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TRIAL CHAMBER VII

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU and NARCISSE ARIDO

Public Redacted Version of

Judgment pursuant to Article 74 of the Statute

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

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Trial Chamber VII ('Chamber') of the International Criminal Court ('Court' or 'ICC'), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* (collectively, 'Accused'), issues the following Judgment pursuant to Article 74 of the Rome Statute ('Statute').

I. OVERVIEW

A. PROCEDURAL HISTORY

1. On 20 November 2013, the Single Judge, acting on behalf of Pre-Trial Chamber II, issued a warrant of arrest for Jean-Pierre Bemba Gombo ('Mr Bemba'), Aimé Kilolo Musamba ('Mr Kilolo'), Jean-Jacques Mangenda Kabongo ('Mr Mangenda'), Fidèle Babala Wandu ('Mr Babala') and Narcisse Arido ('Mr Arido').[1]

2. On 23 November 2013, Mr Bemba was served with the warrant of arrest in the Court's Detention Centre, while Mr Kilolo, Mr Mangenda and Mr Arido were arrested by the authorities of the Kingdom of Belgium, the Kingdom of the Netherlands and the Republic of France, respectively. Mr Babala was arrested on 24 November 2013 by the authorities of the Democratic Republic of the Congo ('DRC'). Following their surrender to the Court, the initial appearances of Mr Bemba, Mr Kilolo and Mr Babala took place on 27 November 2013;[2] that of

[1] Pre-Trial Chamber II, Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU, and Narcisse ARIDO, 20 November 2013, ICC-01/05-01/13-1-US-Exp-tENG (registered on 22 November 2013); a public redacted version is also available, *see* Pre-Trial Chamber II, Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU, and Narcisse ARIDO, ICC-01/05-01/13-1-Red2-tENG (registered on 5 December 2013).
[2] Pre-Trial Chamber II, Transcript of Hearing, 27 November 2013, ICC-01/05-01/13-T-1-ENG CT WT.

Mr Mangenda, on 5 December 2013;[3] and, lastly, that of Mr Arido, on 20 March 2014.[4]

3. On 21 October 2014, the Single Judge, acting on behalf of Pre-Trial Chamber II, issued the 'Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido' ('21 October 2014 Decision') ordering the immediate release of Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido.[5] Following practical arrangements by the Court's Registry, they were released from detention. The Office of the Prosecutor ('Prosecution') appealed the 21 October 2014 Decision.

4. On 11 November 2014, Pre-Trial Chamber II issued its 'Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute' ('Confirmation Decision') confirming, in part, the charges against the Accused.[6]

5. On 30 January 2015, Trial Chamber VII was constituted and the case referred to it.[7]

6. On 17 August 2015, after the Appeals Chamber had reversed the 21 October 2014 Decision,[8] the Chamber ordered the continued release of Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido, subject to conditions.[9]

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[3] Pre-Trial Chamber II, Transcript of Hearing, 5 December 2013, ICC-01/05-01/13-T-3-Red2-ENG WT.
[4] Pre-Trial Chamber II, Transcript of Hearing, 20 March 2014, ICC-01/05-01/13-T-4-Red2-ENG CT WT.
[5] Pre-Trial Chamber II, Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 21 October 2014, ICC-01/05-01/13-703; Decision on the Prosecutor's "Urgent Motion for Interim Stay of the 'Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido'", 22 October 2014, ICC-01/05-01/13-711; Appeals Chamber, Decision on the Prosecutor's urgent request for suspensive effect of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" of 21 October 2014, 22 October 2014, ICC-01/05-01/13-718 (OA9).
[6] Pre-Trial Chamber II, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute ('Confirmation Decision'), 11 November 2014, ICC-01/05-01/13-749.
[7] Presidency, Decision constituting Trial Chamber VII and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, 30 January 2015, ICC-01/05-01/13-805.
[8] Appeals Chamber, Judgment on the appeals against Pre-Trial Chamber II's decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, ICC-01/05-01/13-969 (OA5, OA6, OA7, OA8, OA9).

7. On 29 September 2015, the trial commenced with the opening statements of the parties.[10] The parties presented their closing statements on 31 May 2016 and 1 June 2016.[11]

B. THE ACCUSED

8. Mr Bemba, a national of the DRC, was born on 4 November 1962 in Bokada, Équateur Province. Mr Bemba is a member of the Senate of the DRC, and President of the *Mouvement de Libération du Congo* ('MLC'). Following a warrant of arrest issued by Pre-Trial Chamber III, Mr Bemba was arrested and surrendered to the Court on 3 June 2008, where he was accused of crimes against humanity and war crimes in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case'). The trial in the Main Case was held from 22 November 2010 to 13 November 2014. Mr Bemba was convicted of the charges in the Main Case on 21 March 2016 [12] and, on 21 June 2016, sentenced to a total of 18 years imprisonment.[13] Mr Bemba remained in detention at the ICC Detention Centre during the time relevant to the charges.

9. Mr Kilolo, a national of the DRC, was born on 1 January 1972 in Kinshasa and currently resides in the Kingdom of Belgium. He was Mr Bemba's lead counsel in the Main Case at the time of his arrest. He is a lawyer by profession and has been a member of the Brussels Bar since 26 June 2001.

10. Mr Mangenda, a national of the DRC, was born on 1 October 1979 in Kinshasa and currently resides in the United Kingdom of Great Britain and Northern

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[9] Decision Regarding Interim Release, 17 August 2015, ICC-01/05-01/13-1151.
[10] Transcript of Hearing, 29 September 2015, ICC-01/05-01/13-T-10-Red-ENG WT ('T-10-Red').
[11] Transcripts of Hearing, 31 May 2016, ICC-01/05-01/13-T-48-Red-ENG WT ('T-48-Red'); 1 June 2016, ICC-01/05-01/13-T-49-Red-ENG WT ('T-49-Red'). At trial, the Chamber heard a total of 19 witnesses, including 13 witnesses called by the Prosecution, 6 witnesses called by the Defence. Throughout the trial proceedings, the Chamber issued 266written decisions and orders, and 80 oral decisions and orders.
[12] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute ('Bemba Trial Judgment'), 21 March 2016, ICC-01/05-01/08-3343.
[13] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, ICC-01/05-01/08-3399.

Ireland. He was the case manager in Mr Bemba's defence team in the Main Case until his arrest. He is a lawyer by profession and joined the Kinshasa/Matete Bar in 2004.

11. Mr Babala, a national of the DRC, was born in 1956 in Kinshasa and currently resides in the DRC. He is a close political associate of Mr Bemba and a National Assembly parliamentarian in the DRC.

12. Mr Arido, a national of the Central African Republic ('CAR'), was born on 15 May 1978 in Bangui and currently resides in France. He was a member of the CAR armed forces until at least 2001, after which he moved to Cameroon. Mr Arido was listed as a defence witness in the Main Case but ultimately did not testify.

C. CHARGES

13. In its Confirmation Decision, Pre-Trial Chamber II held that there was sufficient evidence to establish substantial grounds to believe that, between the end of 2011 and 14 November 2013, Mr Bemba, Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido committed in various locations including the Netherlands, Belgium, Sweden, Portugal, the Republic of the Congo, the DRC and Cameroon, offences against the administration of justice involving 14 witnesses who had testified on behalf of the defence in the Main Case ('Main Case Defence').[14] The charges as confirmed involve the offences of corruptly influencing witnesses, presenting false evidence and giving false testimony when under an obligation to tell the truth, within the meaning of Article 70(1)(a) to (c) of the Statute. These offences, as confirmed, were allegedly perpetrated in various ways, namely by committing (perpetration and co-perpetration), soliciting, inducing, aiding,

[14] Confirmation Decision, pp. 47-55.

abetting or otherwise assisting in their commission. Charges against Mr Arido were confirmed only in connection with four of the 14 witnesses.

II. THE APPLICABLE LAW

14. The rationale of Article 70 of the Statute is to enable the Court to discharge its mandate when adjudicating cases falling under its jurisdiction. The different sub-paragraphs of Article 70(1) of the Statute address various forms of conduct that may encroach upon the integrity and efficacy of the proceedings before the Court. In general terms, the provision encompasses two categories of offence. First, Articles 70(1)(a) to (c) of the Statute aim at protecting the reliability of the evidence presented to the Court by criminalising conduct of undue interference with the production and presentation of evidence. Second, Articles 70(1)(d) to (f) of the Statute aim at protecting the integrity of the judicial process by penalising illicit conduct involving officials of the Court.

15. Before embarking on the specific interpretation of Articles 70(1)(a) to (c) of the Statute, which is relevant to this case, the Chamber wishes to point out that Article 70 of the Statute does not require that the illicit conduct meet any 'gravity' threshold. As noted by the Prosecution,[15] Rule 163(2) of the Rules of Procedure and Evidence ('Rules') precludes the application of Article 17 of the Statute to Article 70 offences, including gravity considerations under Article 17(1)(d) of the Statute.[16] Indeed, on 27 March 2015, the Chamber indicated that considerations of 'gravity' or 'interests of justice' cannot be invoked in the context of Article 70 proceedings. It is worth recalling the Chamber's position here again: '[T]he Chamber considers that for a court of law, there is an intrinsic gravity to conducts that, if established, *may* amount to the offence of obstruction of justice (with which the accused is charged). Such

[15] Prosecution Submission on the Confirmation of Charges, ICC-01/05-01/13-597-AnxB-Red, para. 260.
[16] *See also* Decision on Arido Defence request to withdraw the charges, 27 March 2015, ICC-01/05-01/13-876, para. 9; Confirmation Decision, paras 22-23.

conducts are certainly never in the "interest of justice", and hardly will it ever be so to tolerate them. For they potentially undermine the very efficacy and efficiency of the rule of law and of the courts entrusted to administer it'.[17]

16. The Chamber will now proceed to succinctly set out its reading of the relevant applicable law, to the extent necessary. It will first set out its understanding of the *actus reus* of the offence, followed by explanations regarding the requisite *mens rea*. In accordance with Article 21 of the Statute, the Chamber will apply the Statute and the Rules in the first place. Subsidiary sources of law may be resorted to only if there is a *lacuna* in the codified law listed in Article 21(1)(a) of the Statute.[18]

17. The Chamber recalls that the interpretation of the statutory provisions is governed by the 1969 Vienna Convention on the Law of Treaties.[19] Additionally, the Chamber has, where appropriate, sought guidance from approaches developed in other (inter-)national jurisdictions in order to reach a coherent and persuasive interpretation of the Court's legal text. While those approaches are not binding on the Chamber, it may, nevertheless, refer to concepts and ideas found in other jurisdictions thus demonstrating its awareness of the broader jurisprudential corpus against which the interpretation of Article 70 of the Statute takes place.[20]

A. ARTICLE 70 OF THE STATUTE

18. The relevant part of Article 70(1) of the Statute stipulates:

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[17] Decision on Arido Defence request to withdraw the charges, 27 March 2015, ICC-01/05-01/13-876, para. 9.
[18] Bemba Trial Judgment, para. 69; Trial Chamber II, *Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute ('Katanga Trial Judgment'), 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 39.
[19] Articles 31 and 32 of the Vienna Convention on the Law of Treaties (23 May 1969), UNTS vol. 1155, p. 331 (No. 18232); Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168, para. 33.
[20] *See* Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against his conviction ('Lubanga Appeals Judgment'), 1 December 2014, ICC-01/04-01/06-3121-Red (A5), paras 470-472.

The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

(a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;

(b) Presenting evidence that the party knows is false or forged;

(c) Corruptly influencing a witness, obstructing or interfering, with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence.

1. Article 70(1)(a) of the Statute

19. Article 70(1)(a) of the Statute addresses the giving of false testimony when under an obligation, pursuant to Article 69(1) of the Statute, to tell the truth.[21] As Article 69(1) of the Statute prescribes, this obligation is incumbent upon persons who appear as witnesses before the Court and who, before commencing their testimony, 'shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given'. Rule 66(1) of

[21] To give false testimony is also prohibited in other international(-ised) jurisdictions, as illustrated by the following examples: Rule 91 of the Rules of Procedure and Evidence of the International Criminal Tribunal of the Former Yugoslavia (ICTY) states, in relevant part: '(A) A Chamber, *proprio motu* or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so. (B) If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may: (i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or (ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating proceedings for false testimony. […] (G) The maximum penalty for false testimony under solemn declaration shall be a fine of 100,000 EUR or a term of imprisonment of seven years, or both […]'. The same or similar language can be found in Rule 91 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (ICTR). Rule 91 of the Rules of Procedure of the Special Court for Sierra Leone (SCSL) reads, in relevant part: '(A) A Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so. (B) If a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, the Chamber may follow the procedure, as applicable, in Rule 77. (C) The maximum penalty for false testimony under solemn declaration shall be a fine of 2 million Leones or a term of imprisonment of 2 years, or both […]'. Rule 36 of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (ECCC) stipulates, in relevant part: '(1) The Co-Investigating Judges or the Chambers may, on their own initiative or at the request of a party, remind a witness of their duty to tell the truth and the consequences that may result from failure to do so. (2) If the Co-Investigating Judges or the Chambers have grounds for believing that a witness may have knowingly and wilfully given false testimony, they may follow the procedure, as applicable, in Rule 35(2). (3) Cambodian Law shall apply in respect of sanctions imposed for false testimony under solemn declaration'.

the Rules sets out the solemn undertaking that each witness must make.[22] Hence, the physical perpetrator of the offence is a person qualified as 'witness'.

20. A 'witness' within the meaning of Article 70(1)(a) of the Statute is a person appearing before the Court, either in person or by means of audio or video technology,[23] who attests to factual allegations according to his or her personal knowledge.[24] The term 'witness' also extends to an 'expert' witness who provides specialised knowledge on a particular question of fact or law and by doing so may give his or her opinion which need not be based on first-hand knowledge or experience.[25] While there is a distinction between ordinary witnesses and expert witnesses, this distinction does not impact the scope of Article 70(1)(a) of the Statute. Witnesses remain under oath until the end of the proceedings, regardless of whether the hearings have been adjourned.[26]

21. Following Rule 66(1) of the Rules, the witness undertakes 'to speak the truth, the whole truth and nothing but the truth'. The offence under Article 70(1)(a) of the Statute is committed when a witness intentionally affirms a false fact or negates a true fact when directly asked.[27] The same applies if the witness is not directly asked but intentionally withholds information that is true, and that is

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[22] Pursuant to Rule 66(2) of the Rules, an exception may be made for a person under the age of 18 or a person whose judgment has been impaired and who, in the opinion of the Chamber, does not understand the nature of a solemn undertaking.

[23] Article 69(2) of the Statute and Rule 67 of the Rules.

[24] *See also* Trial Chamber II, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Directions for the conduct of proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr, para. 71(a).

[25] Regulation 44 of the Regulations of the Court; Regulation 56 of the Regulations of the Registry. On the latitude of expert witnesses to offer opinions, *see* ICTY, *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.2, Appeals Chamber, Decision on Joint Defence Interlocutory Appeal Concerning the Statute of Richard Butler as an Expert Witness, 30 January 2008, para. 27; ICTR, *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Appeals Chamber, Judgement, 20 May 2005, para. 303.

[26] *See also* Trial Chamber II, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Directions for the conduct of proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr, para. 50.

[27] Confirmation Decision, para. 28; *see* also ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "R", 9 March 1998, p. 3; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Trial Chamber III, Decision on Defence Motion for Investigation of Prosecution witness Ahmed Mbonyunkiza for False Testimony, 29 December 2006, para. 6.

inseparably linked to the issues explored during questioning.[28] The Arido Defence claims that Article 70(1)(a) of the Statute encompasses only 'positive action' on the part of the witness and should not be construed to encompass the withholding of information.[29] The Chamber does not agree with such a narrow interpretation of Article 70(1)(a) of the Statute. First, the plain wording of Article 70(1)(a) of the Statute, which is drafted broadly, does not suggest such a limited reading, given that a witness's testimony is not only marked by positive action but also by omissions that are duly taken into account by a Chamber when assessing the evidence as a whole. Second, it would not accurately accord with the duty of the witness to tell the truth. As dictated by the solemn undertaking that every witness must make pursuant to Rule 66(1) of the Rules, the witness must speak the 'whole truth' which instructs him or her not to withhold relevant information. Third, a teleological interpretation of Article 70(1)(a) of the Statute also suggests the adoption of a broader understanding of how the offence can be committed. The provision penalises the witnesses' misleading of the judges in their enquiry into the facts of the case. If witnesses withhold true information, they give incomplete and partly untrue evidence, and therefore false testimony[30]. Lastly, the witness would be

[28] Confirmation Decision, para. 28. The situation is different when the witness refuses to speak altogether. Unless exceptions apply, such as Rules 74 and 75 of the Rules, the witness would be considered not to comply with the directions of the Chamber and may be subjected to sanctions for misconduct, in accordance with Article 71 of the Statute.

[29] Arido Defence Submission, ICC-01/05-01/13-978, para. 14.

[30] The Chamber notes that in several national jurisdictions the withholding of true evidence is similarly penalised, *see*, for example, **France**: the voluntary failure or hesitation to provide information *('des omissions et réticences volontaires'*) can be deemed false testimony (Crim. 29. Nov. 1951, Bull. crim. n° 329); **Germany**: the Federal Court of Justice (BGH) accepted that not volunteering information without having been questioned specifically can constitute false testimony if the information is 'inseparably linked to the evidentiary question' (unofficial translation); yet, responsibility is incurred only in case the information is relevant (BGHSt 1, 22, 23f.); **Italy**: Article 372 of the Penal Code stipulates expressly that the witness incurs criminal responsibility if he 'conceals, in whole or in part, what he knows about the facts as to which he is being questioned'; **Mexico**: Article 247*bis* of the Mexican Federal Penal Code considers as false testimony also the concealing of information that can prove the truth or falsity of the main fact of the case ('*ya sea afirmando, negando u ocultando maliciosamente la existencia de algún dato que pueda servir de prueba de la verdad o falsedad del hecho principal'*); **Slovak Republic**: Section 346 of the Slovak Criminal Code stipulates that the offence of false testimony is fulfilled if the witness conceals circumstances of significant importance; **Switzerland**: incomplete testimony is considered false, in particular when it perceivably leads to a distorted factual finding or an inadequate assessment of the facts (BSK Strafrecht II-*Delnon/Rüdy*, Art 307 N 23).

responsible under Article 70(1)(a) of the Statute even if he or she did not give objectively false testimony but only a partially truthful account. Here again, assuming that the witness acted intentionally, he or she would not be giving the whole truth.

22. The Statute does not specify which kinds of false testimony fall under Article 70(1)(a) of the Statute. Considering that witnesses make statements on a plethora of issues during their testimony, the Chamber holds that not *all* information can trigger the applicability of Article 70(1)(a) of the Statute; rather, only such information as is 'material'. It is noted that certain national jurisdictions have such a requirement.[31] The Chamber understands 'materiality' to pertain to any information that has an impact on the assessment of the facts relevant to the case or the assessment of the credibility of witnesses. In relation to the latter point, the Chamber considers information such as (i) prior contacts with the calling party and the contents of such contacts; (ii) receipt of telephone calls and/or payments of money by the calling party and/or their associates, regardless of their purpose; (iii) meetings with other prospective witnesses; (iv) acquaintance with the accused or other persons associated with them; and (v) the making of promises to the witness in exchange for his or her testimony[32] to be of crucial importance when assessing the credibility of witnesses. Indeed, such questions, especially when put by the non-calling party, provide indispensable information and are deliberately put to witnesses with a view to

[31] *See*, for example, **France** and **Italy**: according to French and Italian case-law it is required that the false testimony relates to a matter 'material' to the case (Crim. 30. avr. 1954, Bull. crim. n° 147; Crim. 11 déc. 1957, Bull. crim. n° 827; Cass., Sez. VI, 15 maggio 1991, Morabito, CED 187453, RP 1992, 43 (mot.)); **United Kingdom**, **Nigeria, Slovak Republic** and **United States of America**: 'materiality' is set out explicitly in the applicable law (*see* Section 1 of the Perjury Act, 1911; Section 117(1) of the Nigerian Criminal Code; Section 346(1) of the Slovak Criminal Code; 18 USC s. 1621). Conversely, no such requirement is recognized in **Germany, Canada or Switzerland** (*see*, for example, in Germany, BGH NStZ 1982, 464; Canada, *R. v. Prashad*, 191 O.A.C. 86 (Ont. C.A.); Switzerland, Articles 306 and 307 of the Penal Code, according to which false testimony must relate to the facts of the case ('*sur les faits de la cause'*) and, thus, the facts of the case at large (*Trechsel/Affolter-Eijsten*, StGB PK, Art. 307 N 13. However, it is noted that Article 307(3) of the Swiss Penal Code provides for lesser punishment in cases where the testimony is objectively and *a priori* incapable of influencing the decision of the judge, *Trechsel/Affolter-Eijsten*, StGB PK, Art. 307 N 30).

[32] Confirmation Decision, para. 64.

testing their credibility. If the Judges are not furnished with genuine information, they will not be able to assess duly the credibility of the witnesses.

23. However, contrary to what the Mangenda Defence avers,[33] there is no requirement that the false testimony be material 'to the outcome of the case', either in favour of or against the accused. Firstly, no indication can be found in the wording of Article 70(1)(a) of the Statute of such an additional requirement. Secondly, in the Chamber's view the purpose of Article 70(1)(a) of the Statute contradicts such an interpretation as the administration of justice is already tainted if false evidence is introduced into the proceedings thus tainting the Judges' inquiry into the facts and deliberations take place on the basis of false evidence. Thirdly, this criterion would require that the Judges determine in their deliberations whether or not the false testimony is decisive for the outcome of the case. The unreasonable result of this would be that only at this later point would it become apparent that an offence had been committed. Furthermore, such a narrow approach would also not accord with the purpose of Article 70(1)(a) of the Statute as it would allow lying witnesses to escape responsibility simply because their testimony was not 'material to the outcome of the case'. It is also noteworthy that many national jurisdictions with materiality requirements likewise do not interpret 'materiality' so restrictively.[34]

24. The evidence given by the witness must be 'false'. The term 'false' appears in Articles 70(1)(a) and (b), and 84(1)(b) of the Statute but is not further defined. The Oxford Dictionary defines 'false' as something 'not according with truth or

[33] Mangenda Defence Submission, ICC-01/05-01/13-974, paras 5-9.
[34] For example, **Italian** and **French** jurisprudence requires that the testimony is able to influence – *in abstracto* – the decision of the judge (Italy, Cass., Sez. VI, 15 maggio 1991, Morabito, CED 187453, RP 1992, 43 (mot.); France, Crim. 30. avr. 1954, Bull. crim. n° 147); French case-law clarifies that the testimony must concern the essential circumstances of the offence (Crim. 11 déc. 1957, Bull. crim. n° 827). Also, in the **United Kingdom** 'material' is understood to mean significant or important (*Mallet* [1978] 1 WLR 820), although it need not be crucial to the outcome of the case (*Millward* [1985] QB 519).

fact; incorrect'.[35] In the context of Article 70(1)(a) of the Statute, this means that the witness does not comply with the duty to tell the truth and makes an objectively untrue statement, thereby misleading the Court.[36] Differentiating between giving incoherent, mistaken or inconsistent evidence on the one hand, and 'false testimony' within the meaning of Article 70(1)(a) of the Statute on the other hand, can sometimes be difficult. While the former is typically assessed in the context of a witness's credibility, the latter allows investigatory and prosecutorial measures against the witness. This assessment is case-specific and cannot be determined in the abstract.[37] By setting a boundary for false testimony, it may be possible to ascertain whether the witness acted *intentionally*.[38]

25. The Arido Defence submits that to determine falsity against the evidentiary threshold of 'beyond reasonable doubt' in an 'objective way', the Chamber cannot rely solely on the evidence of the witness who claims to have lied under

[35] Oxford Dictionaries, 'False', available at: https://en.oxforddictionaries.com/definition/false (last visited 19 October 2016).

[36] National courts equally take an objective approach when interpreting the notion 'false' *see*, for example, **Germany** (§§ 153, 154 StGB; BGH NJW 1955, 430); **France** (*Garçon*, Code penal annoté, 1re éd., tome I, 1901-1906, tome II, 1911, tome III, 1930, art. 361 à 364, n°84 et s. (ancient article 434-13 du code pénal)); and **Canada** (Section 131 of the Criminal Code). For a different approach see, for example, the **United States of America**, where 18 USC s. 1621 criminalises the making of statements regardless of their objective truthfulness: 'Whoever (…) subscribes any material matter *which he does not believe to be true*' (emphasis added).

[37] In the Court's practice, there have been instances where the giving of inconsistent evidence has not resulted in triggering Article 70(1)(a) proceedings. *For example*, Trial Chamber II in the *Katanga and Ngudjolo* Case determined that inconsistencies in P-279's testimony as regards his age related to the credibility of his testimony and not to the belief that he intentionally lied to the Court; *see* Trial Chamber II, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of Hearing, 22 September 2010, ICC-01/04-01/07-T-190-Red-ENG WT, p. 5, lines 5-10 ('If there is a doubt on the reliability of testimony, whether it relates to uncertainty about age of the witness cannot, in any way, be sufficient to constitute false testimony, and the inconsistencies that could be identified in a testimony cannot also constitute false testimony'); *similarly* Trial Chamber III held in the Main Case that contradictions in the witness's testimony would be analysed in the context of assessing his credibility and did not see sufficient indicia to support an inference of false testimony; *see* Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of 'Decision on the Defence application concerning Witness CAR-OTP-WWWW-0042's evidence' of 10 October 2013, 16 October 2013, ICC-01/05-01/08-2830-Red, paras 18-19. *Similarly*, for example, ICTR, *Prosecutor v. Simba*, Case No. ICTR-01-76-A, Appeals Chamber, Judgement ('Simba Appeals Judgment'), 27 November 2007, para. 32 ('The Appeals Chamber stresses that the mere existence of discrepancies between a witness's testimony and his earlier statements does not constitute strong grounds for believing that a witness may have knowingly and wilfully given false testimony').

[38] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of 'Decision on the Defence application concerning Witness CAR-OTP-WWWW-0042's evidence' of 10 October 2013, 16 October 2013, ICC-01/05-01/08-2830-Red, para. 17.

oath; rather, corroboration is needed.[39] The Chamber is of the view that the question to what extent corroboration is needed is a matter of assessing the evidence and cannot be ruled upon in the abstract. Suffice it to say that a conviction under Article 70(1)(a) of the Statute may not be based solely and mainly on untested evidence, such as a mere allegation by a witness whom the accused has not been able to question at any stage of the proceedings.[40] Rather, a finding on the falsity of the testimony must be informed by a variety of evidentiary items, including the witness's own admission that is ultimately assessed within the entirety of the evidence.[41]

26. The *chapeau* of Article 70(1) of the Statute prescribes that all offences under its sub-paragraphs must be committed 'intentionally'. Hence, the physical perpetrator under Article 70(1)(a) of the Statute must have 'intentionally' committed the offence of testifying falsely. Article 30 of the Statute, which is applicable by dint of Rule 163(1) of the Rules,[42] defines, in principle, the requisite *mens rea*.[43]

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[39] Arido Defence Submission, ICC-01/05-01/13-978, paras 17 and 20.

[40] Instructive on this point, *see* European Court for Human Rights ('ECtHR'), *Dimović v. Serbia*, Application no. 24463/11, Judgment, 28 June 2016, paras 34-40; *Poletan and Azirovik v. The Former Yugoslav Republic of Macedonia*, Application no. 26711/07, 32786/10 and 34278/10, Judgment, 12 May 2016, paras 81-83; *Solakov v. The Former Yugoslav Republic of Macedonia*, Application no. 47023/99, Judgment, 31 October 2001, para. 57; *A.M. v. Italy*, Application no. 37019/97, Judgment, 14 December 1999, para. 25; *Saïdi v. France*, Application no. 14647/89, Judgment, 20 September 1993, paras 43-44; *Unterpertinger v. Austria*, Application no. 9120/80, Judgment, 24 November 1986, paras 31-33.

[41] *See also* ICTY, *Prosecutor v. Haraqija and Morina*, Case No. IT-04-84-R77.4, Trial Chamber I, Judgement on Allegations of Contempt ('Haraqija and Morina Trial Judgment'), 17 December 2008, para. 23; *Prosecutor v. Prlić et al.,* Case No. IT-04-74-AR73.6, Appeals Chamber, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007, para. 53. However, in the above-mentioned *Haraqija and Morina Trial Judgment*, the Trial Chamber also held, following the case-law of the ECtHR, that '[t]he mere existence of corroborating evidence, however, does not preclude a conviction from being based to a decisive extent on untested evidence. The issue is not one of quantity, but of quality; in other words, how much importance was attached to the corroborating evidence in convicting the accused'; *ibid.*, para. 24. This Chamber agrees with such an approach.

[42] Rule 163(1) of the Rules reads: 'Unless otherwise provided in sub-rules 2 and 3, rule 162 and rules 164 to 169, the Statute and the Rules shall apply *mutatis mutandis* to the Court's investigation, prosecution and punishment of offences defined in article 70'. This includes Part III of the Statute entitled 'General Principles of Criminal Law'.

[43] *See also* Pre-Trial Chamber II, *Prosecutor v. Paul Gicheru and Philip Kipkoech Bett*, Decision on the "Prosecution's Application under Article 58(1) of the Rome Statute", 10 September 2015, ICC-01/09-01/15-1-Red, para. 20 (the unredacted version of the decision was registered on 10 March 2015).

27. Article 30(1) of the Statute establishes that the material elements of a crime – and in this case of an offence – must be committed with 'intent' and 'knowledge'. Article 30(2) of the Statute defines 'intent' as follows:

> For the purpose of this article, a person has intent where:
>
> (a) In relation to conduct, that person means to engage in the conduct
>
> (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

28. Article 30(3) of the Statute defines 'knowledge' as follows:

> For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

29. Following the terms 'intent' and 'knowledge' as referred to in Article 30(2) and (3) of the Statute, the Chamber understands the notion 'intentionally' within the meaning of Article 70(1)(a) of the Statute to embrace *dolus directus* in the first degree (direct intent) and second degree (oblique intent). *Dolus directus* in the first degree requires that the witness knows that his or her acts or omissions will bring about the material elements of the offence, *viz*. false testimony, with the purposeful will (intent) or desire to bring about those material elements of the offence.[44] In this case the volitional element is prevalent over the cognitive element. *Dolus directus* in the second degree requires that the witness does not need to have the will (intent) or desire to bring about the material elements of the offence, *viz*. false testimony. Rather, he or she is aware that those elements will be the almost inevitable outcome of his or her acts or omissions, *i.e.* the witness 'is aware that [the consequence] will occur in the ordinary course of

[44] Katanga Trial Judgment, para. 774; Pre-Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges ('Lubanga Confirmation Decision'), 29 January 2007, ICC-01/04-01/06-803-tENG, para. 351; Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo ('Bemba Confirmation Decision'), 15 June 2009, ICC-01/05-01/08-424, para. 358.

events', as described in Article 30(2)(b) and 30(3) of the Statute.[45] In this case, the cognitive element overrides the volitional element, *i.e.* the witness's awareness that his or her acts or omissions 'will' cause the undesired proscribed consequence.[46] The Chamber agrees with previous rulings interpreting the words 'will occur in the ordinary course of events' as requiring 'virtual certainty'.[47] This standard implies that 'the consequence will follow, barring an unforeseen or unexpected intervention that prevent this occurrence'.[48] Accordingly, any lower *mens rea* threshold, such as *dolus eventualis*, recklessness and negligence, is insufficient to establish the offence under Article 70(1)(a) of the Statute.[49]

30. The Defence in this case argue that in addition to the requirement that the offence be committed intentionally, it must also be committed with *special intent* to interfere with the administration of justice and thereby cause harm. The Kilolo Defence and the Arido Defence both argue that the accused must deliberately aim at harming the administration of justice.[50] The Mangenda Defence proposes that the offence under Article 70(1)(a) of the Statute embraces the special intent element, namely the 'wilful intent on the part of the

[45] The relevant part of the French version of Article 30(2)(b) of the Statute reads: '*ou est consciente que celle-ci adviendra dans le cours normal des événements*'.
[46] Katanga Trial Judgment, para. 775; Lubanga Confirmation Decision, para. 352(i); Bemba Confirmation Decision, para. 359.
[47] Lubanga Appeals Judgment, para. 447; Katanga Trial Judgment, para. 776; Bemba Confirmation Decision, para. 362-369.
[48] Bemba Confirmation Decision, para. 362; Katanga Trial Judgment, para. 777.
[49] Lubanga Appeals Judgment, para. 449; Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute ('Lubanga Trial Judgment'), 14 March 2012, ICC-01/04-01/06-2842, para. 1011; Katanga Trial Judgment, paras 775-776; Bemba Confirmation Decision, paras 363-369; Pre-Trial Chamber II, *Prosecutor v. William Samoei Ruto, Henry Kiprono Koshey and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute ('Ruto et al. Confirmation Decision'), 23 January 2012, ICC-01/09-01/11-373, para. 335.
[50] Kilolo Defence Submission, ICC-01/05-01/13-979-Red, para. 15; Arido Defence Submission, ICC-01/05-01/13-978, para. 52; Arido Defence Closing Statements, T-49-Red, p. 105, lines 4-7, referring to ICTR, Simba Appeals Judgment, para. 31, footnote 68; *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Trial Chamber I, Judgement and Sentence, 6 December 1999, para. 20 ('The chamber reaffirms its position that false testimony is a deliberate offence which requires willful intent on the part of the perpetrator to mislead the judge *and thus to cause harm*' - emphasis added).

perpetrator to mislead the judge and thus cause harm'.[51] The Defence's argumentation appears to be influenced by the early jurisprudence of the *ad hoc* tribunals that posited this requirement, albeit without any further discussion.[52]

31. The Chamber does not find support in the relevant statutory provisions to introduce a '*special intent*' element into the Article 70 offences, and Article 70(1)(a) of the Statute, in particular. This conclusion is consistent with the express language set out in Article 30(1) of the Statute, where this standard mental element applies, 'unless otherwise provided'.[53] As argued by the Prosecution,[54] the statutory provisions relevant to this case do not encompass any additional evidential requirement that the administration of justice be 'harmed' or that the offence be committed to interfere with the administration of justice. The offences are of conduct and the harm is captured in the illicit and deliberate conduct of the perpetrator to tamper with the reliability of the evidence. It is an obvious consequence of the acts committed under Articles 70(1)(a) to (c) of the Statute that the administration of justice is interfered with and thereby harmed.[55] In the case of false testimony, it suffices that the witness knowingly and wilfully testified falsely before the Court.[56]

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[51] Mangenda Defence Submission, ICC-01/05-01/13-974, para. 21.
[52] *See* ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False testimony by Witness "R", 9 March 1998, p. 3.
[53] Where the Statute establishes a special intent element, it is expressly provided for, *see*, for example, the *chapeau* of Article 6 of the Statute ('with intent to destroy'); Articles 7(1)(g) and (2)(f) of the Statute ('with the intent of affecting the ethnic composition'); or Articles 7(1)(i) and (2)(i) of the Statute ('with the intention of removing them from the protection of the law').
[54] Document Containing the Charges, ICC-01/05-01/13-597-AnxB-Red, para. 261.
[55] ICTY, *Prosecutor v. Hartmann*, Case No. IT-02-54-R77.5, Specially Appointed Chamber, Judgment on Allegations of Contempt, 14 September 2009, para. 53.
[56] *Similarly*, national laws do not require the existence of special intent, such as in **Italy** (Cass., Sez. VI, 2 marzo 1981, Donnini, Ced 149380, RP 1982, 90 (m)); and the **Slovak Republic** (Section 346(3)(b) of the Slovak Criminal Code). For a different approach, *see* **Canada** (Section 131 of the Criminal Code which requires '*intent to mislead*').

2. Article 70(1)(b) of the Statute

32. Article 70(1)(b) of the Statute protects the integrity of the proceedings and reliability of the evidence insofar as the parties introducing evidence may not present evidence knowing it to be false or forged. The physical perpetrator of this offence is at first someone who is considered a 'party' to the proceedings.

33. The Chamber observes that the term 'party' appears in the English and Arabic[57] versions, but not in the other four authentic versions of the Statute.[58] With a view to reconciling the divergent authentic wordings of one and the same statutory provision,[59] the Chamber is of the view that the norm is to be construed in its context. Bearing in mind that, under the Statute, evidence can only be presented by participants entitled to introduce it in Court proceedings, the Chamber is satisfied that the provision, in all authentic versions, must be understood as being addressed to those who have the right to present evidence to a chamber in the course of proceedings before the Court.

34. The right to present evidence pertains (at least) to the Prosecution and the Defence alike.[60] The Prosecution and the Defence in a given case are typically represented by teams, composed of numerous individuals who serve different functions in representing the entity or individual with which or whom they are affiliated. With respect to the Defence, the Chamber finds that the term 'party' covers all members of the Defence team that are charged, individually or jointly, with the accused's representation, including the presentation of evidence. When

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[57] The Arabic version of Article 70(1)(b) of the Statute reads: تقديم أدلة يعرف الطرف أنها زائفة أو مزورة؛ .

[58] The French version of Article 70(1)(b) of the Statute reads: '*Production d'éléments de preuve faux ou falsifiés en connaissance de cause*'; the Spanish version of Article 70(1)(b) of the Statute reads: '*Presentar pruebas a sabiendas de que son falsas o han sido falsificadas*'; the Russian version of Article 70(1)(b) of the Statute reads: 'представление заведомо ложных или сфальсифицированных доказательств'; the Chinese version of Article 70(1)(b) of the Statute reads: '提出自己明知是不实的或伪造的证据'.

[59] *See* Article 33(4) of the 1969 Vienna Convention on the Law of Treaties.

[60] Under the statutory regime, victims' legal representatives or States representatives may also have the right, under certain conditions, to present evidence. However, since the facts of the case do not relate to victims' legal representatives or States representatives, the Chamber refrains from interpreting the provision beyond what is necessary to be discussed in the present case.

assessing whether a given person meets this requirement, the Chamber does not deem it appropriate merely to pay regard to his or her formal job title. Rather, it is the Chamber's view that it must assess the *actual* role of the member of the Defence team in the specific circumstances of the case. The Chamber therefore understands 'party' to relate to any member of the Defence team who is either formally authorised to present evidence or who, *de facto*, plays a significant role in the Defence team's decisions on the strategy of the accused's representation, including the presentation of evidence. This encompasses (i) (lead) counsel for the defence,[61] associate counsel[62] and assistant to counsel;[63] and (ii) any other person, regardless of his or her job title, who is of equal functional importance to the Defence team as any of its aforementioned members.

35. The Bemba Defence claims that Article 70(1)(b) of the Statute is inapplicable *vis-à-vis* the accused as the accused (in this case Mr Bemba) has neither the right to address the Court, nor to tender evidence.[64] The Chamber cannot accept the argumentation of the Bemba Defence for the following reasons. As a matter of law, the Statute entitles the accused to address the Court at any given stage of the proceedings, either in person or through counsel.[65] By the same token, the accused may present evidence, either in person or through counsel, if he or she chooses to do so. The most prominent among the statutory provisions is Article 67(1) of the Statute which sets out the minimum guarantees accorded to the accused personally and at any given stage of the proceedings. In particular Article 67(1)(e), second sentence, of the Statute stipulates that the *accused* is entitled 'to raise defences and to present other evidence admissible under this Statute'. Article 61(6)(c) of the Statute equally determines that the '*person*' may

[61] Rule 22 of the Rules; Regulation 67 of the Regulations of the Court.
[62] Regulation 67(1) of the Regulations of the Court.
[63] Regulation 68 of the Regulations of the Court; Regulation 124 of the Regulations of the Registry.
[64] Bemba Defence Closing Statements, T-48-Red, p. 46, lines 14-18.
[65] Article 67(1)(d) of the Statute entitles the accused to 'conduct the defence in person or through legal assistance of the accused's choosing'.

'present evidence' at the confirmation stage. Rule 149 of the Rules provides that the 'rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber', transposing the accused's statutory right to present evidence at the appellate stage. Against the backdrop of these provisions, the Chamber concludes that the accused is permitted under the Statute to present evidence him- or herself.

36. The case-law cited by the Bemba Defence[66] does not support the allegation that the accused is not a 'party' within the meaning of Article 70(1)(b) of the Statute. Irrespective of whether counsel is obliged to consult his or her client before taking action in court, the accused is still entitled to present evidence him- or herself.

37. The clarification in the provisions of the English and Arabic versions of the Statute also makes clear that the offence can only be committed by the 'presenting' party.

38. The Chamber understands the reference to the generic term 'evidence', absent any further specification, to encompass all types of evidence, including oral testimony, which seeks to prove a particular factual allegation.[67] This is supported by the ordinary meaning of the term. The Oxford Dictionary defines 'evidence' as any 'information drawn from personal testimony, a document, or a material object, used to establish facts in a legal investigation or admissible as testimony in a law court'.[68] The Chamber also takes into consideration the context in which the notion is used in other statutory provisions.

[66] Bemba Defence Closing Statements, T-48-Red, p. 47, lines 2-5; ICTY, *Prosecutor v. Blagojević*, Case No. IT-02-60-AR73.4, Appeals Chamber, Public and Redacted Reasons for Decision on appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003.
[67] Confirmation Decision, para. 29.
[68] Oxford Dictionaries, 'Evidence', available at: https://en.oxforddictionaries.com/definition/evidence (last visited 19 October 2016).

Articles 61(3)(b), first sentence, 61(6)(c), and (7), 64(6)(d), (8)(b) and (9)(a) of the Statute use the term 'evidence' in a generic fashion without differentiating further between types of evidence. Other provisions highlight oral testimony but place this type of evidence on a par with other evidence. The first sentence of Article 67(1)(e) of the Statute singles out the accused's right to examine and to obtain the attendance and examination of witnesses on his or her behalf but adds, in the second sentence, that the accused may present 'other evidence', thereby equating testimonial evidence with other types of evidence. Articles 65(1)(c)(iii) and 65(4)(a) of the Statute clearly embrace testimonial evidence under the generic term 'evidence' by mentioning it as an example.[69] Likewise, Article 64(6)(b) of the Statute stipulates that the Trial Chamber may 'require the attendance and testimony of witnesses and production of documents and other evidence'. Here again, testimonial evidence and documentary evidence are placed on an equal footing with other types of evidence. The Chamber deduces therefrom that the Statute uses the term 'evidence', if not further specified, in the most generic fashion, embracing all types of evidence. This all-inclusive interpretation also accords with the aim of Article 70(1)(b) of the Statute to protect the integrity of the proceedings and reliability of the evidence.

39. The evidence must be 'false' or 'forged'. The term 'false' is defined in the same manner as in Article 70(1)(a) of the Statute and describes something as being objectively incorrect and not according with truth or fact.[70] In addition to Article 70(1)(b), the term 'forged' also appears in Article 84(1)(b) of the Statute. It

[69] Article 65(1)(c)(iii) of the Statute reads: 'Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether: […] (c) The admission of guilt is supported by the facts of the case that are contained in: […] (iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused'. Article 65(4)(a) of the Statute stipulates: 'Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may: (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses'.
[70] *See* para. 24.

is defined in the Oxford Dictionary as 'copied fraudulently; fake'.[71] It follows that the term 'forged' can only relate to tangible objects, such as documents, that are fraudulently imitated or manipulated to state something untruthful. Conversely, oral testimony is spoken evidence that may be characterised properly as 'false' evidence.

40. The Statute does not require that the 'party' itself be responsible for the production of the 'false' or 'forged' evidence. The party must 'present' the evidence. The Chamber notes that this expression is found in a number of statutory provisions, such as Articles 46(4), 61(6)(b) and (6)(c), 64(6)(d), 65(1)(c)(iii), 65(2), 65(4)(a), 67(1)(e) and 76(1) of the Statute.[72] To 'present' is typically defined as showing, exhibiting or introducing something.[73] The Oxford Dictionary defines 'to present' evidence as 'to bring formally to the notice of a court'.[74] That said, a synonym to 'present' may be found in the notion 'submitted' used throughout the Statute.[75] In addition, it is recalled that a variety of statutory provisions also qualify evidence as having been 'admitted'[76] or 'relied on'.[77] These terms signify a distinct treatment of evidence at any given stage in the proceedings with unique legal consequences. However, it is clear from the wording of Article 70(1)(b) of the Statute that there is no requirement for the evidence presented to have been 'admitted', within the meaning of Article 69(4) of the Statute, or 'relied upon' by the presenting party. As a result, the Chamber cannot follow the Arido Defence in its interpretation that the

[71] Oxford Dictionaries, 'Forged', available at: https://en.oxforddictionaries.com/definition/forged (last visited on 19 October 2016). The Black's Law Dictionary defines 'forgery' as '[t]he act of fraudulently making a false document or altering a real one to be used as if genuine' or 'A false or altered document made to look genuine by someone with the intent to deceive', Bryan A. Garner (ed.), Black's Law Dictionary (10th ed., 2014), p. 766.
[72] *See also* Rules 27(2), 79(3), 121(3), 121(5), 121(6), 121 (8) of the Rules.
[73] Collins Dictionary, 'Present', available at: http://www.collinsdictionary.com/dictionary/english/present (last visited on 19 October 2016).
[74] Oxford Dictionaries, 'Present', available at: https://en.oxforddictionaries.com/definition/present (last visited on 19 October 2016).
[75] *See* Articles 58(1), 61(7)(c)(ii), 64(8)(b), 69(3), and 74(2) of the Statute; *see also* Rules 63(2), 64(1), 68, 140(1) and (2), 147(3) and 147(4) of the Rules.
[76] *See* Articles 69(4), 69(7)(b) of the Statute; *see also* Rules 47(2), 63(2) and (3), 64, 72, and 73(5) of the Rules.
[77] *See* Articles 61(3)(b), 61(5) of the Statute; Rule 79(1) of the Rules.

evidence 'must be brought to the attention of the court with the intention of relying on it'.[78] Such a requirement would introduce an exacting threshold and would allow parties to introduce false or forged evidence in the course of the proceedings but ultimately not rely on it, thereby absolving them from any responsibility. Yet, in this situation, the harm is already done as false or forged evidence has been introduced into the proceedings. In the light of the foregoing, the Chamber holds that evidence is deemed 'presented' when it is introduced in the proceedings, irrespective of whether the evidence is admissible or the presenting party intends to rely on it. In the case of oral testimony, this takes place at least when a witness appears before the Court and testifies.

