that any particular question is raised, such objections must
20 be clear, short and concise.

21 Moreover, and I go further to another point, the Chamber wants to uphold the
22 principle of orality. This principle is a precondition of a fair trial and it guarantees
23 that the trial is not a succession of written submissions and decisions. It means that
24 the arguments of the parties are discussed in the courtroom. It requires that the
25 parties make requests orally and are prepared to address emerging issues and

1 questions orally and if need be spontaneously in the courtroom.

2 The Chamber ascribes to counsel the professional skills that enable them to discuss

3 matters promptly or at least after a short break for consideration. The Chamber will

4 not grant lengthy interruptions whenever a contentious issue arises.

5 Furthermore, the Chamber expects that the parties are prepared at all times. If the

6 time allotted to any one party is not fully used, the Bench will automatically move to

7 the next item on the schedule and the schedule will be adjusted should circumstances

8 so require. In particular, parties must always be prepared to continue with the case,

9 even if less time than estimated is required for a particular witness.

10 Finally, for these preliminary remarks, parties are generally expected to be precise,

11 concise and to the point. Repetitious arguments as well as, as I have said, repetitious

12 questions should be avoided. The Defence of each accused, while having the right to

13 advance relevant arguments at any time, should use its time wisely. Submissions by

14 one Defence team need not be reiterated by another. Everything what has to be said

15 can be said but not by everybody.

16 In line with the aforementioned, meaning upholding the principle of orality, the

17 Chamber may also issue certain decisions orally as the trial unfolds in order to keep

18 the proceedings moving at an appropriate pace.

19 And as I said in line of that, the Chamber will now render several such decisions.

20 First, on the Prosecution application for leave to appeal the decision on Prosecution

21 application to provide notice pursuant to Regulation 55, that is filing 1270 in the

22 record, submitted on 18 September 2015, the impugned decision is filing 1250 in the

23 record and was filed on 15 September 2015.

24 In this request, the Prosecution seeks leave to appeal on, I quote, "Whether the Trial

25 Chamber erred by taking into consideration an irrelevant factor; namely, that the

1 Prosecution did not seek leave to appeal the Confirmation Decision or request to
2 amend the charges according to Article 61(9) of the Rome Statute." Quote end.
3 The Arido Defence has requested the Chamber to reject this issue in filing 1298.
4 The Chamber recalls the leave to appeal test as set out in its previous decisions, in
5 particular the requirement that an appealable issue is constituted by a subject the
6 resolution of which is essential for the determination of matters arising in the judicial
7 cause under examination.
8 In addition to the considerations referenced by the Prosecution, the Chamber's
9 reasoning in the impugned decision was independently premised on the fact that the
10 proposed recharacterisations were rejected by the Pre-Trial Chamber and that no
11 exceptional circumstances or, quote, "any other reasons" were apparent to the
12 Chamber which justified granting Regulation 55(2) notice.
13 As such, even if the Prosecution were to prevail on its appeal, the Chamber's ultimate
14 decision would remain the same. The Prosecution's issue is therefore not essential
15 for the determination of the impugned decision, and leave to appeal is rejected.
16 Second, the Chamber will now render a decision on the application by Mr Kilolo for
17 leave to appeal the, I quote, "Decision on Kilolo Defence motion for inadmissibility of
18 material", that is filing 1274 in the record, submitted on 21 September 2015, the
19 impugned decision is filing 1257 in the record and was filed on 16 September 2015.
20 In this application, the Defence for Mr Kilolo seeks leave to appeal: When, how and
21 under what circumstances, and with what protections, interference with privileged
22 communications may be exercised. The application is contested by the Prosecution.
23 The Chamber has previously noted that an appealable issue under Article 82(1)(d) of
24 the Statute requires the parties to articulate discrete issues and it is insufficient to
25 argue that the Chamber has generally erred in its findings.

1 By asserting that the Chamber did not sufficiently uphold the protection enshrined in
2 Article 67(1)(b) of the Statute, the Defence is doing little more than challenging the
3 entirety of the Chamber's decision. The application fails to disclose any discrete
4 appealable issue arising from the decision and the Chamber thus rejects the
5 application for leave to appeal.

6 Third, the Chamber will also now render a decision on, I quote, "Prosecution's
7 application for leave to appeal the decision on witness preparation and
8 familiarisation" filing 1276 in the record, submitted on 21 September 2015, the
9 impugned decision is filing 1252 in the record and was filed on 15 September 2015.

10 In this application, the Prosecution seeks leave to appeal three issues; namely,
11 whether the Trial Chamber erred in failing to provide a reasoned opinion; whether
12 the Trial Chamber erred in balancing the potential risks of witness preparation
13 vis-à-vis the parties' right to prepare their cases; and whether the Trial Chamber erred
14 by failing to take into account or accord proper weight to relevant factors.

15 The Chamber considers that the first issue does not arise from the appeal.

16 Furthermore, the Prosecution, in the three issues it has listed for certification, has
17 failed to substantiate specific detriments or harms that will accrue to the Prosecution
18 in the current case as a result of the Chamber's decision to disallow witness
19 preparation. To this extent, the resolution of the issues highlighted by the
20 Prosecution would not significantly affect the fair and expeditious conduct of
21 proceedings or the outcome of the trial, within the meaning of Article 82(1)(d) of the
22 Statute. Leave to appeal is therefore rejected.

23 This concludes the oral decisions by the Chamber, but allow me an additional remark
24 on leave to appeal requests. That is directed to all of the parties here in the room.

25 Irrespective of these decisions on important procedural issues dealing with

1 interlocutory appeals, allow me this general remark on requests for leave to appeal,
2 which constantly and so to speak incessantly flow into the case record.

3 While the Chamber is mindful of the rights of the parties to seek legal remedy under
4 Article 82(1)(d) of the Statute, I would like to remind that such interlocutory appeals
5 are exceptional. And they are not or should not be an automatic reflex as it
6 sometimes appears. They are neither meant to be a hidden application for
7 reconsideration nor a legal tool to express mere disagreement with any of the
8 Chamber decisions. And we all know that it lies in the nature of things that usually
9 at least one party is not completely satisfied with what the Chamber decides.

10 Furthermore, even if we talk about potentially reversible error this may be particular
11 at the stage of proceedings that we have now reached better and justly deferred to
12 any final appeal under Article 81.

13 Last point to admissibility of evidence, a few remarks. The Chamber also recalls its
14 approach to relevance and admissibility of evidence set out in its decision of 24
15 September 2015. In this decision, the Chamber determined that, as a general rule,
16 these proceedings would be conducted more efficiently if the Chamber defers its
17 assessment of the admissibility of evidence to the judgment pursuant to Article 74(2)
18 of the Statute.

19 With this in mind, whenever one of the parties wishes to submit an item for the
20 Chamber to consider in its judgment, it may request that a particular piece of material
21 be formally submitted. The other parties may then raise any issue relating to
22 relevance or admissibility pursuant to Rule 64 of the Rules. The Chamber will then
23 recognize the item as submitted, at which point the Registry will reflect in the eCourt
24 metadata that the item has been formally submitted.

25 We conclude now the preliminary remarks and continue with the issues that have

1 been raised, the objections that have been raised in the course of the proceedings.

2 The Chamber invited the parties to raise any issue which requires resolution prior to

3 the commencement of the trial. The Chamber received 13 requests on 10

4 August 2015 and has subsequently ruled on all of them. However, and noting Rule

5 134(2) of the Rules, the Chamber will now ask the parties whether they have any

6 remaining objections or observations concerning the conduct of proceedings which

7 have arisen since the confirmation hearings.

8 We would like to start with the Prosecution.

9 MS BENSOUA: None, Mr President.

10 PRESIDING JUDGE SCHMITT: Then we continue with the Defence. And perhaps

11 we stay with the sequence we started with, the Defence for Mr Bemba.

12 MS TAYLOR: Thank you, Mr President, your Honours. No, for the record, no, we

13 don't at this point.

14 PRESIDING JUDGE SCHMITT: Then the Defence for Mr Kilolo.

15 MR DJUNGA: (Interpretation) No particular comment, your Honour.

16 PRESIDING JUDGE SCHMITT: Mr Mangenda.

17 MR GOSNELL: Not at this time, Mr President. Thank you.

18 PRESIDING JUDGE SCHMITT: I understand.

19 (Microphone not activated)

20 MR KILENDA: (Interpretation) No observations, your Honour.

21 PRESIDING JUDGE SCHMITT: And finally, the Defence of Mr Arido.

22 MR LAROCHELLE: (Interpretation) We have observations to make, your Honour.

23 We are still waiting materials from the Prosecutor. The Prosecutor received an order

24 from you to give us materials, the RFI. We still haven't received that. Politely

25 I would disagree with the decision that you issued very recently for which we have a

1 deadline to file an appeal which I hope won't suffer the same fate as the one -- the
2 decision of this morning.

3 So at least we have these two points without going into the consequences of the order
4 of witnesses for which we have also filed our observations. I won't repeat
5 everything here.

6 I'm being quite abrupt here, but there were other problems which, as far as we're
7 concerned, haven't been resolved, but when it comes to issuing another appeal, there
8 is a decision that you issued regarding the Bar table motion as well, so there's a large
9 quantity of evidence which is floating around without us knowing what treatment it's
10 going to be given.

11 So in this appeal we're going to explain that we are in disagreement with certain
12 things. We're in -- politely we'll say we're in disagreement with the approach of the
13 Chamber with regards to the evidence, what occurs to me. Perhaps I could look at
14 my notes for this morning, if I find anything else, I will also share those elements with
15 you when we come to the hearing tomorrow morning.

16 PRESIDING JUDGE SCHMITT: Thank you. The Chamber has taken note of your
17 positions. If necessary, of course, we will decide on your objections later during the
18 trial.

19 In accordance with Article 64(8)(a) of the Rome Statute, the charges will now be read
20 to the five accused, following which each will be invited to enter his plea.

21 Court officer, please read the operative part of the decision on the confirmation of
22 charges. Since all accused are French speaking please read the French version.

23 THE COURT OFFICER: (Interpretation) Thank you, Mr President.

24 Mr Bemba, pursuant to Article 70(1)(c) and Article 25(3)(a), co-perpetration, of the
25 Statute, committed, together with Mr Kilolo and Mr Mangenda, the offence of

1 corruptly influencing Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29,
2 D-54, D-55, D-57 and D-64 by way of planning and coordinating with the other
3 suspects the perpetration of this offence, as included in Counts 3, 6, 9, 12, 15, 18, 21, 24,
4 27, 30, 33, 36, 39 and 42 of the DCC;

5 In the alternative, pursuant to Article 70(1)(c) and Article 25(3)(b) of the Statute,
6 Mr Bemba solicited the commission of the offence of corruptly influencing Witnesses
7 D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by
8 way of directing and coordinating with the other suspects the perpetration of this
9 offence, as included in Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39 and 42 of the
10 DCC;

11 Mr Bemba, pursuant to Article 70(1)(b) and Article 25(3)(a), co-perpetration, of the
12 Statute committed, together with Mr Kilolo and Mr Mangenda, the offence of
13 presenting false evidence with regard to Witnesses D-2, D-3, D-4, D-6, D-13, D-15,
14 D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of planning and
15 coordinating with the other suspects the perpetration of this offence, as included in
16 Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38 and 41 of the DCC;

17 In the alternative, pursuant to Article 70(1)(b) and Article 25(3)(b) of the Statute,
18 Mr Bemba solicited the commission of the offence of presenting false evidence with
19 regard to Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55,
20 D-57 and D-64, by way of directing and coordinating with the other suspects the
21 perpetration of this offence, as included in Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32,
22 35, 38 and 41 of the DCC;

23 Mr Bemba, pursuant to Article 70(1)(a) and Article 25(3)(b) of the Statute, solicited the
24 commission by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54,
25 D-55, D-57 and D-64, of the offence of giving false testimony when under an

1 obligation pursuant to Article 69, paragraph 1 of the Statute, to tell the truth by way
2 of directing and coordinating with the other suspects the perpetration of this offence,
3 as included in Counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37 and 40 of the DCC;
4 Mr Kilolo, pursuant to Article 70(1)(c) and Article 25(3)(a), co-perpetration, of the
5 Statute, committed, together with Mr Bemba and Mr Mangenda, the offence of
6 corruptly influencing Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29,
7 D-54, D-55, D-57 and D-64, by way of instructing them, in person or by phone, to
8 either provide false information or withhold true information during their testimony
9 in Court and by either promoting, encouraging or rewarding their testimony by way
10 of transfers of money, as included in Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39
11 and 42 of the DCC;
12 Mr Kilolo, pursuant to Article 70(1)(b) and Article 25(3)(a), co-perpetration, of the
13 Statute, committed, together with Mr Bemba and Mr Mangenda, the offence of
14 presenting false oral evidence in the knowledge that it was false, by way of
15 introducing the testimony of Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25,
16 D-26, D-29, D-54, D-55, D-57 and D-64 in the proceedings before Trial Chamber III, as
17 included in Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38 and 41 of the DCC.
18 Mr Kilolo, pursuant to Article 70(1)(a) and Article 25(3)(b) of the Statute, solicited or
19 induced the commission by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26,
20 D-29, D-54, D-55, D-57 and D-64 of the offence of giving false testimony when under
21 an obligation pursuant to Article 69, paragraph 1 of the Statute, to tell the truth, by
22 way of instructing, persuading or otherwise influencing Witnesses D-2, D-3, D-4, D-6,
23 D-13, D-15, D-23, D-25 -- to state false information or withhold true information
24 before Trial Chamber III, as included in Counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34,
25 37 and 40 of the DCC;