41. Pursuant to Article 70(1)(b) of the Statute, the physical perpetrator must have 'intentionally' presented false or forged evidence. The same general considerations apply as elaborated in relation to Article 70(1)(a) of the Statute. This means that Article 70(1)(b) of the Statute is fulfilled if the perpetrator knows that his or her action will bring about the material elements of the offence, *viz.* presenting false evidence with the purposeful will (intent) or desire to bring about those material elements of the offence; or the perpetrator is aware that his or her actions will result, in the ordinary course of events, in the commission of the offence.

42. Article 70(1)(b) of the Statute additionally requires that the perpetrator 'knows' the evidence to be false or forged. This cognitive element is related to the 'false or forged' nature of the evidence. Following Article 30(3) of the Statute, this means that the perpetrator must be aware of the circumstance that the evidence is 'false or forged'.

[78] Arido Defence Submission, ICC-01/05-01/13-978, para. 25.

3. Article 70(1)(c) of the Statute

43. As previously held by the Pre-Trial Chamber,[79] Article 70(1)(c), first alternative, of the Statute ('corruptly influencing a witness') proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the testimony to be given by a witness. Its purpose is to protect the reliability of testimonial evidence before the Court and, more generally, the integrity of the proceedings before the Court.

44. The perpetrator's interference with the 'witness', as contemplated under Article 70(1)(c) of the Statute, implies that he or she seeks to deter the witness from giving full evidence or seeks in any way to unduly influence the nature of the witness's testimonial evidence. Decisive in this regard is the perpetrator's expectation. The Chamber has already elaborated on the term 'witness' in the context of Article 70(1)(a) of the Statute. However, when discussing Article 70(1)(c) of the Statute, the term must also encompass 'potential witnesses', namely persons who have been interviewed by either party but have not yet been called to testify before the Court.[80] This broad conception accords with the purpose of the provision, namely to criminalise any conduct that is intended to disturb the administration of justice by deterring the witness from testifying according to his or her recollection.

45. With regard to the *actus reus* of 'influencing a witness', the Chamber notes that the Statute does not describe any specific form of such 'influencing' but seeks to encompass any conduct via an open-ended provision.[81] It therefore finds that

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[79] Confirmation Decision, para. 30.

[80] For the notion 'potential prosecution witness' *see* Appeals Chamber, *Prosecutor v. Germain Katanga*, Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled 'Frist Decision on the Proseution Request for Authorisation to Redact Witness Statements', 13 May 2008, ICC-01/04-01/07-476 (OA2), para. 2; *similarly* ICTY, *Prosecutor v. Beqaj*, Case No. IT-03-66-T-R77, Trial Chamber I, Judgement on Contempt Allegations ('Beqaj Trial Judgment'), 27 May 2005, para. 21.

[81] In this context, it is noted that equivalent provisions of international(-ised) tribunals enumerate a number of specific acts together with a catch-all clause through which the conduct is captured broadly; *see*, for example,

Article 70(1)(c) of the Statute is to be construed broadly, allowing many different modes of commission to be captured thereunder that are capable of influencing the nature of the witness's evidence.[82] The most obvious form of 'influencing' may be seen in bribing witnesses. Considering the purpose of Article 70(1)(c) of the Statute, the Chamber finds that the concept of bribing encompasses any 'inducement offered to procure illegal or dishonest action or decision in favour of the giver',[83] such as the paying of money, providing goods, rewards, gifts, or making promises.[84] Other forms of 'influencing' can be seen in pressuring, intimidating or threatening witnesses or causing injuries that aim at procuring a particular testimony by the witnesses.[85]

46. 'Influencing' may also be assumed if the perpetrator modifies the witness's testimony by instructing, correcting or scripting the answers to be given in court, or providing concrete instructions to the witness to dissemble when giving evidence, such as to act with indecision or show equivocation. All these behaviours are specifically aimed at compromising the reliability of the evidence. They render it difficult, if not impossible, to differentiate between what emanates genuinely from the witness and what emanates from the instructor. Whenever the witness's testimony is scripted it may be *de facto* the

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Rule 77(A)(iv) of the ICTY Rules of Procedure and Evidence which reads: '(A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who […] (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given or is about to give evidence in proceedings before a Chamber […]'. Similar language can be found in Rule 77(A)(iv) of the ICTR and SCSL Rules of Procedure and Evidence and Rule 35(1)(d) of the Internal Rules of the ECCC.

[82] *See similarly* the case-law on the interpretation of the catch-all clause in Rule 77(A)(iv) of the ICTY Rules of Procedure and Evidence, Haraqija and Morina Trial Judgment, para. 18 ('"Otherwise interfering with a witness" is an open-ended provision which encompasses acts or omissions, other than threatening, intimidating, causing injury or offering a bribe, capable of and likely to deter a witness from giving full and truthful testimony or in any other way influence the nature of the witness's evidence'); ICTR, *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-T, Trial Chamber III, Judgement ('Nshogoza Trial Judgment'), 7 July 2009, para. 193.

[83] Beqaj Trial Judgment, para. 18; Nshogoza Trial Judgment, para. 192.

[84] *Ibid.*

[85] *See* Rule 77(A)(iv) of the ICTY, ICTR, SCSL Rules of Procedure and Evidence and Rule 35(1)(d) of the Internal Rules of the ECCC. *See* also Article 434-15 of the French Penal Code ('*Le fait d'user de promesses, offres, présents, pressions, menaces, voies de fait, manoeuvres ou artifices au cours d'une procédure ou en vue d'une demande ou défense en justice afin de déterminer autrui soit à faire ou délivrer une déposition, une déclaration ou une attestation mensongère, soit à s'abstenir de faire ou délivrer une déposition, une déclaration ou une attestation*').

testimony of the instructor and not that of the witness which is given in Court. It is indiscernible for the Judges to assess what the witness personally experienced and what he or she did not. Crucially, interference with the witness in such a manner also defeats the principles of immediacy and orality and renders impossible any adequate assessment of the credibility of the witness. On the other hand, merely recapitulating the information the witness already knows would fall short of meeting the material elements of the offence. The rehearsal of testimony only then rises to the threshold of Article 70(1)(a) of the Statute if the physical perpetrator contaminated the witness's evidence.

47. The use of the word 'corruptly' signifies that the relevant conduct is aimed at contaminating the witness's testimony. In this context, and with a view to drawing a distinction between permissible conduct and conduct considered to fall under the purview of Article 70(1)(c) of the Statute, it is essential to pay heed to the legal framework which contextualises the conduct of the perpetrator. For example, assessing the nature of contacts with witnesses, the Chamber must bear in mind the regime regulating those contacts, such as decisions on witness preparation and/or witness familiarisation.[86] Likewise, payments to witnesses must be assessed in the light of their purpose and whether the perpetrator has adhered to the Court's applicable directions and guidelines.

48. Finally, the provision penalises the improper conduct of the perpetrator who intends to influence the evidence before the Court and does not require proof that the conduct had an actual effect on the witness.[87] It is not required for this offence that the criminal conduct actually influences the witness in question –

[86] *For example*, Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 18 November 2010, ICC-01/05-01/08-1016, prohibiting any pre-testimony witness preparation by the calling party; Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial ('Familiarisation Protocol'), 22 October 2010, ICC-01/05-01/08-1081-Anx.

[87] *See* similarly ICTY, Beqaj Trial Judgment, para. 21; Haraqija and Morina Trial Judgment, para. 18 ('…for the purposes of establishing the responsibility of the accused, it is immaterial whether the witness actually felt threatened or intimidated, or was deterred or influenced').

the offence can be complete even if the witness refuses to be influenced by the conduct in question.[88] This is so because the provision penalises the conduct of the physical perpetrator who, from his or her vantage point, seeks to manipulate the evidence given by the witness. Whether the witness met the perpetrator's intentions is irrelevant in this regard. This interpretation also finds support in various national legal systems where the mere conduct is criminalised regardless of the result. In France, for example, Article 434-15 of the French Penal Code criminalises the conduct, regardless of any effect on the witness ('*infraction formelle*').[89] A similar approach can be found in Article 377 of the Italian Penal Code, Section 344(1)(d) of the Slovak Penal Code and §159 of the German Criminal Code.

49. Anybody can commit the offence under Article 70(1)(c) of the Statute. The physical perpetrator does not need to be a participant in the proceedings.

50. Pursuant to Article 70(1)(c) of the Statute, the physical perpetrator must have 'intentionally' corruptly influenced the witness. This means that Article 70(1)(c) of the Statute is fulfilled if the perpetrator knows that his or her action will bring about the material elements of the offence, *viz.* corruptly influencing the witness, with the purposeful will (intent) or desire to bring about those material elements of the offence. For the rest, in particular the proposed presence of special intent, the Chamber refers to its elaborations above.

B. MODES OF PARTICIPATION

51. Pre-Trial Chamber II confirmed the charges against the Accused involving offences of corruptly influencing witnesses, presenting false evidence and giving false testimony under Articles 70(1)(a) to (c) of the Statute, all perpetrated in

[88] Pre-Trial Chamber II, *Prosecutor v. Walter Osapiri Barasa*, Warrant of arrest for Walter Osapiri Barasa, 2 August 2013, ICC-01/09-01/13-1-Red2, para. 18 (second redacted version notified 2 October 2013).
[89] Article 434-15 of the French Penal Code criminalises the subordination of witnesses, regardless of the fact whether it had any effect (Crim. 11 janv. 1956, Bull. crim. n° 49; Crim. 31 janv. 1956, Bull. crim. n° 114).

various ways, namely by committing (perpetration and co-perpetration), soliciting, inducing, aiding, abetting or otherwise assisting in their commission. In the light of the above, the Chamber will limit its analysis of the applicable law on the criminal responsibility of the Accused to the following modes of liability: (i) direct perpetration, pursuant to Article 25(3)(a), first alternative, of the Statute; (ii) co-perpetration, pursuant to Article 25(3)(a), second alternative, of the Statute; (iii) soliciting and inducing, pursuant to Article 25(3)(b) of the Statute; and (iv) aiding, abetting or otherwise assisting, pursuant to Article 25(3)(c) of the Statute.

1. Applicability of Article 25 of the Statute

52. The Defence claims that Article 25 of the Statute is not applicable, or applicable only to a limited extent, to offences under Article 70 of the Statute. In its view, Article 70 offences include only one mode of criminal responsibility, namely direct commission; the different offences already capture exhaustively the various means by which participants can commit an offence.[90] Several Defence teams submit, for example, that while false testimony under Article 70(1)(a) of the Statute can only be committed by the witness him- or herself, criminal conduct by a third person is adequately criminalised under Article 70(1)(c) of the Statute.[91] As summarised by the Mangenda Defence '[s]uper-imposing accessorial liability in relation to an Article 70(1)(a) offence would undermine the scope and application of both Article 70(1)(b) and Article 70(1)(c)'.[92]

[90] Bemba Defence Submission, ICC-01/05-01/13-977, para. 29; Arido Defence Submission, ICC-01/05-01/13-598-Red, paras 89, 116 and 328-348; ICC-01/05-01/13-978, para. 41; Mangenda Defence Submission, ICC-01/05-01/13-974, para. 17; Babala Defence Submission, ICC-01/05-01/13-596-Corr2-Red, para. 98.
[91] Arido Defence Submission, ICC-01/05-01/13-598-Red, para. 95; Kilolo Defence Submission, ICC-01/05-01/13-600-Corr2-Red2, para. 561; ICC-01/05-01/13-979-Red, para. 25; Bemba Defence Submission, ICC-01/05-01/13-977, para. 37.
[92] Mangenda Defence Submission, ICC-01/05-01/13-974, para. 17.

53. Whether or not a person other than the direct perpetrator may commit offences under Articles 70(1)(a) to (c) of the Statute depends on whether these provisions are considered to exclude other forms of liability or whether their applicability may be extended through other forms of liability as defined in Article 25(3)(a) to (d) of the Statute.

54. Pre-Trial Chamber II held that Rule 163(1) of the Rules clarifies that Article 25(3) of the Statute remains fully applicable to the regime of Article 70 of the Statute,[93] thus allowing persons other than those identified in sub-paragraphs (a) to (c) of Article 70 of the Statute to be held accountable. The Chamber agrees with this approach. Indeed, this finding is rooted in the systematic construction of the Statute: Article 25 is contained in Part 3 of the Statute entitled 'General Principles of Criminal Law' and, as part of the general principles, must apply to the Statute in its entirety, unless otherwise indicated. The Mangenda Defence argument that Article 25(3) of the Statute refers only to criminal responsibility in relation to Article 5 crimes and not Article 70 offences[94] is inapt, as Rule 163(1) of the Rules unambiguously clarifies that the Statute shall be applied '*mutatis mutandis*', namely with the necessary changes, to the prosecution of offences defined under Article 70 of the Statute.[95] Accordingly, the conduct of an accused can be legally characterised under different provisions involving different modes of liability and may be charged as such. This must be distinguished from the question of cumulative convictions based on the same conduct under different statutory provisions.[96]

55. In order to hold an accused criminally responsible as a principal perpetrator or as an accessory, the Chamber must be satisfied that he or she fulfilled the objective

[93] Confirmation Decision, para. 32.
[94] Mangenda Defence Submission, ICC-01/05-01/13-974, para. 17.
[95] *See also* H. Friman, 'Offences and misconduct against the Court', in: R.S. Lee (ed), The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence (Transnational Publishers, 2001), p. 608.
[96] *See* paras 950-954.

elements of the offence with the required 'guilty mind', commonly known as the *mens rea*.

2. Article 25(3)(a) of the Statute – Direct Perpetration

56. Article 25(3)(a) of the Statute expressly encompasses three different modes of participation, namely direct perpetration (commission of a crime or offence in person), co-perpetration (commission of a crime or offence jointly with another person) and indirect (co-)perpetration (commission of a crime or offence through another person, regardless of whether that person is criminally responsible).

57. Pursuant to Article 25(3)(a), first alternative, of the Statute, 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [c]ommits such a crime (…) as an individual'.

58. The Chamber recalls, that in order to hold a person criminally responsible as a direct perpetrator under Article 25(3)(a) of the Statute, the person has to 'physically carry out the objective elements of the offence' with the requisite *mens rea* in his or her own person.[97] The Chamber has already described the requisite subjective elements for direct perpetrators of offences under Articles 70(1)(a) to (c) of the Statute.[98]

59. Only Mr Arido has charges confirmed on Article 25(3)(a), direct perpetration, and the Arido Defence argues that the Confirmation Decision provides inadequate notice on grounds that the Prosecution never alleged direct perpetration in its

[97] *See*, for example, Lubanga Confirmation Decision, para. 332; Pre-Trial Chamber II, *Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on Charges of the Prosecutor Against Bosco Ntaganda ('Ntaganda Confirmation Decision'), 9 June 2014, ICC-01/04-02/06-309, para. 136; Pre-Trial Chamber I, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on confirmation of charges ('Katanga Confirmation Decision'), 30 September 2008, ICC-01/04-01/07-717, paras 488 and 527; Bemba Confirmation Decision, para. 353.
[98] *See* paras 27-31, 41-42, and 50.

document containing the charges.[99] The Prosecution only charged Mr Arido as a direct and/or indirect 'co-perpetrator',[100] and the Pre-Trial Chamber confirmed the charges against Mr Arido on an understanding that '[p]erpetration is subsumed under the mode of liability of co-perpetration'.[101]

60. Irrespective of whether direct perpetration is indeed subsumed under co-perpetration, the Arido Defence's arguments as to lack of notice are entirely without merit. The factual allegations underpinning the Pre-Trial Chamber's conclusions were all clearly specified in the Confirmation Decision, the document containing the charges and the Prosecution Pre-Trial Brief. The Arido Defence's work during the entire trial phase has been conducted in the knowledge that Mr Arido had charges confirmed against him as a direct perpetrator. It is also noted that, when this Chamber called for any objections as to the conduct of the proceedings since the confirmation hearing, the Arido Defence raised no notice objections as to the modes of liability confirmed.[102]

3. Article 25(3)(a) of the Statute – Co-Perpetration

61. Pursuant to Article 25(3)(a), second alternative, of the Statute, 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [c]ommits such a crime, (…) jointly with another'.

62. Previous decisions of the Court have explained that the 'concept of co-perpetration based on joint control over the crime is rooted in the principle of the division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, although none of the persons has overall control [*viz.* individually] over the offence because they all depend on

[99] Arido Defence Closing Brief, ICC-01/05-01/13-1904-Corr-Red2, paras 58-73.
[100] Document Containing the Charges, ICC-01/05-01/13-526-AnxB1-Red, pp. 74-79.
[101] Confirmation Decision, ICC-01/05-01/13-749, para. 33.
[102] T-10-Red, p. 11, line 24 to p. 13, line 15.

one another for its commission, they all share control because each of them could frustrate the commission of the crime by not carrying out his or her task'.[103] In these circumstances, any person making a contribution 'can be held vicariously responsible for the contributions of all the others, and, as a result, can be considered as a principal to the whole crime'.[104] The Chamber is of the view that this concept of co-perpetration applies also in the context of Article 70 offences.

63. The Chamber also recalls that the concept of co-perpetration or joint commission based on joint control over the crime encompasses objective as well as subjective elements. In order to hold co-perpetrators accountable under the notion of control over the crime for the purposes of Article 25(3)(a) of the Statute, the Chamber must be convinced, on the basis of the evidence, that both elements are fulfilled.

a) Objective Elements

64. Consistent with the established jurisprudence of the Court, the Chamber recalls that to hold an individual criminally responsible as a co-perpetrator under the notion of 'control over the crime',[105] it must be satisfied that (i) there was a common plan between at least two persons, and (ii) the contribution of the co-perpetrators was essential.

65. As regards the first objective element, the Chamber must be satisfied that the accused and at least one other individual worked together ('jointly') in the commission of the offence(s) on the basis of an agreement or common plan.[106] It is this agreement or common plan that ties the co-perpetrators together and justifies

[103] Lubanga Confirmation Decision, para. 342; *see also* Lubanga Appeals Judgment, para. 342; Lubanga Trial Judgment, para. 994; Katanga Confirmation Decision, paras 520-521.
[104] Lubanga Confirmation Decision, para. 326.
[105] The Court has accepted the notion of 'control over the crime' as the distinguishing criterion between principals and accessories where a criminal offence is committed by a plurality of persons. For the discussion of this definitional criterion, *see*, for example, Lubanga Appeals Judgment, paras 469-472; Katanga Trial Judgment, paras 1382-1396; Lubanga Confirmation Decision, paras 327-338; Katanga Confirmation Decision, paras 480-486; Bemba Confirmation Decision, paras 347-348.
[106] Lubanga Appeals Judgment, para. 445; Lubanga Trial Judgment, paras 980-981; Bemba Confirmation Decision, para. 350; Ruto et al. Confirmation Decision, para. 301.

reciprocal imputation of their respective acts.[107] Accordingly, participation in the commission of the offence(s) without coordination with one's co-perpetrator(s) falls outside the scope of co-perpetration.[108]

66. The co-perpetrators need not have signed a written contract. The agreement or common plan may be express or implied, previously arranged or materialise extemporaneously.[109] Its existence may be inferred from subsequent concerted action of the co-perpetrators,[110] and proven by direct evidence or inferred from circumstantial evidence.[111]

67. Crucially, the agreement or common plan need not be specifically directed at the commission of offence(s) and may include non-criminal goals.[112] However, it is necessary for the agreement or common plan to involve a 'critical element of criminality'.[113] As Trial Chamber I held in *Lubanga*, 'committing the crime in question does not need to be the overarching goal of the co-perpetrators'.[114] When enquiring as to the existence and scope of the agreement or common plan, guidance may be found in the manner in which the agreement or common plan is mirrored in the co-perpetrator(s) *mens rea*: do the co-perpetrators know that the implementation of the common plan *will* lead to the commission of the offences at issue?[115] The standard for the foreseeability of future events is that of 'virtual certainty', as elaborated above.[116] This means that in the context of the specificities

[107] Lubanga Appeals Judgment, para. 445; Lubanga Trial Judgment, para. 981.
[108] Lubanga Confirmation Decision, para. 343; Katanga Confirmation Decision, para. 522.
[109] Lubanga Appeals Judgment, para. 445; Lubanga Trial Judgment, para. 988; Katanga Confirmation Decision, para. 523.
[110] Lubanga Confirmation Decision, para. 345; Katanga Confirmation Decision, para. 523; Ruto et al. Confirmation Decision, para. 301.
[111] Lubanga Trial Judgment, para. 988.
[112] Lubanga Confirmation Decision, para. 344; Lubanga Trial Judgment, para. 984.
[113] Lubanga Appeals Judgment, para. 446; Lubanga Trial Judgment, para. 984; Ruto et al. Confirmation Decision, para. 301.
[114] Lubanga Trial Judgment, para. 985.
[115] Lubanga Trial Judgment, para. 985; confirmed in Lubanga Appeals Judgment, paras 446 and 451.
[116] *See* para. 29.

of the case it was virtually certain that the implementation of the common plan would lead to the commission of the criminal offences.

68. With regard to the second objective element, the accused must make an *essential* contribution within the framework of the agreement or common plan in a coordinated manner resulting in the fulfilment of the material elements of the offence(s),[117] without which the commission of the offence(s) would not be possible.

69. The requirement that the contribution of the co-perpetrator be 'essential' has been consistently and invariably established in the Court's jurisprudence.[118] Suffice it to say here that only those to whom 'essential' tasks have been assigned – and who consequently have the power to frustrate the commission of the offence by not performing their task – can be said to have joint control over the offence(s).[119] It is not necessary that each co-perpetrator personally and directly carry out the offence(s), or that he or she be present at the scene of the criminal offence,[120] as long as he or she exercised, jointly with others, control over the criminal offence.

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[117] Lubanga Appeals Judgment, paras 468-469; Lubanga Trial Judgment, paras 989 *et seq*; Lubanga Confirmation Decision, para. 346; Bemba Confirmation Decision, para. 350.

[118] *See*, for example, Lubanga Appeals Judgment, paras 468-469; Lubanga Confirmation Decision, para. 346; Katanga Confirmation Decision, paras 524-525; Bemba Confirmation Decision, para. 350; Pre-Trial Chamber I, *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 153; Pre-Trial Chamber I, *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Corrigendum of the "Decision on the Confirmation of Charges", 7 March 2011, ICC-02/05-03/09-121-Corr-Red, paras 136-138; Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, Decision on the Confirmation of Charges ('Mbarushimana Confirmation Decision'), 16 December 2011, ICC-01/04-01/10-465-Red, paras 273 and 279; Ruto et al. Confirmation Decision, para. 305; Pre-Trial Chamber II, *Prosecutor v. Francis Kirimi Muthaura et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382-Red, paras 297, 401-404 and 419. As explained in detail by Trial Chamber I in the *Lubanga* Case, the requirement of the contribution as being 'essential' is grounded in the understanding that principal liability, as described in Article 25(3)(a) of the Statute, requires a greater contribution than accessorial liability, as described in Articles 25(3)(b) to (d) of the Statute. A graduated characterisation of the individual's conduct allows for the different degrees of responsibility to be properly expressed and addressed, *see* Lubanga Trial Judgment, paras 995-999; Lubanga Appeals Judgment, paras 462-468.

[119] Lubanga Appeals Judgment, para. 473; Lubanga Confirmation Decision, para. 347.

[120] Lubanga Appeals Judgment, paras 458, 460 and 465-466 (in support of this interpretation, the Appeals Chamber draws on Article 25(3)(a), third alternative, of the Statute, which embodies the commission of an offence 'through another person'. In this case, the perpetrator, who did not carry out the incriminated conduct, may bear the same or even more blameworthiness than the person actually committing the criminal offence); Lubanga Trial Judgment, paras 1003-1005.

What is required is a normative assessment of the role and activities of the accused person in the specific circumstances of the case, taking into account the division of tasks.[121] The appropriate yardstick in this assessment is whether the accused exercised control over the offence(s) by virtue of his or her essential contribution.[122] Following this approach, a person who, for example, jointly with others formulates the relevant strategy or plan, becomes involved in directing or controlling other persons, or determines the roles of those involved in the offence would also be held accountable.[123] The assumption is that the co-perpetrator may compensate for his or her lack of contribution at the execution stage of the criminal offence if, by virtue, of his or her essential contribution, the person nevertheless had control over the criminal offence(s).[124] The essential contribution can be made as early as the planning and preparation stage and as late as the execution stage of the offence(s).[125]

b) Subjective Elements

70. With regard to the subjective elements, the Chamber must first ascertain whether the co-perpetrator fulfils the subjective elements of the criminal offence(s) charged, namely intent and knowledge as defined under Article 30 of the Statute, and where applicable, specific intent (*dolus specialis*).[126] In this regard, reference is made to the Chamber's explanations in relation to the requisite *mens rea* under Articles 70(1)(a) to (c) of the Statute.[127] The Chamber must be satisfied of the co-perpetrators' mutual awareness that implementing the common plan would result in the fulfilment of the material elements of the

[121] Lubanga Appeals Judgment, paras 466 and 473; Lubanga Trial Judgment, paras 1000-1001.
[122] Lubanga Appeals Judgment, para. 473.
[123] Lubanga Trial Judgment, para. 1004.
[124] Lubanga Appeals Judgment, para. 469.
[125] Lubanga Appeals Judgment, para. 469; Lubanga Confirmation Decision, para. 348; Katanga Confirmation Decision, para. 526.
[126] Lubanga Trial Judgment, paras 1013 and 1018; Katanga Trial Judgment, paras 1413 and 1416; Lubanga Confirmation Decision, para. 349; Bemba Confirmation Decision, para. 351; Ruto et al. Confirmation Decision, para. 333.
[127] *See* paras 27-31, 41-42, and 50.

crimes; and they nevertheless perform their actions with the purposeful will (intent) to bring about the material elements of the crimes, or are aware that, 'in the ordinary course of events', the fulfilment of the material elements will be a virtually certain[128] consequence of their actions.[129]

71. The Chamber recalls that it is precisely the co-perpetrators' mutual awareness and acceptance of this result that justifies that the contributions made by the others may be attributed to each of them, and that they be held criminally responsible as principals to the whole offence.[130]

4. Article 25(3)(b) of the Statute – Soliciting and Inducing

72. Pursuant to Article 25(3)(b) of the Statute 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person (…) [o]rders, solicits or induces the commission of a crime which in fact occurs or is attempted'.

a) Objective Elements

73. Article 25(3)(b) of the Statute sets out three different forms of accessorial participation. As Pre-Trial Chamber II and other chambers have held, 'soliciting' and 'inducing' fall into the broader category of 'instigating' or 'prompting another person to commit a crime' in the sense that they refer to a form of conduct by which a person exerts psychological influence on another person as a result of which the criminal act is committed.[131] Of relevance for this judgment are the latter two alternative forms of participation.

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[128] *See* para. 29.
[129] Katanga Confirmation Decision, para. 533; Bemba Confirmation Decision, para. 370; Ruto et al. Confirmation Decision, para. 333.
[130] Lubanga Confirmation Decision, para. 362.
[131] Confirmation Decision, para. 34; *see also* Mbarushimana Confirmation Decision, footnote 661 ('For instigating [roughly analogous to soliciting or inducing in article 25(3)(b) of the Statute]'); Pre-Trial Chamber I, *Prosecutor v. Laurent Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo ('Gbagbo Confirmation Decision'), 12 June 2014, ICC-02/11-01/11-656-Red, para. 243; Ntaganda Confirmation Decision,

74. Pre-Trial Chamber II argued that the notions of 'soliciting' and 'inducing' characterise the same conduct and, therefore, have identical legal elements.[132] While the Chamber accepts that both notions describe in general the conduct of the accessory prompting the commission of an offence by another person, it is of the view that both notions nevertheless carry a distinct meaning which should not be conflated. Had the drafters intended to express one and the same concept, they could have stated this expressly by using one definition. In this context, the Chamber is attentive to the wording of equivalent provisions in the founding instruments of other international(ised) tribunals which, beside the form of 'ordering', only make use of the term 'instigate'.[133] In conclusion, Article 25(3)(b) of the Statute specifies different modes by which a person causes the commission of an offence by another.

75. With a view to determining the meaning of the different notions in accordance within the canon of treaty interpretation,[134] the Chamber first pays heed to their ordinary meaning. The second form of liability set out in Article 25(3)(b) of the Statute is that of 'soliciting'. The French text uses the term '*sollicite*' while the Spanish text uses the term '*proponga*'.[135] The Oxford Dictionary defines 'solicit' as

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para. 153; Pre-Trial Chamber I, *Prosecutor v. Charles Blé Goudé*, Decision on confirmation of charges against Charles Blé Goudé ('Blé Goudé Confirmation Decision'), 11 December 2014, ICC-02/11-02/11-181, para. 159; Pre-Trial Chamber II, *Prosecutor v. Dominic Ongwen*, Decision on confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422, para. 42.

[132] Confirmation Decision, para. 34; *see also* Gbagbo Confirmation Decision, para. 243; Blé Goudé Confirmation Decision, para. 159. For a different approach seemingly Ntaganda Confirmation Decision, para. 153.

[133] *See*, for example, Article 7(1) of the ICTY Statute ('A person who […] instigated, ordered […] a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime'); Article 6(1) of the ICTR Statute ('A person who […] instigated, ordered […] a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime'); Article 6(1) of the SCSL Statute ('A person who […] instigated, ordered […] a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime'); Article 29(1) of the Law on the Establishment of the Extraordinary Chambers as amended ('Any Suspect who […] instigated, ordered […] crimes referred to in article 3new, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime').

[134] Articles 31 and 32 of the Vienna Convention on the Law of Treaties (1969).

[135] The Russian text uses the term 'подстрекает'; the Chinese text uses the term '唆使'; the Arabic text uses the term الإغراء بارتكاب.

'ask for or try to obtain (something) from someone'.[136] Following the ordinary meaning of the notion 'solicitation', the Chamber is of the view that the perpetrator asks or urges the physical perpetrator to commit the criminal act. It does not presuppose that the accessory is in a certain relationship with the physical perpetrator of the offence(s).

76. The third form of liability set out in Article 25(3)(b) of the Statute is that of 'inducement'. The French text uses the term '*encourage*' while the Spanish text uses the term '*induzca*'.[137] The Oxford Dictionary defines 'induce' as 'succeed in persuading or leading (someone) to do something'.[138] Following the ordinary meaning of the notion 'inducing', the Chamber is of the view that the accessorial perpetrator exerts influence over the physical perpetrator, either by strong reasoning, persuasion or conduct implying the prompting of the commission of the offence.[139] Compared to the form of liability of 'soliciting', the concept of 'inducing' represents a stronger method of instigation. The element of exertion of influence by the accessory over the physical perpetrator is not required when the accessory simply 'solicits', *i.e.* asks for, the commission of the criminal act.

77. Both abovementioned forms of liability can be distinguished from 'ordering' liability set out in Article 25(3)(b) of the Statute insofar as they do not require the perpetrator to hold a position of authority *vis-à-vis* the physical perpetrator.[140] In other words, the Chamber need not establish that there is a superior-subordinate

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[136] Oxford Dictionaries, 'Solicit', available at: https://en.oxforddictionaries.com/definition/solicit (last visited 19 October 2016).
[137] The Russian text uses the term 'побуждает'; the Chinese text uses the term '引诱实施'; the Arabic text uses the term الحث على ارتكاب.
[138] Oxford Dictionaries, 'Induce', available at: https://en.oxforddictionaries.com/definition/induce (last visited 19 October 2016); *see* also Bryan A. Garner (ed.), Black's Law Dictionary (10th ed., 2014), p. 894 ('The act or process of enticing or persuading another person to take a certain course of action').
[139] Ntaganda Confirmation Decision, para. 153.
[140] Gbagbo Confirmation Decision, para. 243; Blé Goudé Confirmation Decision, para. 159; Ntaganda Confirmation Decision, paras 145 and 153; Pre-Trial Chamber II, *Prosecutor v. Sylvestre Mudacumura*, Decision on the Prosecutor's Application under Article 58 ('Mudacumura Article 58 Decision'), 13 July 2012, ICC-01/04-01/12-1-Red, para. 63.

relationship[141] between the 'instigator' and the physical perpetrator, as required in 'ordering'.[142] In comparison to the remaining two forms of liability, the 'ordering' liability reflects the strongest form of influence over another person.

78. The *actus reus* of 'soliciting' or 'inducing' can be done by any means, either by implied or express conduct.[143]

79. Furthermore, the accessory is held liable only if the offence in fact occurs or is attempted.[144] In other words, the responsibility of the inducer or solicitor is connected to and dependent on the (attempted) commission of the offence by another person.

80. It follows from the above that the instigator does not execute the offence and has no control over it. The control over the offence lies squarely with the physical perpetrator. This element assists in delineating the forms of liability under Article 25(3)(b) of the Statute from those contained in Article 25(3)(a) of the Statute.

81. Lastly, the Chamber must establish that the 'soliciting' or 'inducing' has had a direct effect on the commission or attempted commission of the offence.[145] This means that the conduct of the accessory needs to have a causal effect on the offence. This approach seems warranted as the instigator, the intellectual author, without whom the offence would not have been committed, or not in this form,

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[141] *See* Gbagbo Confirmation Decision, para. 243; Blé Goudé Confirmation Decision, para. 159; Mudacumura Article 58 Decision, para. 63.
[142] *See also*, for example, ICTR, *Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-A, Appeals Chamber, Judgement, 18 March 2010, para. 188; *Prosecutor v. Bagosora and Nsengiyumva*, Case No. ICTR-98-41-A, Appeals Chamber, Judgement, 14 December 2011, para. 277; ECCC, *Prosecutor v. Kaing alias Duch*, Case File/Dossier No. 001/18-07-2007/ECCC/TC, Trial Chamber, Judgement ('Duch Trial Judgment'), 26 July 2010, para. 527.
[143] *Similarly*, ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Trial Chamber, Judgement, 3 March 2000, para. 270 and 280; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Trial Chamber II, Judgement ('Limaj et al. Trial Judgment'), 30 November 2005, para. 514; *Prosecutor v. Orić*, Case No. IT-03-68-T, Trial Chamber II, Judgement ('Orić Trial Judgment'), 30 June 2006, para. 273; ICTR, *Prosecutor v. Kamuhanda*, Case No. ICTR-95-54A-T, Trial Chamber II, Judgement, 22 January 2004, para. 593.
[144] Ntaganda Confirmation Decision, para. 153.
[145] Mudacumura Article 58 Decision, para. 63; Ntaganda Confirmation Decision, paras 145 and 153.

prompts the commission of the offence. Even if the physical perpetrator were already pondering on committing the offence in general, the instigator must have generated the final determination to commit the concrete offence. If the physical perpetrator, on the other hand, is already determined to commit the offence (*omni modo facturus*) then the contribution of the instigator does not have a direct effect on the commission of the offence. Rather, in this case, the encouragement or moral support may be qualified as 'abetting' within the meaning of Article 25(3)(c) of the Statute, as will be further explained below.[146]

b) Subjective Elements

82. The perpetrator meant to 'solicit' or 'induce' the commission of the offence, or must have been at least aware that the offence(s) would be committed 'in the ordinary course of events' as a consequence of the realisation of his or her act or omission.[147]

5. Article 25(3)(c) of the Statute – Aiding, Abetting or Otherwise Assisting

83. Pursuant to Article 25(3)(c) of the Statute, 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person (…) [f]or the purpose of facilitating the commission of such crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission'.

84. Article 25(3)(c) of the Statute establishes accessorial liability,[148] holding responsible a person who assists the principal perpetrator of an offence. As the plain wording of Article 25(3)(c) of the Statute makes clear, criminal responsibility under Article 25(3)(c) of the Statute is dependent on the commission or at least

[146] *Similarly*, for example, ICTY, Orić Trial Judgment, paras 271 and 274.
[147] Ntaganda Confirmation Decision, para. 153; Mudacumura Article 58 Decision, para. 63.
[148] Lubanga Trial Judgment, paras 997 and 999.

attempted commission of an offence by the principal perpetrator.[149] However, establishing accessorial liability is independent of whether the principal is identified, charged or convicted.[150]

85. When compared to Article 25(3)(a) of the Statute, the assistance form of liability under Article 25(3)(c) of the Statute implies a lower degree of blameworthiness.[151] A co-perpetrator who essentially contributes to the commission of the offence in execution of a common plan exercises control over the offence jointly with others. The co-perpetrator has the power to frustrate the commission of the offence by not performing his or her task. The accessorial perpetrator under Article 25(3)(c) of the Statute does not exercise such control but merely contributes to or otherwise assists in an offence committed by the principal perpetrator.

86. When compared to Article 25(3)(b) of the Statute, the form of liability under Article 25(3)(c) of the Statute again implies a lower degree of blameworthiness. This is deduced from the fact that the instigator, the intellectual author of the offence, directly prompts its commission, while the assistant's contribution hinges on the determination of the principal perpetrator to execute the offence.

a) Objective Elements

87. The Rome Statute lists 'aiding', 'abetting' or 'otherwise assisting' disjunctively as independent terms.[152] While the terms 'aids', 'abets' and 'otherwise assists' bear

[149] Lubanga Trial Judgment, para. 998; Katanga Trial Jugdment, para. 1385; *similarly* ECCC, Duch Trial Judgment, para. 534 ('An accused may not be convicted of aiding and abetting a crime that was never carried out').
[150] *See also* ICTY, *Prosecutor v. Perišić*, Case No. IT-04-81-T, Trial Chamber I, Judgement, 6 September 2011, para. 127; ICTR, *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Trial Chamber I, Judgement and Sentence, 27 January 2000, para. 174; ECCC, Duch Trial Judgment, para. 534 ('The perpetrator of the crime need not have been tried or even identified').
[151] Lubanga Appeals Judgment, para. 462.
[152] *See also* Confirmation Decision, para. 35 ('In relation to the different forms of responsibility employed in article 25(3)(c) of the Statute […]').

a separate meaning, they nevertheless belong to the broader category of assisting in the (attempted) commission of an offence.[153]

88. With a view to determining the meaning of the different terms in accordance with the canon of treaty interpretation,[154] the Chamber first heeds their ordinary meaning. The Oxford Dictionary defines 'aid' as 'help or support (someone or something) in the achievement of something'.[155] Reading it in context with the other two forms of responsibility set out in Article 25(3)(c) of the Statute, the Chamber finds that 'aiding' implies the provision of practical or material assistance.[156] It is recalled that Article 25(3)(c) of the Statute specifically mentions a typical form of providing assistance in the form of providing the means for the commission of a crime within the jurisdiction of the Court. In this regard, the term 'aid' overlaps with the term 'otherwise assists' within the meaning of Article 25(3)(c) of the Statute.

89. With regard to the notion of 'abet', the Oxford Dictionary defines it as to 'encourage or assist (someone) to do something wrong, in particular to commit a

[153] For a similar approach, *see* ICTY, *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Trial Chamber II, Judgment ('Mrkšić et al. Trial Judgment'), 27 September 2007, para. 551 ('Strictly, "aiding" and "abetting" are not synonymous'), citing *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Trial Chamber, Judgement ('Kvočka Trial Judgment'), 2 November 2001 para. 254; ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Judgement ('Akayesu Trial Judgment'), 2 September 1998, para. 484 ('Aiding and abetting, which may appear to be synonymous, are indeed different. […] The Chamber is of the opinion that either aiding or abetting alone is sufficient to render the perpetrator criminally liable'); in the same vein, ECCC, 'Duch Trial Judgment', para. 533 ('Though often considered jointly in the jurisprudence of international tribunals, "aiding" and "abetting" are not synonymous'); SCSL, *Prosecutor v. Taylor*, Judgement ('Taylor Trial Judgment'), 18 May 2012, Case No. SCSL-03-01-T, footnote 1136 ('Aiding and abetting actually constitute two discrete activities').

[154] Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

[155] Oxford Dictionaries, 'Aid', available at: https://en.oxforddictionaries.com/definition/aid (last visited 19 October 2016).

[156] *Similarly*, ICTY, *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Judgement ('Kvočka Trial Judgment'), 2 November 2001, para. 253; *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement ('Mrkšić et al. Trial Judgment'), 27 September 2007, para. 551; ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Judgement ('Akayesu Trial Judgment'), 2 September 1998, para. 484; ECCC, Duch Trial Judgment, para. 533 ('"aiding" involves the provision of assistance'); SCSL, *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Trial Chamber I, Judgement ('Sesay et al. Trial Judgment'), 2 March 2009, para. 276 ('rendering practical or material assistance'); Taylor Trial Judgment, footnote 1136 ('"Aiding" consists of giving practical assistance to the physical perpetrator or intermediary perpetrator').

crime'.[157] In the Chamber's understanding, the notion of 'abet' describes the moral or psychological assistance of the accessory to the principal perpetrator, taking the form of encouragement of or even sympathy for the commission of the particular offence.[158] The encouragement or support shown need not be explicit. Under certain circumstances, even the act of being present at the crime scene (or in its vicinity) as a 'silent spectator' can be construed as tacit approval or encouragement of the crime.[159]

90. Pre-Trial Chamber II held that the assistance must have an effect on the commission of the offence.[160] Whereas this general causal requirement is undisputed in the Court's case-law, the level of assistance remains unsettled. The Chamber refers to the analysis undertaken by various pre-trial and trial benches of the Court before which the application of Article 25(3)(c) of the Statute lay for determination.

91. Some chambers construed Article 25(3)(c) of the Statute to encompass the threshold of 'substantial' which distinguishes it from other forms of liability set out under Article 25 of the Statute. In this sense, Pre-Trial Chamber I in *Mbarushimana* held that 'a substantial contribution to the crime may be

[157] Oxford Dictionaries, 'Abet', available at: https://en.oxforddictionaries.com/definition/abet (last visited 19 October 2016).
[158] ICTY, Mrkšić at al. Trial Judgment, para. 551; Kvočka Trial Judgment, para. 253; *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Trial Chamber, Judgement ('Furundžija Trial Judgment'), 10 December 1998, para. 231 ('Indeed, the word "abet" includes mere exhortation or encouragement'); ICTR, Akayesu Trial Judgment, para. 484; ECCC, Duch Trial Judgment, para. 533 ('"abetting" involves "facilitating the commission of an act by being sympathetic thereto'); SCSL, Sesay et al. Trial Judgment, para. 276 ('rendering […] encouragement or moral support'); Taylor Trial Judgment, footnote 1136 ('"abetting" consists of "facilitating the commission of an act by being sympathetic thereto"—in other words, giving encouragement or moral support to the physical perpetrator or intermediary perpetrator').
[159] *See*, for example, ICTR, *Prosecutor v. Ngirabatware*, Case No. MICT-12-29-A, Appeals Chamber, Judgement, 18 December 2014, para. 150; *Prosecutor v. Ndahimana*, Case No. ICTR-01-68-A, Appeals Chamber, Judgement, 16 December 2013, para. 147; ICTY, *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, Trial Chamber I, Judgement, 25 June 1999, para. 87; *Prosecutor v. Šainović et al.*, Case No. IT-05-87-A, Appeals Chamber, Judgement, 23 January 2014, para. 1687.
[160] Confirmation Decision, para. 35.

contemplated'[161] and Trial Chamber I in *Lubanga* determined that Article 25(3)(c) of the Statute required a 'substantial' contribution on the part of the accessory.[162]

92. Other chambers, however, did not further qualify the assistance but adverted to the plain wording of the provision. In this sense, Pre-Trial Chamber II in the Confirmation Decision stipulated that the 'accessory's contribution has an effect on the commission of the offence and is made with the purpose of facilitating such commission'.[163] Equally, Pre-Trial Chamber I in *Blé Goudé* stated that 'the person provides assistance to the commission of a crime and that, in engaging in this conduct, he or she intends to facilitate the commission of the crime'.[164]

93. The Chamber considers that the form of contribution under Article 25(3)(c) of the Statute does not require the meeting of any specific threshold. The plain wording of the statutory provision does not suggest the existence of a minimum threshold. Support for this interpretative approach may be drawn by way of analogy from the corresponding text of Article 2(3)(d) of the 1996 Draft Code of Crimes against the Peace and Security of Mankind of the International Law Commission ('1996 ILC Draft Code').[165] This provision reads: '3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual: […] (d) Knowingly aids, abets or otherwise assists, *directly and substantially*, in the commission of such a crime, including providing the means for its commission' (emphasis added).[166] Article 25(3)(c) of the Statute which corresponds, to a certain extent, to Article 2(3)(d) of the 1996 ILC Draft Code

[161] Mbarushimana Confirmation Decision, para. 280.
[162] Lubanga Trial Judgment, para. 997.
[163] Confirmation Decision, para. 35.
[164] Blé Goudé Confirmation Decision, para. 167.
[165] Report of the International Law Commission on the work of its forty-eighth session (6 May – 26 July 1996), Official Records of the General Assembly, Fifty-first session, Supplement No. 10.
[166] The ILC Commentary to the provision read, in relevant part: 'In addition, the accomplice must provide the kind of assistance which contributes directly and substantially to the commission of the crime, for example by providing the means which enable the perpetrator to commit the crime. Thus, the form of participation of an accomplice must entail *assistance which facilitates the commission of a crime in some significant way*. In such a situation, an individual is held responsible for his own conduct which contributed to the commission of the crime notwithstanding the fact that the criminal act was carried out by another individual' (emphasis added).

was drafted without reference to any of these qualifying elements. Thus, it could be argued that had the drafters intended to include qualifying elements in the text of Article 25(3)(c) of the Statute, they could have done so explicitly in a similar manner to what was done in the context of Article 2(3)(d) of the 1996 ILC Draft Code. Although the 1996 ILC Draft was not an official part of the drafting history of the Rome Statute, the drafting of its corresponding provision (Article 2(3)(d)) may provide some guidance as to the envisaged interpretation of Article 25(3)(c) of the Statute.

94. Even more importantly, the Chamber is of the view that the provision as constructed is adequate to assist in filtering those forms of contribution that are clearly not encompassed by Article 25(3)(c) of the Statute. The first argument lies in the causality requirement. The Chamber holds that even though the contribution of the accessory need not be *conditio sine qua non* to the commission of the principal offence, the assistance must have furthered, advanced or facilitated the commission of such offence. Clearly, if the assistance was not causal, the conduct of the perpetrator does not fall within the ambit of Article 25(3)(c) of the Statute.

95. The second argument lies in the enhanced *mens rea* requirement stipulated in Article 25(3)(c) of the Statute which provides an additional filter, as explained below. Suffice it to say here that the term 'purpose' found in the opening clause '[f]or the purpose of facilitating the commission of such a crime' in Article 25(3)(c) of the Statute goes beyond the ordinary *mens rea* standard encapsulated in Article 30 of the Statute and penalises such assistance only if a higher subjective element is satisfied on the part of the accessory.

96. The assistance may be given before, during or after the offence has been perpetrated.[167] Under any of the three forms of responsibility set out in Article 25(3)(c) of the Statute, the perpetrator need not be personally present during the commission of the offence.[168] The accessory may provide assistance to the principal perpetrator or intermediary perpetrator.[169]

b) Subjective Elements

97. Article 30 of the Statute applies to all forms of participation under Article 25 of the Statute, including Article 25(3)(c),[170] 'unless otherwise provided'. Unlike other international instruments, Article 25(3)(c) of the Statute expressly sets forth a specific 'purpose' requirement according to which the assistant must act ('for the purpose of facilitating the commission of such crime').[171] This wording introduces a higher subjective mental element and means that the accessory must have lent his or her assistance with the aim of facilitating the offence. It is not sufficient that the accessory merely knows that his or her conduct will assist the principal perpetrator in the commission of the offence. Mindful of the twofold intent of the accessory (*viz.* firstly, the principal offence and, secondly, the accessory's own conduct), the Chamber clarifies that this elevated subjective standard relates to the accessory's facilitation, not the principal offence.

98. Additionally, liability for aiding and abetting an offence requires proof that the accessory also had intent with regard to the principal offence pursuant to

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[167] *Similarly*, ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeals Chamber, Judgement ('Blaškić Appeals Judgment'), 29 July 2004, para. 48; *Prosecutor v. Mrkšić and Slijvančanin,* Case No. IT-95-13/1-A, Appeals Chamber, Judgement ('Mrkšić and Šljivančanin Appeals Judgment'), 5 May 2009, para. 81; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Appeals Chamber, Judgement ('Blagojević and Jokić Appeals Judgment'), 9 May 2007, para. 127; ICTR, *Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-T, Trial Chamber II, Judgement and Sentence, 20 December 2012, para. 1294; *Prosecutor v. Renzaho*, Case No. ICTR-97-31-T, Trial Chamber I, Judgement, 14 July 2009, para. 742; ECCC, Chea and Sampan Trial Judgment, paras 712-713; SCSL, Sesay et al. Trial Judgment, para. 278; Taylor Trial Judgment, para. 484.
[168] *See also* ICTR, Akayesu Trial Judgment, para. 484; ICTY, Mrkšić and Šljivančanin Appeals Judgment, para. 81; SCSL, Sesay et al. Trial Judgment, para. 278.
[169] *See* similarly, SCSL, Taylor Trial Judgment, footnote 1136.
[170] Mbarushimana Confirmation Decision, para. 289.
[171] Mbarushimana Confirmation Decision, paras 274 and 281.

Article 30 of the Statute, which applies by default. This means that the aider or abettor must at least be aware that the principal perpetrator's offence will occur in the ordinary course of events. Finally, it is not necessary for the accessory to know the precise offence which was intended and which in the specific circumstances was committed, but he or she must be aware of its essential elements.[172]

III. FINDINGS OF FACT

A. INTRODUCTORY REMARKS

99. The Chamber notes that the Prosecution alleged in its Closing Brief that all five accused 'acted in concert with each other and with other persons pursuant to a plan to defend Mr Bemba against charges of crimes against humanity and war crimes in the Main Case by means which included committing offences against the administration of justice violating Article 70 of the Statute'.[173] Later, in its Closing Statements, the Prosecution reaffirmed its position and clarified that all five accused were part of the common plan.[174]

100. The Chamber recalls that it is bound by the terms of the Confirmation Decision.[175] That decision authoritatively delimits the factual scope of this case.[176] Hence, the Chamber is informed by the factual allegations as described by the Pre-Trial Chamber. Pursuant to Article 74(2), second sentence, of the Statute, the

[172] *Similarly*, for example, ICTR, Karera Appeals Judgment, para. 321; ICTY, Blaškić Appeals Judgment, para. 50; Kvočka Trial Judgment, para. 255; Mrkšić at al. Trial Judgment, para. 556; SCSL, Sesay et al., Trial Judgment, para. 280.
[173] Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 52.
[174] Prosecution Closing Statements, T-48-Red, p. 38, lines 3-7.
[175] Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber and the decisions of the Pre-Trial Chamber in trial proceedings, and the manner in which evidence shall be submitted, 13 December 2007, ICC-01/04-01/06-1084, para. 43; Trial Chamber II, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Filing of a Summary of the Charges by the Prosecutor, 21 October 2009, ICC-01/04-01/07-1547-tENG, para. 16.
[176] Decision on the Submission of Auxiliary Documents, 10 June 2015, ICC-01/05-01/13-992, paras 10-15; Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber and the decisions of the Pre-Trial Chamber in trial proceedings, and the manner in which evidence shall be submitted, 13 December 2007, ICC-01/04-01/06-1084, paras 39 and 41; Trial Chamber II, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Filing of a Summary of the Charges by the Prosecutor, 29 October 2009, ICC-01/04-01/07-1547-tENG, paras 17 and 21-22.

Chamber has ensured that its decision has not exceeded the facts and circumstances described in the charges as confirmed by the Pre-Trial Chamber.

101. In the following section, the Chamber sets out the facts and circumstances of this case as they have been established by the Chamber upon its assessment of the evidence. They are the facts and circumstances which form the basis for the Chamber's decision under Article 74(2) of the Statute. Sections IV.B and IV.C. ('Evidentiary Discussion: Witnesses' and 'Evidentiary Discussion: Modes of Liability') provide the reasoning for the Chamber's determinations in this regard. The facts and circumstances are presented following the order in which the 14 witnesses, in relation to which the accused have been charged, appeared before the Court in the Main Case. As a result, they are referred to in this section by their pseudonym, as assigned in the Main Case.

102. Lastly, the Chamber notes, at this juncture, that it has publicly referred to previously confidential information in this judgment whenever it considers that the basis for the confidential classification of the information no longer exists.[177] The Chamber clarifies that limited re-classification of information for the purposes of this judgment does not affect the classification of any material on the case record.

B. THE FACTS OF THE CASE

1. The Agreement

103. Mr Bemba, Mr Kilolo and Mr Mangenda jointly agreed to illicitly interfere with defence witnesses in order to ensure that these witnesses would provide evidence in favour of Mr Bemba. The agreement was made in the course of the Main Case among the three accused at the latest when the Main Case Defence arranged for the testimony of D-57, and involved the corrupt influencing of, at

[177] *See* Regulation 23*bis*(3) of the Regulations of the Court.

least, 14 defence witnesses, together with the presentation of their evidence. The agreement among the three accused manifests itself in their concerted actions with each other and with others, including Mr Babala and Mr Arido.

104. Mr Bemba, Mr Kilolo and Mr Mangenda carefully and consciously planned their activities in advance. Most of the 14 Main Case Defence witnesses received money, material benefits or non-monetary promises from or at the behest of Mr Kilolo in connection with their upcoming testimony. In particular the timing of the payments or transactions, namely shortly before the testimonies before Trial Chamber III, and the amounts distributed (irrespective of the needs of the witnesses), coupled with Mr Kilolo's occasional remarks that the money was a '*gift*' or a '*token*', were noticeably similar in nearly all instances. This reveals a deliberate strategy on the part of the three accused to influence the testimony of the witnesses and secure their testimony in the Main Case in Mr Bemba's favour.

105. The three accused, through their various contributions, illicitly coached the defence witnesses in the Main Case.

106. Mr Bemba, as the ultimate beneficiary of the common plan, and in detention at time of the commission of the offences, approved the illicit coaching strategy, planned and gave precise instructions on what to instruct witnesses. He was kept updated about the illicit coaching activities and expressed satisfaction with the testimony of the illicitly coached witnesses.

107. Mr Kilolo, leading the defence investigation activities as counsel for Mr Bemba in the Main Case, implemented Mr Bemba's instructions and illicitly coached the witnesses either over the telephone or in personal meetings shortly before the witnesses' testimony. The main focus of the illicit coaching activities was on (i) key points bearing on the subject-matter of the Main Case, and (ii) matters bearing on the credibility of the witnesses, such as their behaviour when

testifying, their prior contacts with the defence, acquaintance with certain individuals and payments of money or promises received from the Main Case Defence. Mr Kilolo illicitly instructed, scripted and corrected the witnesses' expected testimonies also in the light of the evidence given by other defence witnesses. He rehearsed with the defence witnesses prospective questions of the victims' legal representatives which had been confidentially shared with the Main Case Defence, in the same order they would be put in court and provided the expected replies. Mr Kilolo maintained close contact with the witnesses shortly before and during their testimonies, sometimes late at night or early in the morning, so as to make sure that they complied with his instructions. He did so in deliberate disregard of the contact prohibition imposed by Trial Chamber III after the witnesses had been entrusted to the care of the VWU. Whenever Mr Kilolo was not in the courtroom, he asked Mr Mangenda to furnish him with information so that he could effectively and illicitly coach the witnesses and streamline their evidence in favour of the defence. Mr Kilolo also made the calling of witnesses dependent on their willingness to follow his narrative, or on the fact that he had extensively briefed them beforehand.

108. Mr Mangenda, whose role within the Main Case Defence team was actually more than that of a case manager, advised both Mr Kilolo and Mr Bemba and liaised between the two. Mr Mangenda updated Mr Kilolo on the testimonies of witnesses whenever Mr Kilolo was not physically present in the courtroom so that he could effectively and illicitly coach the witnesses and streamline their evidence in favour of the defence. He also advised on which witnesses performed badly or needed to be instructed, and made proposals on how best to carry out the illicit witness preparation. Mr Mangenda also provided Mr Kilolo with the questions of the victims' legal representatives, knowing that Mr Kilolo would send the questions to the witnesses in order to prepare them beforehand. Lastly, Mr Mangenda also conveyed Mr Bemba's instructions and made

Mr Kilolo aware of what Mr Bemba wished to implement when illicitly coaching witnesses. Any concern that other members in the Main Case Defence team may suspect Mr Kilolo's and Mr Mangenda's illicit coaching activities was dispelled by Mr Mangenda.

109. The three accused also adopted a series of measures with a view to concealing their illicit activities, such as the abuse of the Registry's privileged line in the ICC Detention Centre. Mr Kilolo included unauthorised persons in conference calls on the privileged line or otherwise simultaneously and unlawfully relayed information to third persons during privileged line calls in order for Mr Bemba to communicate freely with defence witnesses and other persons, such as Mr Babala. Money transfers to defence witnesses were effected through third persons or to persons close to the defence witnesses so as to conceal any links between the payments and the Main Case Defence. Mr Kilolo, assisted by Mr Mangenda, secretly distributed new telephones to defence witnesses, without the knowledge of the Registry, so that Mr Kilolo could stay in contact with them. The new telephones were distributed around the time the witnesses were entrusted to the care of the VWU, which took away the witnesses' personal telephones. Mr Kilolo explained the purpose of the new telephones to the defence witnesses. Mr Bemba, Mr Kilolo and Mr Mangenda used coded language when on the telephone, making reference to individuals using acronyms or particular expressions such as the term '*faire la couleur*', or variants thereof, signifying the bribing or illicit coaching of witnesses. They would also remind each other to speak in code. Other members of the Main Case Defence team were not taken on field missions so that they would not witness the implementation of '*les couleurs*'. Mr Kilolo and Mr Mangenda agreed to destroy physical evidence of money transfers connected to the bribing of witnesses in order to minimise the traceability of the illicit transactions.

110. On 11 October 2013, one month before the last defence witness (D-13) was called in the Main Case, Mr Mangenda informed Mr Kilolo on a '*top secret*' basis that he had received information from a source whose wife worked at the Court that they were being investigated in connection with the alleged bribing of witnesses. From such time as the three accused learnt that they were being investigated, a number of remedial measures were conceived and implemented with a view to frustrating the Prosecution's investigation. Mr Bemba instructed Mr Kilolo to contact all defence witnesses in a '*tour d'horizon*' to ascertain whether any of them had leaked information to the Prosecution. Mr Kilolo complied with this instruction. All three accused agreed to offer defence witnesses incentives and money to terminate their collaboration with the Prosecution, and to obtain declarations from the defence witnesses attesting that they had lied to the Prosecution. Mr Mangenda advised Mr Bemba to act swiftly. Certain witnesses, suspected by the co-perpetrators of having leaked information to the Prosecution, were indeed approached.

111. Mr Bemba, Mr Kilolo and Mr Mangenda were fully aware of the serious and grave nature of the allegations against them. In particular, Mr Kilolo was concerned about 'losing' all the work done so far, and that Mr Bemba could face another five-year prison sentence. Mr Mangenda believed that the results of the investigation would negatively impact on the reliability of *all* defence witnesses in the Main Case. The three accused discussed similar allegations of witness interference in the case of the *Prosecutor v. Walter Osapiri Barasa* case ('*Barasa* Case').

112. In achieving their goal, the three accused also relied on others, including the co-accused Mr Babala and Mr Arido, who, though not part of the common plan, also made efforts to further this goal. Under Mr Kilolo's instructions, Mr Arido recruited four Main Case Defence witnesses. Mr Arido briefed them, promised them compensation and relocation in Europe for their testimony. Mr Babala was

in regular telephone contact with Mr Bemba and was his financier, transferring money at his behest. Generally, he sought the authorisation and approval of Mr Bemba to proceed with effecting the money transactions in respect of each payment, including illicit payments to some witnesses. On at least one occasion, he advised Mr Bemba to give money to a defence witness in the Main Case. Once Mr Bemba, Mr Kilolo and Mr Mangenda became aware of the initiation of an Article 70 investigation, Mr Babala discussed possible remedial measures and was fully included in their discussions. Tellingly, Mr Babala encouraged Mr Kilolo to ensure '*le service après-vente*', *i.e.* to pay witnesses after their testimonies before Trial Chamber III.

113. The implementation of the agreement made between Mr Bemba, Mr Kilolo and Mr Mangenda resulted in the commission of offences against the administration of justice involving 14 Main Case Defence witnesses. They are presented hereunder in the order in which they appeared before the Court in the Main Case.

2. Witness D-57[178]

114. On 14 June 2012, Mr Kilolo transferred the amount of USD 106 to D-57 as reimbursement for D-57's travel expenses connected to his meeting with Mr Kilolo on 15 June 2012. In the course of the three weeks leading up to his testimony, D-57 and Mr Kilolo regularly spoke on the telephone, including on 15 and 16 October 2012. The cut-off date for contacts between this witness and the Main Case Defence was 16 October 2012.

115. At some time before the witness's travelled to the seat of the Court, Mr Kilolo called D-57 and informed him that he would send '*a little bit of money*'. In doing so, Mr Kilolo hoped to motivate the witness to testify in favour of Mr Bemba.

[178] *See* paras 229-254.

D-57 provided Mr Kilolo with the name of his wife. Thereafter, on 16 October 2012, D-57 received another call from '*a brother from Kinshasa*', Mr Babala, who confirmed the money transfer to the wife's bank account through Western Union. D-57 noted the name of Mr Babala on a piece of paper and gave it to his wife before leaving for the airport, so that she could collect the money. Aware of the exact circumstances and Mr Kilolo's motivation for the money transfer, Mr Babala effected the transfer of USD 665 on the same day from Kinshasa. He then sent D-57's wife an SMS with the transfer number, the name of the transferor and the amount of money. At 11:56 (local time), D-57's wife collected the money at her place of residence. Mr Babala then called D-57's wife to verify that she had indeed received the money. Mr Kilolo further instructed the witness not to reveal in his testimony before Trial Chamber III the exact number of contacts with the witness or the payment of money.

116. Witness D-57 testified in the Main Case from 17 to 19 October 2012. During the witness's testimony before Trial Chamber III, the Prosecution asked D-57 whether he was ever paid or received any money from the Main Case Defence or anyone else on its behalf. The witness, in accordance with Mr Kilolo's instructions, falsely answered, '*No one gave me any money*'. He also incorrectly testified that he had only three prior contacts with Mr Kilolo, namely a telephone conversation in May or June 2012, a personal meeting in May/June 2012, and a telephone conversation in September 2012. He did not mention the telephone contacts on 15 and 16 October 2012.

3. Witness D-64[179]

117. On 16 October 2012, the day before D-64 traveled to The Hague for his testimony, Mr Kilolo called him three times. The same day, Mr Bemba and Mr Babala discussed on the telephone the importance of payments to witnesses

[179] *See* paras 255-281.

shortly before their testimony at the Court alluding to the fact that these payments were aimed at securing certain testimony. Mr Babala told Mr Bemba, '*C'est la même chose comme pour aujourd'hui. Donner du sucre aux gens vous verrez que c'est bien*'. With this, Mr Babala referred to the payment of USD 665 made earlier that day to D-57's wife, suggesting that the payment should be the same amount.

118. The following day, on 17 October 2012, the VWU cut-off date with regard to D-64, Mr Babala's employee transferred to D-64's daughter two instalments totalling USD 700 *via* Western Union. Mr Babala had instructed him to do so in consultation with Mr Kilolo, knowing that the money was being paid to motivate the witness to give certain testimony. The money was collected by D-64's daughter on the same day. Shortly before the money was collected, Mr Kilolo again called D-64. After his return from his testimony, D-64's daughter told him that an 'uncle' had called from '*Africa*' telling her, '*je vous envoie un peu d'argent pour que vous viviez avec l'absence de votre père*'. As the name showing on the Western Union receipt sounded Congolese to D-64, he thought of Mr Kilolo, the only Congolese person he knew.

119. Mr Kilolo instructed D-64 to testify falsely with regard to the number of contacts with the Main Case Defence and to deny any payments. D-64 testified in the Main Case from 22 to 23 October 2012. He untruthfully denied having received any promises in exchange for his testimony or money from Mr Bemba or anyone on behalf of the latter in relation to the Main Case. He also incorrectly testified that he had had only three prior contacts with Mr Kilolo, namely, a telephone call and a meeting in June 2012 and a further telephone call about D-64's prospective meeting with the Prosecution.

4. Witness D-55[180]

120. Witness D-55 is the co-author of a document dating from November 2009 describing alleged crimes committed by the MLC in the Central African Republic. Between late 2011 and mid-2012, Mr Kilolo unsuccessfully approached D-55 to testify in Mr Bemba's favour in the Main Case. Finally, Mr Kilolo and D-55 agreed to meet in Amsterdam, the Netherlands, on 5 June 2012, to discuss the possibility of D-55's testimony. Mr Kilolo e-mailed a round-trip flight ticket to witness D-55 and paid for his overnight accommodation.

121. At the Amsterdam meeting, Mr Kilolo discussed with D-55 the purported falsity of the document he had co-authored. He suggested that D-55 testify that the document had been written to bolster his co-author's refugee claim in [Redacted]. Mr Kilolo made this suggestion despite D-55's statement that Mr Kilolo's version of the events could not be accurate, since the document had been written after his co-author had obtained [Redacted]. Also in the meeting, D-55 expressed concerns about the consequences his testimony could have for him and his family, as in the past a number of incidents had provoked security concerns. He also indicated his fear of Mr Bemba. In response, Mr Kilolo assured D-55 that Mr Bemba '*le traiterait bien*'.

122. After the Amsterdam meeting, Mr Kilolo contacted D-55 several times. In fact, in October 2012, Mr Kilolo contacted the witness five times, including on the cut-off date for contacts between this witness and the Main Case Defence, which was 23 October 2012. About three weeks prior to his scheduled testimony before Trial Chamber III, D-55 requested to speak with Mr Bemba directly as a pre-condition of his testimony.

[180] *See* paras 282-305.

123. On 5 October 2012, Mr Kilolo facilitated a conversation between D-55 and Mr Bemba by way of a multi-party call using the privileged line of the ICC Detention Centre. During the call, Mr Bemba thanked the witness for agreeing to testify in his favour. Mr Kilolo instructed the witness not to publicly reveal his contact with Mr Bemba, explaining that the conversation was '*quelque chose d'inhabituel*'. Shortly before the start of D-55's testimony on 29 October 2012, Mr Kilolo also told the witness not to reveal the Amsterdam meeting under any circumstances, as this trip was '*private*' in nature.

124. D-55 testified in the Main Case from 29 to 31 October 2012. During his testimony before Trial Chamber III, D-55 testified that the document in question '*was fabricated, with a hidden agenda*'. When asked about his contacts with the Main Case Defence, the witness declared that he had only three contacts, one with Mr Nkwebe, Mr Bemba's former counsel in the Main Case, and two with Mr Kilolo, the last of which occurred in September 2012. He also stated, on Mr Kilolo's instruction, that he paid his own travel expenses and denied having received any reimbursement of expenses. Finally, D-55 testified that no promises were made to him in exchange for his testimony.

5. Witnesses D-2, D-3, D-4 and D-6[181]

a) First Contacts Between D-2 and D-3 and Mr Arido

125. Upon Mr Kilolo's request, Mr Kokaté requested Mr Arido to identify soldiers who could testify in Mr Bemba's favour in the Main Case. At some point in January 2012, Mr Arido approached D-2 and D-3 and informed them of an opportunity to make money by testifying for the Main Case Defence.

126. In his meeting with D-2, Mr Arido promised him CFAF 10 million and relocation to Europe in exchange for his testimony in Mr Bemba's favour.

[181] *See* paras 306-421.

Mr Arido instructed D-2 to testify as a '*sub-lieutenant*' in the Main Case about the events in the CAR, and proposed details for his testimony regarding his military training, grade and experience. Once D-2 had accepted the offer to testify, Mr Arido called Mr Kilolo on the spot and put D-2 in contact with Mr Kilolo. After the meeting, D-2 took notes so as to prepare and remember. At this juncture, Mr Kilolo did not know of the instructions given by Mr Arido to D-2 as regards D-2's alleged military background.

127. During his contacts with D-3, Mr Arido promised him money and relocation in exchange for his testimony in Mr Bemba's favour in the Main Case. Even though D-3 had told Mr Arido that he was not a soldier and had no knowledge of military affairs, Mr Arido reassured him that he, Mr Arido, had a military background and that D-3 would be briefed adequately by him and another prospective defence witness. During the meeting, D-3 witnessed Mr Arido speaking to Mr Kilolo on the telephone.

128. Mr Arido admitted that he instructed D-2, D-3, D-4 and D-6 to present themselves to Mr Kilolo and to the Court as FACA soldiers, even though he believed that they had no military background.

b) The Douala Meeting

129. At the end of February 2012, a group of prospective witnesses, including D-2, D-3, D-4 and D-6, met with Mr Kilolo and his legal assistant for interviews in Douala. The day before their meeting with Mr Kilolo, Mr Arido met, *inter alia*, D-2, D-3, D-4 and D-6 in a group gathering with a view to giving precise directions as to the accounts the witnesses should provide to Mr Kilolo. The witnesses spent the day preparing their accounts.

130. Mr Arido instructed the witnesses to present themselves as soldiers, assigned the witnesses various military ranks, and handed out military insignia to each of

them. For example, D-2 was instructed to present himself as a '*second lieutenant*'. Mr Arido refined certain details of D-2's testimony concerning his alleged participation in the events relevant to the charges in the Main Case. D-2 took notes in order to memorise key dates, names of military commanders, abbreviations and the organisational structure of the actors involved in the 2002-2003 events in the CAR. D-3 was instructed to present himself as a '*corporal*'. Mr Arido briefed D-3 on his purported membership of the rebel movement and the movements and operations of the alleged rebel group.

131. Mr Arido acted as the '*go-between*' for the conditions negotiated with the witnesses, which he promised to relay to Mr Kilolo. To this end, he instructed D-2, D-3, D-4 and D-6 to note in writing their conditions for testifying, including their preferred relocation destination. Mr Arido also took away the telephones of all witnesses. He informed them that he had told Mr Kilolo that the witnesses had allegedly been '*in the bush*' without telephones. He instructed them to ask Mr Kilolo for new telephones. Shortly afterwards, Mr Kokaté joined Mr Arido and the group of prospective witnesses. The witnesses raised the issues of payment and possible relocation to Europe. Mr Kokaté reassured them that they would receive money and be able to go to Europe.

132. The following day, Mr Kilolo and his legal assistant interviewed D-2, D-3, D-4 and D-6 individually and recorded their statements. At that time, Mr Kilolo had not yet instructed the witnesses concerning the testimony they would be expected to give about their professional background. As agreed with Mr Arido, the witnesses did not yet raise the issue of payment and relocation. Afterwards, D-2, D-3, D-4 and D-6 debriefed Mr Arido. They revisited and adjusted some aspects of their scripted testimony with Mr Arido in the light of certain issues that had arisen during the interviews with Mr Kilolo.

c) The Yaoundé Meeting

133. On 25 and 26 May 2013, Mr Kilolo and Mr Mangenda travelled to Yaoundé, Cameroon, in order to introduce and entrust D-2, D-3, D-4 and D-6 to VWU representatives. The meeting between the witnesses and the VWU took place on two different dates: D-2 and D-4 met the VWU representatives on 27 May 2013, while D-3 and D-6 met the VWU representatives on 28 May 2013. Before their scheduled hand-over to the VWU, however, Mr Kilolo, in Mr Mangenda's presence, met the four witnesses in order to prepare and illicitly coach them for their upcoming testimony before Trial Chamber III. At that point, Mr Arido, who had arrived in France in the meantime, was no longer affiliated with Mr Kilolo and the Main Case Defence.

134. On 25 May 2013, Mr Kilolo met D-3 alone and provided him with a telephone in Mr Mangenda's presence. Mr Kilolo explained that the VWU would take away D-3's telephone but that he wished to stay in contact with D-3 during his testimony.

135. The following day, 26 May 2013, Mr Kilolo met D-2, D-3, D-4 and D-6. He provided each with a document containing their respective statements of February 2012, as well as new information which Mr Kilolo had added without consulting the witnesses. Mr Kilolo went through the statements with the witnesses and coached them illicitly as regards the substance of their upcoming testimony. He also instructed them to untruthfully testify with regard to the number of contacts with and payments, including legitimate reimbursement, and non-monetary benefits from the Main Case Defence, and to deny acquaintance with other individuals and the fact that the interview in February 2012 had been recorded.

136. For example, Mr Kilolo added new information to D-2's February 2012 statement on logistics and weapons. He had not discussed this information with

D-2 before. Mr Kilolo also drew D-2's attention to certain points that were crucial to the defence strategy in the Main Case, such as the arrival of MLC troops in Bangui and their means of communication. Mr Kilolo directed D-2 to refer during his testimony to, '*at most*', two in-person meetings and four telephone contacts with the Main Case Defence; deny that he had received any money or knew Mr Arido and Mr Kokaté; and state that the February 2012 interview had not been recorded. Following Mr Kilolo's instructions, D-2 modified his earlier notes and drew up a new document ('*Annex 3*') including the new information provided by Mr Kilolo.

137. Mr Kilolo also took D-3 aside from the other witnesses and read a document to him. When going through the document, Mr Kilolo instructed D-3 to go beyond his earlier statement on three points in particular, namely, the MLC troops' date of arrival in Bangui, the killing of Muslims at the Bangui cattle market, and the self-incriminating allegation that D-3 had participated in the commission of pillaging during the relevant events. He also instructed D-3 to deny having received any payments and knowing Mr Arido or Mr Kokaté.

138. In their meeting with Mr Kilolo, all the witnesses complained to Mr Kilolo about the outstanding promised payment of CFAF 10 million and relocation to Europe. They expressed their frustration that they were awaiting relocation while Mr Arido had already moved to France. D-2 even threatened not to testify, unless the deal was honoured. In order to calm the witnesses, Mr Kilolo, in Mr Mangenda's presence, promised that D-2, D-3, D-4 and D-6 would each receive the sum of CFAF 600,000 prior to their testimony before Trial Chamber III. He also promised that Mr Bemba, once released from detention, would meet the witnesses in Kinshasa, DRC in order to show his gratitude.

139. Mr Kilolo then proceeded to pay the witnesses, at least in part, the promised sum. Mr Kilolo gave CFAF 550,000 in cash to D-2, stating that this was a '*small*

gift' on the part of Mr Bemba. Likewise, Mr Kilolo gave CFAF 540,000 in cash to D-3. When D-3 requested the outstanding balance, Mr Kilolo told him to calm down and promised to pay him later. D-4 and D-6 also received CFAF 540,000. Mr Mangenda was not present when Mr Kilolo gave the money to the witnesses.

140. Anticipating that the VWU would take the witnesses' cell phones, Mr Kilolo, in the presence of Mr Mangenda, provided D-2, D-3, D-4 and D-6 with a new telephone each in order to stay in contact during their testimonies before Trial Chamber III.

d) Testimonies Before Trial Chamber III

141. D-2, D-3, D-4 and D-6 testified before Trial Chamber III exactly as they had been instructed by Mr Arido and Mr Kilolo during the above-mentioned meetings.

142. During his testimony from 12 to 13 June 2013 *via* video-link, D-2 followed Mr Arido's instructions and testified that he was a member of the CAR army. As dictated by Mr Kilolo, D-2 gave evidence that Mr Bemba had never been in Bangui. Following Mr Kilolo's direction, he also dishonestly denied having received any reimbursement for expenses or any promise in exchange for testifying or that he knew, *inter alia*, Mr Arido and Mr Kokaté. Upon Mr Kilolo's instruction to limit the number of contacts with the Main Case Defence, D-2 also falsely denied having been briefed on what to say or having been provided with a document during meetings with the Main Case Defence to '*refresh*' his memory.

143. During his testimony from 18 to 25 June 2016 *via* video-link, D-3 testified as instructed by Mr Arido that he had been a FACA member. He also stated that he had participated in acts of pillaging and indicated the MLC troops' date of arrival in Bangui, following Mr Kilolo's instructions exactly. He denied having

been reimbursed for any expenses or knowing Mr Arido, Mr Kokaté or [Redacted], as directed by Mr Kilolo.

144. During his testimony from 18 to 20 June 2013 *via* video-link, D-4 also falsely denied knowing Mr Arido, Mr Kokaté and [Redacted].

145. One day before D-6's testimony before Trial Chamber III, on 20 June 2013, Caroline Bemba, Mr Bemba's sister, transferred the sum of USD 1,335.16 through an acquaintance of D-6. D-6's acquaintance collected the money and handed it over to D-6. During his testimony on 21 and 24 June 2013 *via* video-link, D-6 falsely denied having received any money from Mr Kilolo or anyone else in exchange for his testimony, as instructed by Mr Kilolo. He admitted only having been reimbursed for travel costs incurred. In line with Mr Kilolo's instructions, D-6 also falsely denied having (i) been introduced to Mr Kilolo by a '*committee designed to harmonise the evidence*', (ii) discussed the events in the CAR with the Main Case Defence, and (iii) spoken to any person he knew to be a Main Case witness.

e) Aftermath of Testimonies

146. On 21 October 2013, D-6 called Mr Kilolo regarding the outstanding amount of money promised to him and other witnesses. Mr Kilolo replied that he did not have the money at his disposal but assured him that D-4, D-6 and others would receive '*juste symbolique*' CFAF 100,000 each by the end of the week. This sum was meant to complement the amount of money they had received before their testimonies. He also told D-6 that Mr Bemba was very satisfied with the witnesses' testimonies and that, once released, Mr Bemba would meet each witness individually. A few days later, on 24 October 2013, Mr Kilolo travelled to Cameroon.

147. On this occasion, D-2, D-4 and D-6 were given an additional amount of CFAF 100,000 each, as promised by Mr Kilolo. Mr Kilolo also invited D-3 to pick up the sum of CFAF 100,000 in person. As D-3 was unable to travel, Mr Kilolo alternatively sought to cover up the payment by telling D-3 to nominate a recipient for a money transfer whom the Court would not associate with D-3. D-3's proposal of his fiancée was rejected by Mr Kilolo as too obvious, so D-3 designated [Redacted]. He ultimately received the money.

6. Witness D-23[182]

148. Witness D-23 was approached by Mr Kokaté, an individual with whom D-23 and his family were well acquainted, with the suggestion that he testify '*as a soldier*' on Mr Bemba's behalf in the Main Case. In return, Mr Kokaté promised D-23 that if he testified he would be relocated to Europe. He also instructed D-23 not to reveal to the Court that he had put the witness in contact with Mr Kilolo. This occurred without the knowledge of any of the Accused in this case, in particular Mr Kilolo. After D-23 agreed to testify, Mr Kokaté facilitated contact between D-23 and Mr Kilolo.

149. In late March 2012, Mr Kilolo called D-23. On 28 March 2012, Mr Kilolo, accompanied by the legal assistant to the Main Case Defence, interviewed D-23 in a hotel. D-23 introduced himself as a '*soldier*' but did not further discuss with Mr Kilolo his membership of the FACA. However, the witness did divulge that Mr Kokaté had asked him not to reveal his connection with the Main Case Defence. Mr Kilolo reacted to this with laughter, implicitly asking D-23 to conceal his knowledge of Mr Kokaté. The witness did not discuss with Mr Kilolo matters of possible relocation.

[182] *See* paras 422-453.

150. On at least two occasions, Mr Kilolo gave D-23 money in exchange for his testimony in Mr Bemba's favour in the Main Case. After the interview was concluded, Mr Kilolo gave D-23 USD 100 on the pretext of reimbursement for taxi expenses. He instructed D-23 that, even though '*[t]his is not corruption'* and not '*official*', it is nevertheless '*not something to say during the testimony that I'm making a gift'*. Later, when D-23 was introduced to the VWU prior to his testimony, Mr Kilolo gave him another envelope containing approximately CFAF 450,000. Mr Kilolo indicated that this money was '*something to help you out for you and your family during the period of your absence*'. Mr Kilolo also gave D-23 a new laptop. Mr Kilolo told D-23 not to make an error during his testimony, *i.e.* admit that he had been given money by Mr Kilolo.

151. Despite Trial Chamber III's order to refrain from contacting witnesses after the VWU cut-off date, Mr Kilolo nevertheless gave D-23 a new telephone. He explained that he wished to stay in contact with D-23 after the VWU took the witness's telephone. After the VWU cut-off date of 16 August 2013, Mr Kilolo had a number of telephone contacts with D-23, including two contacts in the evening of 19 August 2013, the night before D-23's testimony.

152. D-23 testified *via* video-link in the Main Case from 20 to 22 August 2013 during the morning sessions. During D-23's testimony, Mr Kilolo called D-23 at least six times, including on 20, 21 and 22 August 2013. During the telephone calls, Mr Kilolo rehearsed a number of topics with D-23 and gave specific directives concerning his testimony.

153. In line with what had been rehearsed, D-23 testified that he was a former FACA soldier who had joined Bozizé's rebellion and had been seconded to the intelligence section. D-23 also incorrectly testified, as instructed by Mr Kilolo, that he had not received any payment in exchange for his testimony. He also

untruthfully testified that he had never spoken to Mr Kokaté and that he was never promised relocation to Europe if he testified.

7. Witness D-26[183]

154. Before, during and after his testimony, D-26 had a number of telephone and SMS contacts with Mr Kilolo, including after the VWU cut-off date on 16 August 2013. The witness testified from 20 to 22 August 2013 during the afternoon sessions, and on 23 August 2013 *via* video-link. Parallel to D-26, as mentioned above, D-23 testified *via* video-link during the morning sessions on 20 to 22 August 2013.

155. On the morning of 20 August 2013, the first day of D-26's testimony, Mr Kilolo spoke with D-26 over the telephone several times. Thereafter, during the court recess beginning at 11:00, Mr Kilolo communicated twice with D-26, using Mr Mangenda's telephone. Mr Kilolo informed D-26 of the purpose of the calls, as follows: '*je voudrais un peu répéter les choses-là, si tu peux me suivre attentivement*'. Mr Kilolo then supplied D-26 with information on issues that were expected to form part of his testimony, such as (i) the timing of Bozizé's rebellion; (ii) the number and movements of Bozizé's troops; (iii) the composition of Bozizé's troops, including the individual roles of various officers; and (iv) the crimes allegedly committed by Bozizé's troops and the reasons for their occurrence. Mr Kilolo highlighted specific points that he deemed most important and asked the witness to adhere to a specific narrative. He scripted the course of D-26's testimony, disclosing the questions to be asked and the corresponding replies to be given. Finally, Mr Kilolo told D-26 to testify untruthfully that the last time they had spoken was at the VWU hand-over and agreed with D-26's suggestion that he say that they spoke only six times over the

[183] *See* paras 454-476.

telephone. During the same court recess, Mr Kilolo called the witness a third time.

156. Thereafter, during the afternoon session of 20 August 2013, D-26 provided, for the most part, the answers rehearsed with Mr Kilolo during the court recess. On at least two occasions, however, D-26 deviated from the script provided by Mr Kilolo, namely on the date of the arrival of Bozizé's troops in Bangui and the start of Bozizé's rebellion. That evening, Mr Kilolo called D-26 again.

157. The next day, 21 August 2013, D-26 revisited his testimony concerning the arrival date of Bozizé's troops in Bangui, giving the scripted response that he had not provided the previous day. When the Prosecution asked about this change, D-26 claimed that he had been mistaken the day before. He lied, on Mr Kilolo's instruction, and testified that he had not spoken to anyone since his testimony on the previous day.

158. On the evening of 22 August 2013, Mr Kilolo was twice in telephone contact with D-26. When questioned by the Prosecution the following day, 23 August 2013, D-26 dishonestly testified that he had been in telephone contact with the Main Case Defence only twice, that he had met Mr Kilolo once, and that he had not had any recent contacts with them.

8. Witness D-25[184]

159. The witness testified before Trial Chamber III on 26 and 27 August 2013 *via* video-link. During that time, he was in telephone contact with Mr Kilolo. On the first day of D-25's testimony, during a court recess, Mr Mangenda updated Mr Kilolo, who had not been present at the hearing, over the telephone on the progress of D-25's testimony. Mr Kilolo asked whether D-25 had followed his instructions. Mr Mangenda replied '*oui, oui il a bien suivi [les enseignements]*'.

[184] *See* paras 477-506.

Mr Kilolo did not fully agree with Mr Mangenda's assessment regarding discrete aspects of D-25's testimony, upon which the witness had failed to follow Mr Kilolo's instructions. Mr Mangenda remarked that it was better that D-25 had not mentioned certain information because co-counsel Peter Haynes ('Mr Haynes') had not specifically asked questions on these points and that '*ça peu para[î]tre un peu suspect*'. He also informed Mr Kilolo that the witness had volunteered that Mr Bemba spoke to his troops not only in Lingala but also in French. Based on the reaction of the Judges and participants in the courtroom, Mr Mangenda considered that the Trial Chamber III Judges appeared to suspect that the witness had been illicitly coached but had no means by which to verify their suspicion.

160. On 27 August 2013, the second day of his testimony before Trial Chamber III, D-25 denied any payment from the Main Case Defence, including legitimate reimbursement of travel or other expenses. He did so despite the fact that he had received an unknown amount of money as reimbursement for a mission to Brazzaville from 9 to 17 August 2013, including at least one payment of USD 132.61.

161. Upon completion of D-25's testimony, Mr Kilolo contacted Mr Mangenda by telephone. He expressed satisfaction that the witness had not revealed an illicit coaching meeting. Mr Kilolo also emphasised that he had given D-25 clear instructions to stay on script. Lastly, Mr Mangenda reported that Mr Bemba was also very pleased with D-25's testimony: '*[le client] a vu vraiment que (…) un véritable travail de couleurs a été effectivement fait (…) lui-même il a vraiment senti cela*'. Mr Kilolo commented that Mr Bemba had to be satisfied because of the precision of the witness's testimony due to their accurate illicit coaching.

9. Witness D-29[185]

162. In 2012, D-29 was approached by Mr Kokaté, a friend of D-29's [Redacted], with the suggestion that he testify in Mr Bemba's favour in the Man Case. After having agreed to testify, Mr Kokaté communicated D-29's telephone number to Mr Kilolo. In April 2012, Mr Kilolo had a meeting in a hotel in D-29's place of residence with the witness and his wife (D-30). In the period leading up to the VWU cut-off date, 26 August 2013, Mr Kilolo and the witness were in contact *via* telephone and SMS.

163. On 13 August 2013, Mr Kilolo introduced the witness to the VWU. During that meeting, D-29 requested that the VWU representative assist him in bringing one of his children from a place in the CAR to D-29's place of residence. The VWU did not agree to this request immediately. D-29 told Mr Kilolo of the VWU's denial of his request. Mr Kilolo responded that, although his budget was limited, he '*could approach some people*' in Kinshasa who support the '*Sénateur*', namely Mr Bemba, and *'ask for assistance in sort of a humanitarian kind of way*' for D-29. On the same day, D-29 received a telephone call from [Redacted]. [Redacted] informed D-29 that Mr Kilolo had asked him to send D-29 money.

164. The witness testified before Trial Chamber III on 28 and 29 August 2013 *via* video-link. On 28 August 2013, the first day of his testimony, D-29 collected USD 649.43, which [Redacted] had sent *via* Western Union from Kinshasa, DRC. On 29 August 2013, D-29 testified that MLC troops had attacked and committed crimes in Mongoumba, CAR. This fact undermined the defence position in the Main Case. He also untruthfully testified, as dictated by Mr Kilolo, that he had only been in contact with the Main Case Defence on five occasions.

[185] *See* paras 507-542.

165. During the court recess on 29 August 2013, Mr Mangenda called Mr Kilolo, who was on mission in Cameroon at the time, and informed him that D-29 had '*vraiment déconné*', as he had not abided by Mr Kilolo's instructions. Mr Kilolo responded that if D-29's testimony did not conclude that day, he would contact D-29 to ensure that the next morning '*il rectifie au moins deux, trois choses*'. He recalled a previous telephone call with Mr Bemba during which he had told the latter that '*le problème que j'ai toujours dit au client de faire encore la Couleur, un ou deux jours avant que la personne passe, parce que les gens ne se souviennent pas de tout avec précision*'. Mr Mangenda agreed, saying that co-counsel Mr Haynes must be satisfied that '*il y a un témoin qui dit la vérité*' and that Mr Haynes can now see how witnesses would testify if not prepared. So that he would know how to prepare D-29's wife, D-30, who was scheduled to testify next in the Main Case, Mr Kilolo also asked Mr Mangenda how D-29 had testified concerning prior contacts with the Main Case Defence and whether the Prosecution had raised the question of monetary payments.

10. Witness D-15[186]

166. Mr Kilolo was in extensive telephone contact with D-15 before and during his testimony, which took place from 11 to 13 September 2013. During these conversations, Mr Kilolo illicitly and extensively prepared D-15 for his testimony. For example, on 10 September 2013, the eve of D-15's testimony, Mr Kilolo called the witness and instructed him to incorrectly testify before Trial Chamber III that he had been in contact with Mr Kilolo only three times, the last time being in January 2013. Mr Kilolo emphasised to D-15 that he should falsely testify that '*nous ne nous connaissons pas bien*'.

167. The following evening, 11 September 2013, when the VWU cut-off entered into effect, Mr Kilolo again spoke to D-15 on the telephone. During that call,

[186] *See* paras 543-592.

Mr Kilolo instructed D-15 and scripted his answers on a number of issues, such as (i) the presence of '*cireurs*' (shoe-shiners), former members of DRC military units, in the CAR and the language they spoke; (ii) the names and functions of commanders, including Mr Bemba, in relation to the MLC troops in the CAR; (iii) the arrival of MLC troops in the CAR; (iv) the dates and composition of the reconnaissance mission of the *Centre de Commandement des Opérations* ('CCOP') in the CAR; (v) the language Mr Bemba used when talking to his troops; and (vi) D-15's involvement in the Pretoria preparatory meetings for the Sun City negotiations. Mr Kilolo also disclosed the specific questions he would ask in court the following day. Later that night, Mr Kilolo called Mr Mangenda to update him on the instructions given to D-15.

168. The following morning, 12 September 2013, before D-15 resumed his testimony, Mr Kilolo reported to Mr Bemba that he had rehearsed three questions with D-15. Mr Bemba expressed approval. Mr Bemba also gave feedback and provided directions to Mr Kilolo on matters that he felt had been handled wrongly.