1 Mr Mangenda, pursuant to Article 70(1)(c) and Article 25(3)(a), co-perpetration, of the
2 Statute, committed, together with Mr Bemba and Mr Kilolo, the offence of corruptly
3 influencing Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54,
4 D-55, D-57 and D-64, by way of liaising between Mr Bemba and Mr Kilolo as well as
5 discussing and coordinating with Mr Kilolo both on money transfers and on the
6 content of their testimony by providing cellphones to witnesses and by actively
7 participating in meetings where witnesses were illicitly coached, as included in
8 Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39 and 42 of the DCC;

9 In the alternative, pursuant to Article 70(1)(c) and Article 25(3)(c) of the Statute,
10 Mr Mangenda, for the purpose of facilitating the commission of the offence, aided,
11 abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the
12 offence of corruptly influencing Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25,
13 D-26, D-29, D-54, D-55, D-57 and D-64 by way of liaising between Mr Bemba and
14 Mr Kilolo as well as discussing, coordinating with and advising Mr Kilolo both on
15 money transfers to witnesses and on the content of their testimony providing
16 cellphones to witnesses and by actively participating in meetings where witnesses
17 were illicitly coached, as included in Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39
18 and 42 of the DCC;

19 Mr Mangenda, pursuant to Article 70(1)(b) and Article 25(3)(a), co-perpetration, of the
20 Statute, committed, together with Mr Bemba and Mr Kilolo, the offence of presenting
21 false oral evidence in the knowledge that it was false, by way of introducing the
22 testimony of Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54,
23 D-55, D-57 and D-64 in the proceedings before Trial Chamber III, as included in
24 Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38 and 41 of the DCC;

25 In the alternative, pursuant to Article 70(1)(b) and Article 25(3)(c) of the Statute,

1 Mr Mangenda, for the purpose of facilitating the commission of the offence, aided,
2 abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the
3 offence of presenting false oral evidence by way of introducing the testimony of
4 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
5 D-64 in the proceedings before Trial Chamber III, by way of assisting as case manager
6 the lead counsel in the main case in introducing false testimony, regularly discussing
7 with Mr Kilolo and Mr Bemba, advising and reporting to them about the false
8 testimonies rendered by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26,
9 D-29, D-54, D-55, D-57 and D-64 before Trial Chamber III as included in Counts 2, 5, 8,
10 11, 14, 17, 20, 23, 26, 29, 32, 35, 38 and 41 of the DCC;

11 Mr Mangenda, pursuant to Article 70(1)(a) and Article 25(3)(c) of the Statute, for the
12 purpose of facilitating the commission of the offence, aided, abetted or otherwise
13 assisted in the commission by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25,
14 D-26, D-29, D-54, D-55, D-57 and D-64 of the offence of giving false testimony when
15 under an obligation pursuant to Article 69, paragraph 1 of the Statute, to tell the truth,
16 by way of actively participating in meetings where witnesses were illicitly coached,
17 by providing cellphones to witnesses and by regularly discussing with Mr Kilolo and
18 Mr Bemba, advising and reporting to them about the false testimonies rendered by
19 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
20 D-64 before Trial Chamber III, as included in Counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31,
21 34, 37 and 40 of the DCC;

22 Mr Babala, pursuant to Article 70(1)(c) and Article 25(3)(c) of the Statute, for the
23 purpose of facilitating the commission of the offence, aided, abetted or otherwise
24 assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offence
25 of corruptly influencing Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26,

1 D-29, D-54, D-55, D-57 and D-64, by way of managing and dispensing as necessary
2 and appropriate to this effect the finances at Mr Bemba's disposal, as included in
3 Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39 and 42 of the DCC;
4 Mr Babala, pursuant to Article 70(1)(b) and Article 25(3)(c) of the Statute, for the
5 purpose of facilitating the commission of the offence, aided, abetted or otherwise
6 assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence
7 of presenting false evidence through Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23,
8 D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of managing and dispensing as
9 necessary and appropriate to this effect the finances at Mr Bemba's disposal, as
10 included in Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41 of the DCC;
11 Mr Babala, pursuant to Article 70(1)(a) and Article 25(3)(c) of the Statute, for the
12 purpose of facilitating the commission of the offence, aided, abetted or otherwise
13 assisted in the commission by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25,
14 D-26, D-29, D-54, D-55, D-57 and D-64, of the offence of giving false testimony when
15 under an obligation pursuant to Article 69, paragraph 1, of the Statute, to tell the truth,
16 by way of managing and dispensing as necessary and appropriate to this effect the
17 finances at Mr Bemba's disposal, as included in Counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28,
18 31, 34, 37 and 40 of the DCC;
19 Mr Arido, pursuant to Article 70(1)(c) and Article 25(3)(a), perpetration, of the Statute,
20 committed the offence of corruptly influencing Witnesses D-2, D-3, D-4 and D-6, by
21 way of instructing them to either provide false information or withhold true
22 information during their testimony in Court and encouraging their testimony with
23 money transfers and the possibility of a relocation in Europe, as included in Counts
24 12, 15, 18 and 42 of the DCC;
25 In the alternative, pursuant to Article 70(1)(c) and Article 25(3)(c) of the Statute, for

1 the purpose of facilitating the commission of the offence, Mr Arido aided, abetted or
2 otherwise assisted the commission of the offence of corruptly influencing Witnesses
3 D-2, D-3, D-4 and D-6 by way of instructing them to falsely testify and encouraging
4 their testimony with money transfers and the possibility of a relocation in Europe, as
5 included in Counts 12, 15, 18, and 42 of the DCC;
6 Mr Arido, pursuant to Article 70(1)(b) and Article 25(3)(c) of the Statute, for the
7 purpose of facilitating the commission of the offence, aided, abetted or otherwise
8 assisted the commission, by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of
9 presenting false oral evidence by way of introducing the testimony of Witnesses D-2,
10 D-3, D-4 and D-6 in the proceedings before Trial Chamber III, by way of instructing
11 Witnesses D-2, D-3, D-4 and D-6 on the false information to provide in Court and
12 introducing them to Mr Kilolo, as included in Counts 11, 14, 17 and 41 of the DCC;
13 Mr Arido, pursuant to Article 70(1)(a) and Article 25(3)(c) of the Statute, for the
14 purpose of facilitating the commission of the offence, aided, abetted or otherwise
15 assisted in the commission by Witnesses D-2, D-3, D-4 and D-6 of the offence of
16 giving false testimony when under an obligation pursuant to Article 69, paragraph 1,
17 of the Statute, to tell the truth, by way of recruiting Witnesses D-2, D-3, D-4 and D-6,
18 instructing, persuading or otherwise influencing them, including by way of transfers
19 of money and the possibility of a relocation in Europe, to state false information or
20 withhold true information before Trial Chamber III, as included in Counts 10, 13, 16
21 and 40 of the DCC.

22 PRESIDING JUDGE SCHMITT: Thank you, court officer.

23 Now, according to Article 64(8)(a), each accused will be afforded the opportunity to
24 make an admission of guilt or to plead not guilty.

25 Mrs Taylor, could you please confirm that you have explained the nature of the

1 charges to Mr Bemba and his right to plead either guilty or not guilty to the charges.

2 MS TAYLOR: Thank you, Mr President. Yes, I have.

3 PRESIDING JUDGE SCHMITT: Thank you.

4 Mr Djunga, could you please confirm that you have explained the nature of the
5 charges to Mr Kilolo and his right to plead either guilty or not guilty to the charges.

6 MR DJUNGA: (Interpretation) Thank you, your Honour. This has been done and
7 it was even easier because Mr Kilolo himself is a lawyer.

8 PRESIDING JUDGE SCHMITT: Thank you very much.

9 Mr Gosnell, can you please confirm that you have explained the nature of the charges
10 to Mr Mangenda and his right to plead either guilty or not guilty to the charges.

11 MR GOSNELL: Mr President, I can and do confirm that.

12 PRESIDING JUDGE SCHMITT: Thank you.

13 Mr Kilenda, can you confirm that you have explained the nature of the charges to
14 Mr Babala and his right to plead either guilty or not guilty to the charges.

15 MR KILENDA: (Interpretation) Mr President, as early as his initial appearance,
16 Mr Babala said that he did not understand this case because he does not understand
17 why he is here. We have since then tried to explain to him what is the exact situation
18 and he will tell you himself a short while from now.

19 PRESIDING JUDGE SCHMITT: Mr Larochelle, can you please confirm that you
20 have explained the nature of the charges to Mr Arido and his right to plead either
21 guilty or not guilty to the charges.

22 MR LAROCHELLE: (Interpretation) Thank you, Mr President. Even though the
23 text is rather complex, we have explained to Mr Arido the nature of the charges
24 against him and he has confirmed to us that he understands them. Thank you.

25 PRESIDING JUDGE SCHMITT: Thank you.

1 Mr Bemba, please rise.

2 MR BEMBA GOMBO: (Interpretation) Yes, Mr President.

3 PRESIDING JUDGE SCHMITT: Do you understand the nature of the charges read
4 out to you today? Do you plead guilty with respect to any charge? First question,
5 do you understand the nature of the charges read out to you today?

6 MR BEMBA GOMBO: (Interpretation) I have fully understood the nature of the
7 charges and of course I plead not guilty to all the charges that have been read out
8 here.

9 PRESIDING JUDGE SCHMITT: This would have been the question that I have
10 added to all the charges. Please, be seated.

11 Mr Kilolo, please rise. Do you understand the same questions, of course, do you
12 understand the nature of the charges read out to you today?

13 MR KILOLO: (Interpretation) Yes, I do confirm that.

14 PRESIDING JUDGE SCHMITT: Do you plead guilty with respect to any of the
15 charges?

16 MR KILOLO: (Interpretation) Mr President, I plead not guilty to all of the charges
17 alleged.

18 PRESIDING JUDGE SCHMITT: Thank you. Please be seated.

19 Mr Mangenda, please rise. Do you understand the charges, the nature of the charges
20 read out to you today?

21 MR MANGENDA KABONGO: (Interpretation) Yes, your Honour, I understand
22 the nature of all the charges.

23 PRESIDING JUDGE SCHMITT: Do you plead guilty with respect to any charge?

24 MR MANGENDA KABONGO: (Interpretation) I plead not guilty to all the
25 charges.

1 PRESIDING JUDGE SCHMITT: Mr Babala, please rise. Please rise, Mr Babala.

2 Do you understand the nature of the charges read out to you today?

3 MR BABALA WANDU: (Interpretation) Yes, your Honour, I understand all the
4 charges.

5 PRESIDING JUDGE SCHMITT: Do you plead guilty with respect to any charge?

6 MR BABALA WANDU: (Interpretation) I plead not guilty. That is to all the
7 charges alleged and that have been read out. Thank you.

8 PRESIDING JUDGE SCHMITT: Thank you.

9 And finally, Mr Arido, please rise. Do you understand the nature of the charges
10 read out to you today?

11 MR ARIDO: (Interpretation) It is rather complicated, Mr President. I do admit
12 that I understand, but it is rather complex and I plead not guilty.

13 PRESIDING JUDGE SCHMITT: Not guilty with respect to all the charges?

14 MR ARIDO: (Interpretation) Yes, indeed, your Honour. From the very outset I
15 have always pleaded not guilty.

16 PRESIDING JUDGE SCHMITT: Thank you. Please be seated.

17 We will now turn to the opening statements. In the decision of the conduct of
18 proceedings, the Chamber decided that the Prosecution would start and that the
19 Defence teams would present opening statements in a collective block, either
20 immediately after the Prosecution opening statement or before the presentation of
21 any Defence evidence.

22 By way of its subsequent decision of 10 December 2015 it was decided that any
23 Defence opening statements would be presented before the presentation of any
24 Defence evidence. Accordingly, only the Prosecution will be presenting an opening
25 statement today.

1 The Prosecution informed the Chamber in filing 1275 which material it intends to use
2 today. The Bemba and Kilolo Defence had no objections to the proposed materials,
3 whereas the Babala and Arido Defence did not respond during the objection window
4 set out in the Rule 140 decision.

5 I also note that the Mangenda Defence team has objected to the Prosecution's use of
6 certain material in the opening statements, this is filing 1292 in the case record with
7 two annexes, containing communications with Kilolo in relation to which the Kilolo
8 Defence has not objected. The Mangenda Defence argues that the purpose of
9 opening statements is not to discuss the evidence in depth, but is rather only to
10 provide a preview of the evidence that will be adduced.

11 As acknowledged by the Mangenda Defence, much of the authority relied upon to
12 exclude these materials are rules from common law jurisdictions developed in the
13 context of avoiding a mistrial before a jury. Presenting an opening statement before
14 this Chamber, composed of professional Judges, is materially different. Professional
15 Judges have not to be shielded from hearing potential evidence, potential evidence, at
16 this stage of the trial. They know how to distinguish between materials used during
17 an opening statement and the evidence submitted during the trial which will be
18 discussed and analysed in depth during the hearings. Furthermore, the ICTY
19 Chamber's concern with the Prosecution's use of opening statement materials
20 stemmed primarily from unresolved admissibility objections. This Chamber has
21 expressly deferred such objections until the final judgment.

22 Under the circumstances, and in light of the submissions, I am not persuaded that the
23 Prosecution should be prohibited from playing or reading the items it wishes to use in
24 its opening statement. The Mangenda Defence objection is therefore dismissed.

25 However, it is again emphasised that referencing items in an opening statement does

1 not make them evidence in the case. These items still require formal submission for
2 them to be considered by the Chamber in its judgment.

3 It should also be noted that the Single Judge yesterday ruled by email upon the, I
4 quote, "Prosecution's urgent request for reclassification of the material intended for
5 use in the course of its opening statement," that is filing 1303, finding that the
6 Prosecution is permitted to make public reference to the requested information
7 subject to certain exceptions.

8 Prosecution, Madam Prosecutor or Mr Prosecutor, whoever wants to start, you may
9 now make your opening statement.

10 MS BENSOU DA: Thank you, Mr President.

11 Mr President, your Honours, this is a case about shielding the integrity of the Court's
12 proceedings from offences against the administration of justice. It is about ensuring
13 that public confidence and the expectations of those who look to it to establish the
14 truth and to dispense justice are preserved and strengthened.

15 It is about ensuring that no one, present or future, can pervert the course of justice in
16 ICC proceedings or to bring the administration of justice before this Court into
17 disrepute.

18 Mr President, your Honours, on 14 June 2012, the Prosecution received an anonymous
19 tip that individuals associated with Jean-Pierre Bemba Gombo's defence were
20 providing benefits to witnesses in exchange of false testimony and false documents.
21 That tip sparked an exhaustive, disciplined and judicially authorised investigation
22 spanning over a year.

23 The investigation, conducted by experienced investigators, and prosecutors, and with
24 the supervision of the Court and the cooperation of national judicial and police
25 authorities, set about gathering the facts.

1 On the resulting evidence, on 11 November 2013, the Pre-Trial Chamber of this Court
2 issued arrest warrants for Mr Bemba; his lead counsel, Mr Aimé Kilolo Musamba; his
3 case manager Mr Jean-Jacques Mangenda Kabongo; his long-time confidant,
4 Mr Fidèle Babala Wandu; and a prospective Defence witness, Mr Narcisse Arido, for
5 the offences against the administration of justice in violation of Articles 70(1)(a), (b)
6 and (c) of the Rome Statute.

7 Now, for the first time, this Court and indeed the public, including those victimised
8 by the accused's crimes, will see the results of the thorough and carefully executed
9 investigation which has led us here today.

10 Those results, the evidence in this case, will show the accused's systematic and
11 concerted efforts to thwart the ends of justice in Mr Bemba's trial for war crimes and
12 crimes against humanity.

13 We will demonstrate, on the strength of our evidence, how the accused engaged in a
14 scheme to corruptly influence witnesses, to bribe them, to encourage or induce their
15 false testimony, to coach their evidence illicitly and to present that false evidence to a
16 Chamber of this Court.

17 The Prosecution's confirmation submissions meticulously detailed the evidence in this
18 case, and its trial brief even more so.

19 That evidence includes intercepted phone calls between the accused, phone records
20 and logs from the Court's Detention Centre, call data records from private
21 telecommunications carriers, money transfer agency financial records and statements
22 from witnesses who were bribed, coached and corruptly influenced.

23 That evidence, Mr President, will show how Mr Bemba directed a plan aimed at
24 securing his acquittal through corrupt means. It will show that he issued
25 instructions to Messrs Kilolo, Mangenda and Babala to execute that plan.

1 It will show that Mr Kilolo, with Mr Mangenda's assistance, planned and scripted
2 witnesses' false evidence, and that he bribed them and presented their false evidence
3 in Court.

4 Mr President, it will show that Mr Mangenda also relayed the necessary instructions
5 and information between Mr Bemba and Mr Kilolo to carry out their plan.

6 It will show that Mr Babala ensured that the money for this scheme was made
7 available to Mr Kilolo and others to bribe the witnesses and that he participated in
8 bribing them.

9 And, Mr President, it will show that Mr Arido, their man on the ground, recruited
10 false witnesses to testify, and himself corruptly influenced witnesses.

11 The evidence the Prosecution will present in this case is uncontroversial. It was
12 collected with the Court's authorisation, with the assistance and authorisation of
13 national authorities and in accordance with the Statute.

14 Where the evidence potentially implicated attorney-client communication, the Court
15 instituted appropriate safeguards to ensure their proper screening by an independent
16 counsel accountable to the Pre-Trial Chamber.

17 The Prosecution, the Court, the independent counsel, and the national authorities
18 involved, acted at all times with integrity, professionalism and due regard for the
19 rights of the accused throughout this investigation.

20 Mr President, your Honours, truth is the foundation of justice. Its pursuit is the
21 guiding principle of my Office, which has defined the investigations of this case
22 throughout. It is the evidence that has guided us throughout and led us here
23 today - nothing more, nothing less.

24 Whatever the attempts to deflect attention away from the charges in this case, at the
25 end of the day, the hard facts remain: They will not change, they will not fade away,

1 and they will not and must not be ignored.

2 The evidence, the unassailable facts in this case, are unequivocal and, as the

3 Prosecution will prove, they point singularly to the accused's guilt.

4 Your Honours, this is a very serious case with ramifications well beyond these

5 immediate proceedings. Its importance cannot be overstated, nor can the integrity of

6 the Court's process be undervalued or left to the whims of those who resort to

7 offences against the administration of justice to escape justice.

8 This is not an attack against the Defence bar, much less against lawyer-client privilege,

9 which is fundamental to the due process and fairness of trials.

10 Against its abuse however, international criminal justice must live up to its promise,

11 and it must stand firm. The principles of fairness and justice for which this

12 institution was established have to be protected. The highest standards in the

13 administration of justice, which guide the Court's important work, and are so crucial

14 to this institution's appeal and credibility, must be preserved and protected.

15 Our decision to commence these proceedings was to ensure that those who seek to

16 pervert the course of justice before this Court are themselves brought to justice. One

17 should not derive benefits from the commission of his own crimes. And impunity

18 leads to criminality.

19 My Office remains firmly committed to investigating and prosecuting these offences,

20 using all the means at our disposal to ensure that our mandate and, indeed, the

21 crucial mandate of this Court can genuinely and effectively be realised.

22 Mr President, your Honours, following these remarks, my learned colleague,

23 Mr Kweku Vanderpuye, will now present the context in which the crimes in question

24 were allegedly committed in a more detailed outline of the evidence supporting the

25 charges.

1 Mr President, your Honours, I thank you.

2 MR VANDERPUYE: Good morning, Mr President. Good morning, your Honours.

3 Good morning, everyone. If you just bear with me a moment, I have to shift a few
4 things around. Thank you, Madam Prosecutor.

5 (Pause in proceedings)

6 MR VANDERPUYE: Thank you, Madam Prosecutor. Again, good morning
7 everyone.

8 On the evening of 12 September 2013, at 20.59 hours, while Defence Witness D-15 was
9 in the middle of his testimony, a sworn witness in the Bemba trial, Mr Kilolo called
10 him.

11 He called him using his cellphone in violation of the orders of the Trial Chamber.

12 He called him in violation of his responsibilities as a lawyer. And he called him to
13 make sure the witness got his -- he got his story straight.

14 In that call, Mr Kilolo explained to D-15 what he needed to say, specifically and
15 emphasising in detail his concern that the witness's evidence reduce the element of
16 knowledge for Mr Bemba concerning crimes allegedly committed by his forces in the
17 Central African Republic as reported by Radio France International.

18 Reports of crimes involving a commander's forces is a key element of any command
19 responsibility case. Mr Bemba's case was no different and it was central.

20 I'd like to play you an excerpt of that intercepted conversation so you can hear for
21 yourselves exactly what Mr Kilolo said and you can see for yourselves the kind of
22 evidence this case involves and what the evidence will show. For this particular clip
23 we will need to go -- we will need to apply protective measures of voice distortion.

24 THE COURT OFFICER: The protective measures are in place.

25 MR VANDERPUYE: Thank you. We can play the clip, please.

1 THE INTERPRETER: The interpreters are now going to read into the record the
2 transcriptions and translations of the audio excerpts as provided to them by the Office
3 of the Prosecutor. The same procedure shall apply to all the rest of the audio
4 excerpts. Thank you. Okay.

5 (Playing of the audio excerpt)

6 THE INTERPRETER: "For the first question, I wanted to return to RFI because you
7 were asked, 'Have you heard about the crimes and all that?' You replied, 'Yes, on
8 radio RFI. So from a legal point of view, that could -- if we leave it like that, it could
9 be awkward for us because it will create the element of knowledge. The only way of
10 quashing that is to show that what you heard was merely a -- vague rumours, nothing
11 specific. RFI never mentioned names, it never said, 'Right, a soldier named
12 so-and-so, or belonging to such-and-such a section or such-and-such a platoon, on
13 such-and-such a day, at such-and-such a time, in such-and-such a place, stole
14 such-and-such a thing belonging to such-and-such a victim.' You see? So we never
15 had any precise details. And that's why I'd like to go back over that by saying to you,
16 'Right, you've told us that you've heard this, so -- but I wanted to know what specific
17 information you heard on RFI about the crimes.' Precisely so you can answer me.
18 'No, there was no specific information. In actual fact, they were mere rumours.'
19 And then I'll ask you, 'Did they mention to you, did RFI mention a soldier's name?'
20 No. 'Did it at least mention that this soldier belonged to a platoon or a section? Did
21 it mention the name of the victim? Did it mention the property which was taken, or
22 the woman who was raped?' And so on.
23 And besides, what I'd like is for us to diminish the rumours by saying that they were
24 mere rumours of theft, of pillaging or theft. You could say but that didn't concern
25 the rape or the murders."

1 "That's right," says (Redacted).

2 AK: "Right."

3 (Redacted): "I couldn't follow the bit, I couldn't, I couldn't really follow that bit,
4 Counsel." Counsel: "I'm going to ask you, 'The rumours in question, what type of
5 crime did they concern? Did they concern the rape of women, or murders, or
6 pillaging?' I would like that to be limited to the absolute minimum by speaking
7 simply of stolen goods."

8 (Redacted): "Yes."

9 "Okay. So there we are. So, that was to mitigate the element of knowledge. That
10 was my primary concern."

11 MR VANDERPUYE: Your Honours, at the end of that call the point was not yet
12 entirely clear to D-15, so Mr Kilolo went over it again, this time a little bit more
13 explicitly. He broke it down this way: One, that the information reported by RFI
14 was vague; and two, that the RFI reports concerned only pillage, not killing and not
15 rape.

16 I'd like to play the second part of that conversation. The same protective measures
17 should apply.

18 THE COURT OFFICER: Would you like to have only the voice distortion or the
19 image and voice distortion?

20 MR VANDERPUYE: Only voice distortion, the same as -- the same as the previous.

21 THE COURT OFFICER: It is in place.

22 MR VANDERPUYE: Thank you very much. We can play this one through as well.
23 Thank you.

24 (Playing of the audio excerpt)

25 THE INTERPRETER:

1 "Counsel, the first question, the first question, could we go back over the last part
2 about the pillaged effects and so on. I didn't really follow that.

3 AK: No. Actually, the same is simply two things: To explain that RFI never gave
4 specific information. RFI gave vague information. Actually, it gave mere -- mere
5 rumours with the information that the -- well, it couldn't be used because -- the
6 information RFI gave couldn't be used because RFI never mentioned the name of a
7 perpetrator of crimes. It never mentioned the name of a victim. It never said, look:
8 'Such-and-such a crime has taken place, such-and-such property has been pillaged,'
9 and so on.

10 That's the first point to show that they were only vague rumours. Now, the second
11 point is when RFI speaks about crimes, it speaks -- it speaks about what, what crime
12 does RFI speak about in a vague way?