169. During D-15's in-court testimony that day, Mr Kilolo asked the rehearsed questions upon which he had instructed D-15 the night before. After the testimony, Mr Kilolo spoke again with D-15, expressing his and Mr Bemba's satisfaction with D-15's testimony so far. Mr Kilolo again rehearsed the questions he would put to the witness in court the following day, and scripted the expected replies, in particular on the alleged crimes of MLC troops. Mr Kilolo specifically directed D-15 to '*réduire l'élément "connaissance"*', to demonstrate that '*il y avait aucune information precise… c'était [sic] des simples rumeurs*', and to mention only pillaging, not rapes or murders. Later that night, Mr Kilolo called Mr Mangenda, asking him to send the questions that the victims' legal representatives had provided to the parties in the Main Case confidentially. Mr Mangenda did so knowing that Mr Kilolo would illicitly coach the witness. Upon receipt of those

questions, Mr Kilolo then informed D-15 of the questions to be asked and the corresponding replies to be given.

170. During the hearing on 13 September 2013, Mr Kilolo again asked the questions scripted and rehearsed the night before, and the witness replied following Mr Kilolo's narrative. As originally instructed, D-15 untruthfully testified that his last contact with Mr Kilolo had been in January 2013. After his testimony, Mr Kilolo called D-15 and conveyed Mr Bemba's thanks.

11. Witness D-54[187]

171. On 29 August 2013, after Trial Chamber III had enquired whether the Main Case Defence would call D-54, Mr Kilolo told Mr Mangenda that Mr Bemba was pressuring him to call D-54, but that he was hesitant as he had not interviewed him thoroughly and preferred not to take any chances '*comme ça parler aux nuages*'.

172. The following day, 30 August 2013, Mr Mangenda conveyed to Mr Kilolo Mr Bemba's instruction '*to complete the task*' in relation to D-54, before Mr Haynes spoke to him. Mr Bemba instructed that D-54 should testify as to certain specific matters and not answer questions randomly ('*du tic au tac*'). Specifically, D-54 was to (i) deny any knowledge of events in Mongoumba; (ii) deny having any powers while a member of the *Centre de Commandement des Opérations* ('CCOP'), the '*organe qui dirigait la guerre*' and had '*mélangé les troupes*'; (iii) pretend that he went to visit family members at a certain location; and (iv) state that he crossed from Zongo to Bangui when the troops arrived in PK12 and joined '*le truc de ces gens-là, qui commandaient toute la guerre*' until December 2002, when he was replaced. Mr Bemba also directed that D-54 should explain that a '*grand groupe*' of soldiers crossed over to the CAR because '*il fallait quand*

[187] *See* paras 593-653.

même qu'ils soient (…) en mesure de riposter'. Lastly, Mr Bemba insisted that D-54 be told not to forget to mention '*les évènements qu'ils filmaient'*, as well as *'les deux grands vehicules qu'ils avaient vus*'.

173. On 1 September 2013, Mr Kilolo confirmed to Mr Mangenda by telephone that he had spoken to D-54, who had agreed to testify, except in relation to his CCOP membership. Concerned about the witness's credibility, Mr Kilolo also told Mr Mangenda that he would try to convince D-54 to at least state that he had been an '*observateur au CCOP, ne fussent quelques jours*'. On 9 September 2013, Mr Kilolo and Mr Mangenda discussed over the telephone certain aspects of D-54's potential testimony, how to ensure consistency with the rest of the evidence, and the need to keep the instructions simple so as to avoid contradictions on D-54's part. On 12 September 2013, the Main Case Defence requested that D-54 commence testifying on 30 September 2013, which was granted by Trial Chamber III.

174. On 1 October 2013, Trial Chamber III postponed the commencement of D-54's testimony until further notice. Other witnesses were also expected to testify for the Main Case Defence. On 17 October 2013, Mr Kilolo informed Mr Bemba by telephone that he had invested many hours in D-54. On 19 October 2013, Mr Kilolo told Mr Mangenda that he had just spoken to D-54.

175. Mr Kilolo was in telephone contact with D-54 prior to and during the testimony of the witness before Trial Chamber III. Concretely, Mr Kilolo had been in regular contact with D-54 by telephone from at least 22 August 2013 to 1 November 2013. On 29 October 2013, the VWU cut-off date, and thereafter, Mr Kilolo and D-54 continued to be in telephone contact both before the start of D-54's testimony and during the overnight adjournments. For example, Mr Kilolo and D-54 were in contact twice on the night of 29 October 2013, twice

on the night of 30 October 2013, and three times on 31 October 2013, once in the morning before his testimony that day commenced and twice that night.

176. During some of these conversations, Mr Kilolo went through the substance of the witness's upcoming testimony. He also told D-54 the answers to the questions expected to be put to the witness. For example, on 30 October 2013, Mr Kilolo insisted that D-54 testify that Mr Bemba's troops had arrived in Bangui on 7 or 8 November 2002, even though D-54 suggested the end of November or the beginning of December. On the morning of 31 October 2013, D-54 asked Mr Kilolo to go through these dates once more, expressing concern about forgetting these details. Further, Mr Kilolo insisted that D-54 testify that there were no complaints concerning and no evidence to support the allegations of any criminal activity by MLC soldiers, and that, for these reasons, Mr Bemba was unaware of the crimes.

177. Mr Kilolo also instructed D-54 concerning other issues, including (i) Mr Bemba's command of troops and civil/military role; (ii) the motives for the MLC's intervention in the CAR; (iii) the dates of MLC troop movements; (iv) the languages spoken by the MLC troops; (v) the identity of perpetrators of crimes in the CAR and the physical appearance of individuals D-54 was to mention in his testimony; and (vi) investigations into crimes and D-54's role and conduct therein.

178. Concerning D-54's prior contacts with the Main Case Defence, Mr Kilolo told D-54 to testify that he had spoken to Mr Kilolo only five to six times, and that their last contact had been about a month before D-54's testimony. Mr Kilolo also told D-54 to state that he had never met Mr Kilolo and that he had only met his predecessor, late counsel Nkwebe, once in 2011. Mr Kilolo reminded D-54 not to reveal their contacts and illicit coaching, insisting that '*personne de la Défense ne vous a appelé la nuit pour vous préparer, en disant faites attention demain,*

dites ceci, dites cela, jamais, jamais, jamais'. Mr Kilolo also instructed D-54 on how to conduct himself before the Court and to deny any payments from the Main Case Defence.

179. Through regular briefings, Mr Kilolo ensured that D-54 followed the agreed narrative so as to accord with the evidence given by other witnesses with a view to achieving overall consistency with the defence position in the Main Case. This occurred, for example, when D-54 described the military posture of the MLC and the FACA in the field in a manner that did not coincide with Mr Kilolo's directions. Mr Kilolo intervened correctively and insisted that D-54's information accord with the evidence given by other witnesses. At another point, Mr Kilolo strongly objected to D-54's intention to testify that he had received reports on the situation in Bangui from intelligence services. Mr Kilolo also informed D-54 that he would not ask in court any questions that had not been previously discussed and rehearsed. In this context, Mr Kilolo instructed D-54 to pretend that he did not know or had forgotten the answer to any question that had not been touched upon in their earlier conversations.

180. D-54 testified in the Main Case from 30 October to 1 November 2013 *via* video-link before Trial Chamber III. During his testimony on 30 and 31 October 2013, D-54 testified as instructed by Mr Kilolo on a series of issues relating to the merits of the Main Case. D-54 also denied receiving any money from the Main Case Defence. On 1 November 2013, D-54 falsely testified, as instructed by Mr Kilolo, that his last contact with Mr Kilolo or anyone else from the Main Case Defence had taken place two months before his testimony. When asked about his contacts with Mr Kilolo, D-54 falsely denied knowing him. He also added that his only personal contact with the Main Case Defence team had been with Mr Bemba's deceased counsel, Mr Nkwebe.

181. On 1 November 2013, Mr Kilolo informed Mr Bemba that he had not been able to respond to Mr Bemba's call the previous day as he was on the telephone with D-54. Mr Kilolo informed Mr Bemba that the preparation for D-54's testimony had exhausted him.

12. Witness D-13[188]

182. After D-13 was scheduled to testify, initially between 19 November and 13 December 2012 and thereafter, between 21 and 24 May 2013, the Main Case Defence informed Trial Chamber III on 27 June 2013 that, due to an alleged incident involving D-13, it was ultimately not in a position to call said witness. Yet, it later requested that D-13 testify *in lieu* of another witness *via* video-link. Trial Chamber III granted that request on 7 November 2013, on the proviso that the witness's testimony would be completed no later than 15 November 2013. After notification of Trial Chamber III's decision, Mr Kilolo communicated with D-13 at least four times over the telephone on 8 November 2013. In a telephone conversation with Mr Mangenda on 10 November 2013, Mr Kilolo discussed the illicit coaching of D-13.

183. D-13 testified in the Main Case from 12 to 14 November 2013 *via* video-link. During these telephone conversations with D-13 Mr Kilolo directed the witness on the content of his testimony, including the instruction to untruthfully restrict the number of contacts with the Main Case Defence.

184. On the witness's last day of testimony, 14 November 2013, D-13 untruthfully testified that his last telephone contact with Mr Kilolo dated back several weeks before his testimony. The witness did not mention his telephone contacts with Mr Kilolo dated 8 November 2013.

[188] *See* paras 654-667.

IV. ASSESSMENT OF EVIDENCE

A. EVIDENTIARY THRESHOLD AND METHODOLOGY

1. The Evidentiary Threshold of 'Beyond Reasonable Doubt'

185. Pursuant to Article 66(1) of the Statute, the accused are presumed innocent until proved guilty before the Court. According to Article 66(3) of the Statute, in order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.[189] The onus is on the Prosecution to prove the guilt of the accused, as stipulated by Article 66(2) of the Statute.

186. The Chamber endorses the findings of previous chambers that the evidentiary standard of beyond reasonable doubt must be applied to establish all the facts underpinning the elements of the particular offence and the mode of liability alleged against the accused.[190]

187. The evidentiary standard under Article 66(3) of the Statute is the highest to be found in the Court's founding instrument.[191] The Chamber is attentive to the Appeals Chamber's endorsement of the ICTR Appeals Chamber's finding that 'the reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice. It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence or

[189] Lubanga Trial Judgment, para. 92; Trial Chamber II, *Prosecutor v. Mathieu Ngudjolo Chui*, Judgment pursuant to article 74 of the Statute ('Ngudjolo Trial Judgment'), 18 December 2012, ICC-01/04-02/12-3-tENG, paras 34-36.
[190] Lubanga Appeals Judgment, para. 22; Bemba Trial Judgment, para. 215; Lubanga Trial Judgment, para. 92.
[191] Appeals Chamber, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Judgment on the appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir', 3 February 2010, ICC-02/05-01/09-73 (OA), paras 30 and 33; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09-19, para. 28.

inconsistencies in the evidence'.[192] The Chamber also follows this finding approvingly.

188. When assessing the evidence, the Chamber carries out 'a holistic evaluation and weighing of all the evidence taken together in relation to the fact at issue'.[193] When the Chamber concludes that, based on the evidence, there is only one reasonable conclusion to be drawn from the facts *sub judice*, the conclusion is that they have been established beyond reasonable doubt.[194]

2. The Chamber's Approach to Evidence

189. By way of introduction, the Chamber wishes to explain again its approach to evidence. The Chamber recalls its 'Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf)' ('Admissibility Decision') in which it decided to defer its assessment of the admissibility of evidence 'until deliberating its judgment pursuant to Article 74(2) of the Statute'.[195] As expressed in Article 69(4) of the Statute, the Chamber is vested with the discretionary power to make the criteria under Article 69(4) part of its assessment of the evidence when evaluating the innocence or guilt of the accused.[196] Against this backdrop, the Chamber clarified in its Admissibility Decision that it would 'consider the relevance, probative value and potential

[192] Appeals Chamber, *Prosecutor v. Mathieu Ngudjolo Chui*, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled 'Judgment pursuant to article 74 of the Statute' ('Ngudjolo Appeals Judgment'), 7 April 2015, ICC-01/04-02/-12-271-Corr, para. 109; Bemba Trial Judgment, para. 216; ICTR, *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Appeals Chamber, Judgment, 26 May 2003, para. 488.
[193] Lubanga Appeals Judgment, para. 22; Katanga Trial Judgment, para. 79; Bemba Trial Judgment, para. 218.
[194] Bemba Trial Judgment, para. 216; Lubanga Trial Judgment, para. 111.
[195] Decision on Prosecution Request for Admission of Documentary Evidence (ICC-01/05-01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf) ('Admissibility Decision'), 24 September 2015, ICC-01/05-01/13-1285, para. 9.
[196] Appeals Chamber, *Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber II entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", 3 May 2011, ICC-01/05-01/08-1386 (OA5 OA6), para. 36; G. Bitti, 'Article 64' in: Triffterer O/Ambos K, The Rome Statute of the International Criminal Court – A Commentary (3rd ed., 2016), MN 50.

prejudice of each item submitted at that time, though it may not necessarily discuss these aspects for every item submitted in the final judgment'.[197]

190. In practice, this approach worked as follows. The participants were permitted to submit evidence (i) in writing through a 'bar table' application; (ii) by email[198] or (iii) orally during the hearing. In accordance with Rule 64(1) of the Rules, any objections to the relevance or admissibility of evidence were then received upon submission. Significantly, and with only rare exceptions, no *prima facie* assessment of the standard evidentiary criteria (relevance, probative value, potential prejudice) was made at the point of submission. These considerations were instead deferred to when the Chamber deliberated its judgment.

191. However, when objections were raised relating to procedural bars which could foreclose the Chamber's consideration of the standard evidentiary criteria, these were ruled upon at the point of submission. Such objections primarily concerned challenges under Article 69(7) of the Statute or to the procedural pre-requisites of Rule 68 of the Rules.[199] When no such procedural bars were found

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[197] Admissibility Decision, 24 September 2015, ICC-01/05-01/13-1285, para. 9.

[198] Transcript of Hearing, 12 October 2015, ICC-01/05-01/13-T-18-Red2-ENG WT ('T-18-Red2'), p. 18, lines 10-22; Further Direction on Submitting Evidence by Email, 26 October 2015, ICC-01/05-01/13-1423; Registry's report on the evidence recognised as formally submitted to the Chamber, 11 December 2015, ICC-01/05-01/13-1523, together with 15 confidential annexes; Second Registry's report on the evidence recognised as formally submitted to the Chamber, 16 December 2016, ICC-01/05-01/13-1527, together with one confidential annex; Third Registry's report on the evidence recognised as formally submitted to the Chamber, 08 April 2016, ICC-01/05-01/13-1786, together with 6 confidential annexes; Fourth Registry's report on the evidence recognised as formally submitted to the Chamber, 25 April 2016, ICC-01/05-01/13-1837, together with one confidential annex.

[199] *For example*, **Rulings relating to Article 69(7) objections**: Decision on Kilolo Defence Motion for Inadmissibility of Material, 16 September 2015, ICC-01/05-01/13-1257; Decision on Request to declare telephone intercepts inadmissible, 24 September 2015, ICC-01/05-01/13-1284; Decision on Bemba and Arido Defence Requests to Declare Certain Materials Inadmissible, 30 October 2015, ICC-01/05-01/13-1432; Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr (relating to witnesses P-20 and P-243); Decision on Narcisse Arido's Request to Preclude the Prosecution from Using Private Communications, 10 March 2016, ICC-01/05-01/13-1711; Decision on Bemba Defence Application for Admission of D20-2's Prior Recorded Testimony Pursuant to Rule 68(2)(b) of the Rules, 29 March 2016, ICC-01/05-01/13-1753; Decision on Requests to Exclude Western Union Documents and other Evidence pursuant to Article 69(7), 29 April 2016, ICC-01/05-01/13-1854; Decision on Requests to Exclude Dutch Intercepts and Call Data Records, 29 April 2016, ICC-01/05-01/13-1855; Decision on Babala, Arido and Mangenda Defence Requests to Appeal 'Decision on Request to Exclude Western Union Documents and other Evidence Pursuant to Article 69(7)', 23 May 2016, ICC-01/05-01/13-1898; Decision on Request in Response to Two Austrian Decisions, 14 July 2016, ICC-01/05-01/13-1948. **Rulings on procedural preconditions under Rule 68 of the Rules are**, for example: Transcript of Hearing, 21 October

to exist - or when none were raised - the Chamber's standard response was to 'recognise' the formal submission of the evidence. The Registry then reflected which items had been recognised as formally submitted in the accompanying eCourt metadata.[200]

192. 'Recognising' the submission of the evidence was the formal action taken by the Chamber to confirm that the relevance, probative value and potential prejudice of the evidence would be considered when deliberating the judgment. The objections raised by the parties based on the standard evidentiary criteria were also deferred accordingly. Consistent with this approach, the Chamber set no limitations in the course of the trial on how it would consider any submitted evidence in its judgment. However, that parties submitted evidence for a particular purpose was sometimes relevant in determining whether a procedural bar precluded its submission.[201]

193. The Chamber emphasises that it considered all 'recognised' submitted evidence and all corresponding objections in its deliberations. However, the Chamber's admissibility approach does not mean that all such items have been

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2015, ICC-01/05-01/13-T-25-Red-ENG WT ('T-25-Red'), p. 5, lines 15-17 (relating to witness P-272); Transcript of Hearing, 29 October 2015, ICC-01/05-01/13-T-31-Red2-ENG WT ('T-31-Red2'), p. 5, lines 5-23 (relating to witness P-20); Decision on Prosecution Request to Add P-242 to its Witness List and Admit the Prior Recorded Testimony of P-242 Pursuant to Rule 68(2) (b) of the Rules, 29 October 2015, ICC-01/05-01/13-1430; Transcript of Hearing, 30 October 2015, ICC-01/05-01/13-T-32-Red2-ENG WT ('T-32-Red2'), p. 32, lines 12-20 (relating to witness P-243); Transcript of Hearing, 3 November 2015, ICC-01/05-01/13-T-34-Red-ENG CT WT ('T-34-Red'), p. 76, line 8 to p. 77, line 9 (relating to witness P-214); Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr (relating to witnesses P-20, P-214, P-243, P-270, P-264 and P-272); Public redacted Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2) (c) of the Rules of Procedure and Evidence, 12 November 2015, ICC-01/05-01/13-1481-Red; Transcript of Hearing, 13 November 2015, ICC-01/05-01/13-T-37-Red-ENG WT ('T-37-Red'), p. 11, lines 3-16 (relating to witness P-242); Decision on Request for Formal Submission of D23-1's Expert Report Pursuant to Rule 68(2)(b) or, in the Alternative, Rules 68(3) and 67, 19 February 2016, ICC-01/05-01/13-1641; Decision on Bemba Defence Application for Admission of D20-2's Prior Recorded Testimony Pursuant to Rule 68(2)(b) of the Rules, 29 March 2016, ICC-01/05-01/13-1753; Decision on the Motion on behalf of Mr Aimé Kilolo for the Admission of the Previously Recorded Testimony pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, 29 April 2016, ICC-01/05-01/13-1857.

[200] T-10-Red, p. 11, lines 19-24.

[201] As an example, the Chamber decided that Rule 68 of the Rules only applies when a statement is submitted for the truth of its content. Hence, if a party submitted prior recorded testimony for a different purpose, such as to challenge the credibility of a witness, then the Chamber considered this when determining whether the procedural bars specified in Rule 68 of the Rules applied.

discussed in the present judgment.[202] Article 74(5) of the Statute merely requires the Chamber to provide a 'full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions'. Regardless of a Chamber's admissibility approach, as long as the judgment remains 'full and reasoned' it need not discuss therein every item of evidence submitted during trial.

194. As a last point, this case concerns offences against the administration of justice pursuant to Article 70 of the Statute that have been committed in the context of the Main Case. As reiterated throughout these proceedings, the Chamber does not render judgment on substantive issues pertaining to the merits of the Main Case.[203] As a consequence, no submission or evidence presented solely for the purpose of re-litigating the Main Case has been considered by the Chamber.[204] The testimonial evidence concerning the merits of the Main Case has only been considered in so far as it shows that illicit pre-testimony witness coaching was in fact reflected in the testimony before Trial Chamber III. However, the truth or falsity of the testimonies concerning the merits of Main Case has not been assessed by this Chamber.

3. Evidence Assessment Method

195. In the light of the Chamber's approach to evidence, it will discuss in this judgment the witnesses' testimonies and submitted items to an extent which provides a full and reasoned statement of its findings on the evidence and conclusions, as required by Article 74(5) of the Statute. In so doing, the Chamber relies in the first place on the evidence it considers as relevant. The Chamber

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[202] *See* Admissibility Decision, 24 September 2015, ICC-01/05-01/13-1285, para. 9.
[203] Decision on 'Requête de la défense de monsieur Aimé Kilolo Musamba aux fins de divulgation d'information relatives au témoin de l'Accusation 169' and Related Additional Requests, 17 August 2015, ICC-01/05-01/13-1154, para. 14; Decision on Defence Requests for Disclosure of Materials from the Record of the Case of *The Prosecutor v. Jean-Pierre Bemba Gombo* and Related Matters, 27 August 2015, ICC-01/05-01/13-1188, para. 12; T-10-Red, p. 4, line 6 to p. 6, line 6.
[204] *See also* Decision on Defence Requests for Disclosure of Materials from the Record of the Case of *The Prosecutor v. Jean-Pierre Bemba Gombo* and Related Matters, 27 August 2015, ICC-01/05-01/13-1188, para. 12.

understands by 'relevance' that a specific piece of evidence must pertain 'to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused'.[205] In the same vein, the Chamber has carefully assessed the probative value,[206] including indicia of reliability and, where applicable, potential prejudice[207] of the evidence upon which it relies.

196. The Chamber underlines that it need not discuss *every* incriminating piece of evidence submitted by the Prosecution, but only those evidentiary items upon which the Chamber relies for conviction. The Chamber cites approvingly the recent explanation given by Trial Chamber III:

> The Chamber notes that, in performing its "holistic evaluation and weighing of *all the evidence*", it is under no obligation "to refer to the testimony of every witness or every piece of evidence on the trial record". In line with the position adopted by the ICTY Appeals Chamber, the Chamber is mindful that it does not need to explicitly refer to specific witness testimony where there is significant contrary evidence on the record. Indeed, the Chamber notes that, where it "did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings". In the Chamber's view the same applies to evidence other than testimony.[208]

197. Moreover, mindful of its truth-finding responsibility, the Chamber assessed exculpatory evidence as submitted by either party, as the case may be.

198. The Chamber is required to base its decision 'only on evidence submitted and discussed before it at trial' (Article 74(2) of the Statute). As explained by other trial chambers of this Court, the phrase 'discussed before it at trial' encompasses not only the oral testimony, documents and audio recordings that were

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[205] Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Corrigendum to Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1399-Corr, para. 27.
[206] Trial Chamber II, *Prosecutor v. Germain Katanga*, Decision on the Prosecutor's Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, para. 20; Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, para. 15.
[207] Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Corrigendum to Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1399-Corr, paras 31-32; Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, para. 17.
[208] Bemba Trial Judgment, para. 227 (footnotes omitted).

discussed during the hearings, but also any item of evidence that was 'discussed' in written submissions of the parties at any stage of the trial.[209] The principal consideration is that the evidence upon which the Chamber bases its judgment pursuant to Article 74 of the Statute has been introduced during the trial and has become part of the case record and that the parties had an opportunity to make submissions as to each item of evidence.[210]

199. In its evaluation of the evidence, the Chamber also draws upon the submissions of the parties as contained in the record of this case, unless the parties indicated their intention to abandon a particular position during the course of trial.[211]

200. In determining whether an allegation has been proved, the Chamber did not restrict its assessment to the evidence to which the parties referred explicitly in their closing statements. It considered, on a case-by-case basis, whether it could rely on evidence in the record which was not referred to explicitly in order to establish a factual allegation, subject to the requirements of Articles 64(2) and 74(2) of the Statute. In particular, it satisfied itself that the Defence had been afforded the opportunity to make submissions as to the evidence in question.[212]

4. Facts of Common Knowledge

201. The Chamber also recalls that, pursuant to Article 69(6) of the Statute, it has taken judicial notice of trial transcripts in respect of the dates and content of the

[209] Katanga Trial Judgment, para. 78; Bemba Trial Judgment, para. 224.
[210] *Similarly* Ngudjolo Trial Judgment, para. 44; Katanga Trial Judgment, para. 78.
[211] Bemba Trial Judgment, para. 224.
[212] *Similarly* Ngudjolo Trial Judgment, para. 47; Katanga Trial Judgment, para. 81; Bemba Trial Judgment, para. 226.

testimonies, and not the truth or falsity of the testimony itself,[213] and decisions emanating from the Main Case.[214]

5. Assessment of Oral Testimony

202. In evaluating the oral testimony of a witness, the Chamber bore in mind the individual circumstances of the witness, including his or her relationship to the accused, age, the provision of assurances against self-incrimination, bias against the accused, and/or motives for telling the truth.[215] At the outset, the Chamber emphasises that no witness is *per se* unreliable, including a witness that has previously given false testimony before a court. Instead, each statement made by a witness must be assessed individually. The testimony of one and the same witness may therefore be reliable in one part, but not reliable in another.

203. When assessing the reliability of a witness's statement, the Chamber relied on a number of factors, such as the witness's demeanour when testifying, willingness to respond to questions, spontaneity when responding, coherence, chronological pattern, structure, use of particular vocabulary, attempt at accuracy, coherence with prior recorded statements and complications in the account which are otherwise unnecessary. The Chamber was mindful of the fact that, given the passage of time, the memory of some witnesses may have faded with regard to certain details, such as specific dates, exact number and duration of telephone calls or former telephone numbers. In this case, the Chamber made appropriate allowance for imprecisions or contradictions.[216]

204. Inconsistencies, contradictions and inaccuracies, if present, are equally important when assessing the reliability of a witness's statement. They do not

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[213] Decision on Prosecution motion for Clarification of Rule 68(3) Direction in Conduct of Proceedings Decision, 15 September 2015, ICC-01/05-01/13-1249, para. 6.
[214] Decision on Prosecution Request for Judicial Notice, 9 November 2015, ICC-01/05-01/13-1473.
[215] *Similarly* Ngudjolo Trial Judgment, para. 51; Bemba Trial Judgment, para. 229.
[216] *Similarly* Bemba Trial Judgment, para. 230; Ngudjolo Trial Judgment, para. 53.

automatically render a witness's evidence unreliable in its entirety but may in fact speak in favour of the truthfulness of the witness's account. Depending on their personal circumstances, witnesses experience past events in different ways. They attach substantial weight to details that were important to them at the time of the events. On the other hand, inconsistencies, contradictions and inaccuracies will regularly surface when they relate to matters to which the witness attached minor significance at the time of the events. Against this backdrop, it is possible for a witness to be accurate and truthful on some aspects of his or her testimony (and therefore reliable in this regard) but inaccurate, contradictory and untruthful on other aspects of his or her testimony (and therefore unreliable in that regard). In this context, the Chamber also pays heed to the Appeals Chamber's two clarifications, namely that (i) 'the evidence of a witness in relation to whose credibility the Trial Chamber has some reservations may be relied upon to the extent that it is corroborated by other reliable evidence'; and (ii) 'there may be witnesses whose credibility is impugned to such an extent that he or she cannot be relied upon even if other evidence appears to corroborate parts of his or her testimony'.[217] Guided by the above considerations, the Chamber has carefully assessed the witnesses' testimonies and has, where applicable, considered the impact of its rejection of parts of the witnesses' evidence on the reliability of the remainder of the testimony.[218] An individual credibility assessment of each witness whose credibility was challenged and whose testimony the Chamber relied upon is provided in the evidentiary discussion.

205. Lastly, the Chamber recalls that it accepted a number of prior recorded testimonies from witnesses either under Rule 68(2)(b) or (3) of the Rules. If a witness's prior recorded testimony was introduced under Rule 68(3) of the

[217] Ngudjolo Appeals Judgment, para. 168.
[218] *Similarly* Ngudjolo Trial Judgment, para. 50; Bemba Trial Judgment, para. 231.

Rules, the Chamber assessed that prior recorded testimony together with and in the light of the testimony given in court. If portions of a prior recorded testimony which had not been introduced through Rule 68 of the Rules were read out to the witness or referred to in the hearing with the aim of proving inconsistencies in the witness's statements, the Chamber considers those portions to be an integral part of the witness's oral testimony in court.

6. Assessment of Evidence Other than Oral Testimony

206. The Statute does not establish the absolute requirement that evidence be introduced only through a witness. Trial Chamber I in *Lubanga* explained, and other trial chambers have followed consistently, that trial chambers must enjoy a

> significant degree of discretion in considering all types of evidence. This is particularly necessary given the nature of the cases that will come before the ICC: there will be infinitely variable circumstances in which the court will be asked to consider evidence, which will not infrequently have come into existence, or have been compiled or retrieved, in difficult circumstances, such as during particularly egregious instances or armed conflict, when those involved will have been killed or wounded, and the survivors or those affected may be untraceable or unwilling – for credible reasons – to give evidence.[219]

207. The Chamber is of the view that the above considerations also apply in respect of trials involving Article 70 offences. As a matter of law, the Statute draws no distinction between Article 5 or Article 70 cases when regulating the manner in which non-oral evidence may be submitted, challenged and judicially considered.[220] Likewise, the parties in trials involving Article 5 crimes or Article 70 offences are provided with the same opportunities to challenge the non-oral evidence, as they deem fit. Clearly, where the parties have not had an opportunity to test the author of the non-oral evidentiary item submitted, the Chamber has duly taken this circumstance into account when attributing appropriate weight.

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[219] Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1399, para. 24.

[220] Rule 163(1) of the Rules stipulates that 'unless otherwise provided (…), the Statute and the Rules shall apply *mutatis mutandis* to the Court's investigation prosecution and punishment of offences defined in article 70'.

208. For non-oral evidence, such as documents and audio recordings, the Chamber assessed, where appropriate, the content of the particular evidentiary items, their provenance, source or author (including the author's role in the relevant events), and any other relevant material. The indicia of reliability have been assessed on a broad basis and the Chamber has borne in mind that a document, while having sufficient indicia of authenticity, may be unreliable.[221]

7. Challenges to Specific Evidence

209. This case involves a high number of items of non-oral evidence, in particular evidence documenting money transfers through Western Union provided by the Austrian authorities, and evidence of telephone communications provided by national authorities and the ICC Detention Centre. As set out above, the parties have had the opportunity to place their objections in relation to any piece of evidence orally or in writing throughout the trial. The Chamber will address below particular general objections as regards the admissibility of Western Union Documents, the provenance of submitted (recorded or intercepted) telephone calls, text messages (SMS), and emails, as advanced by the Defence.

a) Admissibility of Western Union Records

210. To prove the money transfers between the accused and the witnesses the Prosecution presented Western Union records (also 'Western Union Documents') that it had been provided with by the Austrian authorities. These Western Union Documents list money transfers effected through Western Union that indicate, *inter alia,* the sender's name, the amount, the date and time of the transfer, the sender's telephone number, as well as the name and telephone number of the recipient and the date and time on which the money was collected. The Chamber used the Western Union Documents primarily to

[221] Bemba Trial Judgment, para. 237; Ngudjolo Trial Judgment, para. 57; Lubanga Trial Judgment, para. 109.

corroborate other evidence concerning payments, in particular witness testimonies.

211. The reliability and accuracy of the information contained in these records was actually never challenged by the Defence. However, the Defence objected to the admissibility of the Western Union Documents under Article 69(7) of the Statute on the grounds that the records had been obtained in breach of national laws, several Chapter IX provisions and the accuseds' right to privacy as an internationally recognised human right. In its decision of 29 April 2016 the Chamber rejected these objections.[222] Requests for leave to appeal this decision were rejected by the Chamber on 23 May 2016.[223]

212. On 22 April[224] and 24 May 2016[225] the *Oberlandesgericht Wien* (Higher Regional Court of Vienna) rendered two decisions ('Austrian Decisions') repealing two lower-court decisions due to lack of basic reasoning and denying authorisation of two judicial orders submitted by the Austrian public prosecutor's office concerning the collection of the Western Union Documents. In the light of the two Austrian Decisions, several defence teams requested, *inter alia,* that the Chamber reconsider its decision of 29 April 2016. These requests were rejected by this Chamber on 14 July 2016.[226]

b) Telephone Communications

213. In order to prove communications among the accused or between the accused and witnesses or other persons, the Prosecution presented a series of 'call sequence tables', indicating the date, time and duration of connections (be it

[222] Decision on Requests to Exclude Western Union Documents and other Evidence Pursuant to Article 69(7), ICC-01/05-01/13-1854.
[223] Decision on Babala, Arido and Mangenda Defence Requests to Appeal 'Decision on Requests to Exclude Western Union Documents and other Evidence Pursuant to Article 69(7)', ICC-01/05-01/13-1898.
[224] Document, CAR-D24-0005-0001; Official French translation, CAR-D24-0005-0045.
[225] Document, CAR-D24-0005-0013; Official French translation, CAR-D24-0005-0033.
[226] Decision on Request in Response to Two Austrian Decisions, 14 July 2016, ICC-01/05-01/13-1948.

SMS or voice), the telephone numbers involved (calling number and receiving number) and the source from which the information was collected. The attribution of the telephone numbers to the individuals concerned was demonstrated by indicating the telephone number used and the code or name of the individual. The contacts between two particular individuals were set out in chronological order. Other information, such as the cut-off dates implemented by the Victims and Witnesses Unit ('VWU') or the start and finish of the witness's testimony, was also included. The call sequence tables were prepared by an ICC analyst, P-433, who is a member of the Office of the Prosecutor. They were prepared in relation to each of the 14 witnesses and, as the case may be, in relation to the Accused.

214. Together with the call sequence tables, the Prosecution also presented the logs/call data records ('CDR') of national, private telecommunication companies which had been requested, through a cooperation request, to provide this data to the Court. Where national authorities intercepted communications, audio recordings, together with corresponding call logs, were submitted for the Chamber's consideration.

215. Lastly, the Prosecution also presented call logs and audio recordings emanating from incoming and outgoing communications between Mr Bemba in the ICC Detention Centre and other persons. This material was provided by the ICC Registry.

216. When determining the relevant details of the telephone communications, such as the speakers, relevant numbers and the date of the call, the Chamber has conducted its own independent assessment of the evidence. These communications have corresponding logs[227] and/or other information in the case

[227] Witnesses P-433 and P-361 gave evidence on how to read and understand these logs. P-433 also provided lists of relevant communications purportedly sent by the ICC Detention Centre or intercepted by national

record indicating their underlying details (such as the relevant telephone numbers and date of the communication). The Chamber's general inquiry may be described as follows:

(i) The Chamber matched the identification number of the original language audio recording and/or transcripts to a given working language transcript. This was done by reverting to the 'Source/Attachments' field in e-Court.

(ii) The Chamber matched the communication to its corresponding log using the call duration and the e-court metadata, most notably the 'Title' field. The Chamber notes the 'Call Sequence Tables', from which Prosecution analyst P-433 selects certain call details in the call logs.[228] The Chamber never relied on these tables in isolation, and always checked the underlying call logs when conducting its assessment. Nevertheless, for presentation and practicability purposes, the Chamber has referred to the 'Call Sequence Tables', as appropriate.

(iii) The Chamber attributed the telephone numbers in the logs to the speakers. The Chamber did not rely on the attributions provided by the Prosecution and Independent Counsel for these determinations. Sometimes the content of the communication itself sufficiently confirm who is speaking. When this is not possible, the Chamber assessed other relevant evidence in the record to attribute these numbers. There are also a sufficiently large number of calls and/or voice samples in evidence for the Chamber to be able to recognise the voices of some of the Accused on any given call. The Chamber did not rely on voice recognition alone to identify the speakers

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authorities, *see* Transcript of Hearing, 30 September 2015, ICC-01/05-01/13-T-11-Red-ENG WT ('T-11-Red'); Transcript of Hearing, 1 October 2015, ICC-01/05-01/13-T-12-Red-ENG WT; Document, CAR-OTP-0090-0724; Transcript of Hearing, 8 October 2015, ICC-01/05-01/13-T-16-Red2-ENG WT ('T-16-Red2'); Transcript of Hearing, 9 October 2015, ICC-01/05-01/13-T-17-Red2-ENG WT ('T-17-Red2'); Expert Report, CAR-OTP-0090-1825.

[228] Call Sequence Table, CAR-OTP-0090-0630.

in a telephone conversation, but always considered the voices heard in connection with the call content and other relevant information.

217. The Defence objected to the use of these communications and corresponding logs on grounds that the Prosecution had failed to sufficiently establish their authenticity and chain of custody.[229] In particular, objections were raised that the Prosecution did not call any witnesses to authenticate Detention Centre recordings or intercepted communications.[230]

218. Such arguments understate the array of mutually reinforcing information confirming the accuracy of the intercepted communications and their corresponding logs. In this respect, the present case is distinguishable from authorities cited by the Defence on the additional evidence required to establish the provenance of intercepted communications or CDRs.[231]

219. First, some communications and logs do have inherent indicia of authenticity. For example, some call logs bear the corporate watermarks of the

[229] *For example* Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, para. 157; Bemba Defence Submission, ICC-01/05-01/13-1074-Red, paras 53-62; Kilolo Defence Submission, ICC-01/05-01/13-1075-Red, para. 24; Mangenda Defence Submission, ICC-01/05-01/13-1076-Red, para. 26; Babala Defence Submission, ICC-01/05-01/13-1073-Red, para. 25; Arido Defence Submission, ICC-01/05-01/13-1077-Red, para. 26.
[230] *For example*, Bemba Defence Closing Brief, ICC-01/05-01/13-1902-Corr2-Red2, para. 202; Bemba Defence Submission, ICC-01/05-01/13-1799-Red, para. 94(e).
[231] *See* ICTY, *Prosecutor v. Tolimir*, Case No. IT-05-88/3-T, Trial Chamber II, Decision on Prosecution's Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para. 14 ('With regard to the reliability and authenticity of the Proposed Intercepts, the Chamber considers intercepts to be a special category of evidence in that in and of themselves, they bear no *prima facie* indicia of authenticity or reliability, and as such these requirements must generally be fulfilled by hearing from the relevant intercept operators or the participants in the intercepted conversation'); *Prosecutor v. Karadzić*, Case No. IT-95-5/18-T, Trial Chamber, Decision on the Prosecution's First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010, para. 9; *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Trial Chamber II, Decision Denying the Stanisić Motion for Exclusion of Recorded Intercepts, 16 December 2009, paras 16-18; STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC F1937, Trial Chamber, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIIC and STL'S Prosecution, 6 May 2015, paras 113-15; *see also Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/AC/AR126.9, Appeals Chamber, Decision on Appeal by Counsel for Mr Oneissi Against the Trial Chamber's Decision on the Legality of the Transfer of Call Data Records, 28 July 2015 (upholding the STL Trial Chamber decision on appeal, though without addressing the question of provenance).

telecommunications provider.[232] As another example, some of the Detention Centre communications begin with persons identifying themselves as the ICC when connecting Mr Bemba's calls.[233]

220. Second, the content of every communication in evidence matches the allegedly corresponding logs and attributed numbers. When the Chamber is able to recognise peoples' voices on a given call and independently attribute their telephone numbers, the speakers invariably correspond to the telephone numbers in the logs. Some calls discuss concrete events, such as the imminent testimony of specific Main Case defence witnesses, which can be indexed to specific points in time.[234] Most communications also touch upon subject matters from the Main Case, known only to a limited number of people, such as the Accused. Without exception, these logs reflect the conversations occurring on dates when they would be logically expected to occur.

221. Third, P-361 gave expert testimony on the origins of CDRs in this case, provided by the national telecommunication companies. On the basis of his expertise, which was unchallenged in relation to the CDRs, he determined that it was either 'likely' or 'highly likely' that all of the CDRs he analysed in this case came from the telecommunication providers indicated by the Prosecution.[235] P-361 made it clear that these qualifications were not a reflection of any concrete doubt as to the origins of the CDRs, but rather of his experience with certain

[232] *For example*, Orange Cameroon Call Data Records, CAR-OTP-0073-0190, CAR-OTP-0073-0239; KPN Call Data Records, CAR-OTP-0072-0391; CAR-OTP-0072-0396; CAR-OTP-0083-1445 (Microsoft Excel files with a 'kpn Group Belgium' watermark on the first worksheet).
[233] *For instance*, several purported Detention Centre calls transmitted by the Dutch authorities begin with unidentified speakers identifying themselves as the ICC and/or indicating that Mr Bemba requested the call; *see*, for example, Audio recording, CAR-OTP-0074-1000; Transcript of audio recording, CAR-OTP-0079-0056 at 0057, line 9 (*'Allô Bonjour? Allô? CPI Bonjour?'/'Hello good morning? Hello? ICC good morning?'*); Audio recording, CAR-OTP-0074-0986; Transcript of audio recording, CAR-OTP-0079-0067 at 0068, line 5 (*'Good evening, sir. ICC. One moment…I have Mr Bemba for you'*); Audio recording, CAR-OTP-0074-1006; Transcript of audio recording, CAR-OTP-0079-1654 at 1655, line 4 (*'Hello ICC Speaking. I have Mister Bemba for you. Just a moment'*); Transcript of audio recording, CAR-OTP-0082-0524 at 0525, line 5; Transcript of audio recording, CAR-OTP-0082-0983 at 0984, lines 4-5.
[234] Such communications are described in the discussion of the evidence below.
[235] Expert Report, CAR-OTP-0090-1825 at 1830 to 1844; T-16-Red2, p. 72, line 3 to p. 87, line 11.

CDRs and the fact that he did not receive the CDRs directly from the telecommunications service providers.[236] When combined with the other information before the Chamber, P-361's testimony on the origins of these documents leads to the only reasonable conclusion which can be drawn from the evidence.

222. Fourth, the case record is replete with further information confirming the authenticity and chain of custody of these communications and logs. The Pre-Trial Chamber Single Judge directly ordered that a significant amount of evidence be provided to the parties, indicating in these orders exactly where the materials came from.[237] Further, the Registry exhaustively chronicled all seized materials received and kept formal chain of custody logs.[238] On multiple occasions, these materials were unsealed by the Registry in the physical presence of one or more Defence counsel.[239] This all means that, if the Defence's

[236] T-17-Red2, p. 13, line 3 to p. 14, line 3 ('Q.: *I think yesterday you used the word "sure." And you said, "There is one level above [highly likely], and that's when I'm sure." And you said, "When I'm sure I want to have received the CDR directly from the mobile operator, preferably with a digital signature."* A.: *That's correct.* Q.: *So in order to leave that -- achieve that level of sureness, it will be important to have something from the telecom providers themselves?* A.: *They're usually not accessible for experts, because the whole process has been standardized and there is only a relationship between the telecommunication service providers and the requesting law enforcement agencies […]*').

[237] Pre-Trial Chamber II, Order on the filing of documents in the record of the case ('Order of 21 November 2013'), 21 November 2013, ICC-01/05-01/13-6-Conf (reclassified from confidential *ex parte* on 15 December 2015, ICC-01/05-01/13-6-Red with 90 annexes); Decision on the reclassification and filing into the record of material provided by the Dutch judicial authorities, 16 May 2014, ICC-01/05-01/13-403, implemented through, *inter alia*, Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403, 28 May 2014, ICC-01/05-01/13-438-Conf (with 74 annexes).

[238] *See generally* Annex 2 to the Joint report on the implementation of Decision ICC-01/05-01/13-893-Conf and related to the unsealing and transmission of seized material, 5 May 2015, ICC-01/05-01/13-931-Conf-Anx2 (with further references therein), and, for example, Registry Report on the implementation of Decisions ICC-01/05-01/13-41-Conf-Red and ICC-01/05-01/13-103-Conf, 24 January 2014, ICC-01/05-01/13-124-Conf (with eight annexes; annexes 3-4 and 6-7 are signed 'Chain of Custody' forms); Registry's report on the return of material seized in the proceedings belonging to Mr Arido, 21 March 2014, ICC-01/05-01/13-279-Conf (with annex); Registry submissions pursuant Regulation 24*bis* of the Regulations of the Court related to the processing of the material seized in the proceedings and placed in the custody of the Registry, 27 March 2014, ICC-01/05-01/13-299-Conf (with 10 annexes, with most being formal forensic acquisition reports prepared by the Registry on seized materials); Second Registry submissions related to the material seized in the proceedings and transferred by the Dutch authorities to the Registry on 13 May 2014, 23 July 2014, ICC-01/05-01/13-587 (with annex).

[239] *For example*, ICC-01/05-01/13-299-Conf-Anx2; ICC-01/05-01/13-299-Conf-Anx3; ICC-01/05-01/13-587-Conf-Anx1; Annex 1 to Registry submissions related to the implementation of Decisions ICC-01/05-01/13-366-Conf and ICC-01/05-01/13-446, 12 June 2014, ICC-01/05-01/13-490-Conf-Anx1; Annex 1 to Second Registry

objections concerning the lack of testimonial, authenticating evidence were to be accepted – simply to establish authenticity and chain of custody – then the Chamber would have been required to call the Pre-Trial Chamber Single Judge as a witness and hear evidence from the Registry on events Defence counsel had themselves witnessed. Such a conclusion is entirely unreasonable and overstates the Prosecution's burden of proof.