13 (Redacted): Yes.

14 AK: It's precisely there that I wanted to confine ourselves simply to the pillaging.

15 (Redacted): That's right.

16 AK: Mm-mm. So ...

17 (Redacted): RFI spoke of pillaging? Mm-mm.

18 AK: That's right. But not about rape of women -- not of raping women or of
19 murder.

20 RFI only spoke of pillaging.

21 AK: There you are; that's right. That's what I'm going ..."

22 MR VANDERPUYE: Collectively the accused in this case are charged with 180
23 counts of offences against the administration of justice in violation of Article 70 of the
24 Rome Statute.

25 Pre-Trial Chamber II unanimously confirmed 42 counts each for Mr Bemba, Mr Kilolo,

1 Mr Mangenda and Mr Babala, 12 counts were confirmed as against Mr Arido.
2 These only begin to reflect the scale of corruption in the Bemba trial.
3 At its core, this case is straightforward. The accused conspired to pervert the course
4 of justice in this Court and they did so, committing the charged offences as set out in
5 the Decision on the Confirmation of Charges.
6 Today, three years after the investigation of this case began, the evidence of these
7 crimes is clear and it is overwhelming.
8 But before I come to the nuts and bolts of that evidence, which I'm confident will
9 prove the accused's guilt as charged beyond any doubt, I want to underscore a couple
10 of points about the nature of this case.
11 Throughout the litigation which has finally brought this matter to trial after two years
12 since the accused's arrests, as your Honour has pointed out. This case has seen
13 repeated reference to its supposed lack of gravity, that it's not as serious as an Article
14 5 crime, and even the repudiation of the Single Judges of Pre-Trial Chamber II, his
15 characterisation of the seriousness of the alleged offences. All of this debate outside
16 the Court and even within it misses the point entirely.
17 The accused's alleged conduct is unquestionably serious in this case. It's serious by
18 definition because it undermines the fair and just adjudication of the most serious
19 crimes of international concern which is this Court's express mandate.
20 It is serious because in the Bemba case, your Honours, it has the capacity to deny
21 justice to the hundreds, if not thousands, of victims who came before this Court
22 entitled to justice, to render futile the courage of those victims who lay bare the raw
23 and brutal crimes which they undeniably endured between October 2002 and
24 March 2003 in the Central African Republic. It is serious because justice seen is
25 justice done.

1 These offences undermine the Court's mandate, they damage its integrity, they hurt
2 its credibility and they erode its standing as an institution worthy of respect.

3 These crimes threaten justice itself, not just in a single case or a single situation, but as
4 Madam Prosecutor pointed out, in every proceeding before this Court now and in the
5 future.

6 Let me also clarify and reiterate that this case is not brought against the institution of
7 criminal defence, rather the case underscores how vitally important such work is
8 carried out with honour and integrity to ensuring that true justice can be achieved at
9 this Court.

10 To be clear the five accused are here today charged before this Chamber because of
11 what they allegedly did, what the evidence will show that they did and because what
12 they did goes to the very essence of this Court's mandate, that mandate is to
13 determine the truth regarding the extremely serious crimes that come before this
14 Court.

15 This case is about justice and it's a testament to its fragility even in an institution as
16 celebrated as this one. And despite the vulnerability of the process, the case is also
17 about the Court's determination to preserve and fulfil its mandate to ensure that
18 justice is done, even in the face of individuals that are bent on undermining it. This
19 is the reason why the Office of the Prosecutor treats this case very seriously and the
20 reason why if proved, the Court cannot but do so as well.

21 I come to the evidence --

22 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, this would perhaps be a good
23 opportunity to have the break until 11.30 because you seem to start with a new point,
24 so I think we'll have a break until 11.30.

25 MR VANDERPUYE: Thank you very much, Mr President.

1 THE COURT USHER: All rise.

2 (Recess taken at 10.59 a.m.)

3 (Upon resuming in open session at 11.32 a.m.)

4 THE COURT USHER: All rise.

5 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, you can continue with your
6 opening statement.

7 MR VANDERPUYE: Thank you very much, Mr President.

8 We just turned to the evidence. What is the evidence you can expect to see in this
9 case? As the Chamber is aware, most of the Prosecution's evidence is largely
10 documentary. As the Prosecutor indicated, it contains or comprises call data records,
11 telephone network data records, records of financial transactions of money transfer
12 agencies and also court transcripts, as well as filings and other documents and
13 records. All of this evidence, your Honours, unequivocally will show the accused's
14 guilt in this case.

15 As you know, and have just heard, the accused's own words are captured in wiretaps
16 or intercepted conversations. There are well over a hundred of these intercepts.
17 These conversations provide the best insight into the criminal plan together with
18 more than a hundred conversations monitored and recorded by the Registry at the
19 ICC detention centre. That evidence too will establish unequivocally the accused's
20 guilt in this case.

21 You'll also hear from and consider the statements of witnesses involved in the
22 charged crimes. These witnesses will also prove the criminal plan, its
23 implementation and of course the accused's culpability.

24 I just want to indicate a word of caution. When these witnesses are testifying in this
25 case, they may try to minimise their own responsibility, their own conduct or have

1 done so in providing statements to avoiding incriminating themselves or protecting
2 others.

3 In regard to their evidence, you will see where the witnesses minimise their
4 involvement. On the other hand, you will also see quite clearly where their evidence
5 is corroborated and importantly where they're telling you the truth about what
6 actually happened concerning the circumstances of their testimony and of the
7 accused's conduct in relation to the evidence they gave in the Bemba trial.

8 And when you evaluate their evidence in light of the totality of the evidence in this
9 case, you will see that these witnesses unequivocally establish the accused's guilt in
10 this case.

11 By way of background, between late 2011 and 14 November 2013, the accused led by
12 Mr Bemba set upon a criminal plan to defend him in his trial for war crimes and
13 crimes against humanity committed in the Central African Republic between
14 October 2002 and March of 2003.

15 That criminal plan involved the commission of offences against the administration of
16 justice. That criminal plan resulted in the violation of Article 70(1)(a), (b) and (c) as
17 the Prosecutor as indicated and as the evidence will establish.

18 As you know, Mr Bemba was put on trial before this Court beginning 22
19 November 2010 and he was charged with two crimes against humanity, murder and
20 rape; three crimes -- three war crimes, murder, rape and pillage.

21 During the Defence case the accused each participated in a criminal plan and in their
22 various roles they implemented it. The evidence will show that for almost two years
23 prior to and during the Defence case Bemba, together with his counsel, Mr Kilolo, and
24 his case manager, Mr Mangenda, planned and executed the charged offences.

25 Without compunction and without reservation the three acted together to corruptly

1 influence the testimony of numerous Defence witnesses to solicit their evidence,
2 solicit them to lie and to misrepresent their evidence to the Trial Chamber in their
3 sworn testimony and to knowingly present that false evidence either by planting it to
4 be elicited or directly eliciting it themselves before the Trial Chamber.

5 For his part, Mr Babala helped them do it, financing their illicit activities and
6 operations, including payments to witnesses.

7 Mr Arido was the group's point man in Cameroon and he procured witnesses for the
8 Bemba Defence, some of whom were known to be altogether, altogether false. He
9 also acted corruptly to influence their prospective testimony.

10 Make no mistake, your Honours, although the accused face charges concerning 14 of
11 the just over 30 Defence witnesses, nearly half of whom were called by the Defence in
12 the Bemba trial, the charges merely reflect the Prosecution's selection of
13 representative incidents demonstrating the scope of the accused's conduct. The
14 criminal plan as conceived by the accused and confirmed by the Pre-Trial Chamber
15 which termed it an overall strategy was not confined to 14 incidents. They were but
16 its result.

17 The evidence will show that what the Bemba Trial Chamber heard sadly was not the
18 independent testimony of witnesses, but the concerted fabrications of at least 14
19 witnesses complicit in the crimes charged in this case.

20 The evidence will show that the accused implemented the common plan secretly in
21 four main ways:

22 One, by circumventing the ICC detention centre's monitoring system through the
23 abuse of the privileged line assigned to Mr Bemba to contact his lawyer confidentially.

24 They used that line to contact third parties including witnesses.

25 Two, by using third parties to transfer money to witnesses.

1 Three, by surreptitiously providing witness telephones to enable their illicit contact
2 after the VWU cut-off date and during their testimony, and

3 Four, by using coded language and expressions to conceal the criminal plan.

4 The Prosecution's pre-trial brief provides a detailed analysis of the codes used by the
5 accused and I won't repeat that, but you will have seen some codes and expressions
6 are banal, using NATO phonetic alphabet, referring to the initials of people, places,
7 things and actions.

8 For example, whiskey, which denotes the letter W in the NATO phonetic alphabet.

9 "Faire un whiskey" in the context of this case refers to a Western Union transaction.

10 Other codes were used, basic symbols to refer to money and denominations thereof.

11 For example, café, which refers to money or livre, chapitre, verset, which refer to
12 currency and denominations. You will hear some of the conversations using those
13 codes.

14 Other codes, more complex ones denote the illicit activities, the illicit coaching itself.

15 For example, "faire la couleur" or "les couleurs" those were used to refer to illicit
16 coaching and activities by the accused. "Service après-vente" literally "after- sales
17 service" was used to denote what we say in this case was to strengthen the loyalty of
18 witnesses who falsely testified in Bemba's favour. That phrase was coined by Mr
19 Babala in this case and you will hear the intercept in which he uses that term together
20 with Mr Kilolo.

21 I'd like to talk to you about the roles of the accused.

22 Mr Bemba was the main beneficiary of the criminal plan. He was at its centre. He
23 gave the key decisions. He made the key decisions, and from his cell in the ICC
24 detention centre he instructed Kilolo, Mangenda and his long-time political ally and
25 friend Mr Babala on its implementation.

1 Your Honours, Mr Bemba authorised and approved every step they took in carrying
2 out the plan. That's what the evidence will show.

3 To conceal their activities Mr Bemba circumvented the Registry detention centre
4 system, he contacted third parties, and Mr Kilolo helped him do that.

5 He contacted witnesses in this case in that manner knowing that the Registry would
6 not be monitoring those calls. That is not in dispute.

7 Mr Kilolo's confirmation submission concedes that he placed Mr Bemba in contact
8 with a third person. In this case Witness D-55. Call data records of Kilolo's phone
9 will back this up concretely as will testimonial evidence in this case.

10 Defence Witness D-55 in his January 22 statement described the circumstances of his
11 contact with Mr Bemba through Mr Kilolo.

12 The witness met Mr Kilolo in June 2012 during which -- during which time Mr Kilolo
13 suggested that D-55 recant or discredit information that he had previously given
14 about crimes allegedly committed by Mr Bemba's forces.

15 The witness was reluctant to go along, particularly since some of Mr Kilolo's
16 suggestions did not add up factually. D-55 expressed concerns for his security, but
17 Mr Kilolo assured him, and I quote this in French, (interpretation) "Bemba will treat
18 him well."

19 In October 2012, the witness told Mr Kilolo that he would not testify unless he spoke
20 to Bemba directly. So Kilolo got Bemba on the line and Mr Bemba thanked the
21 witness personally for agreeing to testify in his favour.

22 Mr Kilolo's call data records confirm the call and others made in the same manner to
23 Defence witnesses in the Bemba trial. What you have in the slide before you, your
24 Honours, now are those call data records, and they reflect several multiparty calls
25 involving calls originating from Mr Bemba in the detention centre. Among them

1 you will notice the Defence Witnesses D-51, D-19, and you will of course notice the
2 call of 5 October 2012, D-55, which is indicated.

3 In his testimony during the trial, D-55 specifically lied about his prior contact with the
4 Defence. He subsequently explained to State authorities on questioning why he did
5 this and very simply, the reason for it is that Mr Kilolo told him not to reveal this
6 information. Here you see an excerpt of that statement.

7 And what it reads, your Honours is: "Similarly, during the telephone conversation
8 with Kilolo - at the time he had just spoken with Mr Bemba - the same way as during
9 the preparatory meeting, Kilolo told him that the contact with Bemba was something
10 unusual and that it should not be revealed to the public."

11 Remember, during the course of his testimony, Mr Bemba was sitting there in court
12 and so was Mr Kilolo and so was Mr Mangenda. The evidence will show that this
13 instruction was not an aberration, instruction to tell witnesses not to reveal contacts
14 with the Defence. It was a pattern of conduct in respect of several other witnesses in
15 the Bemba trial, including D-2, D-3, D-6, D-13, D-15, D-23, D-26, D-29, D-54, D-57 and
16 D-64. All of those asked, deliberately misled the Trial Chamber about their prior
17 contact with the Bemba Defence.

18 What is clear, your Honours, and what the evidence will show is that something like
19 this doesn't just happen. Something like this is made to happen, it is deliberate and
20 in this case it was for the purpose of achieving the specific objectives of the criminal
21 plan.