223. Fifth, the Registry either generated or received many of the materials challenged. The Statute mandates that the Registry's responsibilities involve the non-judicial aspects of the administration of the Court, as reflected in Article 43(1) of the Statute. It is a neutral organ tasked, *inter alia*, with making evidence available for the benefit of chambers and participants by storing it, registering it in the Court's e-court information system and adding relevant metadata in the e-Court system, as the case may be.[240] In this regard, the information the Registry provides, most notably from the VWU and the Court's Detention Centre, is precisely the type of information which the Registry would acquire in the course of its administrative functions.

224. The Chamber emphasises that it has not been able to find a single communication in evidence where the communication itself was demonstrably inconsistent with the corresponding log. The Defence has likewise been unable to present a single substantiated challenge to the authenticity of any of this information. When considering what can be clearly ascertained as to the provenance of these communications and logs, no second reasonable conclusion can be drawn from the evidence other than that these materials are authentic.

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submissions related to the implementation of Decisions ICC-01/05-01/13-366-Conf and ICC-01/05-01/13-446, 29 October 2014, ICC-01/05-01/13-724-Conf-Anx1.

[240] *See also* Rules 13(1), 15 121(10) and 131 of the Rules; Regulations 10, 15, 16, 26, 28, and 29 of the Regulations of the Registry; particular emphasis is laid on Regulation 26(2), second sentence, of the Regulations of the Registry which reads: 'The Registry shall ensure that documents, material, orders and decisions are not altered in any way'.

225. It was not necessary for the Prosecution to provide further testimonial evidence on authenticity in the light of all these considerations. To conclude otherwise would overstate the burden of proof required and would have disproportionately lengthened the trial – it is easy to imagine that accepting the Defence's objections at face value would have led to more 'authenticity witnesses' in these proceedings than all the witnesses who actually testified on the facts and circumstances described in the charges. In the light of all the information on authenticity before the Chamber, calling witnesses solely on such matters would have been a formal and useless exercise.

c) Problems in Recording of Telephone Communications from the ICC Detention Centre

226. In addition to the general authenticity challenges, the reliability of the original language audio recordings and corresponding transcriptions/translations of telephone communications incoming and outgoing from the ICC Detention Centre was challenged by the Bemba Defence. Relying on expert witness D20-1,[241] the Bemba Defence challenged the reliability of all the ICC Detention Centre audio recordings as they suffer from the problem of synchronisation of the spoken content between two interlocutors, 'i.e. the speech from one side of the call is temporarily misaligned with that from the other'.[242] In its view, the 'significant' technical problems diminished the reliability of said material. However, it is also conceded that some audio recordings may be only partially 'misaligned'[243] and that the extent of misalignment between two speakers varies both within and between recordings.[244] Nevertheless, as a consequence of the

[241] It is noted that the expert witness prepared a report of his analysis of 28 out of 708 audio recordings, *see* Expert Report, CAR-D20-0006-1244 at 1260.
[242] Expert Report, CAR-D20-0006-1244 at 1250 and 1258; *see also* Transcript of Hearing, 10 March 2016, ICC-01/05-01/13-T-43-Red-ENG WT ('T-43-Red'), p. 21, lines 13-16 and 25 to p. 22, line 1; p. 43, lines 5-6; Bemba Defence Closing Brief, ICC-01/05-01/13-1902-Corr2-Red2, paras 204-.208.
[243] Expert Report, CAR-D20-0006-1244 at 1257.
[244] Expert Report, CAR-D20-0006-1244 at 1261; T-43-Red, p. 65, lines 20-24.

inaccuracy of the recordings in their temporal representation of the original telephone conversations, derivative transcriptions and translations of the audio material are equally considered unreliable.[245]

227. In the Chamber's view, the technical irregularities in recording conversations from and to the ICC Detention Centre, albeit significant, are not of such a scale as to exclude the evidence from the outset. Rather, in this instance a case-by-case approach is warranted for the following reasons. First, this identified problem is a matter of synchronisation of speech, *i.e.* the sequence of utterances by two interlocutors, caused by the telephone system, and does not concern whether a specific topic, name or location was mentioned during a conversation. As also pointed out by expert witness D20-1, only the sequence of utterances is affected. There is no information suggesting that anything is missing in the recording and the content of the speech of the individual speakers is complete.[246] Second, as confirmed by expert witness D20-1, the sequence of the utterances relating to one individual speaker is correct.[247] Third, the Chamber has not relied only on the audio recordings or their transcriptions/translations in isolation but has reviewed all corresponding material together. Fourth, the reliability of the recording depends on the type of information on which the Chamber seeks to rely. As a result, the Chamber must review each and every excerpt within a telephone conversation to be relied upon. Furthermore, the difficulties identified by the Defence cause the Chamber to treat with circumspection any probative value to be attributed to the information emanating from the evidence concerned. Hence, where discrepancies appear plausible, the Chamber refrained from relying on the recordings. Otherwise, the Chamber did not rely solely on the audio recordings and transcription/translation concerned; it relied on such items only if corroborated by other evidence.

[245] Expert Report, CAR-D20-0006-1244 at 1256, 1258 and 1261; T-43-Red, p. 43, lines 5-6.
[246] T-43-Red, p. 21, lines 21-23; p. 67, lines 20-22.
[247] T-43-Red, p. 67, lines 17-19; p. 68, lines 1-4.

B. EVIDENTIARY DISCUSSION: WITNESSES

1. Introduction

228. The Chamber sets out below its assessment of the evidence regarding the factual allegations involving the 14 Main Case defence witnesses as they have been summarised in Section III.B. The Chamber structures its evidentiary discussion by witness and according to the order in which they appeared in the Main Case.

2. Witness D-57

229. D-57 was called by the Main Case Defence and testified under this pseudonym. In the present case he was called by the Prosecution and testified as P-20.[248] His wife testified before this Chamber under the pseudonym P-242.

a) Credibility

230. P-20 (D-57) provided a statement to the Prosecution in January 2014, which has been recognised as submitted under Rule 68 of the Rules.[249] He also testified before this Chamber after having been given Rule 74 assurances.[250]

231. The Chamber finds the witness credible as regards the core details relating to his prior contacts with Mr Kilolo and Mr Babala and payments of money. His

[248] The Chamber hereby explains the manner in which it uses the pseudonyms of witnesses. When the Chamber uses the pseudonym assigned in the Main Case (here, 'D-57'), it makes reference to the witness's testimony before Trial Chamber III in the Main Case or events that took place in the context of the Main Case. On the other hand, when the Chamber makes reference to the witness's testimony before this Chamber and events that took place in the context of this case, it makes reference to the pseudonym assigned in this case, together with the former pseudonym in parentheses (here, 'P-20 (D-57)'). In case the witness only testified in the Main Case, the Chamber makes reference to the pseudonym as assigned in the Main Case. Witnesses who have only testified in the context of this case and not in the Main Case are referred to by their pseudonyms as assigned in this case.
[249] Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr; Prior recorded testimony, CAR-OTP-0074-0712; CAR-OTP-0077-0045; CAR-OTP-0077-0052; CAR-OTP-0077-0074; CAR-OTP-0077-0088; CAR-OTP-0077-0121; CAR-OTP-0077-0149; CAR-OTP-0077-0160; CAR-OTP-0074-0713; CAR-OTP-0077-0003; CAR-OTP-0077-0026.
[250] T-31-Red2, p. 4, line 18 to p. 5, line 23.

account, as reflected in both the January 2014 statement and later in his testimony before this Chamber, remained essentially consistent. The witness was generally forthcoming in answering questions, and did not change crucial aspects of his testimony during the Defence examination. The Chamber thus considers that it can rely on core parts of P-20 (D-57)'s testimony since he testified about facts within his personal knowledge when explaining his prior contacts with some of the Accused and the manner in which payments were effected. However, the Chamber also notes that the witness occasionally prevaricated with regard to his own conduct. In such instances, in particular when P-20 (D-57) testified as to the Accused's behaviour, the Chamber relied on his word only to the extent that it was corroborated by other evidence. The Chamber will determine on a case-by-case basis whether other aspects of his testimony can be relied upon without corroboration.

232. Before P-20 (D-57)'s testimony, the Defence challenged the admissibility of the January 2014 statement, arguing, in essence, that the witness's right to legal assistance had been violated. The Chamber rejected that argument.[251] During the trial, the Defence again advanced those arguments.[252] Witness P-20 (D-57), who had been summoned to appear before national authorities to give a statement in January 2014, testified, however, that he had not been under pressure at the time of the interview,[253] had waived his right to counsel,[254] and had answered the questions voluntarily.[255] Having found no violation justifying any further assessment under Article 69(7) of the Statute, the Chamber relies on the January 2014 statement for the purpose of its evidentiary assessment.

[251] Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr, paras 16 and 52-60.
[252] T-31-Red2, p. 40, line 22 to p. 43, line 18.
[253] T-31-Red2, p. 43, lines 19-20.
[254] T-31-Red2, p. 85, lines 21-25 to p. 86, lines 1-2.
[255] T-31-Red2, p. 42, lines 10-12.

233. P-242, P-20 (D-57)'s wife, also testified before this Chamber on limited aspects regarding the payment of money intended for her husband. On account of a marital privilege recognised under Rule 73(2) of the Rules, she was informed that she could refuse to answer questions that might incriminate her husband.[256] Her prior recorded testimony was not admitted under Rules 68(2)(b) and (3) of the Rules.[257] The Chamber finds the witness credible as regards the core details relating to her contact with Mr Babala, the conduct of her husband and the payment of money. She volunteered the relevant information and remained consistent during both the Prosecution and Defence examinations.

b) Discussion

234. On 14 June 2012, Mr Kilolo transferred the amount of USD 106 to D-57.[258] P-20 (D-57) confirmed this money transfer,[259] which is not contested by Mr Kilolo.[260] P-20 (D-57) testified that the money was intended to pay for his travel,[261] which is consistent with submissions by the Kilolo Defence.[262] Accordingly, contrary to the Prosecution allegations otherwise,[263] the Chamber is satisfied that this amount was paid as reimbursement for D-57's travel expenses in connection with his meeting with Mr Kilolo on 15 June 2012, and was not paid to bribe the witness.

235. The Chamber is convinced that there were regular telephone contacts between Mr Kilolo and D-57 prior to his testimony before Trial Chamber III commencing

[256] T-37-Red, p. 12, line 10 to p. 13, line 19; p. 15, line 13 to p. 16, line 1; p. 17, lines 11-13.
[257] Decision on Prosecution Request to Add P-242 to its Witness List and Admit the Prior Recorded Testimony of P-242 Pursuant to Rule 68(2)(b) of the Rules, 29 October 2015, ICC-01/05-01/13-1430; The Prosecution's request to submit P-242's prior recorded statement under Rule 68(3) of the Rules was equally rejected, *see* T-37-Red, p. 11, lines 3-16.
[258] Western Union records, CAR-OTP-0070-0007, tab 32, row 23.
[259] Transcript of Hearing, 29 October 2015, ICC-01/05-01/13-T-31-CONF-ENG ET ('T-31-CONF'), p. 51, lines 8-10; *see also* p. 51, line 23 to p. 52, line 6.
[260] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 762, footnote 943.
[261] T-31-Red2, p. 52, lines 5-6.
[262] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 762, footnote 943.
[263] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 175.

on 17 October 2012,[264] and after the VWU cut-off date of 16 October 2012.[265] The Chamber is particularly attentive to the following contacts:

- 15 October 2012, at 14:16, for approximately 7 minutes;[266] at 17:34, for approximately 70 minutes;[267]
- 16 October 2012, at 08:35, for approximately 6½ minutes;[268] at 11:11, for approximately 11 minutes.[269]

236. According to the call sequence table and corresponding call data records, the above communications involved, for D-57, telephone number [Redacted]. The Chamber is satisfied that the table correctly attributes this telephone number to D-57 as he recognised it as his own[270] from a document containing private telephone numbers provided by the Main Case Defence and Main Case defence witnesses.[271] Likewise, according to the call sequence table and corresponding call data records, the above communications involved Dutch telephone number [Redacted], which, in the view of the Chamber, is attributable to Mr Kilolo.[272]

237. The above evidence is corroborated by P-20 (D-57) who, during his testimony before this Chamber, admitted to having spoken to Mr Kilolo on the telephone at least on 15 and 20 October 2012.[273] P-20 (D-57) testified that he did not remember whether he had also had telephone contact with Mr Kilolo on

[264] *See* Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 17 October 2012, ICC-01/05-01/08-T-256-CONF-ENG ET; ICC-01/05-01/08-T-256-Red2-ENG WT; Transcript of Hearing, 18 October 2012, ICC-01/05-01/08-T-257-CONF-ENG ET; ICC-01/05-01/08-T-257-Red2-ENG WT ('T-257-Red2'); Transcript of Hearing, 19 October 2012, ICC-01/05-01/08-T-258-CONF-ENG ET; ICC-01/05-01/08-T-258-Red2-ENG CT WT ('T-258-Red2').
[265] VWU Table, CAR-OTP-0078-0290 at 0292 (ICC-01/05-01/13-207-Conf-Anx p. 3).
[266] Call Sequence Table, CAR-OTP-0090-0630 at 0720, row 12; Call Data Record, CAR-OTP-0072-0082, row 175.
[267] Call Sequence Table, CAR-OTP-0090-0630 at 0720, row 14; Call Data Record, CAR-OTP-0072-0082, row 193.
[268] Call Sequence Table, CAR-OTP-0090-0630 at 0720, row 18; Call Data Record, CAR-OTP-0072-0082, row 221.
[269] Call Sequence Table, CAR-OTP-0090-0630 at 0720, row 20; Call Data Record, CAR-OTP-0072-0082, row 225.
[270] T-31-CONF, p. 21, lines 11-15; *see also* p. 34, lines 15-17; Transcript of Hearing, 30 October 2015, ICC-01/05-01/13-T-32-CONF-ENG ET ('T-32-CONF'), p. 4, lines 7-9. The Chamber notes that the Call Data Record indicates for the contact dated 15 October 2012 at 14:16 the telephone number [Redacted] attributable to D-57.
[271] T-31-Red2, p. 21, lines 5-10; ICC Document, CAR-OTP-0077-0942 at 0942.
[272] *See* para. 585.
[273] T-31-Red2, p. 36, lines 8-9; p. 37, lines 4-7; p. 53, lines 12-16 and 18-20.

16 October 2012.[274] He challenged the accuracy of the data of the 15 October 2012 contact as reflected in the call sequence table,[275] but only in relation to its duration (70 minutes, as opposed to 5 to 15 minutes), not its occurrence.[276] The Chamber does not find the witness's testimony on this point reliable given his statement that he discussed a series of questions with Mr Kilolo on the telephone, as he was about to come to The Hague for the first time.[277] This in itself implies that he may have been on the telephone with Mr Kilolo for a longer time. Furthermore, there is no indication that there was a technical failure in the production of the call data records. Critically, the Chamber notes that the witness remained rather evasive on certain matters, apparently in an effort to protect his own interests. As a result, the Chamber finds the call sequence table/call data records reliable in showing contacts, including their duration, between witness D-57 and Mr Kilolo during the period concerned.

238. With regard to the content of conversations between D-57 and Mr Kilolo, the witness admitted straightforwardly and consistently, both in his January 2014 statement and during his testimony, that Mr Kilolo informed him over the telephone that he would send '*a little bit of money*'.[278] Witness P-20 (D-57) also confirmed that he had given Mr Kilolo the name of his wife, P-242.[279] On the basis of P-20 (D-57)'s testimony, it is not possible to clarify the exact date of this conversation. Nevertheless, according to P-20 (D-57), Mr Kilolo first informed him about the imminent money transfer.[280] Accordingly, the Chamber is satisfied that this telephone call must have taken place earlier than the telephone call from Mr Babala on 16 October 2012.

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[274] T-31-Red2, p. 36, lines 7-12.
[275] Call Sequence Table, CAR-OTP-0090-0630 at 0720, row 14; Call Data Record, CAR-OTP-0072-0082, row 193.
[276] T-31-Red2, p. 36, line 23 to p. 37, line 3.
[277] T-31-Red2, p. 36, lines 14-21; *see also* p. 37, lines 6-8; p. 69, line 18 to p. 70, line 1.
[278] T-31-Red2, p. 22, lines 3-5 and 11-13; p. 27, lines 14-16; *see* para. 240.
[279] T-31-Red2, p. 22, lines 7-13; Prior recorded testimony, CAR-OTP-0077-0088 at 0106, lines 616-624.
[280] T-31-Red2, p. 27, lines 14-16.

239. As will be discussed below, D-57's wife received USD 665 through Western Union on 16 October 2012, the day of D-57's travel to The Hague.[281] P-20 (D-57) indicated in his January 2014 statement[282] and in his testimony[283] that Mr Kilolo, of his own volition[284] and out of kindness, sent the money for D-57's children, as D-57 was about to depart for The Hague. The Chamber does not consider this explanation to be convincing. First, D-57's expenses relating to his travel to The Hague in 2012 were borne entirely by the Court. There was no reason for Mr Kilolo to 'advance' any money for this specific purpose. Second, the Chamber notes that the money transfer took place on the VWU cut-off date, just one day in advance of D-57's testimony before Trial Chamber III. The temporal proximity between the money transfer and the witness's testimony, along with P-20 (D-57)'s statement that the money was sent because of his departure for The Hague, clearly indicates a link between the payment and the witness's imminent testimony. Third, and strikingly, similar amounts of money were given or transferred to other witnesses shortly before their testimonies in the Main Case, including D-2, D-3, D-4, D-6, D-23, D-29 and D-64.[285] Considering these circumstances, the Chamber is convinced that Mr Kilolo did not send the money as a gesture of kindness.

240. Nor does the Chamber find convincing the Kilolo Defence argument during P-20 (D-57)'s testimony that the money was for payment of costs incurred by the witness during a meeting with Mr Kilolo in June 2012.[286] P-20 (D-57) clarified on several occasions that any expenses incurred on account of the June 2012

[281] T-31-Red2, p. 37, lines 13-22.
[282] Prior recorded testimony, CAR-OTP-0077-0088 at 0106, lines 627-630; at 0107, lines 645-647.
[283] T-31-Red2, p. 27, lines 17-19; *see also* p. 60, lines 10-11 and 13-14.
[284] T-31-Red2, p. 54, lines 21-22.
[285] *See* paras 268-269, 373-374, 436-438 and 520.
[286] T-31-Red2, p. 58, line 22 to p. 59, line 3; *see* also Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 242.

meeting with Mr Kilolo (*viz*. travel and hotel) had already been paid in full.[287] It is clear from P-20 (D-57)'s testimony, that there were no outstanding costs pertaining to the June 2012 meeting with Mr Kilolo. Rather, he claimed that the sum of USD 665 was a gesture of kindness, an assertion to which, for the reasons set out above, the Chamber gives no credence. As a result, the Chamber is persuaded that the sum of USD 665 was transferred to P-20 (D-57) not as reimbursement of outstanding expenses, but to motivate him to testify to particular matters in favour of Mr Bemba before Trial Chamber III.

241. The witness underlined several times that he had not entered into negotiations about his prospective testimony in the Main Case,[288] he had testified of his own volition and he had not been pressured or offered money for his testimony.[289] The Chamber considers that the existence of 'negotiations' between D-57 and Mr Kilolo concerning the money transfer is not determinative. In this regard, the Chamber emphasises that P-20 (D-57) admitted that he received USD 665 on the day he departed for The Hague.[290]

242. The Chamber is also convinced that, on the morning of 16 October 2012, shortly before he left for The Hague, D-57 received a telephone call from Mr Babala in Kinshasa. P-20 (D-57) testified before this Chamber that Mr Babala, whom he did not know of at the time,[291] confirmed his name and the transfer to be made.[292] P-20 (D-57) also unequivocally admitted many times during his in-court testimony that he noted down the name of the transferor and transfer

[287] T-31-CONF, p. 23, lines 11-13; p. 37, lines 17-20; p. 38, lines 1-3; p. 51, line 7 to p. 52, line 6; p. 54, lines 8-11; p. 56, lines 2-5; p. 58, lines 11-17; p. 64, lines 16-17; T-32-CONF, p. 12, lines 20-22; p. 13, lines 14-22.
[288] T-31-Red2, p. 53, lines 6-8; *see also* p. 54, line 20 to p. 55, line 1; p. 60, lines 8-9 and 13; p. 65, lines 13-14; T-32-Red2, p. 20, line 2.
[289] T-31-Red2, p. 65, lines 14-16.
[290] T-32-CONF, p. 25, lines 15-23.
[291] T-31-Red2, p. 26, lines 10-12; *see also* line 18; T-32-Red2, p. 28, lines 9-10.
[292] T-31-Red2, p. 25, line 25 to p. 26 lines 2, 5-7, 10-12, 17 and 25 to p. 27, line 2; p. 34, lines 17-21; T-32-Red2, p. 28, lines 11-12.

number on a piece of paper, which he gave to his wife, P-242.[293] P-20 (D-57) added that, because he was preparing to leave for the airport, he instructed his wife to collect the money.[294] P-242 confirmed these points.[295] The Chamber finds that this course of events demonstrates the close coordination between Mr Kilolo and Mr Babala in relation to witness contact and payments.

243. P-20 (D-57)'s testimonial evidence concerning the payment made is mutually corroborated by other evidence. The 16 October 2012 transfer of USD 665 by Mr Babala, at the request of Mr Kilolo, from Kinshasa to the bank account of D-57's wife, P-242 is not contested by Mr Babala[296] and is admitted by Mr Kilolo.[297] This transfer is further corroborated by the relevant Western Union records[298] and P-242's testimony.[299] The Chamber considers that this mutual corroboration serves as another example of the accuracy and reliability of the Western Union records.

244. P-242 admitted straightforwardly that she received an SMS from a person who '*did not state his name*',[300] with the transfer number, name of the transferor and amount of money being sent.[301] P-242 also confirmed that she collected the money after D-57's departure for The Hague on 16 October 2012,[302] which is corroborated by the Western Union record showing that the money was collected on that day at 11:56 (local time).[303] Like her husband, P-242 first

[293] T-31-Red2, p. 25, line 25 to p. 26, line 13; T-32-CONF, p. 20, lines 8-9; p. 25, lines 15-23.
[294] T-31-Red2, p. 34, lines 19-20.
[295] T-37-Red, p. 34, lines 13-14 and 18.
[296] *See* Babala Defence Submissions, ICC-01/05-01/13-596-Corr2-Red, paras 20, 43, 82, 124 and 148; ICC-01/05-01/13-671-Conf, para. 56.
[297] Kilolo Defence Submission, ICC-01/05-01/13-674-Conf, para. 275; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 226.
[298] Western Union record, CAR-OTP-0073-0274, tab 31, row 14.
[299] T-37-Red, p. 33, line 10; p. 35, lines 1 and 4.
[300] T-37-Red, p. 33, line 13.
[301] T-37-Red, p. 33, lines 14-25.
[302] T-37-Red, p. 42, line 11.
[303] Western Union record, CAR-OTP-0073-0274, tab 31, row 14, column AA. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (Transcript of Hearing, 2 November 2015, ICC-01/05-01/13-33-ENG ET ('T-33'), p. 19, lines 11-21). The time indicated in this judgment is the local time of the place of residence.

underlined that she did not know the sender[304] and only confirmed that it was Mr Babala after having refreshed her memory.[305] P-242 also testified that, after she collected the money, she received a telephone call from Mr Babala enquiring whether she had received it.[306]

245. The Chamber is attentive to P-20 (D-57)'s testimony that the money was sent to his wife. As in other instances involving, for example, D-3, D-6 and D-64, the Chamber detects a pattern involving money transfers to persons other than the witnesses themselves. In all those cases, the money was sent to the witnesses through another person so as to conceal the existence of transfers between the Main Case Defence and the witnesses it had called to testify. As discussed further below, P-245 (D-3) testified that Mr Kilolo had specifically instructed him to nominate someone other than himself and his fiancée, since their identities were known to the Court. In the present case, the witness admitted that he had given Mr Kilolo his wife's details, which were, in turn, passed on to Mr Babala, who effected the transfer immediately thereafter. As a result, the Chamber concludes that Mr Kilolo arranged for the money transfer to be made in a manner intended to conceal any link between the witness and the Main Case Defence.

246. During his testimony before Trial Chamber III, from 17 to 19 October 2012, the Prosecution asked D-57 whether he had ever received any money from the Main Case Defence or anyone else on its behalf, to which the witness untruthfully answered, '*No one gave me any money*'.[307] P-20 (D-57) emphasised on several occasions that he did not lie before Trial Chamber III, as he had not physically seen the money.[308] The Chamber considers P-20 (D-57)'s statement to be a rather

[304] T-37-Red, p. 33, lines 10 and 22.
[305] T-37-Red, p. 40, lines 12-19.
[306] T-37-Red, p. 33, lines 21-22; p. 36, line 10.
[307] Trial Chamber III, T-258-Red2, p. 3, line 6; more generally p. 3, lines 4-10.
[308] T-31-Red2, p. 28, line 8 and 11-15; p. 29, line 25 to p. 30, line 11.

contrived interpretation of the events and an attempt to stay in line with his previous testimony before Trial Chamber III.

247. In addition to the above, the Chamber notes that P-20 (D-57) also testified that (i) the money was transferred on 16 October 2012;[309] (ii) Mr Babala announced the money transfer in a telephone conversation on 16 October 2012; and (iii) he had asked his wife to collect the money after his departure for the airport.[310] Accordingly, the Chamber concludes that D-57 at least knew at the time of his testimony before Trial Chamber III that the money had been transferred on 16 October 2012.

248. Considering P-242's evidence on this topic, it is clear that D-57 actually knew that his wife had collected the money. P-242 testified that, during a telephone conversation with her husband, D-57, on the day he travelled to The Hague,[311] she informed him that she had collected the money.[312] She also testified that her husband had agreed that she '*spend some [money] (…) and keep the rest for him*'.[313] The Chamber is satisfied that P-242 was honest in her description of the above events. Furthermore, the Chamber excludes the possibility that D-57 misunderstood the question referring to remuneration, as alleged by the Kilolo Defence[314], as the question put to him was clear and his final response general.[315]

249. In addition to his testimony concerning payments, D-57 also incorrectly testified that he had only three prior contacts with Mr Kilolo, namely a telephone conversation in May or June 2012,[316] a personal meeting in May/June

[309] T-31-Red2, p. 21, line 24.
[310] T-31-Red2, p. 34, lines 19-21.
[311] T-37-Red, p. 42, lines 3-4.
[312] T-37-Red, p. 27, line 2; p. 33, lines 5-6.
[313] T-37-Red, p. 34, lines 14-15; *see also* p. 35, lines 20-21.
[314] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 226.
[315] Trial Chamber III, T-258-Red2, p. 2, line 25 to p. 3, line 6.
[316] Trial Chamber III, T-257-Red2, p. 20, lines 15-17; p. 21, line 23; p. 24, lines 19-20.

2012,[317] and a telephone conversation in September 2012.[318] He did not mention the telephone contacts on 15 and 16 October 2012.

250. Even though no intercept records exist in relation to D-57, the Chamber discerns a clear pattern discernible from instructions, as recorded in the evidence, that Mr Kilolo gave to other witnesses, such as D-2, D-3, D-15, D-23, D-54 and D-55, not to reveal that they had received any money or material benefits from the Main Case Defence. What's more, the Chamber finds it highly implausible that a significant number of witnesses would testify incorrectly – purely coincidentally – on exactly the same issue using similar language. In the light of the above, the Chamber finds, as the only reasonable conclusion available, that Mr Kilolo also instructed D-57 not to reveal the illegitimate transfer of money shortly before his testimony. As a result, the Chamber finds that Mr Kilolo instructed D-57 to lie concerning his receipt of money transfers.

251. Likewise, it also discerns a demonstrable pattern of instructing witnesses, such as D-2, D-15, D-26, D-54 and D-55, to testify to a specific and false number of prior contacts with the Main Case Defence. In particular, Mr Kilolo directed defence witnesses not to reveal contacts that occurred after the VWU cut-off date or shortly before their testimony. Accordingly, the Chamber infers, as the only reasonable conclusion available on the evidence, that Mr Kilolo also instructed D-57 to conceal the real number of contacts with the Main Case Defence for the following reasons. First, in all cases in which telephone intercepts or documentary evidence exist, Mr Kilolo instructed the witnesses, such as D-2, D-15, D-26, D-54 or D-55, on the topic of contacts with great care. Second, the evidence, in particular the telephone records and intercepts of communications between Mr Kilolo and the other accused, demonstrate the time and effort expended on D-57's instruction. If the witness revealed the true extent and

[317] Trial Chamber III, T-257-Red2, p. 20, lines 7-17; p. 24, lines 19-20.
[318] Trial Chamber III, T-257-Red2, p. 24, lines 1-4 and 19-23.

nature of his contacts with the Main Case Defence, these efforts would be rendered not only fruitless, but could also entail other consequences for the accused, including criminal prosecution. This suggests that the instruction to conceal the extent and nature of contacts with the Main Case Defence was an integral part of Mr Kilolo's illicit coaching activities. Third, D-57 did in fact testify incorrectly concerning contacts with the Main Case Defence, even though they had been in contact shortly before his testimony. Again, in the light of all the above, the Chamber finds it highly implausible that a significant number of witnesses would testify incorrectly – purely coincidentally – on exactly the same issue using similar language. As a result, the Chamber concludes that D-57's testimony was consistent with the instructions generally given to and followed by other Main Case Defence witnesses.

c) Overall Conclusions Regarding D-57

252. The Chamber finds that D-57 untruthfully testified in the Main Case as regards the payments of USD 106 as reimbursement and USD 665 shortly before his testimony in the Main Case as well as the number of his prior contacts with the Main Case Defence.

253. The Chamber also finds that Mr Kilolo arranged the transfer of USD 665 to D-57 through Mr Babala shortly before D-57's testimony in the Main Case, so as to secure his testimony in Mr Bemba's favour. In an effort to conceal any links between the witness and the Main Case Defence, Mr Kilolo ensured that the transfer was made to D-57's wife. This concerted action demonstrates the close coordination between Mr Kilolo and Mr Babala in relation to this witness. Lastly, as with many other witnesses, the Chamber finds that Mr Kilolo also instructed D-57 to lie about the existence of payments and the extent of his contacts with the Main Case Defence.

254. The Chamber further finds that Mr Babala transferred USD 665 to D-57's wife shortly before her husband's testimony, knowing that the money was meant to ensure that D-57 would testify in the Main Case in Mr Bemba's favour.

3. Witness D-64

255. D-64 was called by the Main Case Defence and testified under this pseudonym. He was called by the Prosecution in the present case and testified as witness P-243. Furthermore, Mr Babala's employee, P-272, testified as a Prosecution witness in the present case.

a) Credibility

256. P-243 (D-64) gave a statement to the Prosecution on 22 and 23 January 2014, which has been recognised as submitted under Rule 68(3) of the Rules.[319] He also testified before this Chamber after having been given Rule 74 assurances.[320]

257. The Chamber finds this witness credible as regards core details relating to the payment of money to him and his daughter and some telephone contacts with Mr Kilolo. His account, as reflected in the January 2014 statement and his subsequent in-court testimony, remained essentially consistent. However, the Chamber noticed a degree of reluctance on the part of the witness to fully disclose information at the time of his January 2014 statement. His account was, at times, evasive and contradictory, in particular, in relation to certain details concerning the monetary payment to his daughter. Further, he would, at times, adapt his testimony following confrontation by the Prosecution. As far as the telephone contacts with Mr Kilolo are concerned, it is evident that the witness

[319] T-32-Red2, p. 32, lines 12-20; p. 41, line 23 to p. 42, line 3; Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr; Audio recording, CAR-OTP-0074-0707-R01 Track 1-7; Transcripts of audio recordings, CAR-OTP-0074-1091; CAR-OTP-0074-1112-R01; CAR-OTP-0074-1124-R01; CAR-OTP-0074-1155; CAR-OTP-0074-1169; CAR-OTP-0074-1189-R02; CAR-OTP-0074-1201; Audio recording, CAR-OTP-0074-0708-R01 Track 1-3; Transcripts of audio recordings, CAR-OTP-0074-1206-R01; CAR-OTP-0074-1229-R01; CAR-OTP-0074-1259.
[320] T-32-Red2, p. 32, lines 1-11.

sought to remain consistent with his testimony before Trial Chamber III. In sum, the Chamber considers that it can rely on core parts of P-243 (D-64)'s testimony concerning his contacts with Mr Kilolo and monetary payments to him and his daughter, which are facts within his personal knowledge. However, on account of the contradictions in his statement, in particular concerning the Accused's behaviour, the Chamber relied on P-243 (D-64)'s evidence only if corroborated by other evidence.

258. During P-243 (D-64)'s testimony, the Defence challenged the circumstances under which the January 2014 statement was made. The Chamber notes that the witness was brought to the police station to give his statement by police officers in plain clothes.[321] He was assigned and assisted by counsel,[322] the atmosphere during the interview was agreeable[323] and he declared both in January 2014 and during his in-court testimony that he was not subject to any pressure.[324] Accepting that the witness felt frustrated when being escorted for the interview, the facts as documented do not amount to any violation that might justify the exclusion of the January 2014 statement. Having found no violation justifying any further assessment under Article 69(7) of the Statute, the Chamber relies on the January 2014 statement for the purpose of its evidentiary assessment.

259. P-272, Mr Babala's employee, also provided a statement to the Prosecution on 4 and 5 March 2015, which has been recognised as submitted under Rule 68(3) of the Rules.[325] He testified before this Chamber *via* video-link and with the assistance of a legal adviser under Rule 74 of the Rules.

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[321] T-32-Red2, p. 70, lines 21-23; p. 72, lines 3-4.
[322] T-32-Red2, p. 72, lines 24-25; p. 74, lines 22-23 (*'We moved to the side with the lawyer and we discussed for a bit before they started questioning me'*).
[323] T-32-Red2, p. 73, lines 22-23.
[324] T-32-Red2, p. 79, lines 14-17.
[325] Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr; T-25-Red, p. 21, line 23 to p. 22, line 3; Transcripts of

260. P-272 testified on limited aspects regarding payments of money on Mr Babala's behalf and his acquaintance with the Accused. The Chamber finds him credible. He was straightforward and candid in answering questions. P-272's testimony remained consistent with his prior recorded statement of March 2015. He did not equivocate, despite the fact that he testified against his employer, Mr Babala.[326] His admission that he could not remember the name of P-243 (D-64)'s daughter[327] and his willingness to stand corrected where the evidence painted a different picture[328] reinforce the general impression that the witness intended to truthfully recount his personal experience. The Chamber thus considers that it can rely on P-272's testimony concerning payments he effected on Mr Babala's behalf, which are facts within his personal knowledge.

b) Discussion

261. It is uncontested that, on 14 June 2012, Mr Kilolo transferred USD 106 *via* Western Union to D-64.[329] P-243 (D-64) confirmed this transfer[330] and Mr Kilolo and Mr Babala do not contest it.[331] Based on P-243 (D-64)'s testimony[332] and Mr Kilolo's submissions,[333] the Chamber is satisfied that this money was for D-64's travel expenses in connection with his meeting with Mr Kilolo the next

audio recordings, CAR-OTP-0088-0224-R01; CAR-OTP-0088-0249-R01; Transcripts of audio recordings, CAR-OTP-0088-0155-R01; CAR-OTP-0088-0188-R01.

[326] Transcript of audio recording, CAR-OTP-0088-0155-R01 at 0166, lines 354 and 356.

[327] T-25-Red, p. 36, line 14.

[328] T-25-Red, p. 29, lines 19-21.

[329] Western Union record, CAR-OTP-0070-0007, tab 32, row 24.

[330] Audio recording, CAR-OTP-0074-0707-R01 Track 5; Transcript of audio recording, CAR-OTP-0074-1169 at 1174, lines 174-176, 178-179 and 187; at 1175, lines 195-196 and 207; Audio recording, CAR-OTP-0074-0708-R01 Track 2; Transcript of audio recording, CAR-OTP-0074-1229-R01 at 1251-R01, lines 807-808.

[331] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 762, footnote 942.

[332] Audio recording, CAR-OTP-0074-0707-R01 Track 5; Transcript of audio recording, CAR-OTP-0074-1169 at 1183, lines 492-494 and 478-489; Audio recording, CAR-OTP-0074-0708-R01 Track 2; Transcript of audio recording, CAR-OTP-0074-1229-R01 at 1251-R01, lines 802-804; T-32-Red2, p. 46, line 25 to p. 47, line 1; p. 68, lines 5-7.

[333] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, footnote 942.

day, and was not paid to bribe the witness,[334] as alleged by the Prosecution.[335] Likewise, it is uncontested that P-243 (D-64) does not know Mr Babala.[336]

262. The call sequence table and corresponding call data records show that, prior to the witness's testimony before Trial Chamber III on 22 and 23 October 2012,[337] there were at least three contacts between Mr Kilolo and D-64 on 16 October 2012 and one further call after the VWU cut-off date,[338] on 17 October 2012. The Chamber is thus particularly attentive to the contacts on

- 16 October 2012, at 17:56, for almost 1½ minutes;[339] at 18:11, for approximately 8 minutes;[340] and at 18:42 for 48 minutes;[341] and
- 17 October 2012, at 13:17, for approximately 4 minutes.[342]

263. According to the call sequence table and corresponding call data records, these communications involved, for D-64, telephone number [Redacted]. P-243 (D-64) testified that this was his former number.[343] The Chamber is therefore satisfied that the call sequence table correctly attributes it to D-64. According to

[334] As regards the date of the meeting, it is noted that D-64 gave evidence that the sum of USD 106.14 was sent *prior* to his travel to meet Mr Kilolo, *see* T-32-Red2, p. 46, line 25 to p. 47, line 1. Mr Kilolo also accepts having met the witness on 15 June 2012, *see* Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, footnote 942.
[335] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 182.
[336] Audio recording, CAR-OTP-0074-0707-R01 Track 2; Transcript of audio recording, CAR-OTP-0074-1112-R01 at 1122-R01, lines 353-356.
[337] *See* Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 22 October 2012, ICC-01/05-01/08-T-259-CONF-ENG ET; ICC-01/05-01/08-T-259-Red2-ENG WT ('T-259-Red2'); Transcript of Hearing, 23 October 2012, ICC-01/05-01/08-T-260-CONF-ENG ET; ICC-01/05-01/08-T-260-Red3-ENG WT ('T-260-Red3').
[338] VWU Table, CAR-OTP-0078-0290 at 0292 (ICC-01/05-01/13-207-Conf-Anx, p. 3).
[339] Call Sequence Table, CAR-OTP-0090-0630 at 0721, row 3, Call Data Record, CAR-OTP-0072-0082, row 252.
[340] Call Sequence Table, CAR-OTP-0090-0630 at 0721, row 4, Call Data Record, CAR-OTP-0072-0082, row 259.
[341] Call Sequence Table, CAR-OTP-0090-0630 at 0721, row 7; Call Data Record, CAR-OTP-0072-0082, row 272.
[342] Call Sequence Table, CAR-OTP-0090-0630 at 0721, row 9; Call Data Record, CAR-OTP-0072-0082, row 280.
[343] T-32-Red2, p. 43, line 12; *see also* the document provided by the VWU which contains the private telephone numbers provided by the Main Case Defence and Main Case Defence witnesses, ICC Document, CAR-OTP-0077-0942 at 0942. The Chamber notes that the Call Data Record indicates for the contact dated 16 October 2012 at 17:56 the telephone number [Redacted] attributable to D-64.

the call sequence table and corresponding call data records, the above communications also involved Mr Kilolo's telephone number [Redacted].[344]

264. The above evidence is further corroborated by P-243 (D-64), who testified that he was in telephone contact with Mr Kilolo,[345] including on the day he travelled to The Hague.[346] The Chamber observes, however, that P-243 (D-64) testified that he did not remember the exact timing or frequency of all of his contacts with Mr Kilolo.[347] Alive to the difficulties of remembering events that occurred in the distant past, the Chamber accepts that P-243 (D-64) may no longer remember the exact number and dates of contacts with Mr Kilolo. Yet, the Chamber notices an inconsistency, which is unaccounted for, in the fact that P-243 (D-64) claims not to remember a 48 minute conversation the day before he travelled to The Hague, but does remember discrete, short telephone calls with Mr Kilolo during which, as P-243 (D-64) claims, only logistical arrangements were discussed. Also, P-243 (D-64)'s swift and categorical denial regarding his earlier contacts with Mr Kilolo in his prior recorded statement cast doubt on P-243 (D-64)'s willingness to provide full information on this topic to the Chamber. As a result, the Chamber treats P-243 (D-64)'s relevant evidence with caution and relies on it only in part.

265. Shortly after the last telephone call between D-64 and Mr Kilolo on 16 October 2012, Mr Babala had a telephone conversation lasting 4:13 minutes, between 19:49 and 19:53, with Mr Bemba on his privileged line at the ICC Detention Centre. This information is recorded in the call log produced by the ICC Detention Centre and submitted by the Prosecution.[348] The corresponding audio

[344] *See* para. 585.
[345] Audio recording, CAR-OTP-0074-0707-R01 Track 2; Transcript of audio recording, CAR-OTP-0074-1112-R01 at 1114-R01, lines 57-68; at 1117-R01, lines 166-167; at 1119-R01, lines 225-226.
[346] T-32-Red2, p. 44, lines 5-8; p. 54, line 22 to p. 55, line 7.
[347] T-32-Red2, p. 48, lines 4-8 and 15-17*; see also* Audio recording, CAR-OTP-0074-0707-R01 Track 3; Transcript of audio recording, CAR-OTP-0074-1124-R01 at 1126, lines 42-70; at 1138, lines 484-486.
[348] ICC call log, CAR-OTP-0074-0609.

recording, submitted by the Prosecution,[349] also lasts 4:13 minutes and thus duly corresponds to the call log entry concerned. In the Chamber's view, the call log correctly attributes telephone number [Redacted][350] to Mr Bemba and telephone number [Redacted][351] to Mr Babala. The Chamber is satisfied that the telephone number [Redacted] is attributable to Mr Bemba since (i) it is an ICC telephone number, indicated in ICC documents as being Mr Bemba's privileged number;[352] and (ii) in the intercepted call, Mr Babala refers to Mr Bemba as '*Président*',[353] alluding to Mr Bemba's position as MLC president.[354] The Chamber is also satisfied that the second telephone number, [Redacted], is attributable to Mr Babala since (i) the ICC Detention Centre registered it as belonging to Mr Babala, Mr Bemba's friend;[355] and (ii) P-272 testified that it belonged to his employer, Mr Babala.[356]

266. The Bemba Defence challenged the accuracy of this particular audio recording, arguing that the interlocutors' utterances were not recorded in the order in which they were made. As the expert witness D20-1 testified, this particular audio recording, in its entirety,[357] suffered from misalignment problems, such as unnatural silence and overlapping of speech.[358] Accordingly, in his view, the related transcript does not accurately reflect the conversation.[359] The Chamber recognises that this particular audio recording is affected by misalignment

[349] Audio recording, CAR-OTP-0074-0610; Transcript of audio recording, CAR-OTP-0077-1141 (in Lingala); Translated transcript of audio recording, CAR-OTP-0077-1299 (French translation).
[350] ICC call log, CAR-OTP-0074-0609, column G.
[351] ICC call log, CAR-OTP-0074-0609, column L.
[352] ICC Document, CAR-OTP-0074-0079.
[353] Audio recording, CAR-OTP-0074-0610; Translated transcript of audio recording, CAR-OTP-0077-1299 at 1301, line 3.
[354] Bemba Confirmation Decision, paras 451-455; *see also* Open-source material, CAR-OTP-0005-0198. Mr Bemba was MLC President at the time relevant to the charges, *see* Bemba Defence Submission, ICC-01/05-01/13-599-Conf, para. 50.
[355] ICC Document, CAR-OTP-0074-0059 at 0061, line 12.
[356] Transcript of Hearing, 21 October 2015, ICC-01/05-01/13-T-25-CONF-ENG ET ('T-25-CONF'), p. 36, lines 1-6; *see also* Transcript of audio recording, CAR-OTP-0088-0188-R01 at 0218-R01, lines 1033 and 1045.
[357] Transcript of Hearing, 10 March 2016, ICC-01/05-01/13-T-43-CONF-ENG ET ('T-43-CONF'), p. 39, line 6.
[358] T-43-CONF, p. 36, line 21 to p. 38, line 18.
[359] T-43-CONF, p. 39, lines 24-25.

problems, as demonstrated at the end of the recording where the two speaker channels are clearly not aligned. Moreover, it cannot be ruled out that the sequence of the questions and responses at the beginning of the recording was other than as recorded and, by extension, transcribed. In the Chamber's view, these irregularities diminish the reliability of the recording and related transcription. However, as the expert confirmed, the recordings accurately reflect the utterances of the individual speakers.[360] For these reasons, the Chamber treats this recording with utmost caution.