22 I turn to Mr Kilolo. Mr Kilolo is a member of the Brussels Bar since 2001. He
23 became Bemba's lead counsel in 2012. He was responsible for the conduct of the
24 Bemba Defence at his trial and the presentation of all evidence in that case. His job
25 was to put Bemba's instructions into action. His conversations with Mangenda show

1 that their concern was making sure that the client got what the client wanted. In
2 reality, that did not always prove easy and in a 10 November 2013 conversation
3 between Kilolo and Mangenda, Kilolo spoke candidly about the difficulty in coaching
4 witnesses.

5 Concerning Witness D-13, Kilolo described his fatigue at having to coach the witness
6 starting from zero because the witness had apparently forgot what he was supposed
7 to say as the expected date of his testimony had been put off for a long time.

8 In the conversation he complains about Bemba's constant calls, noting that he's
9 occupied with, and I quote in French, "les couleurs," end quote, and he talks about
10 how exhausting it is to do so.

11 There you can see an excerpt of that particular conversation.

12 What he says is, at line 10:

13 Oh, our brother too, referring to Bemba, he's overdoing it, you know. Take me, for
14 example, I'm busy doing les couleurs. I'm doing it for that person because you see
15 the guy since it's been a long while, in his mind he wouldn't be -- he knew he
16 wouldn't be coming anymore, so he did -- he didn't have those things in his mind
17 anymore. So I just tried with him, just like that. Even what he -- even what he told
18 us during our meeting with Kate, he just can't anymore.

19 And he continues:

20 "So I had to start again from scratch, so it took me time...it completely wore me out."

21 Kilolo's role was both executive and operational. He was the point person dealing
22 directly with the witnesses for the group. It was his job to make sure that the
23 witnesses got the script. It was his job to make sure they understood it, and it was
24 his job to deliver, to make sure that, above all, that the witnesses stuck to the
25 contrived evidence when testifying, whether on questioning by the Defence or by the

1 Prosecution. He needed Mangenda's help to do this. He got it. And they were
2 accountable to Mr Bemba.

3 As regards D-25's, 27 August 2013 testimony, for example, in response to Kilolo's
4 inquiry, Mangenda reported Bemba's satisfaction with the results of the witness's
5 evidence remarking that the client was satisfied, and he says:

6 "... the client was satisfied, because he himself, he really saw...no, a real work of
7 couleurs had indeed been done."

8 He says in French, quote: (Interpretation) "A real work of colours has been indeed
9 done."

10 MR VANDERPUYE: Again, we see the unambiguous reference to the code
11 "couleurs" in this conversation.

12 On 30 August 2013, Kilolo talked to Mangenda about their responsibility, but
13 foremost his responsibility for, quote, "les couleurs," end quote. And what he says is
14 this:

15 "...the very important issue for me, you see, is that you should always brief me about
16 the people who appear. Why? Because, you see, like me, I'm currently doing les
17 couleurs - in other words, I'm in such a situation that when things happen over
18 there...it needs to be clear...because you see, if things go wrong, all of us...but the first
19 person is certainly me. Not just in my professional capacity, but also because, in fact,
20 les couleurs - that's also...me. So, I'm aware, that...in other words, if someone were
21 to mess up, he would mention someone's name."

22 Kilolo was the person on the ground telling witnesses exactly what to say, how to say
23 it and even why. He was the face of the criminal plan, your Honours. He was its
24 front man. But he was not on his own. The evidence will show that Kilolo
25 strategised getting the witnesses to falsely say what Bemba needed them to say

1 together with Mangenda's help.

2 The intercepted conversations are crystal clear as you will see. They leave no doubt
3 about the criminal plan and even less about the accused's culpability for the resultant
4 crimes. You will hear a bit more of that evidence in just a short while. But I move
5 to Mr Mangenda in the meantime.

6 Mr Mangenda is a lawyer by profession and he's admitted to the Kinshasa Matete Bar.
7 He was also a former staff member of this Court ,and he worked the Office of the
8 Public Counsel for the Defence, OPCD. Mangenda was Bemba's case manager until
9 his arrest in November 2013.

10 The evidence will show that Mangenda was fully engaged in carrying out the
11 criminal plan actively advising Kilolo and keeping him informed of everything he
12 needed to illicitly coach witnesses effectively.

13 Mangenda was often the go-between between Kilolo and Bemba. He relayed
14 instructions and he reported back as was necessary in order to carry out their criminal
15 plan, particularly when Mr Kilolo was in the field with witnesses.

16 For instance, in a 26 August 2013 conversation, Mangenda updated Kilolo, who was
17 not in the courtroom at the time, on whether the witness had followed the
18 instructions given him during his testimony.

19 This conversation, August -- 26 August 2013, 14.14 hours to be precise. And here is
20 what he says, in English, Kilolo:

21 "But my question now is to find out if the person followed the instructions."

22 Mangenda's answer: "...yes, yes, he followed well, he followed well." And he
23 continues in the conversation to explain why: "...il a bien suivi, il a bien suivi..."

24 There were instructions to the witnesses to tell lies. That's the first point. He calls
25 them "les enseignements".

1 Two, Mangenda knew all about them. That's how he's able to report back to
2 Mr Kilolo.

3 The evidence will show that while Mr Kilolo was not entirely satisfied because the
4 witness had failed to name and describe three CAR officers as he was supposed to
5 have done, Mangenda reassured him that were the witnesses to say something about
6 that now, and I quote, (interpretation) "That may appear to be a little bit suspect."

7 MR VANDERPUYE: (Overlapping speakers) Kilolo agreed.

8 Your Honours, that is evidence of planning and it is evidence of intent.

9 The evidence will show that Mangenda provided some of the instrumentalities used
10 by Kilolo as well to illicitly coach the witnesses.

11 For example, on 12 September 2013, at 22.49 hours to be precise, in an intercepted
12 conversation, Kilolo requested Mangenda to send him the confidential list of
13 questions provided by the two legal representatives in the case and Kilolo requested
14 that they be sent immediately before the witness went to bed.

15 Nine minutes later Mr Mangenda sent those lists on to Mr Kilolo and he sent them
16 using his private email.

17 Only 8 minutes after Mr Kilolo received those documents at 23.06, he was on the
18 phone coaching D-15 on those questions.

19 What you have in front of you now in the slide is the email that was sent by
20 Mr Mangenda to Mr Kilolo, and you can see the details there. I won't go over them,
21 but you will note that what's in there, and the attachment, is the confidential list of
22 questions from the legal representatives in the case, Douzima-Lawson and
23 Zarambaud, both referring to this Witness D-15.

24 Kilolo's use of these documents to illicitly coach D-15 was intercepted as I mentioned,
25 and one of the questions he put, one of the questions in those documents was, "Who

1 took the decision to withdraw MLC troops from the CAR? And why?"

2 Now remember, Bemba's alleged responsibility for the crimes in his trial was based

3 on the violation of Article 28 of this Statute. It is a command responsibility case.

4 This question goes to the ultimate issue of command and control in that case. And

5 what I'd like to do is to play you the intercept on this question. It will require voice

6 distortion, only voice distortion, please.

7 THE COURT OFFICER: The protective measure is in place.

8 MR VANDERPUYE: Thank you. You can play that through, please.

9 (Playing of the audio excerpt)

10 THE INTERPRETER: "And then, lastly, you're going to be asked the famous

11 question, 'Who took the decision to withdraw the MLC troops from Central Africa

12 and why?' Because what they're now saying is that Patassé didn't want the troops to

13 return to Central Africa. So, from there, they claim that Bemba wanted it; Patassé

14 didn't. Therefore, it can't have been Patassé who took that decision. It could only

15 have been Bemba. But if Bemba took that decision it means that he controlled the

16 troops in Central Africa. This is where you have to draw the distinction for them.

17 Bemba took the political decision, the political decision to take the people back. But

18 now, in order for this political decision to produce concrete results, there had to be a

19 military order which was given to Mustapha to leave the territory, and that military

20 order could only have come from the Central African hierarchy. So, that's more or

21 less it, grosso modo."

22 Witness: "I've understood you very well, very well, Counsel."

23 Counsel: "Right. I wish you good night."

24 Witness: "Good night, Counsel."

25 Counsel: "Thank you."

1 MR VANDERPUYE: The witness was in the middle of his testimony when that
2 conversation occurred.

3 The evidence will show that the legal representatives' questions regarding D-54, a
4 different witness, were used in exactly the same way to illicitly coach his evidence.

5 And in case you were wondering, the evidence will show that it was Mangenda who
6 emailed those questions to Mr Kilolo in the middle of D-54's testimony on 31

7 October 2015, just as he had done for D-15.

8 There you can see a slide of that particular email as I have just indicated and you can
9 see the attachments once again from the legal representative Douzima-Lawson and

10 Zarambaud concerning D-54.

11 By the way, the illicit coaching of D-54 on these particular questions was also
12 intercepted and you will have that evidence as well.

13 The evidence will show that Mr Mangenda distributed mobile phones to a group of
14 witnesses in Cameroon. Those phones helped ensure that the Defence could
15 maintain contact with the witnesses after their handover to the Victim Witness Unit.

16 Both Mr Kilolo and Mr Mangenda considered the timing of illicit coaching key to
17 successfully implementing Bemba's instructions and the criminal plan. Intercepted
18 conversations show that they discussed this. And you will have that evidence as
19 well.

20 On 29 August 2013, Kilolo informed Mangenda of how he has always stressed to
21 Bemba the importance of timing.

22 He says, "Actually all that ... you see now the problem that I've always told the client,
23 to do more of la couleur. One or two days before the person appears, why?

24 Because people forget ... you see? People don't remember everything in detail."

25 Mr Mangenda's response: "That's also the case."

1 Again, the evidence will show that Mr Mangenda was fully on board with the
2 criminal plan. There is no doubt about it.

3 Mr Babala is a jurist by training, a lawyer. He's a DRC parliamentarian, Bemba's
4 long-standing political ally and friend, and he helped his friend implement the
5 criminal plan.

6 The evidence will show that Mr Babala was in near daily contact with Mr Bemba
7 throughout the charged period. And while of course the two necessarily talked
8 about political affairs, they also discussed aspects of the goings on in the case itself.

9 Babala was also in contact with Mr Kilolo about the case. His function in the
10 criminal plan was as its treasurer. And his responsibility was to assure -- to ensure
11 that the money needed to carry out the plan was made available, that the
12 expenditures were authorised by Mr Bemba, and to get that money to the right people
13 at the right time.

14 The evidence, including the ICC detention centre recordings, will show that he did
15 exactly that and that he did it at Bemba's direction and on his authorisation. He
16 made payments personally and he used his driver to make them.

17 The evidence will show that Babala made several money transfers, not only to the
18 accused and other individuals involved in implementing the criminal plan such as
19 Caroline Bemba, the accused's sister, and Joachim Kokate, but that he also paid
20 Defence witnesses, including D-64, who received the money through his daughter,
21 and D-57, who received his payment through his wife.

22 Both payments, your Honours, are substantiated by Western Union records which
23 you have before you. What you have in the slide before you there is evidence of
24 those records which we will tender. And what they reflect is a payment from Mr
25 Babala to the wife of D-57 on 16 October 2012 in the amount of \$665. And then a

1 payment the next day to the daughter of D-64 by his driver in the amounts of \$200
2 and \$500 respectively.

3 Both of these payments Mr Babala had no choice but to concede as his confirmation
4 submissions do, and both of these payments are reflected in a 16 October 2012
5 detention centre recalling -- detention centre call at 19.49 hours which show that he
6 and Mr Bemba discussed these payments and that Mr Bemba authorised them.

7 Both payments, your Honours, by no coincidence the witnesses denied at trial, and
8 we can have a short look at D-64's 23 October 2004 testimony. It reads as follows:

9 "Have you ever received any payment purportedly on Mr Bemba's behalf?"

10 No, Madam Prosecutor.

11 Have you ever received any money at all in relation to this case?

12 No, Madam Prosecutor.

13 Did you receive any reimbursement in relation to travel expenses, for example, when
14 you went to meet Mr Kilolo?

15 Nothing whatsoever, Madam Prosecutor.

16 And, lastly, were any promises made to you by anyone in exchange for your
17 testimony here today?

18 No, Madam Prosecutor."

19 D-57 unsurprisingly denied receiving the payment in his 19 October 2012 testimony
20 just the same.

21 I'd like to turn to Mr Arido's role. Mr Arido is a jurist by training. He's a former
22 member of the Central African armed forces, the FACA. Although his involvement
23 in the criminal plan concerned fewer witnesses than Mr Kilolo, the differences end
24 there, because Mr Arido implemented the criminal plan in Cameroon where he
25 recruited, among others, false witnesses to testify in the Bemba trial. And the

1 evidence will show that working with Kokate and Kilolo, Arido encouraged and
2 solicited their false testimony by offering them money and making them promises
3 among other inducements.