267. The Chamber notes that Mr Babala is recorded saying to Mr Bemba, '*Non, non ce n'est pas ça, il faut qu cela se fasse quand même parce que c'est très important. C'est la même chose comme pour aujourd'hui. Donner du sucre aux gens vous verrez que c'est bien*'.[361] Because of the problems pointed out by the expert witness D20-1, the Chamber cannot, with certainty, establish the reference point for the first part of Mr Babala's statement: '*Non, non ce n'est pas ça, il faut qu cela se fasse quand même parce que c'est très important*'. However, the Chamber is satisfied that Mr Babala's statement, '*C'est la même chose comme pour aujourd'hui. Donner du sucre aux gens vous verrez que c'est bien*', stands on its own and can be relied upon. Considering the accused's references throughout the conversation to, for example, '*Whisky*', '*le Collègue d'en haut*', and '*Bravo Golf*',[362] the Chamber understands that they used coded language in their communication.[363] Against this background, the Chamber understands that, in using '*la même chose comme pour aujourd'hui*' and '*donner du sucre aux gens*', Mr Babala refers to the payment of money to D-57's

[360] T-43-Red, p. 67, lines 17-19; p. 68, lines 1-4.
[361] Audio recording, CAR-OTP-0074-0610; Translated transcript of audio recording, CAR-OTP-0077-1299 at 1301, lines 29-30 (*'No, it's not that, it needs to be done though because it's very important. It's the same thing as for today. You'll see that it's good to give people sugar'*). This and the following translations into English of text originally in French are official Court translations.
[362] Audio recording, CAR-OTP-0074-0610; Translated transcript of audio recording, CAR-OTP-0077-1299 at 1301, lines 8, 11 and 22.
[363] *See* paras 748-761.

wife earlier the same day.[364] The Chamber is convinced that the advice Mr Babala gave Mr Bemba in this conversation further demonstrates that Mr Babala was aware of D-64's and D-57's status as witnesses in the Main Case and the importance of paying witnesses shortly before their testimony at the Court. The Chamber further finds that it proves Mr Bemba's knowledge about money transfers to witnesses.

268. Further, the Chamber is satisfied that, on 17 October 2012, one day after Mr Babala's '*donner du sucre*' remark and the day D-64 travelled to The Hague, Mr Babala's employee, P-272, transferred USD 700 in two transactions, at 11:48 and 12:41 (local time)[365] to D-64's daughter on Mr Babala's behalf. In this regard, the Chamber notes the evidence of P-272, who effected the transfers via Western Union. He confirmed that, while employed by Mr Babala, he made a number of money transfers on Mr Babala's behalf.[366] P-272 stated that he did not question the purpose of the money transfers. He simply executed the task as requested.[367] When using Western Union services, P-272 made payments in his name. The money, however, was Mr Babala's.[368] P-272 also confirmed that he provided Mr Babala with the transaction receipts.[369] The transfer of USD 700 to D-64 is further proven by the following evidence.

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[364] *See* para. 243.
[365] Western Union record, CAR-OTP-0070-0007, tab 34, rows 2 and 3, column G. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferor.
[366] T-25-Red, p. 22, line 25 to p. 23, line 4; p. 24, line 18*; see also* Transcript of audio recording, CAR-OTP-0088-0188-R01 at 0209-R01, lines 720-721; Transcript of audio recording, CAR-OTP-0088-0224-R01 at 0240 R01, lines 545-547 and 557-559; Transcript of audio recording, CAR-OTP-0088-0224-R01 at 0243-R01, lines 660-667.
[367] T-25-Red, p. 37, lines 6-7*; see also* Transcript of audio recording, CAR-OTP-0088-0224-R01 at 0242-R01, lines 617-619.
[368] T-25-Red, p. 24, lines 9 to 11.
[369] T-25-Red, p. 37, lines 10-12*; see also* Transcript of audio recording, CAR-OTP-0088-0224-R01 at 0241-R01, lines 589-591; at 0243, lines 683-685.

269. Mr Babala admitted that, at Mr Kilolo's request, he facilitated the transfer of money for D-64's benefit.[370] In addition, Mr Kilolo admits this transfer.[371] This is also corroborated by P-243 (D-64), who conceded, in both his January 2014 statement and in-court testimony, the payment of USD 700 to his daughter after his departure for The Hague.[372] As the Western Union records reliably demonstrate, the money was collected by D-64's daughter the same day, at 14:47 and 14:50 (local time).[373]

270. The Chamber is particularly attentive to the details provided by P-243 (D-64) concerning the circumstances of the transfer. As demonstrated above, D-64 received a telephone call from Mr Kilolo on 17 October 2012, at 13:17, which, as the witness specified, occurred while he was travelling to The Hague.[374] As is discernible from the available documentation, the calling party was not yet prevented from contacting the witness at that point, as this was contingent upon his arrival in The Hague.[375] P-243 (D-64) testified that, during this conversation, Mr Kilolo enquired whether an adult was at home.[376] P-243 (D-64) testified that he gave Mr Kilolo his daughter's telephone number, thinking that this was normal practice.[377]

271. P-243 (D-64) also declared consistently, both in his January 2014 statement and in-court testimony, that, after his return from The Hague, his daughter told him

[370] Babala Defence Submissions, ICC-01/05-01/13-596-Corr2-Red, paras 20, 43, 46, 82 124, 126, 131 and 148; ICC-01/05-01/13-671-Conf, para. 56; Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, para. 220.
[371] Kilolo Defence Submission, ICC-01/05-01/13-674-Conf, paras 279-280; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 260.
[372] T-32-CONF, p. 54, lines 12-20; p. 55, lines 16-24; p. 68, lines 7-8; p. 69, lines 5-7.
[373] Western Union record, CAR-OTP-0070-0007, tab 34, rows 2 and 3, column AC. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferee.
[374] T-32-Red2, p. 54, lines 22-23; p. 55, lines 5-6.
[375] VWU Table, CAR-OTP-0078-0290 at 0292 (ICC-01/05-01/13-207-Conf-Anx, p. 3) (*'Cut-off date as of arrival of witness to the NL'*).
[376] T-32-CONF, p. 54, lines 22-24; p. 55, lines 11-13.
[377] T-32-Red2, p. 55, lines 1-3 and 13-14.

that a person from Africa[378] had called her stating, '*je vous envoie un peu d'argent pour que vous viviez avec en l'absence de votre père*'.[379] While P-243 (D-64) testified that he did not to know the name of the person calling from Africa, the Chamber observes that Mr Babala admits contacts with D-64 in connection with Western Union transfers.[380] Next, according to P-243 (D-64), after the first money transfer had been collected, the same man called his daughter, asking how much she had received. P-243 (D-64) added that his daughter also said that the person told her that the amount she had indicated was '*not right*'[381] and that he would send her '*a little bit more money*'.[382] In the estimation of the Chamber, this is a reasonable explanation as to why two transactions were effected on 17 October 2012. P-243 (D-64)'s hearsay evidence is supported by the relevant Western Union records, which reflect two transfers, totalling USD 700, by P-272 to D-64's daughter.[383] This again demonstrates the reliability of the Western Union records. On the basis of its overall assessment of the evidence, the Chamber further concludes that Mr Kilolo facilitated, through Mr Babala, the payment of USD 700 to motivate the witness to give a certain testimony. In particular, the Chamber cannot conclude that Mr Kilolo facilitated the payment of this sum due to a misunderstanding and in the belief that the witness needed reimbursement for hotel costs for a meeting in June 2012, as alleged by the Kilolo Defence,[384] as no evidence exists to support this claim.

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[378] Audio recording, CAR-OTP-0074-0708-R01 Track 2; Transcript of audio recording, CAR-OTP-0074-1229-R01 at 1252, line 845.
[379] Audio recording, CAR-OTP-0074-0707-R01 Track 5; Transcript of audio recording, CAR-OTP-0074-1169 at 1187, lines 630-631 (*'I am sending you some money so that you'll be able to manage while your father is away'*); Audio recording, CAR-OTP-0074-0707-R01 Track 6; Transcript of audio recording, CAR-OTP-0074-1189-R02 at 1192-R02, lines 89-90; at 1193-R02, lines 123-124; Audio recording, CAR-OTP-0074-0708-R01 Track 2; Transcript of audio recording, CAR-OTP-0074-1229-R01 at 1251-R01, line 815 to 1252-R01, line 845.
[380] Babala Defence Submissions, ICC-01/05-01/13-596-Corr2-Red, paras 126 and 148; ICC-01/05-01/13-671-Conf, para. 56.
[381] T-32-Red2, p. 55, lines 19-20.
[382] T-32-Red2, p. 55, lines 21-22.
[383] Western Union record, CAR-OTP-0070-0007, tab 34, rows 2 and 3.
[384] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 260-261.

272. The Chamber observes again that there is a demonstrable pattern of Mr Kilolo effecting payments through third parties, as was done with D-57, in an effort to conceal them. As with other witnesses, such as D-57, D-3, and D-6, D-64 received USD 700 through a third person, namely his daughter. Further, as with, for example, D-3 and D-57, Mr Kilolo asked for the contact details of a person other than D-64. Thereafter, Mr Babala, who admits having acted at Mr Kilolo's behest, arranged for the money transfer through another person. As a result, the Chamber concludes that, as with other witnesses, Mr Kilolo and Mr Babala arranged the money transfer to D-64 in a manner intended to conceal any link between the witness and the Main Case Defence.

273. The Chamber notes that the money transfers concerned were made while the witness was on his way to the Court to testify. Like D-57, and in contradiction to other pieces of evidence, P-243 (D-64) claimed that he was unaware of the payment as it did not occur in his presence.[385] In this regard, the Chamber emphasises that, in his January 2014 statement, P-243 (D-64) first stated that he did not wish to ask his daughter about the payment as it was her private business.[386] He subsequently admitted to having received at least part of the money upon his return.[387] At the same time, P-243 (D-64) also confirmed outright that his expenses in connection with his travel to and testimony in The Hague had been borne entirely by the Court[388] and that his family was financially secure.[389] The Chamber observes that the witness remained rather

[385] Audio recording, CAR-OTP-0074-0707-R01 Track 5; Transcript of audio recording, CAR-OTP-0074-1169 at 1186, lines 595-596; Audio recording, CAR-OTP-0074-0707-R01 Track 4; Transcript of audio recording, CAR-OTP-0074-1155 at 1162, lines 219-220.
[386] Audio recording, CAR-OTP-0074-0707-R01 Track 5; Transcript of audio recording, CAR-OTP-0074-1169 at 1186, lines 617-619; *see also* Audio recording, CAR-OTP-0074-0707-R01 Track 4; Transcript of audio recording, CAR-OTP-0074-1155 at 1161, line 208; at 1166, lines 373-376 and 383-389.
[387] Audio recording, CAR-OTP-0074-0707-R01 Track 6; Transcript of audio recording, CAR-OTP-0074-1189-R02 at 1196, lines 258-259.
[388] Audio recording, CAR-OTP-0074-0707-R01 Track 3; Transcript of audio recording, CAR-OTP-0074-1124-R01 at 1147-R01, line 834 to 1151-R01, line 992.
[389] Audio recording, CAR-OTP-0074-0707-R01 Track 4; Transcript of audio recording, CAR-OTP-0074-1155 at 1165, lines 349-358.

vague and meandered through a similar line of argument when giving evidence on this topic in January 2014.

274. For the following reasons, the Chamber does not accept the witness's assertion that he did not lie before Trial Chamber III as regards the payment of USD 700 because he knew nothing about its transfer at the time of his testimony. First, it is unrealistic that D-64 would, on the day he was to travel, provide his daughter's name to Mr Kilolo, upon the latter's request and without enquiring as to the purpose. Second, D-64 accepted the money after his return from The Hague. Third, his claim that the money could have been sent by his daughter's boyfriend was a pretext abandoned by the witness in the course of his testimony. Fourth, the same operational pattern was followed in the case of D-57 whose wife received approximately the same amount of money on the day of her husband's travel to the Court. In the light of the foregoing, the Chamber finds that P-243 (D-64)'s explanations were made in an effort not to contradict his previous testimony before Trial Chamber III that he had not been given any money by the Main Case Defence.

275. This assessment does not change in view of the arguments advanced by the Kilolo Defence when questioning witness P-243 (D-64). The Kilolo Defence's proposition that, during his meeting with Mr Kilolo on 15 June 2012, D-64 declared that he was not under pressure and had not been promised any money or other encouragement to testify in the Main Case is irrelevant in this context.[390] This concerns D-64's position at the time of the interview, *before* the money was transferred to D-64's daughter. Accordingly, this proposition cannot shed light on events that would occur in four months' time. Equally, the Chamber does not attach any relevance to P-243 (D-64)'s statement that he had '*never asked for any*

[390] Audio recording, CAR-D21-0011-0001; Partial transcript of audio recording, CAR-D21-0011-0005 at 0007, lines 57-60; at 0008, lines 61-65.

money from Mr Kilolo',[391] given that the witness nevertheless accepted the money after his return[392] and did not adequately explain why Mr Kilolo would send him USD 700.

276. During his Main Case testimony on 22 and 23 October 2012, D-64 claimed that he had only had two telephone contacts with Mr Kilolo; one in June 2012, the same month that they met in person,[393] and one thereafter relating to a prospective meeting with the Prosecution.[394] D-64 withheld that he had had other multiple telephone contacts with Mr Kilolo, including shortly before his testimony and on the day he travelled to The Hague. D-64 also incorrectly denied having received money from the Main Case Defence, including travel expenses in connection with the June 2012 meeting and the money transferred to his daughter.[395]

277. As explained in the context of D-57, and for the same reasons,[396] considering that Mr Kilolo directed other witnesses, including D-2, D-15, D-26, D-54, and D-55 to incorrectly testify to a specific or lesser number of prior contacts with the Main Case Defence, the Chamber infers, as the only reasonable conclusion available on the evidence, that Mr Kilolo also instructed D-64 to conceal the real number of contacts with the Main Case Defence. Although no intercept records exist in relation to D-64, the Chamber infers from the clear pattern and nature of instructions concerning contacts given to D-64, when considered in conjunction with D-64's denial of contacts, in particular those shortly before his testimony, that Mr Kilolo also instructed D-64 prior to his testimony before Trial Chamber III to untruthfully testify on this point.

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[391] T-32-Red2, p. 68, line 1.
[392] Audio recording, CAR-OTP-0074-0707-R01 Track 6; Transcript of audio recording, CAR-OTP-0074-1189-R02 at 1196-R02, lines 258-259 (*'I think they may have spent that money on food. And when I arrived, she gave me what was left'*).
[393] Trial Chamber III, T-259-Red2, p. 61, lines 8-11; p. 62, line 17 to p.63 line 6.
[394] Trial Chamber III, T-259-Red2, p. 61, lines 5-7.
[395] Trial Chamber III, T-260-Red3, p. 6, lines 14-20.
[396] *See* para. 251.

278. For the same reasons,[397] the Chamber also infers that Mr Kilolo instructed D-64 to deny having received money from the Main Case Defence. In particular, the Chamber again notes the pattern discernible from the explicit instructions, as recorded in the evidence, that Mr Kilolo gave to witnesses, such as D-2, D-3, D-15, D-23, D-54 and D-55, not to reveal that they had received any money from the Main Case Defence. Therefore, in the light of this pattern and D-64's denial of payments, the Chamber finds, as the only reasonable conclusion available on the evidence, that Mr Kilolo instructed D-64 to lie about the money transfers.

c) Overall Conclusions Regarding D-64

279. The Chamber finds that D-64 incorrectly testified when he denied having received any money from the Main Case Defence, including for legitimate reimbursement of costs and the amount of USD 700 *via* his daughter. He also lied about the number of contacts with the Main Case Defence, in particular, Mr Kilolo.

280. The Chamber also finds that Mr Kilolo, through Mr Babala, arranged the transfer of USD 700 to D-64 shortly before D-64's testimony in the Main Case so as to secure the witness's testimony in Mr Bemba's favour. Mr Kilolo ensured that the transfer was made to D-64's daughter in an effort to conceal any links between the witness and the Main Case Defence. He also instructed D-64 to lie about payments received from and the number of prior contacts with the Main Case Defence.

281. The Chamber further finds that, shortly before D-64's testimony before Trial Chamber III, Mr Babala transferred, through his employee, USD 700 to D-64's daughter. Mr Babala arranged the payments knowing that the money was meant to ensure that D-64 would testify in Mr Bemba's favour. Mr Babala

[397] *See* also para. 250.

informed Mr Bemba by telephone of the need to give prospective witnesses money.

4. Witness D-55

282. Witness D-55 was called by the Main Case Defence and testified under this pseudonym. He was called by the Prosecution and testified as witness P-214 in the present case.

a) Credibility

283. P-214 (D-55) provided a statement to the Prosecution on 22 January 2014, which has been recognised as submitted under Rule 68 of the Rules.[398] The interview leading to the January 2014 statement was conducted in [Redacted], as agreed by the witness.[399] He also testified before this Chamber after having been given Rule 74 assurances.[400]

284. The Chamber finds P-214 (D-55) credible as regards his contacts with Mr Kilolo and the payment of money, as his January 2014 statement and testimony before this Chamber are consistent on these matters. P-214 (D-55) was generally forthcoming in answering questions and did not change crucial aspects of his testimony during examination by the Defence. The Chamber also notes his eagerness to be comprehensive, which was coupled with a manifest attempt at accuracy. For example, P-214 (D-55) added, without prompting, background information 'in parenthesis' or corrected certain aspects of his

[398] T-34-Red, p. 76, line 10 to p. 77, line 9; Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr; Letter, CAR-OTP-0074-0860-R03; Translation of the letter, CAR-OTP-0074-0872-R03 (French translation); Video of the interview with the [Redacted] authorities, CAR-OTP-0090-2036; Translated transcript of the video recording, CAR-OTP-0091-1031 (English translation); Video of the interview with the [Redacted] authorities, CAR-OTP-0090-2037; Translated transcript of the video recording, CAR-OTP-0091-1038 (English translation); Video of the interview with the [Redacted] authorities, CAR-OTP-0090-2038; Translated transcript of the video recording, CAR-OTP-0091-1048 (English translation); E-mail from Trial Chamber VII Communications dated 12 November 2015; CAR-OTP-0090-2005; CAR-OTP-0091-0715 (French translation).
[399] Translation of the letter, CAR-OTP-0074-0872-R03 at 0876-R03.
[400] T-34-Red, p. 75, line 20 to p. 76, line 6.

January 2014 statement, which, in his view, had not been accurately translated into French. At times, however, he was not clear in his answers and remained nebulous. The Chamber also notes that, in relation to Mr Bemba, P-214 (D-55) provided no additional information during his testimony, except for the detail that he could not be certain that he spoke on the telephone with Mr Bemba, who had not been introduced by name.

285. The Chamber thus considers that it can rely on P-214 (D-55)'s testimony since he testifies to facts within his personal knowledge when explaining his prior contacts with Mr Kilolo and the payment of money. Where he was unclear, the Chamber relies on P-214 (D-55)'s word only to the extent that it is corroborated by other evidence.

286. The Chamber recalls that, when ruling on the formal submission of the January 2014 statement under Rule 68 of the Rules and in response to a Defence challenge, it found no violation justifying exclusion.[401] During the trial, the Defence again challenged this statement, contending, mainly, that the witness, at the time of the interview, had been intimidated, threatened and not informed of his rights.[402] P-214 (D-55) characterised the questioning by national authorities in the January 2014 interview as 'robust and rigorous', amounting to 'psychological torture'.[403] However, he failed to further substantiate his claim. Indeed, on 5 August 2014, when given the opportunity to confirm or amend his statement, as reflected in the video recording, P-214 (D-55) confirmed that he gave the January 2014 statement *'willingly, without coercion'*.[404] Lastly, P-214

[401] *See* Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr, paras 17, 87-94.
[402] Transcript of Hearing, 5 November 2015, ICC-01/05-01/13-T-36-CONF-ENG ET ('T-36-CONF'), p. 42, line 25 to p. 46, line 24.
[403] Transcript of Hearing, 4 November 2015, ICC-01/05-01/13-T-35-Red-ENG WT ('T-35-Red'), p. 24, lines 24-25; Transcript of Hearing, 5 November 2015, ICC-01/05-01/13-T-36-Red-ENG WT ('T-36-Red'), p. 44, line 16 and p. 45, line 7.
[404] Prior recorded testimony, CAR-OTP-0091-1048 at 1055, lines 192-198.

(D-55) reiterated that he had renounced his right to counsel[405] and affirmed that the January 2014 interview was not recorded at his explicit request.[406] In the light of the above, the Chamber sees no reason to depart from its prior finding under Article 69(7) of the Statute. It therefore relies on the January 2014 statement for the purpose of its evidentiary assessment.

b) Discussion

287. At the outset, the Chamber observes that a series of factual allegations are uncontested in relation to D-55. For example, it is uncontested that D-55 was the co-author of a November 2009 letter to the Prosecution.[407] In this letter, D-55 and another author claimed to have personal knowledge about events related to the Main Case and expressed their willingness to testify as Prosecution witnesses. This document was introduced in the Main Case.[408] D-55 testified before Trial Chamber III that letter had been 'fabricated'.[409] The document, bearing D-55's signature, was also submitted to this Chamber.

288. Further, it is uncontested that, while D-55 does not personally know and has never met Mr Babala[410] or Mr Arido,[411] Mr Kilolo approached D-55[412] and enquired whether he was willing to testify for Mr Bemba. The Amsterdam meeting between Mr Kilolo and D-55 and the resulting expenses are also undisputed. Both P-214 (D-55) and Mr Kilolo acknowledge that (i) Mr Kilolo purchased and sent by e-mail a round-trip flight ticket to D-55 before the meeting;[413] (ii) D-55 initially paid for a flight change and other travel costs,

[405] T-36-Red, p. 45, lines 20-21.
[406] T-36-Red, p. 46, lines 2-3.
[407] Document, CAR-OTP-0062-0094-R02; T-36-CONF, p. 19, lines 4-14.
[408] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 29 October 2012, ICC-01/05-01/08-T-264-Red2-ENG WT ('T-264-Red2'), p. 20, lines 1-4.
[409] Trial Chamber III, T-264-Red2, p. 21, line 24 to p. 22, line 4.
[410] T-36-Red, p. 8, lines 11-16; Document, CAR-D22-0003-0009 at 0009.
[411] T-36-Red, p. 60, lines 13-17.
[412] T-35-Red, p. 18, lines 11-12; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0877-R03.
[413] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 339; Document, CAR-D21-0003-0036 at 0037 and 0038; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878.

which Mr Kilolo later reimbursed *via* a Western Union transfer of EUR 100;[414] (iii) Mr Kilolo paid one night of D-55's hotel bill;[415] and (iv) they met in Amsterdam on 5 June 2012.[416] Contrary to the Prosecution's allegation,[417] the Chamber finds that the Amsterdam meeting and resulting costs were the result of legitimate investigative activities.

289. At or before the Amsterdam meeting, D-55 – who had no personal, direct information about the events described in the November 2009 document[418] – had doubts about his co-author's account in the November 2009 document and discussed its veracity with Mr Kilolo.[419] In his Main Case testimony, January 2014 statement and testimony before this Chamber, P-214 (D-55) consistently expressed his doubts about the November 2009 document.[420] P-214 (D-55) did not implicate Mr Kilolo or otherwise attempt to deflect attention from his and his co-author's alleged conduct. In the light of the foregoing, the Chamber is not persuaded that Mr Kilolo specifically instructed D-55 to testify before Trial Chamber III that the November 2009 document was false.

290. On the other hand, the Chamber is satisfied that Mr Kilolo instructed D-55 to testify that the November 2009 document was prepared for the sole purpose of

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[414] Kilolo Defence Submission, ICC-01/05-01/13-600-Corr2-Red2, para. 340 (indicating that the sum is composed of 60 EUR for the change of flight, 20 EUR for the taxi, and 20 EUR for a meal for D-55); Western Union records, CAR-OTP-0070-0007, tab 32, row 25; CAR-OTP-0070-0005, tab 45, row 5; T-35-Red, p. 26, lines 12-13; p. 28, lines 6-7 and 14-15; T-36-Red, p. 13, lines 16-18; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0880-R03.

[415] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 339; Document, CAR-D21-0003-0036 at 0037 and 0038; Document, CAR-D21-0003-0056; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878-R03.

[416] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 339; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878-R03 and 0880-R03; Transcript of Hearing, 4 November 2015, ICC-01/05-01/13-T-35-CONF-ENG ET ('T-35-CONF'), p. 21, lines 3-4.

[417] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 191; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 281.

[418] T-36-CONF, p. 21, lines 9-10; *see also* p. 20, lines 5-6; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0877-R03.

[419] T-36-CONF, p. 27, lines 17-19.

[420] Trial Chamber III, T-264-Red2, p. 21, line 24 to p. 22, line 1; Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 29 October 2012, ICC-01/05-01/08-T-264-CONF-ENG ET ('T-264-CONF'), p. 25, line 18 to p. 26, line 4; Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03; T-36-CONF, p. 20, lines 12-18.

bolstering his co-author's case [Redacted]. To this end, the Chamber relies on P-214 (D-55)'s January 2014 statement, where he referred to Mr Kilolo's instruction three times,[421] as well as his in-court testimony before this Chamber.[422] When confronted with the hypothetical scenario that Mr Kilolo did not know about the personal circumstances of the co-author and simply asked D-55 about his co-author's motivation, P-214 (D-55) rejected it emphatically, insisting that this proposition came from Mr Kilolo.[423] The Chamber also finds it to be reasonable that P-214 (D-55) did not follow Mr Kilolo's instruction because, when the November 2009 document was drafted, the [Redacted] had concluded.[424] The Chamber finds this evidence reliable because it is plausible and consistent, and P-214 (D-55) implicated a third person, thus adding an otherwise unnecessary complication to his account. It is therefore convinced that Mr Kilolo instructed D-55 to testify to circumstances that the former knew to be incorrect.

291. The call sequence table and corresponding call data records show that there were in total five telephone or SMS contacts between D-55 and Mr Kilolo, including one after the VWU cut-off date of 23 October 2012.[425] The Chamber is particularly attentive to the following contacts:

- 4 October 2012, at 20:17, for approximately 24 minutes;[426]
- 5 October 2012, at 20:05, for approximately 3½ minutes;[427]
- 23 October 2012, at 20:22, for approximately 1 minute.[428]

[421] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878-R03; *see also* at 0879-R03 and 0880-R03.
[422] T-36-CONF, p. 29, lines 13-14.
[423] T-36-Red, p. 29, line 23.
[424] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878-R03; *see also* T-36-CONF, p. 29, lines 13-18.
[425] VWU Table, CAR-OTP-0078-0290 at 0292 (ICC-01/05-01/13-207-Conf-Anx, p. 3).
[426] Call Sequence Table, CAR-OTP-0090-0630 at 0718, row 1; Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 515.
[427] Call Sequence Table, CAR-OTP-0090-0630 at 0718, row 4; Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 710.
[428] Call Sequence Table, CAR-OTP-0090-0630 at 0718, row 5; Call Data Record, CAR-OTP-0072-0082, row 503.

292. According to the call sequence table, the above communications involved, for D-55, telephone number [Redacted]. P-214 (D-55) testified that this was his number[429] and the Chamber is therefore satisfied that the call sequence table correctly attributes it. According to the call sequence table, and corresponding call data records, the above communications also involved Mr Kilolo's[430] Dutch telephone number [Redacted][431] and Belgian telephone number [Redacted].[432] With regard to the Belgian telephone number, the Chamber is satisfied that it belongs to Mr Kilolo since it (i) appears in the signature block on Mr Kilolo's personal e-mails;[433] and (ii) was registered on Mr Bemba's list of privileged contacts from 2008 to 2013.[434] P-214 (D-55) further corroborated the above evidence, testifying that he spoke to Mr Kilolo on the telephone several times.[435]

293. In addition to his conversations with Mr Kilolo, P-214 (D-55) testified that Mr Kilolo also facilitated[436] a telephone conversation with a person he assumed to be Mr Bemba. P-214 (D-55) testified that he had insisted on speaking to Mr Bemba,[437] as he had lost confidence in Mr Kilolo.[438] P-214 (D-55) consistently stated, in both his January 2014 statement and before this Chamber, that although they did not discuss the content of his upcoming Main Case

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[429] T-35-CONF, p. 28, lines 24-25; *see also* Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878-R03 and 0879-R03.
[430] *See* para. 585.
[431] Call Sequence Table, CAR-OTP-0090-0630 at 0718, row 5; Call Data Record, CAR-OTP-0072-0082, row 503.
[432] Call Sequence Table, CAR-OTP-0090-0630 at 0718, rows 1 and 4; Call Data Record, CAR-OTP-0072-0391, tab '[Redacted], rows 515 and 710.
[433] *For example*, E-mail Correspondence, CAR-D21-0003-0176 at 0180; CAR-OTP-0075-0586.
[434] ICC Document, CAR-OTP-0074-0067.
[435] T-36-Red, p. 27, lines 12-13; *see also* Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0878-R03 and 0879-R03.
[436] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03 and 0080-R03 ('*après la présentation faite par Kilolo*'/'*going by the introduction made by Kilolo*').
[437] T-36-Red, p. 35, line 12; p. 66, lines 4-5*; see also* Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03 (*'Lors de cet appel, il a également dit à Kilolo (...) qu'il voulait témoigner à condition de parler auparavant à Bemba'/'During that call, he also told Kilolo (...) that he wanted to testify provided he could speak to Bemba beforehand'*).
[438] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03 (*'Il a dit qu'il n'était pas digne de confiance et a demandé à parler à son patron'/'He said that he was not trustworthy and asked to speak to his boss'*); *see also* T-36-Red, p. 41, lines 19-20 (*'But I did make a request to Maître Kilolo to speak, because I felt that there was a lack of trust at a given moment in time'*); p. 66, lines 5-6.

testimony,[439] the other person on this call, presumed to be Mr Bemba, thanked D-55 for agreeing to testify in Mr Bemba's favour.[440] The Chamber notes that P-214 (D-55)'s consistent description of the events was diffident and cautious and he seemed hesitant to deliberately implicate Mr Bemba.

294. In this regard, the Chamber notes that P-214 (D-55) never positively stated that he actually spoke with Mr Bemba. Rather, in an attempt at accuracy, he stated that he assumed that the person on the other end of the line was Mr Bemba,[441] even though Mr Kilolo did not introduce Mr Bemba by name and Mr Bemba did not identify himself.[442] This complication in P-214 (D-55)'s account adds to the reliability of the witness's statement insofar it demonstrates his desire to stay true to his experiences without adding further details or simplifying matters.

295. P-214 (D-55) testified that the telephone conversation was conducted in Lingala, which Mr Bemba speaks.[443] He characterised Mr Bemba as a powerful man with many friends outside detention.[444] The Chamber finds that this description matches Mr Bemba.[445] In this regard, the Chamber considers it unlikely that, in the light of D-55's loss of trust in Mr Kilolo and his request to speak to Mr Bemba personally, Mr Kilolo would pass the call through to a person other than Mr Bemba. Indeed, the Kilolo Defence admitted in its written submissions to the Pre-Trial Chamber that Mr Kilolo facilitated contact between Mr Bemba and D-55.[446]

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[439] T-36-Red, p. 37, lines 14-15.
[440] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03; *see also* T-36-Red, p. 65, lines 20-21.
[441] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03; *see also* T-36-CONF, p. 66, lines 9-10.
[442] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03; T-35-Red, p. 20, lines 14-25; T-36-Red, p. 35, line 23 to p. 36, line 16.
[443] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0880-R03.
[444] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0879-R03.
[445] It is also noted that the witness referred to Mr Bemba as the 'senator', *see* T-35-Red, p. 26, line 19; T-36-CONF, p. 20, line 14.
[446] Kilolo Defence Submission, ICC-01/05-01/13-674-Conf-Anx3, p. 21, row 69.

296. The Chamber notes that the relevant call data records also corroborate the fact that P-214 (D-55) spoke to Mr Bemba. They demonstrate that, on 5 October 2012, at 19:49, Mr Kilolo received, on his Belgian telephone number ([Redacted]) a call from number [Redacted] which lasted about 32½ minutes.[447] As already set out above, Mr Kilolo called D-55 at 20:05 on the same day for approximately 3½ minutes using the same Belgian telephone number.

297. With regard to number [Redacted], the Chamber finds it to be the number of Mr Bemba's privileged line at the ICC Detention Centre for the following reasons: (i) it is a Court number; (ii) it appears numerous times in the evidence in connection with Mr Kilolo's telephone numbers;[448] (iii) at the beginning of a different call between this number and Mr Kilolo's number on 17 October 2013, an operator can be heard saying, '*Hello ICC, I have telephone for you, from Mr Bemba. One moment, please*';[449] and (iv) the content of the 17 October 2013 conversation is particular and specific to developments in the Main Case.

298. In the light of the above, the context and timing, the Chamber is convinced that Mr Bemba, with the intention of motivating D-55 to give specific testimony, agreed to and did speak to D-55 personally on 5 October 2012 and thanked him for agreeing to testify in his favour.

299. The Chamber is further convinced that Mr Kilolo instructed witness D-55 not to reveal the Amsterdam meeting and his telephone contact with Mr Bemba. P-214 (D-55) gave evidence in his January 2014 statement that Mr Kilolo, shortly before the witness's testimony before Trial Chamber III, expressly instructed

[447] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 709.
[448] *See*, for example, Call log, CAR-OTP-0079-1507 at 1508, row 3 from the top; CAR-OTP-0080-1312 at 1312, rows 4, 5, and 9 from the top; at 1313, row 24 from the top; at 1314, row 37 from the top; at 1315, row 56 from the top; Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 3842;.
[449] *See* para. 615; Audio recording, CAR-OTP-0080-1323; Transcript of audio recording, CAR-OTP-0082-0489 at 0490, line 2.

him to deny that the Amsterdam meeting had taken place[450] and suggested that that meeting was private in nature.[451] P-214 (D-55) further stated that Mr Kilolo instructed him not to reveal his telephone contact with Mr Bemba as this was '*quelque chose d'inhabituel*'.[452]

300. P-214 (D-55)'s description of Mr Kilolo's instructions has an undeniable ring of sincerity. Not only does he consistently stress throughout his evidence that Mr Kilolo told him not to talk about certain things,[453] but he also did not waiver when questioned by the Kilolo Defence. Indeed, his demeanour clearly showed that P-214 (D-55) was adamant on this point.[454] He also admits to having abided by these instructions.[455] P-214 (D-55) fervently insisted throughout his evidence that the EUR 80 transfer from the Defence had no impact on his testimony before Trial Chamber III.[456] In the Chamber's estimation, the witness plausibly describes the dilemma he faced.

301. D-55 testified before Trial Chamber III from 29 to 31 October 2012.[457] During his testimony and in line with Mr Kilolo's instructions, he untruthfully mentioned only three contacts[458] and concealed, despite being asked, his meeting with Mr Kilolo in Amsterdam and the telephone call with Mr Bemba. Likewise, the Chamber also finds that it was upon Mr Kilolo's instruction that D-55 lied, like other Main Case Defence witnesses, that he had not received any money from the Main Case Defence, including any legitimate reimbursement of

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[450] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0881-R03; *see also* at 0880-R03.
[451] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0880-R03.
[452] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0880-R03 ('*something rather unusual*').
[453] T-36-Red, p. 33 line 23 to p. 34, line 3*; see also* Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0881-R03.
[454] T-36-Red, p. 33 lines 21-25.
[455] Prior recorded testimony, CAR-OTP-0074-0872-R03 at 0881-R03.
[456] T-35-Red, p. 22, lines 9-11.
[457] *See* Trial Chamber III, T-264-CONF; T-264-Red2; Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 30 October 2012, ICC-01/05-01/08-T-265-CONF-ENG ET; ICC-01/05-01/08-T-265-Red2-ENG WT ('T-265-Red2'); Transcript of Hearing, 31 October 2012, ICC-01/05-01/08-T-266-CONF-ENG ET; ICC-01/05-01/08-T-266-Red2-ENG WT.
[458] Trial Chamber III, T-264-Red2, p. 62, line 22 to p. 66 line 23.

expenses.[459] He also denied having been given any promises,[460] even though he was told that he would benefit from Mr Bemba's good graces.

302. As the Chamber explained in the context of D-57 and D-64,[461] it notes a clear pattern discernible from explicit instructions, as recorded in the evidence, that Mr Kilolo gave to other witnesses not to reveal that they had received any money from the Main Case Defence. Therefore, the Chamber infers that Mr Kilolo also instructed D-55 to deny having received money, including legitimate reimbursement, and any non-monetary promises from the Main Case Defence. Therefore, in the light of this pattern and D-55's denial of payments, the Chamber finds, as the only reasonable conclusion available on the evidence, that Mr Kilolo instructed D-55 to lie about the money transfers.

c) Overall Conclusions Regarding D-55

303. The Chamber finds that D-55 incorrectly testified about his prior contacts with the Main Case Defence and payment of money, including reimbursement of expenses. He also lied about not having been promised that he would benefit from Mr Bemba's good graces.

304. The Chamber further finds that Mr Kilolo asked D-55 to testify that the November 2009 document was fabricated by his co-author in order to assist the co-author's case [Redacted], even though Mr Kilolo knew this to be incorrect. The Chamber finds that Mr Kilolo also instructed D-55 to lie about his contacts with the Main Case Defence and to conceal, for example, their meeting in Amsterdam and the telephone call Mr Kilolo facilitated between D-55 and Mr Bemba. Mr Kilolo also instructed D-55 to deny having received money,

[459] Trial Chamber III, T-265-Red2, p. 15, lines 1-12.
[460] Trial Chamber III, T-265-Red2, p. 15, lines 13-18.
[461] *See* paras 250 and 278.

including legitimate reimbursement, and any non-monetary promises from the Main Case Defence.

305. Lastly, the Chamber finds that, in order to motivate D-55 to give specific testimony, Mr Bemba spoke with D-55 by telephone shortly before his testimony and thanked him for agreeing to testify in his favour.

5. Witnesses D-2, D-3, D-4 and D-6

306. Witnesses D-2, D-3, D-4 and D-6 were called by the Main Case Defence and testified under these pseudonyms. D-2 and D-3 were called by the Prosecution in the present case and testified as P-260 and P-245, respectively, before this Chamber. D-4 and D-6 were not called to testify in the present case.

a) Credibility

307. P-260 (D-2) testified in the present proceedings from 12 to 15 October 2015, after having been given Rule 74 assurances.[462]

308. The Chamber observes that P-260 (D-2) was forthcoming and replied candidly to questions put to him by the Prosecution and the Defence. In general terms, his account was clearly structured, coherent and detailed, and followed a chronological pattern. From the outset, P-260 (D-2) admitted that he had lied on specific points in the Main Case for his own benefit.[463] When challenged by the Defence on perceived inconsistencies between his in-court testimony and prior statement, P-260 (D-2) responded spontaneously and provided reasonable clarifications without diffidence. For example, he reported outright the various sums of money he had received from Mr Kilolo and Mr Arido. He also

[462] T-18-Red2, p. 29, line 22 to p. 30, line 8.
[463] Transcript of Hearing, 14 October 2015, ICC-01/05-01/13-T-20-Red2-ENG WT ('T-20-Red2'), p. 18, lines 3-6 (*'From the first 10 million that you thought you might receive until now, your aim has been to get money? 'No, Counsel. The first time, yes. But the second time it was out of my own conscience'*); p. 23, lines 19-25; p. 24, lines 24-25; Transcript of Hearing, 15 October 2015, ICC-01/05-01/13-T-21-Red3-ENG ET ('T-21-Red3'), p. 23, lines 1-6.

contextualised the events by providing details as to timing and circumstances. These details did not change when he was questioned by the Defence.

309. P-260 (D-2) was articulate and precise in his descriptions. He was careful to limit himself to his personal experiences.[464] For example, at times, he added small details, *inter alia*, when explaining the process of drawing up his personal notes in preparation for his testimony before Trial Chamber III[465] or describing meeting places.[466] Further, when the witness could not remember exact dates, he set a particular event in context with another or otherwise provided an approximate time frame.[467] The Chamber considers these efforts to constitute a meaningful attempt at accuracy and demonstrate the personal basis of his testimony. The Chamber notes instances where the witness did struggle to remember certain ancillary details he might have been expected to remember, such as the name of Mr Arido's wife, whom he claimed to know well, or details of his prior professional positions. However, such minor lapses in memory did not relate to matters of consequence. Therefore, the Chamber does not consider that they have any broader impact on P-260 (D-2)'s credibility.

310. The Chamber also notes P-260 (D-2)'s various attempts to differentiate facts within his testimony. For example, he stated that, while Mr Kilolo had paid the witness money, he had not promised relocation.[468] This ability to differentiate between the varying roles and conduct of the different accused demonstrates that P-260 (D-2) recounted events as he personally experienced them. Another telling feature of the witness's evidence was his use of diversified vocabulary when describing events at different junctures of his testimony, while the

[464] Transcript of Hearing, 13 October 2015, ICC-01/05-01/13-T-19-Red2-ENG WT ('T-19-Red2'), p. 33, line 6-7.
[465] T-18-Red2, p. 51, lines 7-9; p. 52, line 12 to p. 53, line 10.
[466] Transcript of Hearing, 12 October 2015, ICC-01/05-01/13-T-18-CONF-ENG ET ('T-18-CONF'), p. 67, lines 15-17.
[467] T-18-CONF, p. 69, lines 11-15; T-19-Red2, p. 7, lines 2-10.
[468] T-19-Red2, p. 78, lines 11-12; p. 79, line 2; p. 82, lines 19-21.

substance of his account would essentially remain the same.[469] In the view of the Chamber, this demonstrates P-260 (D-2)'s sincerity and truthfulness. Finally, the Chamber notes that P-245 (D-3) corroborated many aspects of P-260 (D-2)'s evidence regarding the meetings in Douala and Yaoundé, such as arrival times, accommodation and attendance.

311. During its questioning, the Defence emphasised the Court's reimbursement of costs and payments to P-260 (D-2). The witness answered related questions openly.[470] The Chamber is alive to the fact that the Court invested significant amounts of money in order to facilitate P-260 (D-2)'s testimony. Nevertheless, the Chamber finds no indication that those payments prompted the witness to strategically direct his evidence in the Prosecution's favour. Accordingly, they do not impact on P-260 (D-2)'s credibility or the overall reliability of his evidence.

312. P-245 (D-3) testified in the present proceedings from 19 to 23 October 2015, after having been given Rule 74 assurances.[471]

313. Although he appeared timid at first, P-245 (D-3) demonstrated confidence in the course of his testimony. P-245 (D-3) calmly responded to the questions and remained frank and forthcoming throughout his testimony. His answers were chronologically structured, coherent and clear. He provided explanations voluntarily and did not evade questions, even if they could potentially cast him in a disadvantageous light. In this regard, the Chamber notes his forthright testimony in relation to his contacts with P-260 (D-2) and other defence witnesses after their Main Case testimonies, and his threat at the Douala

[469] T-20-Red2, p. 36, line 20 to p. 37, line 11.
[470] T-20-Red2, p. 15, line 22 to p. 16, line 3; p. 18, lines 2-6 and 25 to p. 19, line 14.
[471] Transcript of Hearing, 19 October 2015, ICC-01/05-01/13-T-22-Red2-ENG WT ('T-22-Red2'), p. 24, lines 2-13.

meeting, in front of Mr Arido and Mr Kokaté,[472] not to testify unless he was paid.[473]

314. The level of detail in P-245 (D-3)'s testimony and the presence of various complicating elements are consistent with the account of someone who personally experienced the events. For example, his evidence on the Douala and Yaoundé meetings was precise, including details as to arrival times, accommodation and the presence and conduct of individuals. When describing the May 2013 handover of CFAF 540,000 and the October 2013 transfer of CFAF 100,000, P-245 (D-3) provided details that only a person who personally experienced these events could easily relate. Similar considerations apply to P-245 (D-3)'s description of the episode when the group of witnesses in Yaoundé expressed their dissatisfaction with Mr Kilolo for having failed to accede to the promises of payments and relocation and Mr Kilolo's subsequent reaction. In this context, P-245 (D-3)'s evidence is corroborated by P-260 (D-2), who, in different words, essentially described the same scenario.

315. On numerous occasions, P-245 (D-3) resisted Defence propositions and did not revise or retract his statements.[474] For example, P-245 (D-3) provided a firm and consistent account of Mr Kilolo's role and instructions[475] concerning, in particular, three points, shortly before his Main Case testimony. The Chamber also notes that, when questioned by the Mangenda Defence, P-245 (D-3) confirmed the date he started testifying in the Main Case but could not remember the number of days his testimony lasted.[476] The Chamber finds that

[472] Transcript of Hearing, 19 October 2015, ICC-01/05-01/13-T-22-CONF-ENG ET ('T-22-CONF'), p. 39, lines 18-24; Transcript of Hearing, 22 October 2015, ICC-01/05-01/13-T-26-CONF-ENG ET ('T-26-CONF'), p. 50, line 12 to p. 51, line 8.
[473] Transcript of Hearing, 22 October 2015, ICC-01/05-01/13-T-26-Red-ENG WT ('T-26-Red'), p. 50, lines 13-14 and 21-23.
[474] Transcript of Hearing, 20 October 2015, ICC-01/05-01/13-T-23-Red2-ENG WT ('T-23-Red2'), pp. 41-42; T-26-Red, pp. 9-10; p. 12, lines 8-18; pp. 18-19.
[475] Transcript of Hearing, 23 October 2015, ICC-01/05-01/13-T-27-Red-ENG WT ('T-27-Red'), p. 17, lines 1-6.
[476] T-27-Red, p. 62, line 16 to p. 63, line 1.

the explanation provided by the witness as to why he could not remember this information convincing and does not consider this detail to be significant enough to cast doubt on the truthfulness of the witness's evidence as a whole.

316. As was the case with P-260 (D-2), Defence questioning also explored the Court's reimbursement of costs and payments to P-245 (D-3). In addition, the Arido Defence sought to clarify the extent to which the Prosecution intervened [Redacted]. The witness answered all of these questions openly.[477] The Chamber is alive to the fact that the Court invested resources and money to facilitate the testimony of P-245 (D-3), both in the Main Case and this case. Nevertheless, the Chamber finds no indication that the witness benefited from extraordinary reimbursements that prompted the witness to strategically direct his evidence. P-245 (D-3) was also adamant and coherently explained that he had not received any ICC assistance in relation to [Redacted].[478] As a result, the Chamber is of the view that the credibility of the witness is not affected. The payments identified by the Defence do not impact on the witness's credibility or the overall reliability of his evidence.