4 He scripted false information for the witnesses to testify about concerning their
5 military service, their status, their rank, their training in full knowledge that some of
6 his recruits were never members of the FACA, let alone members of any militia
7 during the conflict period.

8 The independent evidence of P-245 and P-260, who were never FACA soldiers,
9 corroborates Arido's 23 November 2013 admission. And you'll hear the evidence of
10 P-245 and P-260 in this case.

11 The evidence will also show that Mr Arido encouraged witnesses to give false
12 evidence in Bemba's favour by suggesting the possibility of their relocation to Europe
13 as an incentive.

14 He also promised them and provided them money for the same purpose, money
15 which Mr Kilolo and Mr Bemba were behind.

16 In his 2 April 2014 statement to Prosecution investigators and in the presence of
17 counsel, D-2, that is P-245, explained the deal. Arido promised the group of
18 witnesses they would receive 10 million CFA and that they would attest -- they were
19 to testify in The Hague, but the plan changed and they were to testify from Cameroon.
20 He was unhappy about the change and complained to Mr Kilolo and told him that he
21 would no longer testify and Kilolo told him to stay calm.

22 Let's have a look at what D-2 says happens and we'll take it beginning at line 503 of
23 his statement and then we'll move to line 514.

24 He says, this is a question by the investigator:

25 "And that's when Mr Kilolo answered you ... ?" question.

1 The witness, quoting Kilolo: "It doesn't matter, calm down." End quote.

2 The witness continues: "So there you have it. And so the next day ... and so the

3 next day, he gave me the sum of 500,000 CFA I admit."

4 At line 514 he continues to explain what that money was, and he says:

5 "But to me, he gave me the sum and said it wasn't here's the term he used: 'This

6 isn't ... a bribe but a gift from Jean-Pierre Bemba.'"

7 The evidence will show that Arido's participation in the criminal plan was

8 unapologetically blatant and that it involved nearly one-third of the incidents

9 confirmed by the Pre-Trial Chamber in this case, and that is Defence Witnesses D-2,

10 D-3, D-4, and D-6.

11 As I said, the evidence in this case will show that the criminal plan involved corruptly

12 influencing Defence witnesses in three principal ways:

13 First, by illicitly coaching witnesses on what to say. You've heard some of that.

14 Second, by paying witnesses to induce, encourage or in exchange for their false

15 evidence; and

16 Third, by making promises to witnesses for these very same reasons.

17 The evidence will show that Kilolo was at the forefront implementing the plan to fix

18 the testimony of witnesses to be presented at trial. His actions were carefully

19 thought out, they were calculated, they were deliberate, risks were managed. And

20 Kilolo did not act alone or without Bemba's authority to be sure.

21 The overwhelming evidence in this case will prove that he acted corruptly to

22 influence witnesses set out in each and every charged incident in this case and that he

23 it as part of the criminal plan, which was led by Mr Bemba, of which Mr Mangenda

24 was an integral part, which Babala assisted and in which Arido was involved.

25 I now want to take you through just a bit of that evidence starting with some of the

1 intercepted communications.

2 In an 11 September 2013 intercept at 20.30 hours, Kilolo discusses with Defence

3 Witness D-15 his evidence concerning a trip that he allegedly made to Bangui during
4 the events and his observations while he was there.

5 To avoid any possible contradiction with the testimony of other witnesses in the case,
6 the main case, who were also in Bangui at the time, Kilolo instructed the witness on
7 what to testify to, specifically, that the witness say that during his visit to Bangui, he
8 only saw one liaison officer and no other officer of Bemba's forces, that is the ALC,
9 Armée de libération du Congo.

10 We'll need to go into private session for this particular -- for this particular clip and it
11 should not be broadcasted. Protective measures should apply.

12 THE COURT OFFICER: Counsel, could you please be more specific please?

13 MR VANDERPUYE: Yes. We should go into private session and at the -- the
14 particular clip should not be broadcast.

15 (Private session at 12.12 p.m.)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Open session at 12.14 p.m.)
14 THE COURT OFFICER: We're in open session, Mr President.
15 MR VANDERPUYE: Thank you. In this next intercept Kilolo goes over the specific
16 areas he will cover with the witness the following day, providing the witness with
17 details concerning the military commanders involved in the operations during the
18 October 2002 through March 2003 campaign, including that he would ask the witness
19 to write down this information in a court exhibit and sign it.
20 For this clip we should apply the protective measures of voice distortion. And I
21 would like to play that as soon as we have clearance.
22 THE COURT OFFICER: The voice distortion is in place.
23 MR VANDERPUYE: If we can please play this clip.
24 (Playing of the audio excerpt)
25 THE INTERPRETER:

1 Counsel: "All right. All right. So I'll just come with three questions tomorrow, to
2 ask you to give me the names. So that way you give me Bombayaké, Mazi and
3 Lengbé. Give me that, the names of the military leaders who were conducting the
4 command and control of the MLC troops in Central Africa. When we finish with
5 these three things ... erm ... well, you can give me like you had put, Dambi, Mazi,
6 Bombayaké and Lengbé. There was also Bemondombi who replaced Lengbé.
7 Well, what ..."

8 Witness: "Yes."

9 Counsel: "... you'll remember, you put it down on paper and you sign."

10 MR VANDERPUYE: In a continuation of this conversation Kilolo provides the
11 witness with details concerning the various commanders and it is clear from this clip,
12 as the evidence will show when you have a chance to review it, that the witness does
13 not know the information. I'd like to play this clip, which is a continuation of that
14 conversation with the same protective measures in place of voice distortion.

15 THE COURT OFFICER: It's applied.

16 MR VANDERPUYE: Thank you. If we could please proceed with this one.

17 (Playing of the audio excerpt)

18 THE INTERPRETER: "Now, in the organigram, actually, it was Mazi, Mazi was the
19 head of operations, General Mazi who was in fact the deputy chief of staff.
20 Bombayaké was the person who provided logistics. Lengbé was the coordinator of
21 the CCOP."

22 "Okay. And what did you say?"

23 "Mazi provided logistics."

24 "No. Logistics, that was the Presidential Guard, simply because all the heavy
25 weapons were conserved in containers in the Presidency of the Republic."

1 Witness: "Yes, yes."

2 Counsel: "So it's known that there was the heavy weapons of the Presidential
3 Guard."

4 Witness: "Bombayaké was" --

5 Counsel: "No. He was the chief of the Presidential Guard, the equivalent of -- what
6 was he called? Of Zimbi, you know."

7 Witness: "Yes, yes."

8 Counsel: "Bombayaké, he was the director general of the Presidential Guard, the one
9 who's supplying logistics. Sometimes he supplied the troops directly and sometimes
10 he went via the CCOP to supply them. Mazi was chief of all operations and Lengbé
11 took care of coordination at the CCOP. There was Lengbé, and when Lengbé fled,
12 he fled and then he was replaced by Bemondombi."

13 Witness: "Okay."

14 Counsel: "I think that then it's -- then you could talk about it with the Prosecutor,
15 not with me because we've already covered that. They'll find it suspicious that if
16 you don't mention these -- if you didn't mention it today but that tomorrow you are
17 go into these details with me. I prefer that you go into these details only when the
18 Prosecutor brings up the subject."

19 "Okay. Mazi, chief of operations, Bombayaké, Presidential Guard."

20 "And who carried out logistics. And Lengbé and Bemondombi in the CCOP. So
21 that's to the -- that is to say conception, planning and including intelligence."

22 Counsel: "There you have it. There you have it."

23 MR VANDERPUYE: Your Honours, I would like to briefly show you a short excerpt
24 of D-15's trial evidence. For that we will ask that voice and image distortion be
25 applied. And I just want to describe what we will do in order to save a little bit of

1 time. We'll play this clip through 1.20 and then we'll forward it to play it from 5.03
2 out because the period of time in between the witness is simply -- he's simply noting
3 certain things on a document which is not necessary for the purposes of this
4 presentation.

5 So if we can proceed with voice and image distortion, then we will play the clip for
6 you.

7 THE COURT OFFICER: The protective measures are in place.

8 MR VANDERPUYE: Thank you.

9 (Viewing of the video excerpt)

10 THE INTERPRETER: "So if you could, please take a pen and a piece of paper, and if
11 you could please write down the names of the leader - or military leaders - who were
12 commanding and ensuring oversight of the ALC contingent in the Central African
13 Republic in 2002-2003, if you could.

14 If you could just write down the names on a piece of paper."

15 "I would suggest that you put some kind of heading at the top of the page. So it's
16 clear for everybody, if you write something like 'Names of Military Leaders Who
17 Were Commanding and Ensuring Oversight Over Military Operations of the ALC
18 Unit in the Central African Republic in 2002-2003.'"

19 "The GP, Presidential Guard. I put Brigadier-General Bombayaké. I've put
20 'Commander of Operations.' 'Commander of Operations' I've put the abbreviation,
21 'COMDOPS' General Mazi. I put 'Chief CCOP,' the Chief of the Centre of
22 Coordination of Operations. And that's called the CCOP. We call it the CCOP,
23 Centre of Coordination of Operations. And then there was a time when it was
24 Colonel Lengbé. And I also put Colonel Bemondombi who had replaced Colonel
25 Lengbé when the last -- when the latter was no longer there. That's what I put on the

1 paper, Counsel."

2 "Could I ask you to date and sign the document writing your name next to it."

3 "It's done, Counsel."

4 "I just want to ask you to be so kind as to provide it to the court officer next to you."

5 MR VANDERPUYE: Your Honours, D-15 barely knew the information that was put
6 down in that organigram, only hours before as you could see from the conversation
7 he had with Mr Kilolo.

8 And in case you were wondering, that organigram was received in evidence in the
9 Bemba trial.

10 Later in the September 11th intercepted conversation that I just played, Kilolo went
11 over the issue of the languages spoken by Bemba's forces. It was a key issue in the
12 case as many victims identified the forces that perpetrated the crimes on the basis of
13 the language that they spoke.

14 In this particular clip, your Honours, we will need to apply voice distortion.

15 THE COURT OFFICER: The voice distortion is in place.

16 MR VANDERPUYE: Thank you. We'll go ahead and play it.

17 (Playing of the audio excerpt)

18 THE INTERPRETER: Counsel: "Okay. But be careful. If they come back to that
19 tomorrow, they'll ask you in which language Bemba spoke in PK12. And in any case,
20 say that you don't know. You don't have that exact information. Because since you
21 weren't there, it's too precise a detail. If you give that, it's going to look suspicious.
22 You don't know nothing about that."

23 Witness: "Yes, I don't know anything about it. Hello?"

24 Counsel: "Yes."

25 Witness: "Hello?"

- 1 Counsel: "Yes, I'm listening, yes."
- 2 Witness: "But I don't know anything about the ... the language he used."
- 3 Counsel: "Pardon?"
- 4 Witness: "Hello?"
- 5 Counsel: "Yes?"
- 6 Witness: "Hello?"
- 7 Counsel: "Yes, I'm listening."
- 8 Witness: "But I don't know anything about the language he used."
- 9 Counsel: "Now I don't understand."
- 10 Witness: "You're saying that I ... that I should say that I don't know anything about
- 11 the language he used?"
- 12 Counsel: "Yes, exactly. Affirmative; affirmative. You don't know anything about
- 13 it."
- 14 Witness: "Oh, but no -- but that -- it will look somewhat suspicious if I say I don't
- 15 know anything about it. Because, right, well ... because if I say it isn't what
- 16 [unintelligible] reported back to me --"
- 17 Counsel: "No. You can say that you don't remember. Or reply, but with a great
- 18 deal of hesitation, to show that it's a long time ago ... it's a detail you no longer have in
- 19 your mind."
- 20 Witness: "Right. If I say that he ... that he addressed the troops in Lingala, what's
- 21 the consequence?"
- 22 Counsel: "No. They might think it's a fabrication. They might think it's a
- 23 fabrication. It will take -- it'll take too long to explain why."
- 24 Witness: "A fabrication?"
- 25 Counsel: "No. In other words, they're going to think ... they're going to ... because

1 the language issue is crucial for us. If you say you remember ... they're going to have
2 the impression somebody's recently told you what to say. You see."

3 Witness: "But ... I have to ... reply to that straight away. I know..."

4 Counsel: "No, no, no. No, no. You mustn't speak about it. Only if they ask you
5 the question. But after hesitation and reflection, not spontaneously. Not too
6 quickly."

7 Witness: "Oh, all right."

8 Counsel: "Yes. Right."

9 Witness: "But anyway, I'm going to say that he spoke to them in Lingala.

10 "Of course. Lingala, but after hesitation, you know?"

11 Witness: "Yes."

12 Counsel: "Of course, he had to speak in French for the authorities who were there,
13 the Central Africans, to understand."

14 Witness --

15 MR VANDERPUYE: Your Honours, this is only a small portion of the content of
16 these communications. I mentioned earlier that there are over a hundred of these
17 recordings. But it's hardly unique in this case as the evidence will prove. And I'll
18 show you a bit of the evidence concerning D-54.

19 In the morning before D-54's second day of testimony, on 31 October 2013, at 6.46 a.m.,
20 Kilolo gave him details about the alleged perpetrators of some of the crimes
21 committed in the Central African Republic to counter Bemba's alleged responsibility.
22 The evidence will show that Kilolo told the witnesses what to say and that war crimes
23 of all kinds were committed by the Chadians aligned with General Bozizé, PK12 and
24 in Bangui.

25 He said they raped women and children in front of their families. They stole. They

1 committed murders. And he told the witness, "You'll say that it was the Chadians."

2 After D-54's first day of testimony, Kilolo told him in no uncertain terms never to
3 admit that he was coached.

4 I would like to play the following excerpt which should apply voice distortion. I
5 should just qualify that so that you're aware that this is a conversation that took place
6 in Lingala and it was translated and subtitled into French. Hopefully our colleagues
7 in the interpretation booth will be able to manage it for the Court's benefit.

8 THE COURT OFFICER: The voice distortion is applied.

9 MR VANDERPUYE: Thank you. We can go ahead and play this one through as
10 well. It's at 21.12 hours.

11 THE INTERPRETER: "And then they'll ask you, 'What language did the soldiers
12 mainly speak?' So just say --"

13 "No, never."

14 MR VANDERPUYE: The witness responds to Kilolo saying "Never, never."

15 Your Honour, I'd like to move on to the contacts because that was a key element and a
16 key element in showing how this kind of coaching could have occurred. The
17 evidence will show that in order to do this coaching that the accused had to maintain
18 contact with the witnesses, notwithstanding the Trial Chamber's

19 prohibition on unsupervised contact with witnesses following the VWU cut-off date.

20 And the evidence will show that this illicit contact between witnesses and the Defence
21 concerned the following witnesses: D-13: Kilolo's telephone records show between
22 11 November 2013, the VWU cut-off date, and 14 November 2013, he and D-13 spoke
23 at least 23 times, totalling 2.4 hours. You can see how many calls occurred during
24 the witness's testimony. In response to a question from the Presiding Judge, D-13
25 testified under solemn declaration that his last contact with the Defence dated back

1 several weeks before his testimony. The hard evidence will show that that was a
2 flat-out lie.

3 D-15: Kilolo's phone records show that between 11 July 2013, which was the VWU
4 cut-off date, and 13 September 2013, he and D-15 spoke at least 37 times totalling
5 about 6.2 hours. He testified under solemn declaration that the last contact he had
6 with the Defence was in January 2013. There you can see on your screen call after
7 call after call in September 2013, including during the course of his testimony.

8 D-23: Kilolo's telephone records show that between 16 August 2013, the VWU
9 cut-off date, and 22 August 2013, he spoke to D-23 at least eight times, totalling about
10 one and a half hours, including during the period of time of his testimony as you can
11 see in the screen in front of you.

12 D-25: Kilolo's phone records show that between 15 August 2013, the VWU cut-off
13 date for that witness, and 27 August 2013, he spoke to D-25 at least nine times,
14 totalling about an hour, including during the course of his testimony.

15 D-26: Telephone records show that between 16 August 2013, which was the VWU
16 cut-off date, and 23 August 2013, he and Kilolo spoke at least 12 times totalling more
17 than an hour, again, including during the period of time that the witness was
18 testifying.

19 D-54: Kilolo's phone records show that between 29 October 2013, the VWU cut-off
20 date, and 1 November 2013, he and D-54 spoke at least 21 times totalling over 4 hours
21 and 59 minutes. That witness later testified that his last phone contact with Kilolo
22 was two and a half months prior to his testimony. Again, the hard evidence will
23 show that this was a flat-out lie.

24 And it is no coincidence that not one of these witnesses testified truthfully about their
25 prior contacts with Kilolo or the Bemba Defence. It is also no coincidence that Kilolo

1 has never corrected the record in the Bemba trial concerning their evidence despite
2 the Code of Professional Conduct for Counsel.

3 There you see it, Article 25 provides explicitly that "Counsel shall not introduce
4 evidence which he knows -- which he or she knows to be incorrect."

5 The evidence that you've just seen and the evidence that you will see in this case was
6 not merely incorrect, your Honours, it was contrived and it was false. Here are a
7 couple of examples of what Mr Kilolo told witnesses to say about their contacts with
8 the Defence, some of whom were intercepted while the witness was still on the stand
9 testifying.

10 Kilolo wanted them to say that they only had a limited number of contacts with the
11 Defence, and he dictated each of their contacts and every answer they should provide.
12 For instance, D-15, here you can see an excerpt of an intercept at 23.55 hours, and you
13 can see clearly here in that record his reference to the first visit, the second visit, the
14 third visit and so on and so forth.

15 I'd like to have a brief look at what Kilolo went over with D-15 the night before his
16 testimony and each of the contacts he dictated that he should provide in answering
17 the questions, the three contacts that they agreed on, as opposed to the 37 contacts
18 you just saw in Kilolo's contact -- in Kilolo's call data records.

19 And I'd like to show you a short excerpt of that conversation. We'll need voice
20 distortion for this particular excerpt, please.

21 THE COURT OFFICER: The voice distortion is in place.

22 MR VANDERPUYE: Thank you. Let's play that through.

23 (Playing audio excerpt)

24 THE INTERPRETER: Counsel: "There you have it. So for me, for me, that's all.

25 So obviously they will determine, erm, the last contact you had with the Defence.

1 We can say that this year we barely -- this year you and I barely spoke, but you -- you
2 rather -- you spoke mostly to my staff. So" --

3 Witness: "Yes."

4 Counsel: "The last telephone contact, erm, between us two, we can consider it goes
5 back -- no, we won't say last year, but this year but at the start of the year. I can say
6 the last contact we had the third time was in January. So since January" --

7 Witness: "All right."

8 Counsel: -- "that makes February, March, April, May. There you have it exactly."

9 Witness: "To ask me if the Prosecutor can meet me."

10 Counsel: "Exactly. It was in January. Since then, we haven't had any contact."

11 Witness: "Yes."

12 MR VANDERPUYE: Your Honours, I'd like you to see what D-15 testified to during
13 the course of the trial. For this video excerpt we will require voice and image
14 distortion.

15 THE COURT OFFICER: The protective measures are on.

16 MR VANDERPUYE: Thank you. We'll play that through.

17 (Playing video excerpt)

18 "From today, when was the last time that you spoke with Mr Kilolo?"

19 THE INTERPRETER: Answer: "I said that it was in January of this year."

20 MR VANDERPUYE: Again, your Honours, Mr Kilolo was sitting there in court
21 when the witness gave that answer, Mr Mangenda was sitting there in court when the
22 witness gave the answer, and of course so was Mr Bemba.

23 The evidence will show that this same pattern with unrelated -- will show this same
24 pattern with unrelated defence witnesses, for example, D-2, that is recounts his
25 meeting with Kilolo in May 2013, wherein he wrote down what Mr Kilolo told him to

1 say about their prior contacts. Again, there is no connection between D-2 and D-15,
2 who you just saw.

3 This is the note that he wrote down at the time. And we've transcribed that so you
4 can get a better look at what it says.

5 What it says is it refers to a first meeting, March 2012, where he says "en compagnie
6 d'une dame Blanche" (interpretation) "the company of the white lady."

7 He indicates the second meeting with Mr Kilolo and Mr J Jacques Mangenda. And
8 he indicates here where he says "4 telephone calls at most" and a note, nota bene "Sans
9 enregistreur" (interpretation) "no recorder."

10 That particular phrase mirrors exactly what Mr Kilolo told D-15 in their 10 September
11 conversation, to say that there were no recordings, everything was done orally.

12 In his 5 November statement, 5 November 2014 statement to the Prosecution, D-2
13 explains this note. And what he says is clear. He says about Kilolo that "He
14 wanted that the phone calls, for instance, the contact that they had over the telephone,
15 among others, in the case were not part of, let's say -- the members of the Court
16 should not know that there was very close contact between him and us" -- referring to
17 the other individuals with D-2 at this meeting in May 2013.

18 Finally, on 20 August 2013 at 11.12 hours, during a court recess, while D-23 was on
19 the witness stand testifying, Kilolo called D-26, who was the next witness to testify
20 following D-23 at 3 p.m. of that day. And in the conversation that they had, that is
21 between Kilolo and D-26, he told D-26 to say that the last time they spoke to each
22 other was when he presented the witness over to the VWU.

23 The CDR from Kilolo's phone, which you just saw and which you will have before
24 you, contradicts that claim. In fact, as you may recall, it showed 12 contacts between
25 the two, between the two.

1 During the Defence case in Bemba's trial, it was no secret that witnesses' behaviour
2 was suspect during their testimonies.

3 No one knew for sure, but it was clear that something was definitely wrong,
4 something was definitely wrong.

5 Witnesses' spontaneous correction of their evidence overnight and without -- and
6 volunteering of information which suddenly appeared and consistent -- suddenly
7 appeared consistently with the testimony of other witnesses, without being asked any
8 questions was clear to everyone. It was even clear to the judges.

9 Judge Aluoch's question of D-51 -- you remember D-51 is an individual who was
10 listed in the multiparty calls from the detention centre, where Mr Bemba is in contact
11 with the witness through Mr Kilolo. D-51's questioning in 2012 October underscores
12 the point.

13 Regarding his observations when he says he was at the gendarmerie in Damara, he
14 testified that was the base of the joint forces, and in particular he claimed that he did
15 not see any dead bodies there.

16 The Judge Aluoch expressed concerns about the similarity of that witness's evidence
17 with another witness who had previously testified. In particular, the Judge noted
18 that the question posed to the witness did not elicit the response that he gave
19 concerning no dead bodies in Damara. And she continued as this:

20 "Is this evidence that has been rehearsed when you talk about joint forces, you have to
21 say that, you know, in an effort to distance the joint forces from any crimes that were
22 allegedly missed, you have to talk, you have to talk about the dead bodies. Dead
23 bodies is an issue, that they did not kill anybody. That's what I'm driving at, or is
24 this really your evidence? I just want to try -- I want you to try to explain to me,
25 because there is too much similarity and I'm just wondering whether you've

1 rehearsed this evidence or this evidence has been -- somebody has instructed you to
2 give this? I just want a clarification please."

3 And that's at transcript reference 263-RED2, English version, 26 October 2012, page 23,
4 lines 3 through 10.

5 What I would like to read to you, your Honours, and like you to see is Mr Kilolo's
6 intervention, because it's directly relevant to the charges in this case, in particular his
7 intent.

8 What he says, if I can refer you, this is transcript 263-RED2, 26 October, page 33, line 5
9 through 16, what he says, "Our concern is that when the Judge expresses an opinion
10 saying 'Perhaps you rehearsed,' I think we all know that this is a Defence witness and
11 as such this leads to the question who would have prepared him? Who would have
12 rehearsed? Insofar as we wonder in the final analysis, if ever, if ever, and I stress
13 this, if ever the professional -- professionalism of the Defence is being questioned, one
14 might wonder that the presumption of professionalism and good faith that the
15 Chamber has always mentioned whenever ambiguity has arisen, does this also hold
16 true for the Defence? So I think you can see the concern." He continues: "Perhaps
17 there was a problem with the French translation, I have no idea, but this is how it was
18 perceived and this is what the Defence heard, and we would certainly appreciate
19 being edified as to the approach being taken here with such questions. Thank you."

20 That exchange, your Honours, occurred in October 2012. In August of 2013, it was
21 clear that even members of the Defence team, including co-counsel, had their own
22 questions about what was going on. In a 28 August 2013 intercept Mangenda and
23 Kilolo discussed co-counsel's suspicions and his demand to know if the witness had
24 been re-interviewed.

25 In this conversation you can see Mr Kilolo talking to Mangenda, and what he says is:

1 Actually, you can see when he varied there.

2 And he's referring to the testimony of a witness.

3 There's something that he also said. That is referring to co-counsel.

4 And he says: He said it in a clever way. He said no, quote, the people who we've

5 seen recently and maybe we even interviewed them a second time. He put a

6 question mark. In fact, in reality he suspects us of having met with those people and

7 that we gave them the information.

8 In a separate conversation on 2 October 2013 and in reaction to co-counsel's complaint

9 about being excluded from missions conducted by the Defence, Mr Mangenda admits

10 that co-counsel is excluded from the missions because he doesn't understand the

11 usefulness of the objective of those missions is to coach witnesses.

12 Here you can see an excerpt of that particular intercept. He says: He was not in a

13 position to understand the usefulness of these trips, because the purpose of the trips

14 was to faire les couleurs.