317. As highlighted by the Arido Defence and Kilolo Defence,[479] the Chamber notes that P-260 (D-2) and P-245 (D-3) were in contact after their Main Case testimonies and after their 2014 interviews with the Prosecution in the context of the present proceedings. P-245 (D-3) admitted outright to being friends with P-260 (D-2) and having been in regular telephone contact with him.[480] Yet, he claimed that they had not talked about their respective testimonies in the

[477] Transcript of Hearing, 20 October 2015, ICC-01/05-01/13-T-23-CONF-ENG ET ('T-23-CONF'), p. 30, line 16 to p. 36, line 15; T-26-CONF, p. 12, line 19 to p. 13, line 24.
[478] T-26-CONF, p. 13, lines 14-24; p. 49, lines 14-17; p. 59, lines 5-10; p. 68, lines 4-11.
[479] Arido Defence Closing Brief, ICC-01/05-01/13-1904-Corr-Red2, para. 335; *see also* T-20-Red2, p. 14, line 7 to p. 15 line 8; T-26-CONF, p. 8, lines 21 to p. 12 line 18.
[480] T-22-CONF, p. 50, lines 4-5; p. 51, lines 12-14; p. 52, line 1; T-26-CONF, p. 9, lines 3-5 and 8-9; p. 32, lines 10-11; p. 56, lines 3-7.

present case.[481] The Defence averred that the close relationship and contacts between the two witnesses led to the conclusion that they colluded and harmonised their testimonies to the Accused's detriment.[482]

318. The Chamber takes this allegation of collusion very seriously.[483] However, the fact that the two witnesses were in regular contact and attested to similar factual allegations is not sufficient, in itself, to demonstrate collusion. In order to detect signs of collusion the Chamber compared the manner in which the witnesses testified about the events in question. The witnesses, while consistent on main points, still varied on discrete aspects of the events. They did not use the same language when describing the same facts and varied in detail. Reverting to the above example of the alleged telephone call during the first introductory meeting, the Chamber notes that, while P-245 (D-3) stated that he witnessed Mr Arido being called by Mr Kilolo,[484] P-260 (D-2) testified that he actually spoke personally with Mr Kilolo on the telephone.[485] It is also significant that neither witness attempted to conceal their contacts.[486] In the light of the above, the Chamber finds Defence allegations of collusion to be unfounded.

319. In sum, the Chamber finds that P-260 (D-2) and P-245 (D-3) are generally credible and therefore relies on their testimonies, in particular, regarding the meetings with Mr Arido and Mr Kilolo, Mr Mangenda's intervention, and the payments of money.

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[481] T-22-Red2, p. 52, lines 3-4; T-26-Red, p. 33, lines 2-4.
[482] For example, the Arido Defence purported that both P-260 (D-2) and P-245 (D-3) colluded in their allegation that, in their first meeting with Mr Arido, the latter had been called by Mr Kilolo, *see* T-26-CONF, p. 32, line 24 to p. 33, line 1.
[483] In fact, the Chamber adopted additional safeguards before P-260 (D-2) and P-245 (D-3) testified to avoid any collusion or the appearance thereof at trial, *see* Transcript of Hearing, 7 October 2015, ICC-01/05-01/13-T-15-CONF-ENG ET ('T-15-CONF'), p. 63, line 10 to p. 64, line 21 (*'Second, the Chamber is requested to order that Witness P-260 and P-245 not to communicate with each other after the provision of their statements. The Chamber is persuaded that such a measure is appropriate for the reasons provided by the Arido Defence. The VWU is directed to inform P-260 and P-245 not to communicate with each other from the provision of their statements until after both have completed their testimony'*).
[484] T-26-Red, p. 31, lines 17-19.
[485] T-18-Red2 , p. 68, lines 15-24.
[486] T-26-Red, p. 32, lines 10-12.

b) Discussion

i. First Contacts Between D-2 and D-3 and Mr Arido

320. P-260 (D-2) testified that Mr Arido, [Redacted],[487] first approached him in January 2012.[488] As corroborated by P-245 (D-3),[489] P-260 (D-2) testified that Mr Arido told him that Mr Kokaté, '*otherwise known as Djoki Djoki*',[490] had initiated the search for witnesses.[491] P-260 (D-2) claimed that he reacted negatively to the mention of Mr Kokaté's name[492] and in response Mr Arido reassured him that he '*was there to handle the situation*' personally.[493] P-260 (D-2) averred that Mr Arido informed him of an opportunity to earn some money, namely by testifying as a witness for the Main Case Defence.[494] P-260 (D-2) claimed that Mr Arido promised him CFAF 10 million and travel to Europe.[495]

321. P-260 (D-2) stated that Mr Arido gave concrete directions as to what he was expected to testify in the Main Case. According to the witness, Mr Arido told him to testify as a military person and proposed related details:[496] '*Listen, as of today, you are now a sub lieutenant and this is what you are going to say: you are a member of the youth wing of the MLC and you were trained in Karako, you're in the habit of being with the president or in the compound of the president*'.[497] P-260 (D-2)

[487] T-18-CONF, p. 63, lines 19-25; p. 64, lines 19-20 and line 23 to p. 65, line 2; Transcript of Hearing, 14 October 2015, ICC-01/05-01/13-T-20-CONF-ENG ET ('T-20-CONF'), p. 63, lines 5-15.
[488] T-18-CONF, p. 69, lines 9-15; T-19-Red2, p. 7, lines 7-8.
[489] *See* para. 327.
[490] T-18-CONF, p. 68, line 2. The name *'Djoki'* was also used by the witness in e-mails addressed to Mr Arido, *see* E-mail correspondence, CAR-OTP-0075-0785; CAR-OTP-0075-0789.
[491] T-18-CONF, p. 67, line 18 to p.68, line 2.
[492] T-18-Red2, p. 68, line 6; T-20-CONF, p. 71, lines 9-12.
[493] T-18-Red2, p. 68, line 8.
[494] T-18-Red2, p. 67, lines 10-12 and 18-20.
[495] T-20-Red2, p. 4, lines 1-2; p. 72, lines 7-11.
[496] T-19-Red2, p. 5, lines 7-8; *see also* p. 7, line 4-5.
[497] T-19-Red2, p. 5, lines 13-16; p. 64, lines 14-16; *see also* T-18-Red2, p. 68, lines 9-10; T-20-Red2, p. 59, lines 3-13; T-21-CONF, p. 90, lines 15-17.

testified that he noted this information on paper so as to prepare and to remember.[498]

322. The Arido Defence claims that Mr Arido did not instigate D-2 to impersonate a '*sub-lieutenant*'. It notes that, in a different context prior to the events *sub judice,* D-2 had already presented himself with a military title.[499] To this end, the Defence presented a handwritten document listing alleged participants in a meeting in Douala in February 2010 together with their military ranks, amongst them '*lieutenant*' D-2.[500] The Chamber notes P-260 (D-2)'s spontaneous reaction to the document, denying his participation at the February 2010 meeting and denying the signature beside his name.[501] Lacking any information about the authenticity and background of the document, and considering that P-260 (D-2)'s challenged the document's contents, the Chamber finds the handwritten document unreliable and cannot attribute any probative value to it. In any event, for the purposes of the present case, particularly the scope of topics that may be considered in relation to the charges of false testimony,[502] the key detail is that Mr Arido gave D-2 specific directions as to how to present his military grade and training. The witness stood firmly by this aspect of his testimony. As a result, irrespective of the witness's true background, the Chamber finds no reason to doubt P-260 (D-2)'s evidence that Mr Arido instructed him to present himself as a '*sub-lieutenant*'.

323. The Chamber is of the view that P-260 (D-2)'s account on the exchange with Mr Arido is honest, consistent, coherent, and detailed, in particular his description of the local surroundings of the meeting. P-260 (D-2)'s testimony

[498] T-19-Red2, p. 5, lines 8-11;
[499] T-20-CONF, p. 65, lines 12-21; p. 66, lines 13-16.
[500] T-20-Red2, p. 72, lines 23-24; Document, CAR-D24-0002-0003, row 5; the document was recognised as formally submitted in Decision on Arido Defence Request to Formally Submit CAR-D24-0002-0003, 20 June 2016, ICC-01/05-01/13-1935.
[501] T-20-Red2, p. 73, lines 11-18; p. 74, lines 2-5 and 19-24; T-21-CONF, p. 23, lines 11-13.
[502] *See* paras 48 and 194.

about his reaction to the mention of Mr Kokaté was unprompted and reflects a complication in the account that was otherwise not necessary. Also, P-260 (D-2)'s language, in particular the recurrent use of the colloquialism '*trouvé un topo*', indicates that he recalled the contents of a discussion he had personally had. Crucially, P-260 (D-2)'s testimony of Mr Arido's specific instructions during the first meeting essentially remained consistent throughout the four days of his testimony. In the light of the foregoing, the Chamber is satisfied that Mr Arido recruited D-2 to testify as a witness for the Main Case Defence and specifically directed D-2 to present himself as a '*sub-lieutenant*'. Mr Arido's deep involvement in the recruitment and illicit coaching of witnesses is demonstrated by P-260 (D-2)'s testimony that Mr Arido instructed him specifically to present himself as a military person and his assurance that he would personally handle the situation.

324. P-260 (D-2) claimed that, once he accepted Mr Arido's proposal, Mr Arido called Mr Kilolo '*on the spot*'[503] and handed the telephone to D-2 so that he could introduce himself to Mr Kilolo.[504] According to P-260 (D-2), Mr Kilolo confirmed that he was looking for witnesses '*who were part of the experience of what happened, witnesses who can come to testify here or who can come to testify in The Hague*',[505] and announced that he would come to Douala and discuss the matter in detail with D-2.[506] Mr Kilolo's search for witnesses through Mr Arido is further supported by the witness's statement that, prior to the Douala meeting, Mr Kilolo called Mr Arido '*and told him to bring all the people who were to testify to Douala*'.[507]

325. The Chamber notes that P-260 (D-2)'s account on the above events is organised, chronological and clear. The Chamber's immediate impression of the

[503] T-18-Red2, p. 68, line 15.
[504] T-18-Red2, p. 68, lines 15-16; T-19-Red2, p. 64, lines 16-17; T-20-Red2, p. 59, lines 8-9.
[505] T-18-Red2, p. 68, lines 20-22.
[506] T-18-Red2, p. 68, lines 23-24.
[507] T-18-Red2, p. 69, lines 1-2.

witness in the courtroom – something it can hardly convey in this judgment – was that he was firm and honest. The Arido Defence argument that no call data records have been produced in support of the alleged telephone call between Mr Arido and Mr Kilolo during Mr Arido's meeting with D-2[508] does not diminish the reliability of P-260 (D-2)'s evidence. The Chamber notes that, as explained by P-433, the call data records do not necessarily comprise *all* contacts between the accused, as they may have used telephone numbers unknown to the prosecuting authorities.[509] The Chamber is also attentive to the fact that P-245 (D-3) recalled a similar pattern on the part of Mr Arido, insofar as he called Mr Kilolo during his meeting with D-3.[510] Accordingly, the Chamber is satisfied that the witness's evidence is sufficiently reliable and does not necessitate further corroboration. As a result, the Chamber finds that Mr Kilolo knew and was kept abreast of Mr Arido's witness recruitment plans.

326. However, the Chamber cannot discern from P-260 (D-2)'s testimony that Mr Kilolo – at this juncture – knew of the instructions given by Mr Arido or directed the witness to give specific testimony. Rather, the evidence suggests that Mr Kilolo, with the assistance of Mr Arido and Mr Kokaté, searched for potential witnesses '*who were part of the experience of what happened*'. As a result, the Chamber is not satisfied that this evidence alone demonstrates that Mr Kilolo intended to motivate D-2 to testify falsely.

327. Like P-260 (D-2), P-245 (D-3) testified that Mr Arido, [Redacted],[511] contacted him in January 2012.[512] According to P-245 (D-3), Mr Arido said he was looking for '*soldiers*' to testify in the Main Case.[513] P-245 (D-3) also added that Mr Arido had told him that Mr Kilolo had asked Mr Kokaté to identify '*soldiers*' who

[508] T-20-Red2, p. 60, lines 6-9 and 17-18.
[509] T-11-Red, p. 72, lines 11-14; p. 73, lines 20-23.
[510] *See* para. 329.
[511] T-23-CONF, p. 4, line 21 to p. 5, line 2.
[512] T-22-Red2, p. 37, line 23.
[513] T-26-Red, p. 19, lines 15-18.

would testify in Mr Bemba's favour.[514] As the evidence of P-260 (D-2) and P-245 (D-3) is mutually corroborative in this regard, the Chamber is satisfied that, upon Mr Kilolo's instruction, Mr Kokaté and Mr Arido acted in concert to identify potential witnesses for the Main Case Defence.

328. P-245 (D-3) testified that, during his first encounter, Mr Arido told him of an opportunity to make money,[515] promising that he would receive money and be relocated in exchange for his testimony as a soldier.[516] Like P-260 (D-2), P-245 (D-3) testified repeatedly that he disclosed from the beginning that he was not a soldier and did not know anything about military matters.[517] According to P-245 (D-3), Mr Arido reassured him that this was not a problem: Mr Arido had a military background[518] and would put him in contact with another prospective witness, a soldier, who would brief him on military matters ('Prospective Witness').[519] P-245 (D-3) testified that Mr Arido indeed arranged for the Prospective Witness to brief D-3 before he met Mr Kilolo.[520] P-245 (D-3) testified that Mr Arido induced him to give false testimony in the Main Case ('*I was aware that it was false testimony. (…) No, it was not my fault. It was Arido's fault*'),[521] a sentiment purportedly shared by P-260 (D-2).[522]

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[514] T-22-CONF, p. 37, lines 15-17; p. 61, lines 3-6.
[515] T-22-Red2, p. 37, lines 13-14; *see also* lines 24-25; p. 55 lines 7-14; T-23-Red2, p. 37, lines 17-18.
[516] T-22-CONF, p. 55, lines 17-18 (*'The idea was to agree for me to testify in exchange for receiving some money or for being relocated abroad. Those were the two proposals that Arido made to me'*); *see also* p. 37, line 24 to p. 38 line 1 ('*Once again, he said to me that this was an opportunity to make some money because we were suffering greatly... And this way we could even get to the West, and, if possible, stay there'*); T-23-Red2, p. 15, lines 14-15; T-27-Red, p. 48, lines 5-8 and 13.
[517] T-22-Red2, p. 37, lines 18-19; T-26-Red, p. 17, lines 12-13; p. 37, lines 10-11; p. 38, lines 4-5 and 12; p. 46, lines 21-22; p. 48, lines 2-5; Prior recorded testimony, CAR-OTP-0078-0206-R01 at 0210, lines 126-127; at 0214, line 251.
[518] T-26-Red, p.37, lines 12-13; p. 38, lines 5-6 and 13-14; Prior recorded testimony, CAR-OTP-0078-0206-R01 at 0214, lines 256-261.
[519] T-22-CONF, p. 37, lines 20-22.
[520] T-22-CONF, p. 64, lines 2-3 and 7-8; T-26-CONF, p. 46, lines 21-24.
[521] T-23-Red2, p. 38, lines 11 and 19; T-26-Red, p. 15, lines 18-20; p. 37, line 5; p. 37, line 22 to p. 38, line 1; T-27-Red, p. 47, lines 14-17 (*'It was someone who encouraged me to lie. It wasn't of my own volition. (...) [Mr Arido] put words in my mouth. It wasn't my fault'*).
[522] T-23-CONF, p. 39, lines 1-2.

329. The Chamber further notes P-245 (D-3)'s statement that, during D-3's first encounter with Mr Arido, Mr Arido received a telephone call, which he said was from Mr Kilolo.[523] P-245 (D-3) quoted Mr Arido as having stated on the telephone that he was '*together with his elements*', a reference the witness understood to relate to prospective witnesses.[524] The Chamber recalls that P-260 (D-2) also testified that, when he first met with Mr Arido, Mr Kilolo and Mr Arido communicated by telephone. The Chamber therefore concludes that Mr Kilolo was updated on the recruitment process undertaken by Mr Arido. However, as with P-260 (D-2), P-245 (D-3)'s evidence does not indicate that Mr Kilolo illicitly instructed the witness at that stage to give specific testimony or that he knew of Mr Arido's instructions to the witness concerning the content of his testimony.

330. The Chamber observes that P-245 (D-3)'s account of his first encounter with Mr Arido was clear and consistent throughout his testimony, including when questioned by the Defence. When considered in the light of P-260 (D-2)'s evidence, P-245 (D-3)'s account of how he was approached by Mr Arido manifests a similar, yet subtly nuanced, pattern. The Chamber therefore considers that P-245 (D-3)'s evidence on his encounter with Mr Arido is honest and reliable.

ii. The Douala Meeting

Arrival in Douala

331. It is uncontested that, in February 2012,[525] D-2, D-3, D-4 and D-6 were introduced to Mr Kilolo in a meeting that took place in a hotel in Douala.[526] P-260 (D-2) and P-245 (D-3) both testified that other people, among them

[523] T-22-Red2, p. 38, line 4; T-26-Red, p. 31, lines 17-19; p. 31, line 22 to p. 32, line 1.
[524] T-26-Red, p. 31, lines 18-19; p. 31, line 22 to p. 32, line 1.
[525] T-19-Red2, p. 6, lines 14 and 16-19; T-22-Red2, p. 38, lines 7-8; T-23-Red2, p. 6, lines 10-11.
[526] T-18-CONF, p. 69, lines 13-15; p. 75, lines 6-10; T-21-CONF, p. 15, line 24 to p. 16, line 2.

[Redacted] and prospective witnesses (who did not eventually testify), were also present at the time of the meeting in Doulala.[527] At this meeting, Mr Kilolo, together with his legal assistant (the '*white lady*'), interviewed the witnesses individually.[528] Before this, however, the witnesses met with Mr Arido and Mr Kokaté, as will be analysed below.

332. Both P-260 (D-2) and P-245 (D-3) gave detailed and mutually corroborative evidence on their travel to and arrival in Douala,[529] as well as their accommodation.[530]

333. The Arido Defence presented a report, allegedly authored by the Cameroonian police, in which it is alleged that D-2's stay at a certain hotel in February 2012 cannot be confirmed.[531] The Chamber notes that the document bears sufficient indicia of reliability, with a logo, letterhead, date and seal, and the signature of a representative of the '*Directeur de la Sécurité Publique*'. However, for the following reasons, the Chamber considers that the report cannot impact the reliability of P-260 (D-2)'s evidence concerning his stay in Douala: (i) the report was produced on 23 June 2015, more than two years after the relevant events; (ii) the Kilolo Defence relies heavily on interviews recorded during the Douala meeting, thus implicitly acknowledging that this meeting with D-2 took place; and (iii) P-245 (D-3) confirmed that he, together with D-2, resided in the hotel concerned.[532] As a result, the Chamber is convinced that D-2, together with Mr Arido, D-3 and other individuals, stayed in a specific hotel, identified by P-260 (D-2) and P-245 (D-3), in Douala in February 2012.

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[527] T-19-CONF, p. 9, lines 19-24; p. 36, lines 16-21; T-21-CONF, p. 15, line 24 to p. 16, line 5; T-22-CONF, p. 38, line 18 to p. 39, line 4; p. 61, lines 20-22.
[528] T-18-Red2, p. 73, lines 20-25; p. 74, line 9 to p. 75, line 19; p. 76, lines 4-8; T-19-Red2, p. 65, lines 10-12; T-20-Red2, p. 5, line 22 to p. 6, line 1.
[529] T-22-CONF, p. 38, lines 9-19; T-26-Red, p. 34, lines 4-5.
[530] T-22-CONF, p. 38, lines 20-22; p. 39, lines 6-7; T-26-Red, p. 34, lines 21-23; p. 35, lines 19-22.
[531] Document, CAR-D24-0002-0001 at 0001.
[532] T-22-CONF, p. 38, lines 18-21; p. 39, lines 7-8.

Preparatory Meeting: Assignment of Military Ranks by Mr Arido

334. Both P-260 (D-2) and P-245 (D-3) testified that on the morning following their arrival in Douala they, along with others, including D-4 and D-6[533] – who '*were in Douala already*'[534] – met with Mr Arido and, a short while later, with Mr Kokaté at their hotel.[535] P-260 (D-2) stated that, during the meeting, Mr Arido gave specific directions as to what the witnesses were expected to say to Mr Kilolo and, subsequently, the Court.[536] P-260 (D-2) also consistently characterised the meeting with Mr Arido (and later with Mr Kokaté) as a briefing,[537] during which '*we talked about what we would say on the day that we would come before the Court and give testimony*'.[538] When asked by the Prosecution whether the information during those briefings was true, P-260 (D-2) responded unequivocally and repeatedly that the information given was not true and that it had been put together at the meeting.[539] For example, P-260 (D-2) testified that Mr Arido directed him to state that he was a sub-lieutenant.[540] P-245 (D-3), who was present, also confirmed that Mr Arido assigned D-2 the role of '*lieutenant*'.[541]

335. In order to remember and prepare themselves properly for the interview with Mr Kilolo, P-260 (D-2) testified that he and the other witnesses at the briefing took notes.[542] He asserted that he produced these notes for the purpose of – '*mental preparation*' – for his Main Case testimony.[543] He conceded that he and the

[533] T-19-CONF, p. 7, lines 13-16; T-22-CONF, p. 38, line 25 to p. 39, line 4; p. 61, lines 20-22; T-26-CONF, p. 36, lines 16-20; p. 37, line 2; p. 47, lines 14-16.
[534] T-18-CONF, p. 71, line 2.
[535] T-18-Red2, p. 76, line 4; T-21-CONF, p. 87, lines 13-15; T-22-CONF, p. 39, lines 13-25; T-26-CONF, p. 48, lines 23-24; p. 50, lines 8-9.
[536] T-18-Red2, p. 75, lines 22-25 (*Each one of us knew what side he was on… He knew what his duties were, and he knew what he had to say to Mr Kilolo and each person was supposed to say. We were all briefed'*).
[537] T-18-Red2, p. 71, lines 4-5; *see also* p. 75, line 22 and 25; T-19-Red2, p. 4, lines 19-20; p. 6, lines 3, 10-11, 17; Transcript of Hearing, 15 October 2015, T-21-Red3, p. 87, line 15.
[538] T-18-Red2, p. 71, lines 3-4.
[539] T-18-Red2, p. 76, lines 19-20; *see also* T-19-Red2, p. 4, lines 20-24.
[540] T-19-Red2, p. 64, lines 1-16 (*'Mr Arido gave me to understand that from the moment when I undertook to testify, I was to behave as a second lieutenant'*).
[541] T-22-CONF, p. 40, line 20; T-26-CONF, p. 38, line 7.
[542] T-21-CONF, p. 32, line 13.
[543] T-18-Red2, p. 53, lines 9-10.

other witnesses, *'on the basis of mental preparation'*,[544] *'used the information* [obtained during the briefing] *as witnesses on behalf of Mr Bemba'* during their Main Case testimonies.[545]

336. P-260 (D-2) testified that the personal notes he wrote were originally entitled 'Chronology of Events'. He explained in detail their evolution.[546] P-260 (D-2) testified that the first version of his notes ('Annex 1') captured information upon which Mr Arido had briefed him.[547] He produced a revised version of his original notes after his meeting with Mr Kilolo in Douala ('Annex 2').[548] As P-260 (D-2) further explained, he later corrected and amended his revised notes ('Annex 3') to include Mr Kilolo's instructions, in the light of *'everything that we had been saying'*.[549]

337. The Chamber notes that D-2 included detailed information in Annex 1 and Annex 2 of his notes as to key dates, names of military commanders, abbreviations and the organizational structure of the actors involved in the 2002-2003 events in the CAR. They also contained references to D-2's alleged membership of the MLC youth wing and his purported military training.[550] Contrary to the claims of the Kilolo Defence,[551] the Chamber finds no indication in the evidence that these documents were forged or produced *post factum*.[552]

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[544] T-19-Red2, p. 4, line 19.
[545] T-19-Red2, p. 4, lines 23-24.
[546] P-260 (D-2) provided three different versions of personal notes to the Prosecution. He testified that the three versions reflect the evolution of his expected testimony in the Main Case, following Mr Arido's instructions and input received at the Douala meeting and eventually Mr Kilolo's instructions at the Yaoundé meeting, *see* Personal notes of P-260 (D-2), CAR-OTP-0079-1522 ('Annex 1'); CAR-OTP-0079-1526 ('Annex 2'); CAR-OTP-0079-1530 ('Annex 3'); T-18-Red2, p. 47, line 3 to p. 49, line 3; p. 50, line 24 to p. 53, line 10.
[547] T-18-Red2, p. 48, lines 1-2.
[548] T-18-Red2, p. 51, lines 7-9; T-21-CONF, p. 32, lines 8-20.
[549] T-18-Red2, p. 48, line 22; p. 51, lines 17-25.
[550] Personal notes of P-260 (D-2), CAR-OTP-0079-1522 at 1524 ('Annex 1'); CAR-OTP-0079-1526 at 1529 ('Annex 2').
[551] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 38-39; Arido Defence Closing Brief, ICC-01/05-01/13-1904-Corr-Red2, para. 261; T-20-Red2, p. 29, line 21 to p. 30, line 4.
[552] *See* para. 358.

338. A similar account on the preparation of witnesses by Mr Arido was also given by P-245 (D-3). P-245 (D-3) confirmed that the witnesses gathered in Douala in February 2012 spent the day preparing with Mr Arido the accounts to be given to Mr Kilolo the next day.[553] He unequivocally stated that, when meeting the entire group of potential witnesses, including D-2, D-4 and D-6,[554] Mr Arido assigned each witness a military rank and handed out military *'insignia'* to each of them.[555] P-245 (D-3) testified that D-4 and D-6 told the other witnesses in the group that they had no military background.[556] P-245 (D-3) stated that Mr Arido instructed him to say that he had been a '*corporal'* and member of the rebellion.[557] As foreshadowed during their first encounter in January 2012, Mr Arido also instructed the Prospective Witness, who was part of the group in Douala and with whom D-3 shared a hotel room, to brief D-3 on military matters.[558] P-245 (D-3) gave detailed and consistent evidence on the subject-matters of his briefings by Mr Arido and the Prospective Witness, such as his purported membership of the rebel movement, and the movements and operations of the alleged rebel group.[559] P-245 (D-3) affirmed that this story had been '*fabricated*'[560] and admitted that he knew he would testify in the Main Case following Mr Arido's instructions.[561]

339. The Chamber considers that both P-260 (D-2) and P-245 (D-3) described their encounters with Mr Arido in a sufficiently detailed, chronologically structured, clear and consistent manner. Critically, their evidence was mutually corroborative on essential points regarding the timing (prior to Mr Kokaté's

[553] T-26-Red, p. 47, lines 8-10 and 13-16.
[554] T-26-CONF, p. 19, lines 9-11; p. 36, lines 16-20; p. 37, line 2; p. 47, lines 14-16.
[555] T-22-Red2, p. 39, lines 9-10; T-26-Red, p. 37, lines 24-25; p. 38, lines 6-7; p. 45, lines 8-10; p. 46, line 12.
[556] T-26-CONF, p. 37, lines 15-17; p. 40, lines 1-12.
[557] T-22-CONF, p. 39, lines 10-12; p. 40, lines 19-20; p. 63, lines 18-22; T-26-Red, p. 45, lines 3-5.
[558] T-22-CONF, p. 63, line 22; T-26-Red, p. 46, lines 22-24; p. 47, lines 13-14 and 19-22; p. 53, lines 17-18; p. 64, lines 20-23.
[559] T-22-CONF, p. 64, lines 3-5 and 9-11; T-26-Red, p. 18, lines 13-24.
[560] T-26-Red, p. 62, lines 18-19.
[561] T-26-Red, p. 37, lines 3-5.

arrival) and nature of the instructions (assignment of military ranks), as well as the recipients of those instructions, which included D-2, D-3, D-4 and D-6. The witnesses' consistent testimony persuades the Chamber that they were honest and credible.

340. As a result, the Chamber is convinced that Mr Arido unduly influenced D-2, D-3, D-4 and D-6 through his directives concerning the content of their imminent statements to Mr Kilolo and subsequent testimony before Trial Chamber III, in particular, the instruction to present themselves as having a certain military background, regardless of the truth or falsity of the information.

Preparatory Meeting: Conditions for Testifying

341. As set out above, when meeting D-2 and D-3, Mr Arido made promises of monetary payments in exchange for testifying in Mr Bemba's favour in the Main Case. The conditions of their testimonies were addressed again at the Douala meeting. Mr Arido promised to relay the witnesses' conditions to Mr Kilolo. Mr Arido's function as a 'go-between' is demonstrated by the mutually corroborative evidence given by P-245 (D-3) and P-260 (D-2). P-245 (D-3) testified comprehensively that, prior to Mr Kokaté's arrival at the meeting, Mr Arido had asked each witness to note his conditions on a piece of paper, which he would transmit to Mr Kilolo.[562] P-245 (D-3) confirmed that Mr Arido then collected the pieces of paper.[563] Similarly, P-260 (D-2) testified that Mr Arido acted as an intermediary, who conveyed the witnesses' conditions to Mr Kilolo.[564] P-245 (D-3) was, however, unable to specify the precise amount of

[562] T-22-Red2, p. 39, lines 14-15; T-26-CONF, p. 48, line 14 to p. 49, line 24; *see also* T-26-Red, p. 48, lines 14-16; p. 50, lines 2-5; *see also* the witness's reference to Mr Arido as '*go-between*' in the context of Mr Arido's instruction to the witnesses to lie to Mr Kilolo about their possession of telephones, T-22-Red2, p. 66, lines 22-23.
[563] T-26-Red, p. 52, lines 12-16.
[564] T-18-Red2, p. 72, lines 15-17.

money requested or the desired place of relocation.[565] He did not attest to the other witnesses' specific conditions,[566] although both P-260 (D-2) and P-245 (D-3) confirmed that the promise was addressed to all four witnesses present in Douala.[567]

342. P-260 (D-2) further testified that, after Mr Kokaté joined the meeting, the witnesses raised the issue of payment and possible relocation to Europe.[568] P-260 (D-2) clarified that Mr Kokaté repeated Mr Arido's promise that each witness would receive money shortly before the testimony[569] and be able to go to Europe in exchange for their Main Case testimony.[570] P-245 (D-3) also added, without prompting, that he became overwhelmed by the anticipated risk and threatened to withdraw unless the witnesses were paid. D-3's intervention provoked a swift and angry reaction from Mr Kokaté, who, in turn, threatened to recruit other witnesses to do the job.[571]

343. The *do ut des* character of the promise for money and relocation in exchange for the witnesses' testimony is further underlined by P-260 (D-2)'s and P-245 (D-3)'s use of the notions '*deal*'[572] and '*contract*'.[573] P-260 (D-2) conceded, unprompted and outright, that the CFAF 10 million that Mr Arido had proposed

[565] T-26-Red, p. 49, lines 1-5.
[566] T-26-Red, p. 49, lines 22-24 ('*On that day, Arido had told us that all the requests had to be individual. And because of that there was no way for me to know what the others were requesting. I could not have any idea about what the others wrote down*').
[567] T-20-Red2, p. 4, lines 3-4; T-26-Red, p. 52, line 4.
[568] T-26-CONF, p. 50, lines 12-13 ('*After Mr Kokaté's arrival, we asked him to tell us the amount of our financial compensation after our various testimonies*').
[569] T-18-CONF, p. 71, lines 14 and 25; p. 72, lines 4-5 and 18-19; T-19-Red2, p. 5, line 25 to p. 6, line 3; T-21-CONF, p. 24, lines 19-20; p. 25, lines 11-18.
[570] T-18-CONF, p. 71, lines 6-8 ('*Captain Kokaté gave us to understand that he – he explained to us that what we were going to do, if we did it right, we would get money, and we would – would be able to leave and come to Europe here*') and 14-15; *see also* p. 72, lines 20-21.
[571] T-22-CONF, p. 39, lines 18-23.
[572] T-18-Red2, p. 72, line 1; T-19-Red2, p. 37, line 13; T-22-Red2, p. 37, line 14; p. 55, line 12; T-23-Red2, p. 17, line 11.
[573] T-18-Red2, p. 71, line 13; T-23-Red2, p. 17, lines 10-11.

was his '*motivation*' to testify in the Main Case.[574] P-245 (D-3) testified, in a remarkably open manner, that he and the other witnesses sought to ensure that they would '*get something out of it*' considering the '*risky venture*' upon which they were to embark.[575] He also stated that, when later claiming CFAF 600,000 at a meeting with Mr Kilolo, which is discussed below, he also considered that it was '*owed*' to him.[576]

344. The Chamber finds P-260 (D-2)'s and P-245 (D-3)'s evidence reliable as they describe in a convincingly detailed and articulate manner Mr Arido's direct involvement with the witnesses, his 'go-between' role and Mr Kokaté's intervention. Their accounts of the meeting and statements made by different participants therein are chronologically structured, precise and consistent. In particular, P-245 (D-3)'s description of the intermezzo with Mr Kokaté and Mr Kokaté's ensuing threat to recruit other witnesses is a complicating element that demonstrates truthfulness and attempts at accuracy. The Chamber is not persuaded by the Arido Defence's arguments that P-245 (D-3) blurred Mr Arido's and Mr Kokaté's respective roles;[577] the witness consistently described their distinct roles. As a result, the Chamber is satisfied that Mr Arido asked D-2, D-3, D-4 and D-6 to note down their conditions, which he promised to relay to Mr Kilolo. The Chamber is also convinced that Mr Arido promised the witnesses money and relocation in exchange for testifying in the Main Case.

[574] T-18-Red2, p. 72, lines 17-19; T-20-Red2, p. 4, lines 4-5 (*'And that is why I had agreed to give testimony, testimony to earn the 10 million and 10 million to have this travel to Europe'*); p. 18, line 5; T-21-CONF, p. 14, lines 12-14; p. 24, lines 8-12.
[575] T-26-Red, p. 53, lines 11-13.
[576] T-23-Red2, p. 15, lines 20-21.
[577] Arido Defence Closing Brief, ICC-01/05-01/13-1904-Conf-Corr, paras 268-271.

Preparatory Meeting: Collection of Witnesses' Telephones by Mr Arido

345. P-245 (D-3) testified that, before their meeting with Mr Kilolo, Mr Arido took away the telephones of all witnesses present,[578] explaining that he had told Mr Kilolo that the witnesses were '*in the bush*' using '*Thurayas*'[579] and, therefore, had no telephones.[580] P-245 (D-3) also stated that he complied with Mr Arido's instruction.[581] This evidence is corroborated by P-260 (D-2), who testified that, following Mr Arido's instruction, the witnesses lied to Mr Kilolo telling him they had no telephones and, in turn, requesting them.[582] According to P-245 (D-3), Mr Kilolo then promised to provide telephones.[583] The meeting at which this exchange between Mr Kilolo and the witnesses took place is discussed in more detail below.

346. The Chamber notes the clear and consistent, indeed, nearly identical, evidence of P-260 (D-2) and P-245 (D-3) on this matter. Considering this mutually corroborative evidence, the Chamber finds that Mr Arido took away the telephones of D-2, D-3, D-4 and D-6. He then instructed them to lie to Mr Kilolo that they had no telephones of their own and to request new telephones.

Money for Dinner

347. Both P-260 (D-2) and P-245 (D-3) testified that, all witnesses present, including D-2 D-3, D-4 and D-6, were given CFAF 10,000 at Mr Kilolo's behest for a meal

[578] T-22-Red2, p. 40, line 10.
[579] The Chamber understands that 'Thurayas' are satellite communication devices.
[580] T-22-Red2, p. 62, lines 17-20; T-26-Red, p. 56, lines 23-25; T-27-Red, p. 33, line 23 to p. 34, line 2.
[581] T-22-Red2, p. 62, lines 19-20 and 25.
[582] T-19-Red2, p. 17, line 25 to p. 18, line 3; T-20-Red2, p. 76, lines 19-20.
[583] T-22-Red2, p. 66, line 21.

that evening.[584] Consequently, the Chamber finds that Mr Arido distributed the money for the purpose of buying food and not to influence the witnesses.[585]

Mr Kilolo's Interview of the Witnesses D-2, D-3, D-4 and D-6

348. Mr Kilolo, together with his legal assistant, interviewed D-2, D-3, D-4 and D-6 the following day, 21 February 2012, at his hotel.[586] The Kilolo Defence argues that Mr Kilolo was unaware of Mr Arido's instructions regarding the witnesses' testimony.[587] When played the recordings of the Douala interview with Mr Kilolo,[588] P-260 (D-2) candidly admitted that his statements, which had been '*arranged*',[589] were influenced by Mr Arido's instructions.[590] Similarly, P-245 (D-3) testified outright that Mr Kilolo had not given any directions as to the substance of his expected testimony at the Douala meeting.[591] Instead, P-245 (D-3) gave Mr Kilolo information as instructed by Mr Arido.[592] The witnesses consistently maintained their statements and did not endeavour to detract from their own wrong-doing. On the basis of P-260 (D-2)'s and P-245 (D-3)'s evidence, the Chamber is persuaded that, at the Douala meeting, D-2, D-3, D-4 and D-6 followed Mr Arido's instructions and Mr Kilolo did not instruct the witnesses on their testimony.

349. Both P-260 (D-2) and P-245 (D-3) consistently stated that the issues of relocation and money were not openly discussed with Mr Kilolo at the meeting

[584] T-18-Red2, p. 70, lines 13-16; T-19-Red2, p. 80, lines 5-13; Prior recorded testimony, CAR-OTP-0080-0069 at 0084, lines 526-528; T-21-CONF, p. 8, lines 4-5; *as submitted in* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, paras 140, 150 and 156; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 142.
[585] *As submitted in*, Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 142; Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, paras 140, 150 and 156.
[586] T-21-CONF, p. 25, line 21; T-22-CONF, p. 40, lines 13-15; p. 40, lines 20-22; p. 63, lines 8-10; T-26-Red, p. 53, lines 20-21.
[587] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 29, 57-58, 80 and 86.
[588] Audio recording, CAR-D21-0007-0020. The Chamber notes that the date of the audio recordings has been indicated in the metadata field 'Main Date' with '21 February 2012'.
[589] T-19-Red2, p. 65, line 9; T-20-Red2, p. 87, lines 15-16.
[590] T-19-Red2, p. 64, lines 1-8 and 15-16.
[591] T-27-Red, p. 6, lines 18-20.
[592] T-22-Red2, p. 65, lines 3-4; T-26-Red, p. 46, line 14.

in Douala in 2012. P-245 (D-3) explained that Mr Arido – the '*leader*'[593] of the group or '*go-between*'[594] – was expected to speak to Mr Kilolo on the witnesses' behalf.[595] D-3 therefore refrained from directly putting his conditions to Mr Kilolo. Similarly, P-260 (D-2) insisted several times throughout his testimony that Mr Kilolo did not expressly promise relocation.[596] He testified that it was only when he left the hotel that Mr Kilolo advised D-2 not to give the impression that he was interested in '*Europe*'.[597] However, in the light of the scarcity of P-260 (D-2)'s evidence on this topic, the Chamber cannot conclude that this singular remark and general reference to Europe necessarily referred to D-2's possible relocation. In the light of the above, the Chamber is thus convinced that, at the Douala meeting in February 2012, Mr Kilolo did not promise or discuss with D-2, D-3, D-4 or D-6 their requests for relocation or payment. Rather, Mr Arido promised such incentives and undertook to convey the witnesses' wishes to Mr Kilolo.

350. After Mr Kilolo interviewed the witnesses, D-2 and D-3 received EUR 50 in cash from Mr Kilolo for their travel expenses.[598] P-260 (D-2)[599] and P-245 (D-3)[600] each provided similar details as to the timing and circumstances of the handover. The Chamber is persuaded that this mutually corroborative evidence is reliable. The Chamber finds no reason to doubt that the sum of EUR 50 was intended and used legitimately for the witnesses' travel costs, as was the case with other witnesses, such as D-55, D-64 and D-57.[601]

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[593] T-22-CONF, p. 63, lines 20-21; p. 64, lines 8, 14; p. 66, line 20; p. 67, line 20; T-26-Red, p. 37, line 5; p. 47, line 19; p. 50, lines 2-3; T-27-Red, p. 34, line 5.
[594] T-22-Red2, p. 65, lines 13-14; p. 66, lines 22-23; T-27-Red, p. 26, line 1.
[595] T-22-Red2, p. 66, lines 19-20; T-26-Red, p. 50, lines 3-5.
[596] T-19-Red2, p. 78, line 11.
[597] T-20-Red2, p. 4, lines 8-10.
[598] *As submitted in*, Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, paras 140, 150 and 156; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 143.
[599] T-19-Red2, p. 33, lines 7-8; p. 78, line 22 to p. 79, line 12; T-20-Red2, p. 4, lines 11-12; Prior recorded testimony, CAR-OTP-0080-0069 at 0076, lines 239-254.
[600] T-22-CONF, p. 41, lines 8-10; p. 41, lines 20-21; p. 69, lines 21-23; T-27-Red, p. 28, lines 17-18.
[601] *See* paras 234, 261 and 288.

De-briefing of Witnesses with Mr Arido

351. P-260 (D-2) testified that, after the interview with Mr Kilolo, all witnesses, namely D-2, D-3, D-4, and D-6, de-briefed Mr Arido[602] on the substance of their interviews with Mr Kilolo.[603] In the light of the issues that arose during the interviews with Mr Kilolo, the witnesses, with Mr Arido, revisited and adjusted some aspects of their scripted testimonies. In this regard, the Chamber draws upon the testimony of P-260 (D-2) in particular. He explained that new information was exchanged among the meeting participants[604] and that he produced Annex 2, the updated version of his personal notes, upon his return to his place of residence so as to capture the new information.[605] Given P-260 (D-2)'s consistent testimony, the Chamber is of the view that, in that second de-briefing, Mr Arido readjusted the scripted testimonies of D-2, D-3, D-4 and D-6.

352. P-260 (D-2) testified that he received from Mr Arido CFAF 10,000 for travel costs.[606] P-245 (D-3) also testified that, sometime after the Douala meeting, he personally received another CFAF 10,000 from Mr Arido in Yaoundé for travel costs incurred.[607] P-245 (D-3) rejected outright the Arido Defence suggestion that this money was related to his close relative's death.[608] Accordingly, the Chamber finds that Mr Arido gave D-2 and D-3 CFAF 10,000 to cover travel costs and that the money was not meant to influence their testimony.

[602] T-21-CONF, p. 27, line 24 to p. 28, line 3; p. 32, lines 13-16.
[603] T-21-CONF, p. 28, lines 6-7; *see also* p. 26, lines 5-6 and 11-12.
[604] T-21-CONF, p. 26, lines 11-12.
[605] T-21-CONF, p. 26, lines 9-11; p. 27, lines 4-8; p. 32, lines 13-20; p. 35, lines 15-21; Prior recorded testimony, CAR-OTP-0084-0412-R01 at 0427-R01, lines 568-573.
[606] T-19-Red2, p. 33, lines 9-11.
[607] T-26-Red, p. 55, lines 3-11 and 14-15; *as submitted in* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 140; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 146.
[608] T-26-CONF, p. 55, lines 15-17.

iii. The Yaoundé Meeting

353. It is uncontested that, on 25 and 26 May 2013,[609] D-2, D-3, D-4 and D-6 met Mr Kilolo and Mr Mangenda at a hotel in Yaoundé, on the occasion of the witnesses' handover to the VWU prior to their Main Case testimony.[610]

Mr Mangenda's Conduct

354. It is undisputed that Mr Mangenda was present and in charge of the witnesses' protection issues.[611] The Chamber also accepts the consistent evidence of P-260 (D-2) and P-245 (D-3) that Mr Mangenda, albeit present, was not involved in their discussions with Mr Kilolo regarding the substance of their upcoming testimony,[612] as will be examined below.

Mr Kilolo's Instructions

355. It is unchallenged that, as confirmed by P-260 (D-2)[613] and P-245 (D-3),[614] Mr Kilolo provided or read out a document to each witness, namely, D-2, D-3, D-4 and D-6, which reflected their statements at the February 2012 interview in Douala. The parties dispute, however, (i) whether the documents, prepared and provided by Mr Kilolo, contained information that went beyond the witnesses' statements and (ii) whether Mr Kilolo illicitly directed the witnesses as to the content of their testimony before Trial Chamber III.

356. P-260 (D-2) testified that the document Mr Kilolo provided contained both his statement from his February 2012 interview and new information added by

[609] T-23-CONF, p. 6, line 25 to p. 7, line 1; p. 9, lines 14-17.
[610] T-19-Red2, p. 8, lines 21-25; p. 10, lines 3-8; T-23-CONF, p. 5, lines 10-22; p. 6, lines 11-12 (*'The second meeting was in May 2013 but I no longer remember the precise date'*).
[611] T-19-Red2, p. 9, lines 4-5; p. 11, lines 7-8*; see also* T-23-Red2, p. 9, lines 19-20; T-27-Red, p. 83, lines 12-13.
[612] T-19-Red2, p. 12, lines 1-3; T-23-Red2, p. 11, lines 11-12; T-27-Red, p. 74, lines 14-18; p. 75, lines 13-20; p. 76, lines 15-16; Prior recorded testimony, CAR-OTP-0078-0248-R01 at 0262-R01, lines 491-492.
[613] T-18-Red2, p. 52, lines 3-6; p. 53, line 1; T-19-Red2, p. 9, lines 7-9 and 19-25; p. 11, lines 11-13.
[614] T-23-Red2, p. 11, lines 20-22; T-27-Red, p. 17, lines 8-15; p. 74, lines 8-15; Prior recorded testimony, CAR-OTP-0078-0248-R01 at 0255-R01, lines 236-238 and 244-245.