15 Again you see the reference.

16 He continues, this is Mangenda, with respect to co-counsel, he says: It's none of his

17 business. We're the ones in charge.

18 Kilolo says: What did you say?

19 And Mangenda continues: It's none of his business. What is his problem? He

20 only needs to examine them. That's all. He only needs to examine them.

21 Kilolo says: That's right. Is the client satisfied or not? The client himself?

22 And Mangenda says: We were with the client in the courtroom. He's satisfied.

23 He's satisfied.

24 The accused's responsibility for the offences charged in this case will not only be

25 shown by the contacts, the recordings, the CDR, the witness statements, the testimony,

1 the money transfer agency records, but it will also be underscored by what they did
2 and what they said when news of the Article 70 investigation broke in October 2013.
3 But before news of that particular investigation broke in this case, it broke in the
4 Kenya Article 70 case in the Kenya situation.

5 On 2 October 2013, a warrant of arrest was issued for a suspect in that
6 investigation -- rather, that warrant was unsealed. And the same day Mr Bemba
7 called Mr Mangenda about it.

8 Bemba wanted to know whether the case concerned the vice-president of Kenya,
9 whether it would reach that level. And Mangenda reassured him that for the
10 moment it was at the level of the suspect allegedly interfering with the witness.

11 As the evidence will show Bemba was preoccupied with that Kenya Article 70
12 investigation and revisited the question in more detail with Mangenda and with Mr
13 Kilolo.

14 On 11 October Mangenda learned of the Article 70 investigation in this case from a
15 court staffer and a friend who tipped him off. He immediately informed Mr Kilolo.

16 And here is what he says as you can see in the transcript of that intercept. Starting at
17 line 29, he says, of his friend:

18 "But I'm just giving you the information ... it's up to you to interpret it as you want,
19 but I don't know, but I ask you and your brother to be careful because according to
20 the information he got," the friend, "there's currently an investigation going on, it's
21 especially targeting you and me."

22 That's Mangenda and Kilolo.

23 Kilolo responds: "Okay."

24 Mangenda continues: "That we're giving des livres to the people are coming."

25 You remember that code from early on as I described it.

1 On 16 October Kilolo told Bemba and in an intercepted conversation between Kilolo
2 and Mangenda, Kilolo described Bemba as in a state of panic.

3 To quote Kilolo in French he describes it as (Interpretation) "Fear, isn't it?"

4 With complete confidence that they had been careful enough not to be caught, the
5 evidence will show that Kilolo and Mangenda decided to take advantage of that

6 situation in order to benefit themselves. Bemba's stay provided them with an

7 opportunity to get some money out of him and they took it. They devised to tell

8 Bemba that the individuals on the Defence side had given the Prosecution

9 information about their criminal plan and they would have to be bought off.

10 They agreed to tell Bemba that the leak on the Defence side originated with the

11 Cameroonian witnesses because they believed that Bemba could not effectively check
12 that information.

13 On 17 October, Kilolo told Bemba that he had progressed in identifying these

14 informers, and he told Bemba that although the witnesses had informed on the

15 Defence to the Prosecution, referred to as, quote, "les gens de l'homonyme" in French,

16 end quote, they had not yet signed off on their statements.

17 Kilolo told Bemba that he had learned that the informants had acknowledged the

18 illicit coaching, the bribery and even knowledge of the individuals involved,

19 including Arido and D-2.

20 The evidence will show that on the same day, 17 October 2013, Bemba and Kilolo

21 discussed yet again the Kenya Article 70 case and Kilolo told Bemba, and I quote in

22 French (Interpretation) "I would not even want that ... that we come to this type of
23 things."

24 Bemba understood the situation.

25 Again, in a 17 October conversation between Mangenda and Kilolo, Mangenda

1 recounts telling Bemba that the contacts between the informers and the Prosecution
2 needed to be cut immediately because if the Prosecution were to relocate these
3 witnesses, that would be it.

4 The same day Kilolo discussed the matter with Babala and he told Babala that he had
5 identified, quote in French (interpretation) "The famous leak."

6 He was trying to see a way clear to plug that leak and referred again in that
7 conversation with Babala to the Kenya Article 70 case. Crucially Babala asked if
8 Kilolo thought that their situation was manageable.

9 Now although Kilolo's and Mangenda's stories about informers being among Defence
10 witnesses in October 2013 were entirely made up, the reactions of Mr Bemba and Mr
11 Babala were not. They were real.

12 And the evidence will show that what they said and did proves the existence of a
13 criminal plan and their direct participation in it.

14 On the news of the investigation into this case, the Article 70 case, Bemba faulted
15 Kilolo. He blamed their predicament on his failure to maintain contact with the
16 witnesses after their testimony.

17 He told Mr Kilolo to do a tour d'horizon, to work out what witnesses had said and
18 done.

19 In Kilolo's conversation the next day with Babala, it was clear that Babala understood
20 the situation and he even had a term for it, what I referred to you before as the
21 "service après-vente," the after-sales service, to ensure the witness's loyalty.

22 And what I would like to do is to play that conversation for your Honours. It
23 doesn't require any protective measures and it's October 17, 12.38 hours.

24 (Playing of the audio recording)

25 THE INTERPRETER:

1 "Yes, Aimé?"

2 Counsel: "No. I was saying that ... it's becoming really urgent now ... for the ...

3 FB: You'll have it ... you'll have it in ... before 3 p.m, it will be with you."

4 Counsel: "Okay, okay. Because now, I've come to The Hague, incidentally, to
5 have a --

6 FB: Let me ... shall I send it to Brussels or to where you are? Where are you?"

7 Counsel: "Brussels, Brussels. I'm going back shortly anyway this evening. Now,
8 I'm here simply to test the water because in the meantime, I've already managed to
9 locate the famous leak. And now, I'm looking at how it can be stopped, you know?
10 Because those people are in ... in the total chaos as regards our opponents. And so,
11 now they're looking everywhere to see if --

12 FB: If there has been weakness somewhere, you know?"

13 Counsel: "That's it. Exactly. That's more or less like it. Like they have done for
14 Kenya. I don't know ... there's a journalist who ... who's been charged there, and
15 who they're trying to arrest, simply because he's suspected of having put pressure on
16 witnesses.

17 FB: Mm-mm. Mm-mm."

18 Counsel: "Mm-mm.

19 FB: And do you think it's manageable?"

20 Counsel: "It ought to be manageable. It's a bit difficult for me at the moment
21 because actually it was another guy who denounced ... hello ... his friend, but the
22 friend in question won't ... is refusing to take my calls. Well, in my opinion maybe
23 he thinks ... that I'm annoyed or something. Now, I've gone through someone else
24 who's close to him, and he's going to see him to explain to him and tell him, "No, I'm
25 ready for us to speak as brothers to find a solution," you know?

1 FB: Okay. You'll have it by 3 p.m, you'll have it. You'll have around €2,000, right?

2 Okay, Okay. That's more or less it.

3 FB: Right. I told ... I told the client to get hold of you. But the finance side isn't his
4 problem. In any case, I know what I have to do."

5 Counsel: "All right. All right.

6 FB: Well, since I didn't have the words to explain to him, it's up to you to do so,
7 right?"

8 Counsel: "Yes, yes. Of course, of course. Of course.

9 No, I will talk to him shortly. I know he's been calling me several times, but when I
10 take that kind of call, I've always got to be very, very far from my traditional devices,
11 you know? Because the technology here is now very advanced.

12 FB: Yeah, yeah. Okay."

13 Counsel: "There we are. Okay. That's okay. If there are any developments of
14 any kind, I will keep you posted.

15 FB: Okay."

16 Counsel: "All that's simply because I insisted on ... if only ...

17 FB: I can't hear you very well now."

18 Counsel: "Okay. No, I was saying: All that simply because we failed to ... to stay
19 in permanent contact with those people, you know?

20 FB: After-sales service, right?"

21 Counsel: "Indeed. Indeed. Exactly. Just a moment.

22 FB: Oh. Right.

23 There we are. That's what was ... what was missing. And considering the
24 vulnerability, well, they're at the mercy of all the vultures.

25 FB: Mm-mm."

1 Counsel: "So, that's more or less it. But, well ... we have got no choice: We have
2 to fight on to the end to put matters right, you know?

3 FB: Yes, yes, yes. Yes, yes. Mm-mm. Mm-mm."

4 Counsel: "So, there we are. There we are. In any case, if there's anything
5 particular, I'll let you know, right?

6 FB: All right. Okay."

7 Counsel: "Okay.

8 FB: Speak to you soon."

9 Counsel: "Right. Speak to you soon."

10 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, may I politely remind you of the
11 allotted time for the opening statement.

12 MR VANDERPUYE: Yes.

13 PRESIDING JUDGE SCHMITT: So this would, if I'm not wrong, I think we are
14 nearly coming near to the two hours that have been allotted, so I would be very -- it
15 would be very nice of you if you think of that.

16 MR VANDERPUYE: I'm well aware of your instruction and I will oblige the
17 Chamber.

18 PRESIDING JUDGE SCHMITT: Yes.

19 MR VANDERPUYE: As you can see (indicating), that's all I have left.

20 PRESIDING JUDGE SCHMITT: Okay.

21 MR VANDERPUYE: Babala's understanding of the situation and the code used by
22 Mr Kilolo in this conversation, particularly the term "ami," which was referred
23 to -- which referred to witnesses in the case, shows Babala's participation in the
24 criminal plan. On 22 October, Kilolo returned to the question of la fameuse fuite, the
25 leak, with Bemba for his approval to pay off the informers and he got it.

1 The matter was to be arranged with Mr Babala.

2 In their conversation Bemba expressed serious concern that Western Union payments,
3 which he referred to as Whiskey, leave traces.

4 There you can see the excerpt of that particular intercept.

5 Bemba: "Because the problem with Whiskey now --"

6 And Kilolo interrupts him.

7 "-- as you know it, really, it's especially in situations like these, you'll certainly leave
8 traces."

9 In Kilolo's follow-up conversation with Babala, to his suggestion that a one-time
10 payment of 1,000 per person be made, Babala says this, and I quote in French
11 (interpretation) "You have to continue to provide the after-sales service. From time
12 to time a 50 and from time to time a 100. That wouldn't harm anyone."

13 The evidence will show that there was no question of the accused's involvement in
14 the criminal plan. Mangenda's 17 October conversation with Kilolo after news of the
15 Article 70 investigation broke is particularly telling. In that conversation, your
16 Honours, Kilolo tells Mangenda half-jokingly that he was sure that Bemba was
17 contemplating how he would sacrifice Kilolo and say that Kilolo acted alone without
18 his knowledge.

19 There you see the excerpt of that conversation, 17 October 2013, 16.37 hours.

20 Kilolo: "And knowing the guy as I do, I'm sure that deep down he's wondering how
21 to sacrifice me."

22 Laughing with Mangenda, he continues: "-- that I was doing it myself without his
23 knowledge."

24 What the evidence will show is that when the news broke of the Article 70
25 investigation in this case, rather than doing everything possible if it was mistaken to

1 clear things up, the accused did everything possible to cover it up.

2 There is no mistake, there is no error, there is no miscarriage of justice, just the clear
3 and overwhelming evidence as you will see.

4 It will show the existence of a criminal plan beyond any doubt, a plan in which each
5 of the accused was involved despite their varying roles as perpetrators, co-perpetrators,
6 solicitors and inducers or aiders and abettors, a plan to which each of the accused
7 contributed: Bemba, who led it; Kilolo, who helped plan it and execute it; Mangenda,
8 who together with Kilolo and Bemba assured its success; Babala, who obtained and
9 provided the necessary finances; and, of course, Narcisse Arido, who personally
10 secured crucial and false evidence for the Bemba Defence, and a plan from which
11 each of the 14 charged incidents in this case resulted.

12 All of the evidence in this case, your Honours, will leave no doubt about the
13 culpability of the accused for the crimes as charged, to be precise, 180 confirmed
14 counts of offences against the administration of justice that the accused collectively
15 face. And we are confident, your Honour, that on the evidence you will find that it
16 proves beyond any doubt the accused's guilt.

17 Your Honours, that concludes the Prosecution's opening statement and I thank you
18 for your attention and indulgence.

19 PRESIDING JUDGE SCHMITT: Thank you, Mr Vanderpuye.

20 We have reached now the end of today's hearing. We will adjourn and resume
21 tomorrow morning at 9.30 with the beginning of the presentation of the evidence by
22 the Prosecution.

23 I would like to thank the court officer, especially the interpreters for their indulgence
24 with the Presiding Judge's speaking speed, the transcribers and others in and around
25 the courtroom for their assistance.

Trial Hearing

(Open Session)

ICC-01/05-01/13

- 1 The Court is now adjourned.
- 2 THE COURT USHER: All rise.
- 3 (The hearing ends in open session at 1.06 p.m.)