Mr Kilolo, such as information on logistics and weapons.[615] P-260 (D-2) emphatically and repeatedly insisted that Mr Kilolo had '*readjusted*' the information contained in the document.[616] He also stated that Mr Kilolo explained the '*shortcomings*' or '*errors*' in his previous statement,[617] or drew his attention to certain issues that were crucial for the Main Case Defence:

> *Then he told me the following: 'Do not forget that when you testify, you must mention how the troops arrived in Bangui (…) what manner in which the two armies coordinated their activities, that they were similar or the same radio frequencies and that when they went beyond the borders or the limits, they would use the Thurayas'*.[618]

357. Following Mr Kilolo's instructions[619] and in his presence, D-2 created an updated version of his notes ('Annex 3') for his personal preparation, including the points Mr Kilolo had impressed upon him.[620] P-260 (D-2) tellingly described the degree of Mr Kilolo's intervention, as follows:

> *I did not have those instructions myself. I did not provide them in the first meeting I had with [Mr Kilolo]. But it was on the occasion of the second meeting [i.e. Yaoundé meeting] that he opened my eyes to this and then I was able to copy things down again and beef up my prep sheet*.[621]

P-260 (D-2) further declared that the document Mr Kilolo provided '*monitored or controlled everything that I had said at the outset'*.[622] Strikingly, when examined by the Kilolo Defence, P-260 (D-2) reaffirmed his position and reiterated that he considered Annex 3 to be a '*fabrication, but of all of us*',[623] produced upon Mr Kilolo's advice and directions.[624]

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[615] T-19-Red2, p. 12, lines 7-21; p. 69, lines 3-10 and 17-21.
[616] T-18-Red2, p. 53, line 5; T-19-Red2, p. 69, lines 3-6; T-20-Red2, p. 29, line 17 ('*there were adjustments here*'); T-21Red3, p. 79, lines 4-8.
[617] T-18-Red2, p. 53, lines 5-6; T-19-Red2, p. 68, lines 14-15; p. 69, lines 4-5; T-21-Red3, p. 79, line 6.
[618] T-19-Red2, p. 76, lines 13-18.
[619] T-19-Red2, p. 68, line 23; *see also* p. 39, lines 19-20; p. 40, lines 5-6; p. 76, lines 2-3.
[620] T-18-Red2, p. 51, lines 21-25; T-19-Red2, p. 12, lines 7-12; p. 13, lines 8-20; p. 68, lines 14-17; p. 76, lines 9-19; T-20-Red2, p. 37, lines 1-11; T-21-Red3, p. 79, lines 6-10.
[621] T-19-Red2, p. 69, lines 11-14.
[622] T-19-Red2, p. 69, lines 3-4.
[623] T-20-Red2, p. 28, line 14; *see also*, p. 33, line 25 to p. 34, line 1 (*'It is like, like a play where an actor is playing his or her role. My role is reflected in this document'*).
[624] T-20-Red2, p. 29, line 4; p. 29, lines 7-14, in particular lines 9-10; p. 32, lines 11-14; p. 33, lines 8-9 and 16-20; p. 37, lines 1-11, in particular lines 10-11.

358. The Chamber rejects the Kilolo Defence proposition that P-260 (D-2) produced Annex 3 subsequent to an interview with the Prosecution in April 2014 '*in order to convict someone*'.[625] The Chamber finds no evidence that Annex 3 was produced *post factum*, or that P-260 (D-2) ever stated or otherwise indicated that he produced Annex 3 '*in order to convict someone*'. When confronted with this proposition, P-260 (D-2) explained that his earlier comment in the April 2014 interview meant that proof, not supposition, was needed to convict someone.[626]

359. When comparing earlier versions of D-2's personal notes (namely, Annexes 1 and 2) with Annex 3, the Chamber observes that key information appears for the first time in Annex 3, including MLC soldiers' logistics and equipment,[627] collaboration between the MLC and the FACA (highlighted by the addition '*NB*'),[628] and the allegation that Mr Bemba had never been in Bangui.[629] On the latter topic, D-2 introduced the note with the words '*il faut dire que*',[630] which indicates that this information was added as a result of an instruction and was not merely a belated recollection. Further, Annex 3 contains additional notes on contacts with the Main Case Defence, including its number and the assertion that the Douala meetings with Mr Kilolo were not recorded.[631]

360. P-260 (D-2) testified that Mr Kilolo specifically instructed D-2, D-3, D-4 and D-6 on '*the fact that [they] needed to limit what [they] said about [their] encounters with him*'.[632] He specified that Mr Kilolo instructed him to refer to two physical

[625] T-20-CONF, p. 29, line 21 to p. 30, line 4.
[626] T-20-CONF, p. 31, lines 22-24; Prior recorded testimony, CAR-OTP-0080-0494-R01 at 0504-R01, lines 355-357 (*'Mais par après, quand j'ai compris la nécessité d'avoir les pièces de conviction, parce qu'on voit…On ne peut entrer en voie de condamnation contre quelqu'un sur la base de suppositions.'/'But afterwards, when I understood why it was important to have the incriminatory evidence, because you see…A person cannot be convicted on the basis of supposition.'*).
[627] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1531.
[628] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533.
[629] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533.
[630] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533 (*'We must say that'*).
[631] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533.
[632] T-19-Red2, p. 14, lines 5-12.

contacts and four telephone contacts '*at most*',[633] even though they had more than four telephone contacts. The same instruction was noted in Annex 3, together with the remark '*au trop*', which D-2 encircled.[634] P-260 (D-2) also stated that Mr Kilolo impressed upon him that previous conversations with the Main Case Defence were not recorded:

> *I believe that when Maître Kilolo came for the second time to place us or to make us available to the Court, he hoped that I would be able to make the Court understand that during all of our conversations there had never been a recording device. That's why I wrote nota bene "without a recording device". That is the information that I received from Maître Kilolo.*[635]

Indeed, in Annex 3, below D-2's notes on prior contacts with Mr Kilolo, he inserted the reference '*NB = Sans enregisteur*' [sic].[636] Finally, P-260 (D-2) explained that he was told not to reveal payments from the Main Case Defence in order to give the impression that he was a '*real witness*', who had not been bribed.[637] It was P-260 (D-2)'s understanding that he testified before Trial Chamber III following Mr Kilolo's instructions.[638]

361. Similarly to P-260 (D-2)'s account, P-245 (D-3) testified that Mr Kilolo took him aside and read out his February 2012 statement.[639] He also testified that Mr Kilolo instructed him to go beyond his statement on three points:[640] the arrival date of MLC troops in Bangui,[641] the date of killings at the Bangui cattle market,[642] and the self-incriminating allegation that D-3 participated in the

[633] T-19-Red2, p. 14, line 8; p. 15, line 25 to p. 16, line 1; p. 16, line 7; p. 16, lines 10-16; Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533.
[634] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533.
[635] T-19-Red2, p. 16, line 22 to p. 17, line 1; p. 77, lines 18-23.
[636] Personal notes ('Annex 3'), CAR-OTP-0079-1530 at 1533.
[637] T-19-Red2, p. 39, line 20 to p. 40, line 3 (*'When I met Mr Kilolo that day or perhaps someone else, any witness as part of this case having to do with the testimony in benefit of Mr Bemba, I did not receive any money. I received nothing. So I had to be in a position to say that because if I had said that I was giving money or that I was coming to give – it would be as if someone were buying me off, bribing me to give testimony. So I said that so that they would understand that I was a real witness that Mr Kilolo had found, the one who could tell the truth that he saw, that he experienced. And so I had to answer in that way'*).
[638] T-19-Red2, p. 41, lines 15-17.
[639] T-23-Red2, p. 11, lines 23-24; T-27-Red, p. 74, lines 12-15.
[640] T-27-Red, p. 17, lines 1, 5-6.
[641] T-23-Red2, p. 12, lines 10-14; *see also* T-27-Red, p. 24, line 25 to p. 25, line 2.
[642] T-27-Red, p. 17, lines 1-3; p. 25, lines 2-3.

commission of pillaging during the relevant events.[643] P-245 (D-3) fervently insisted that he did not give this information when meeting Mr Kilolo in Douala in 2012 and that, rather, Mr Kilolo added it as new information.[644] He also flatly rejected the Kilolo Defence proposition that Mr Kilolo merely asked questions or discussed those issues with the witness.[645]

362. The Chamber notes that P-245 (D-3) recognised his voice and those of Mr Kilolo and his legal assistant in an excerpt of the audio recording of his 2012 interview with Mr Kilolo.[646] In this excerpt, D-3 referred to the alleged massacre at the Bangui cattle market, but did not mention a date.[647] During the Arido Defence's examination, P-245 (D-3) maintained that he was not in the CAR at the time in question.[648]

363. Finally, P-245 (D-3) testified that Mr Kilolo specifically instructed him to deny before Trial Chamber III that he knew the members of the group gathered in Douala and/or Yaoundé, including Mr Arido and Mr Kokaté.[649] Mr Kilolo also instructed P-245 (D-3) not to reveal that he had received any money.[650]

364. The Chamber is convinced that P-260 (D-2)'s account of the above events, which he personally experienced, is reliable as the witness testified spontaneously, clearly and in a structured manner. He also added complications that were otherwise not necessary, such as the timing and versions of his amendments to his personal preparation notes. Critically, the essence of his evidence remained the same throughout his testimony. For example, he

[643] T-26-Red, p. 61, lines 22-25; T-27-Red, p. 17, lines 4-5.
[644] T-27-Red, p. 24, line 21. This is in line with the Kilolo Defence allegation that D−3 discussed his presence in CAR during the arrival of the MLC troops with Mr Kilolo in February 2012; *see* Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 69.
[645] T-27-Red, p. 24, line 25 to p. 25, line 5.
[646] T-27-Red, p. 15, lines 14-23.
[647] Audio recording of interview, CAR-D21-0008-0005, Transcript of audio recording, CAR-D21-0008-0006, at 0009 and 0010.
[648] T-26-CONF, p. 62, lines 5-8.
[649] T-23-CONF, p. 12, line 18 to p. 13, line 6; T-27-Red, p. 26, lines 10-15.
[650] T-23-CONF, p. 15, lines 3-6; T-27-Red, p. 28, lines 16-17.

unhesitatingly admitted the information added by Mr Kilolo and did not retract it when questioned by the Defence. The Chamber also finds P-245 (D-3)'s evidence on the above events, which he personally experienced, to be coherent and reliable. He remained calm, unwavering and resolute in stating that Mr Kilolo had instructed him on three specific topics, in particular when questioned by the Defence. In fact, alternative propositions by the Defence were rejected flatly.

365. Accordingly, in the light of the evidence given by P-260 (D-2) and P-245 (D-3), the Chamber is convinced that, at the time of the Yaoundé meeting, Mr Kilolo distributed to D-2, D-3, D-4 and D-6 their prior statements, which they provided to the Main Case Defence in February 2012 in Douala, together with certain amendments. As demonstrated by the examples of D-2 and D-3, Mr Kilolo individually instructed them on specific points, as elaborated above, with a view to ensuring that their evidence was consistent with other defence evidence and favourable to the Main Case Defence position.

366. Further, the Chamber is convinced that Mr Kilolo instructed D-2, D-3, D-4 and D-6 to deny any receipt of money or non-monetary benefits. First, the Chamber relies on P-260 (D-2)'s and P-245 (D-3)'s clear testimony which allows the Chamber to infer that Mr Kilolo similarly instructed D-4 and D-6, considering that they were present as a group at the Yaoundé meeting. Second, as explained in the context of D-57 and D-64, the Chamber notes a clear pattern discernible from explicit instructions, as recorded in the evidence, that Mr Kilolo gave to other witnesses not to reveal that they had received any money, including legitimate reimbursements and non-monetary promises, from the Main Case Defence. Therefore, in the light of P-245 (D-3)'s testimony and demonstrable pattern, the Chamber finds, as the only reasonable conclusion available on the evidence, that Mr Kilolo also instructed D-4 and D-6 at the time to lie about payments and any non-monetary benefits. In addition, the evidence shows that

Mr Kilolo expressly instructed D-2 and D-3, shortly before their testimonies, to limit the number of prior contacts with the Main Case Defence or deny knowledge of certain individuals. On the evidence, the Chamber is convinced that Mr Kilolo instructed all witnesses present in Yaoundé on these issues as well. First, the Chamber recalls P-260 (D-2)'s clear evidence regarding the instruction on prior contacts and P-260 (D-2)'s and P-245 (D-3)'s clear evidence with respect to the instruction on acquaintances. Second, as explained earlier, the Chamber notes a clear pattern from explicit instructions, as recorded in the evidence, that Mr Kilolo gave other witnesses to conceal the real number of contacts with the Main Case Defence or deny knowledge of certain individuals. Mr Kilolo gave the same instructions to various other Main Case Defence witnesses, including D-15, D-23, D-26, D-54 and D-55. As noted previously, the Chamber considers these repeated and consistent occurrences are not merely coincidental. Rather, they demonstrate a clear pattern of conduct. In the light of the above, in particular the evidence of D-2 and D-3 and the pattern of instructions Mr Kilolo gave to Main Case Defence witnesses, the Chamber is satisfied that Mr Kilolo illicitly instructed D-2, D-3, D-4 and D-6 on the above topics, in particular, payments from, contacts with and knowledge of members of the Main Case Defence and other individuals.

Distribution of New Telephones by Mr Kilolo and Mr Mangenda

367. According to P-260 (D-2) and P-245 (D-3), Mr Kilolo,[651] as promised, distributed new telephones to D-3 on 25 May 2013, and D-2, D-4 and D-6 on 26 May 2013,[652] in order to stay in touch with them.[653] According to P-245 (D-3),

[651] T-19-CONF, p. 31, lines 19-21.
[652] T-19-CONF, p. 31, lines 19-21; T-23-Red2, p. 9, line 24 to p. 10, line 5; p. 26, lines 8 and 11-13; T-27-Red, p. 78, line 3 to p. 79, line 1; p. 79, lines 5.
[653] T-23-Red2, p. 10, lines 1-5; T-19-CONF, p. 18, lines 9-11; p. 31, lines 19-21; Prior recorded testimony, CAR-OTP-0080-0100-R01 at 0133-R01, lines 1216-1218.

this occurred when the witnesses were entrusted to the care of the VWU,[654] which would take away the witnesses' personal telephones.[655] Both P-260 (D-2)[656] and P-245 (D-3)[657] testified that Mr Kilolo was in charge of distributing the telephones. P-260 (D-2) stated that he could not remember Mr Mangenda's role in the distribution of the telephones,[658] and P-245 (D-3) specified that Mr Mangenda had brought them upon Mr Kilolo's request.[659] In any event, the Chamber notes that both witnesses confirmed unequivocally that Mr Mangenda was present when D-2, D-3, D-4, and D-6 received the telephones.[660]

368. The mutually corroborative evidence elicited from P-260 (D-2) and P-245 (D-3) proves that, when they were given the telephones, Mr Kilolo informed the witnesses of their purpose. P-245 (D-3) and P-260 (D-2) testified that, when they, including D-4 and D-6, received the telephones, Mr Kilolo explained that they were necessary to stay in contact with the witnesses, as the VWU would take away their personal telephones.[661] The witnesses understood that they were not supposed to stay in contact with Mr Kilolo during their testimony. As P-260 (D-2) acknowledged, '*by giving us the telephone [Mr Kilolo] implied that the link, or that the relationship was going to stop there*'.[662] P-260 (D-2) and P-245 (D-3) both confirmed that they purchased new SIM cards for the new telephones.[663]

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[654] T-23-Red2, p. 27, lines 14-15.
[655] T-23-CONF, p. 16, line 25 to p. 17, line 1.
[656] T-19-Red2, p. 18, lines 9-11 (*'So each individual who had testified for a first time had a telephone and a number that would enable us to remain in contact with Maître Kilolo'*); p. 31, lines 19-21; Prior recorded testimony, CAR-OTP-0080-0100-R01 at 0133-R01, lines 1216-1218.
[657] T-23-Red2, p. 10, lines 1-5.
[658] T-19-CONF, p. 32, line 24 to p. 33, line 1.
[659] T-23-Red2, p. 10, lines 1-5; T-27-Red, p. 80, lines 13-16.
[660] T-19-CONF, p. 32, lines 17-19; T-23-Red2, p. 10, lines 9-12 and 16-17; T-27-Red, p. 80, lines 13-16; p. 81, lines 8-9.
[661] T-27-Red, p. 81, lines 21-25; p. 82, lines 19-21; T-19-CONF, p. 18, lines 7-9; p. 21, lines 6-11; p. 24, lines 10-15; p. 29, line 24 to p. 30, line 1; p. 31, line 24 to p. 32, line 3.
[662] T-19-CONF, p. 29, lines 23-24; *see also* Prior recorded testimony, CAR-OTP-0080-0100-R01 at 0103-R01, lines 89-91.
[663] T-19-CONF, p. 21, lines 6-7; p. 32, lines 3-4; T-23-Red2, p. 19, line 24 to p. 20, line 1.

369. The Chamber notes that, while P-245 (D-3) confirmed that Mr Kilolo provided the explanation concerning the purpose of his new telephone at the meeting on 25 May 2013, at which Mr Mangenda was present, he did not testify that Mr Mangenda was physically present for the explanation itself.[664]

370. The Chamber observes that the witnesses provided the information candidly and coherently and finds their evidence reliable. Both remained consistent in their testimony that the telephones were distributed at the time of their handover to the VWU. The evidence exemplifies the clandestine and conspiratorial nature of Mr Kilolo's conduct, considering, in particular, that he acted against the backdrop of the witness contact prohibition imposed by Trial Chamber III and resulting VWU cut-off date. In this regard, the Chamber also notes that the telephones were distributed without the VWU's knowledge.

371. Furthermore, the Chamber notes that the witnesses consistently affirmed Mr Mangenda's presence when the telephones where distributed. They did not expressly assert that Mr Mangenda himself handed out the telephones or advised on their illicit purpose. However, taking into account the timing, a few days before the handover to the VWU and less than three weeks before the VWU cut-off date, and Mr Mangenda's knowledge of and role in the Main Case, the Chamber concludes that Mr Mangenda could not have surmised any legitimate purpose for the telephones. Any legitimate purpose to stay in contact with the witnesses as proposed by the Mangenda Defence[665] is further contradicted by the following three considerations: Firstly, according to witnesses P-260 (D-2) and P-245 (D-3)'s testimony, Mr Kilolo explained that these telephones were needed as the VWU would take away their personal telephones. Therefore, the distributed telephones were meant for the witnesses to stay in contact in circumvention of the VWU measures. Secondly, the Main

[664] T-27-Red, p. 81, lines 21-25; p. 82, lines 24-25; p. 83, lines 11-15, in particular lines 14-15 and 21-22.
[665] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, para. 44.

Case Defence kept these telephones secret from the VWU. Thirdly, there was no need for such telephones after the VWU handover, since any contact until the cut-off date could have been facilitated by the VWU.[666] The Chamber thus infers, as the only conclusion, that Mr Mangenda was aware that the telephones were handed out to the witnesses in order to enable Mr Kilolo to illicitly contact them after the VWU cut-off date and approved thereof.

Mr Kilolo's Payment of CFAF 540,000 or 550,000

372. The Chamber is also convinced that the witnesses complained to Mr Kilolo about the outstanding payment of CFAF 10 million and relocation to Europe at the meeting in Yaoundé. The evidence of P-260 (D-2) and P-245 (D-3) is consistent and mutually corroborative in this regard, confirming that these promises were indeed made.[667] According to P-260 (D-2), all four witnesses expressed their dissatisfaction that they had not yet received the promised sum of CFAF 10 million before testifying.[668] Both P-260 (D-2) and P-245 (D-3) explained, in similar terms, that they all expressed their frustration that Mr Arido (a prospective witness in the Main Case at the time) was in France in the meantime, while they were still awaiting their promised relocation.[669] P-260 (D-2) declared that he actually called Mr Kilolo before the Yaoundé meeting regarding Mr Arido's relocation and expressed his anger, threatening that he would bring the matter to the Court's attention.[670]

[666] *See* Familiarisation Protocol, ICC-01/05-01/08-1081-Anx, para. 31. *See* also the testimony of D-2 before Trial Chamber III in which he stated at the time, Trial Chamber III, T-321bis-Red, p. 37, lines 13-16 ('*And once Counsel Kilolo introduced me to the members of the court, he said that from that day I'll be available to them, and I didn't have the right to meet the counsel anymore. That's what was done, and I respected that until today*').
[667] *Contrary to* Arido Defence Closing Brief, ICC-01/05-01/13-1904-Corr-Red2, paras 281-91.
[668] T-19-CONF, p. 34, lines 24-25; p. 36, lines 7-9.
[669] T-19-CONF, p. 34, lines 21-23; p. 35, line 13 to p. 36, line 1; p. 37, lines 6-9; T-23-Red2, p. 15, lines 13-16, p. 37, lines 8-12.
[670] T-19-CONF, p. 36, lines 2-4.

373. In order to calm D-2, D-3, D-4 and D-6,[671] Mr Kilolo agreed to pay them CFAF 600,000 before their Main Case testimony. Indeed, P-245 (D-3) clearly and imperturbably testified that Mr Kilolo promised the payment of CFAF 600,000[672] and that Mr Bemba, once released from detention, would meet the witnesses individually in Kinshasa, DRC.[673] He also added that, at the time this promise was made, Mr Mangenda was present. The witness did not retract this statement when examined by the Mangenda Defence.[674]

374. Mr Kilolo then proceeded to pay the witnesses at least parts of the promised sum. P-260 (D-2) testified that Mr Kilolo proposed either that the witnesses designate someone to collect the money or that he provide a certain amount of money '*on the spot*'.[675] P-260 (D-2) explained that he had no one to designate and therefore asked to receive the money immediately.[676] He stated that he received from Mr Kilolo CFAF 550,000 in 10,000 franc bills that day.[677] P-260 (D-2) explained in detail the circumstances of the money handover and quoted Mr Kilolo as having said that this was a small gift from Mr Bemba.[678] During questioning by the Kilolo Defence, the witness clarified – indeed, claimed emphatically – that Mr Kilolo gave the money to fulfil the promise of CFAF 10 million. He denied the defence proposition that the money was paid in response to the witness's earlier request for assistance in enrolling his child in school[679] or to cover expenses incurred since the Douala meeting.[680]

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[671] T-20-Red2, p. 85, line 24 to p. 86, line 1; T-23-Red2, p. 16, lines 2-3.
[672] T-22-Red2, p. 66, lines 9-14; T-23-Red2, p. 15, line 17; p. 16, lines 14-17; p. 17, line 24; T-27-Red, p. 20, lines 9-10; p. 86, lines 1-3.
[673] T-23-Red2, p. 15, lines 18-19; p. 17, line 25 to p. 18, line 1; T-27-Red, p. 20, lines 10-11; p. 86, lines 4-6.
[674] T-23-Red2, p. 16, lines 20-22; T-27-Red, p. 86, lines 18-19; p. 97, line 23 to p. 98, line 2.
[675] T-19-CONF, p. 35, lines 1-5.
[676] T-19-CONF, p. 35, lines 5-6; T-20-Red2, p. 11, lines 1-3.
[677] T-18-Red2, p. 73, lines 2-5; T-19-CONF, p. 35, lines 7-9; p. 36, lines 13-15; T-20-Red2, p. 11, lines 4-6.
[678] T-19-CONF, p. 34, lines 7-16; *see also* p. 36, lines 10-12; T-20-Red2, p. 10, lines 23-24.
[679] T-19-CONF, p. 82, lines 17-25; p. 83, lines 14-16; p. 84, lines 9-18; T-20-Red2, p. 9, lines 13-20; E-mail correspondence, CAR-D21-0007-0001.
[680] T-20-CONF, p. 10, lines 22-25; p. 11, lines 7-9.

375. P-245 (D-3)'s evidence on this point is similar. P-245 (D-3)'s testified that, at the handover, Mr Kilolo told him that the VWU would take care of him.[681] He openly admitted that, as of May 2013, the VWU did indeed take care of him,[682] including hotel accommodation,[683] pocket money[684] and subsistence allowance.[685] Nevertheless, after the meeting with VWU representatives, P-245 (D-3) testified that Mr Kilolo called him to pass by the hotel and collect the promised money.[686] P-245 (D-3) rejected spontaneously and with verve ('*It is frustrating, I have told you the reason why that money was given to me*')[687] the Kilolo Defence proposition that the money was given as compensation for expenses incurred between the Douala meeting and his Main Case testimony.[688] In fact, P-245 (D-3) stated that he had regular income since August 2012 and could sustain himself.[689]

376. P-245 (D-3) averred that, when meeting Mr Kilolo, he became upset because he only received CFAF 540,000, instead of the promised CFAF 600,000.[690] According to P-245 (D-3), when requesting the outstanding balance, Mr Kilolo told the witness to calm down and promised to pay him later.[691] P-245 (D-3) also stated that all witnesses present, including D-4 and D-6, confirmed to him that they received CFAF 540,000.[692] P-245 (D-3) clarified that Mr Mangenda was not present when Mr Kilolo gave him the money.[693]

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[681] T-23-CONF, p. 32, lines 9-11; *see also* T-27-Red, p. 18, line 25 to p. 19, line 1.
[682] Transcript of Hearing, 23 October 2015, ICC-01/05-01/13-T-27-CONF-ENG ET ('T-27-CONF'), p. 39, lines 9-10; p. 43, lines 1-2 and 22-24.
[683] T-23-CONF, p. 34, line 17.
[684] T-23-CONF, p. 32, lines 13-15.
[685] T-23-CONF, p. 34, line 20.
[686] T-23-Red2, p. 15, line 20.
[687] T-27-Red, p. 36, lines 1-2.
[688] T-27-Red, p. 34, lines 10-13; see also Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 74.
[689] T-27-CONF, p. 39, lines 18-19; p. 42, lines 11-15.
[690] T-23-Red2, p. 15, lines 21-22; line 24 to p. 16, line 1; p. 16, lines 11-19.
[691] T-23-Red2, p. 15, line 24 to p. 16, line 3; T-27-Red, p. 36, lines 22-24.
[692] T-23-Red2, p. 18, lines 5-9.
[693] T-27-Red, p. 97, lines 23-24.

377. P-260 (D-2)'s evidence concerning the payment of CFAF 550,000 is straightforward and coherent. He provided many small details, such as the manner in which the money was paid, which strengthen the conclusion that he recounted events based on personal experience. The Chamber also adverts to the fact that the witness clarified throughout his testimony that the information he provided concerning the payment did not necessarily concern other witnesses,[694] which adds to the accuracy of his testimony. He also stood firm in his explanations of the purpose of the payment. In sum, the Chamber considers P-260 (D-2)'s evidence concerning the payment to be reliable.

378. Similar considerations apply to P-245 (D-3)'s evidence. The Chamber is attentive to the fact that the witness provided a variety of small details, such as the information that he went to Mr Kilolo's hotel to receive the money, which demonstrate that his testimony was based on personal experience. The Chamber also observes that the witness added a complicating element to his account when admitting that he was upset with Mr Kilolo for not having received the full amount of CFAF 600,000. This information was unnecessary and, for him personally, seemingly disadvantageous. Interestingly, unlike P-260 (D-2), P-245 (D-3) claimed that Mr Kilolo paid the money to fulfil his promise of CFAF 600,000, not Mr Arido's promise of CFAF 10 million. This divergence in the evidence of both witnesses adds to the Chamber's conviction that P-245 (D-3) recounted events with honesty, based on his personal experience, and did not collude with P-260 (D-2). For these reasons, the Chamber also relies on P-245 (D-3)'s evidence.

379. The Chamber infers from the evidence above that at the time of the Yaoundé meeting, Mr Kilolo knew about Mr Arido's promise of payment to the witnesses. Both witnesses congruently testified about this meeting, explaining

[694] T-19-CONF, p. 33, line 6; p. 35, line 5; p. 37, lines 6-7.

that, once Mr Kilolo was confronted with the witnesses' complaints, he sought to calm them and promised D-2, D-3, D-4 and D-6 CFAF 600,000 each.[695] The Chamber understands from this testimonial evidence that Mr Kilolo was not at all surprised by the witnesses' complaints. This precludes the possibility that Mr Kilolo did not know about Mr Arido's promise of payment before witnesses complained about non-compliance with this '*deal*'.

380. In addition to knowing about the promised payment, Mr Kilolo also proceeded immediately to pay the witnesses when they complained. In the Chamber's view, the fact that Mr Kilolo had more than CFAF 2 million in cash on hand clearly indicates the degree of planning and organisation involved on the part of Mr Kilolo. The Chamber is convinced that Mr Kilolo paid the money for the purpose of bribing D-2, D-3, D-4 and D-6 to testify according to the instructions provided and in favour of the Main Case Defence. The Chamber arrives at this conclusion on the basis of the following considerations:

(i) As evidenced above, Mr Kilolo gave specific instructions to the witnesses concerning the content of their imminent testimonies before Trial Chamber III;

(ii) P-260 (D-2) and P-245 (D-3) testified that they believed they were entitled to the money based on the agreement with Mr Arido (and later, Mr Kilolo) that they would receive money in exchange for their testimonies for the Main Case Defence;[696]

(iii) P-260 (D-2) testified that Mr Kilolo told him that the money was a *'small gift'* on behalf of Mr Bemba, which, considering that D-2's testimony was imminent, could only be understood as encouragement to testify in Mr Bemba's favour, as confirmed by P-245 (D-3);

[695] T-19-Red2, p. 34, line 20 to p. 35 line 5; T-23-Red2, p. 15, lines 13-22.
[696] T-19-CONF, p. 37, lines 10-12 (*'I cannot just get up one morning for nothing and desire to testify. If I agreed to testify, it was because I realized that at the end of it all I stood to gain something'*); T-23-Red2, p. 15, lines 20-21; T-26-Red, p. 53, lines 11-13; T-27-Red, p. 88, lines 12-14.

(iv) After handover to the VWU, the witnesses were being taken care of by that section, and there was no need for Mr Kilolo to pay any expenses for the witnesses;

(v) Consistent with the pattern of payments to other witnesses, such as D-57, D-64, D-23 and D-29, shortly before their testimonies, P-260 (D-2) and P-245 (D-3) affirmed that the money was provided when they were handed over to the care of the VWU, shortly before they testified;[697] and

(vi) P-245 (D-3) rejected spontaneously and with verve the suggestion that the money was intended to cover expenses incurred between the Douala meeting and the witness's Main Case testimony.

Further Payments

381. The Chamber is satisfied that D-2, D-3, D−4 and D−6 received further payments from Mr Kilolo to cover their travel costs. D-2[698] and D−4[699] received EUR 350 for travel costs, as handwritten confirmation letters of each of them prove. The Chamber notes that during his testimony P-260 (D-2) remained unclear as to the exact amount received.[700] However, in his testimony the witness made specific reference to the abovementioned receipt. Accordingly, the Chamber is convinced that, corroborated by the documentary evidence, P-260 (D-2) received EUR 350. P-260 (D-2) also confirmed that he received CFAF 65,000 *via* Western Union from Mr Kilolo for travel from his place of

[697] T-18-CONF, p. 73, lines 16-17; T-19-CONF, p. 33, lines 18-21.
[698] Handwritten confirmation letter, CAR-OTP-0088-2915 at 2916; *as submitted in* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 150; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 158; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 46.
[699] Handwritten confirmation letter, CAR-OTP-0088-2911 at 2912; *as submitted in* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 169; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 158; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 82.
[700] T-19-Red2, p. 33, lines 15-17 ('*Maître Kilolo also sent me some money and the receipt for that money I have given to you. So I went back and I returned to meet him at […]. You see, in principle, the money was in Euros and that amount – that money was in the amount of about 100 Euros. And I think when I came back he gave me 150 Euros I believe*').

residence to Yaoundé.[701] He produced a self-authenticating Western Union receipt dated 24 May 2013[702] and logically explained the circumstances underlying the transfer. He testified that he was called to travel, on short notice, from his place of residence to Yaoundé in order to meet Mr Kilolo and that, once he received the money, he travelled to give his testimony.[703] P-260 (D-2)'s evidence is coherent and straightforward. For these reasons, the Chamber is satisfied that Mr Kilolo paid additional money to the witnesses and that this money was indeed intended and used for travel to Yaoundé and did not constitute a bribe.

382. Similarly, D−3 and D−6 received a further payment of EUR 250. P-245 (D-3) testified that, on 25 and 26 May 2013, he received EUR 250 from Mr Kilolo to cover his travel costs[704] and produced a handwritten confirmation letter that he had personally written and signed on 26 May 2013.[705] He testified that, through this letter, he acknowledged receipt of the money from Mr Kilolo.[706] A similar handwritten confirmation letter confirms that D−6 received EUR 250 from Mr Kilolo.[707] The Chamber sees no reason to doubt that the money was given to D-3 and D−6 in order to pay their travel to Yaoundé. It therefore does not find that the money constituted a bribe.

[701] T-18-Red2, p. 53, lines 22-24; T-19-CONF, p. 10, lines 13-20; p. 33, lines 13-16; p. 82, lines 1-2; *as submitted in,:* Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 149.
[702] Financial document, CAR-OTP-0084-0055 at 0056.
[703] T-18-Red2, p. 54, lines 8-18; T-20-CONF, p. 10, lines 6-8.
[704] T-23-Red2, p. 11, lines 2-8; T-27-Red, p. 36, lines 3-4; p. 86, line 1; *as submitted in* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 140; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 158; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para 73.
[705] Handwritten confirmation letter, CAR-OTP-0088-2917 at 2918.
[706] T-23-Red2, p. 6, lines 18-19; T-27-Red, p. 18, line 23 to p. 19, line 1; p. 28, lines 19-20; p. 29, line 9.
[707] Handwritten confirmation letter, CAR-OTP-0088-2913 at 2914; *as submitted in* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 157; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 158; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 89.

iv. Testimonies before Trial Chamber III

Testimony of D-2

383. D-2 testified *via* video link before Trial Chamber III on 12 and 13 June 2013.[708] The VWU cut-off date for contacts between this witness and the Main Case Defence was 10 June 2013.[709]

384. P-260 (D-2) admitted that, during his Main Case testimony, he was in telephone contact with Mr Kilolo on 12 and 13 June 2013 using the telephone number [Redacted].[710] He testified that Mr Kilolo's telephone number would, at times, appear on D-2's telephone display as '*unknown*'.[711] As to the number of contacts, the witness testified that he spoke with Mr Kilolo '*each evening*' after his testimony.[712] The witness's statement is not corroborated by any documentary evidence. In this regard, the relevant call sequence table and available call data records do not reflect any contacts between D-2 and Mr Kilolo on 12 and 13 June 2013.

385. The Chamber finds P-260 (D-2)'s evidence is reliable on its own, irrespective of the fact that there is no corroborating evidence, for the following reasons: (i) the witness's statement that Mr Kilolo's number would be displayed as an '*unknown caller*' suggests that Mr Kilolo used additional telephone numbers unknown to the witness; (ii) P-433 testified that the call sequence table may not be

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[708] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 12 June 2013, ICC-01/05-01/08-T-321-CONF-ENG ET ('T-321-CONF'); ICC-01/05-01/08-T-321-Red-ENG WT; ICC-01/05-01/08-T-321bis-CONF-ENG ET; ICC-01/05-01/08-T-321bis-Red-ENG WT; Transcript of Hearing, 13 June 2013, ICC-01/05-01/08-T-322-CONF-ENG ET; ICC-01/05-01/08-T-322-Red2-ENG WT ('T-322-Red2').
[709] VWU Table, CAR-OTP-0078-0290 at 0294 (ICC-01/05-01/13-207-Conf-Anx, p. 5).
[710] T-19-CONF, p. 20, lines 22-24; p. 21, lines 6-11; p. 22, line 24 to p. 23, line 2, 12-15 and 20-23 (*'I told you earlier that the [Redacted] number I used when I had finished testifying in the courtroom, I went back to the hotel, and that was the telephone number I used to call Mr Kilolo and talk to him. That is the number that he could use to call me as well'*); p. 24, lines 1-5; p. 25, lines 10-14.
[711] T-19-CONF, p. 25, lines 17-19; T-21-CONF, p. 59, lines 16-20.
[712] T-19-Red2, p. 25, lines 22-25; p. 26, lines 7-9; p. 27, lines 3; 12-13; T-21-Red3, p. 57, lines 23-24; p. 60, line 24 to p. 61, line 2; p. 61, lines 20-24; p. 62, lines 14-16; Prior recorded testimony, CAR-OTP-0080-0135 at 0139, lines 118-119 and 127.

comprehensive, since the accused may have used other telephones and SIM cards which were unknown to the Prosecution during its investigation; and (iii) the call sequence table reflects other contacts, such as on 14 June and 1 July 2013, between D-2 and Mr Kilolo involving D-2's number [Redacted][713] and Mr Kilolo's numbers[714] [Redacted][715] and [Redacted].[716]

386. P-260 (D-2) added that he was assigned counsel for the purpose of his Main Case testimony[717] and he knew that the Court prohibited his contact with the Main Case Defence for the duration of his testimony.[718] However, P-260 (D-2) insisted that he contacted Mr Kilolo because his child became sick and he needed assistance.[719] He remained calm and consistent when giving these explanations, which constitute complications in his testimony demonstrating accuracy and his personal experience of these events. The Chamber understands that, although he knew about the contact prohibition, the witness did not consider it inappropriate to establish contact with Mr Kilolo, as he considered the condition of his child to represent extraordinary circumstances. In other words, the witness did not understand that he had done something wrong. From the foregoing, the Chamber concludes that the witness testified without fear about his contacts with Mr Kilolo, which he knew were otherwise prohibited. In the estimation of the Chamber, this circumstance adds to the reliability of P-260 (D-2)'s evidence. It therefore relies on P-260 (D-2)'s testimony concerning his contacts with Mr Kilolo during his testimony.

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[713] *For example*, Call Sequence Table, CAR-OTP-0090-0630 at 0632, rows 15, 16 and 29; Call Data Record, CAR-OTP-0072-0391, rows 39031 and 39032; CAR-OTP-0072-0082, rows 3754 and 3868.
[714] *See* paras 585 and 292.
[715] *For example*, Call Sequence Table, CAR-OTP-0090-0630 at 0632, row 15; Call Data Record, CAR-OTP-0072-0391, rows 39031 and 39032.
[716] *For example*, Call Sequence Table, CAR-OTP-0090-0630 at 0632, rows 16 and 29; Call Data Record, CAR-OTP-0072-0082, row 3754 and 3868.
[717] T-19-CONF, p. 27, lines 6-8; p. 27, line 23 to p. 28, line 5.
[718] T-19-Red2, p. 29, line 7-11.
[719] T-19-Red2, p. 26, lines 19-25; p. 28, lines 6-8.

387. As to the content of their conversations, P-260 (D-2) conceded that he discussed with Mr Kilolo the substance of his testimony in court.[720] He admitted that he gave an account of his testimony to Mr Kilolo (*'About everything that I – I had testified to'*),[721] as he believed that he, being called by the Main Case Defence, could address himself to Mr Kilolo. Accordingly, the Chamber is convinced that D-2 was in telephone contact with Mr Kilolo during his testimony concerning the substance of his evidence before the Court.

388. D-2 testified before Trial Chamber III that he was a FACA soldier,[722] as instructed by Mr Arido. In his testimony before this Chamber P-260 (D-2) testified that the reason for his testimony at the time wasthe prior preparation he received.[723] Also consistent with Mr Kilolo's preparation, as recorded in Annex 3, D-2 gave evidence that Mr Bemba had never been in Bangui, when questioned by the victims' legal representative.[724]

389. Moreover, P-260 (D-2) testified that he followed Mr Kilolo's directions[725] when he untruthfully testified on 13 June 2013 that he (i) had not received from the Main Case Defence any form of compensation for expenses incurred, for example, for travel and meals,[726] (ii) was never promised any sort of benefit,[727] and (iii) did not know Mr Arido and [Redacted], and had only heard of, but never met, Mr Kokaté.[728] D-2 also denied having been briefed on what to say during the meetings with the Main Case Defence.[729] Considering P-260 (D-2)'s

[720] T-19-Red2, p. 26, lines 14-16.
[721] T-19-Red2, p. 27, line 5.
[722] Trial Chamber III, T-321-CONF, p. 41, lines 9-10 and 17-18; p. 42, line 24; p. 47, lines 5-6; p. 48, line 9.
[723] T-20-CONF, p. 33, lines 23-25 (*'Now, if you listen to my testimony, however, in the first trial you would come off it with the impression that I was a soldier and it came across that way clearly in my testimony because I was prepared for it.'*); *see* also T-19-CONF, p. 4, lines 18-24.
[724] Trial Chamber III, T-322-Red2, p. 44, lines 10-13.
[725] T-19-Red2, p. 39, lines 9-15; p. 41, lines 9-14; T-21-Red3, p. 81, lines 2-9.
[726] Trial Chamber III, T-322-Red2, p. 26, lines 19-23.
[727] Trial Chamber III, T-322-Red2, p. 26, line 24 to p. 27, line 9.
[728] Trial Chamber III, T-322-Red2, p. 7, lines 22-23; p. 8, lines 10-11 [Redacted]; p. 10, line 25 to p. 11, line 5; p. 12, lines 8-15.
[729] Trial Chamber III, T-322-Red2, p. 26, lines 10-12.

testimonial evidence that Mr Arido and Mr Kilolo '*briefed*' him, the Chamber finds that the witness incorrectly testified that he had not been briefed. The Chamber's conclusion also extends to the witness's statement in the Main Case that he had not received any document during his meetings with the Main Case Defence to '*refresh*' his memory.[730] As found above, D-2 received his prior statement to the Main Case Defence in writing and as '*readjusted*' by Mr Kilolo.

Testimony of D-3

390. D-3 testified *via* video-link before Trial Chamber III between 18 and 25 June 2013.[731] The VWU cut-off date for contacts between this witness and the Main Case Defence was 13 June 2013.[732]

391. Consistent with Mr Arido's instruction, D-3 testified before Trial Chamber III that he was a member of the FACA during the period relevant to the charges in the Main Case.[733] P-245 (D-3) testified before this Chamber that he had '*never been a soldier*', nor had he '*received any military type training*'.[734] Also consistent with Mr Kilolo's directions, D-3 testified that he participated in acts of pillaging[735] and indicated the arrival date of MLC troops in Bangui.[736]

392. Upon Mr Kilolo's instruction, D-3 further falsely denied having been reimbursed for any expenses[737] and knowing Mr Arido,[738] Mr Kokaté[739] and

[730] Trial Chamber III, T-322-Red2, p. 26, lines 13-15.
[731] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 18 June 2013, ICC-01/05-01/08-T-325-CONF-ENG ET ('T-325-CONF'); ICC-01/05-01/08-T-325-Red-ENG WT ('T-325-Red'); Transcript of Hearing, 19 June 2013, ICC-01/05-01/08-T-326-CONF-ENG ET ('T-326-CONF'); ICC-01/05-01/08-T-326-Red-ENG WT ('T-326-Red'); Transcript of Hearing, 25 June 2013, ICC-01/05-01/08-T-330-CONF-ENG ET ('T-330-CONF'); ICC-01/05-01/08-T-330-Red-ENG WT.
[732] VWU Table, CAR-OTP-0078-0290 at 0294 (ICC-01/05-01/13-207-Conf-Anx, p. 5).
[733] Trial Chamber III, T-325-Red, p. 10, line 21 to p. 11, line 5.
[734] T-22-Red2, p. 30, lines 21 and 23.
[735] Trial Chamber III, T-325-Red, p. 19, lines 6-12.
[736] Trial Chamber III, T-326-Red, p. 11, lines 8-10.
[737] Trial Chamber III, T-330-Red, p. 21, line 23 to p. 22, line 4.
[738] Trial Chamber III, T-330-Red, p. 20, line 22 to p. 21, line 1.
[739] Trial Chamber III, T-330-Red, p. 21, lines 2-3.

[Redacted][740] P-245 (D-3) also gave evidence that Mr Kilolo called him during his Main Case testimony on the telephone he received from Mr Kilolo.[741] As to the content of the conversations, P-245 (D-3) testified that Mr Kilolo called him to congratulate him or to ask about his health, as he had fallen ill during his testimony.[742] The witness also claimed that Mr Kilolo called him before the commencement of his Main Case testimony, directing him to decline to speak to the Office of the Prosecutor and to insist that he would speak only to Judges.[743] The Chamber is attentive to the fact that there is no further evidence available to corroborate the witness's statement, such as the call sequence table and call data records. From the foregoing, the Chamber considers that, while Mr Kilolo may have circumvented the VWU cut-off date and stayed in contact with P-245 (D-3) for the duration of his Main Case testimony, it cannot establish that Mr Kilolo corruptly influenced the content of the witness's testimony by telephone during this period. The matters raised are not such as to necessarily impact the assessment of the facts relevant to the case or the assessment of the witness's credibility.

Testimony of D-4

393. D-4 testified *via* video-link before Trial Chamber III between 18 and 20 June 2013.[744]

394. Despite his participation in the Douala and Yaoundé meetings, D-4 untruthfully testified before Trial Chamber III that he did not know Mr Arido,[745]

[740] [Redacted].
[741] T-23-Red2, p. 28, lines 19-20; T-27-Red, p. 17, line 19 to p. 18, line 2.
[742] T-27-Red, p. 17, line 19 to p. 18, line 2.
[743] T-23-Red2, p. 28, line 25 to p 29, line 2.
[744] Trial Chamber III, Transcript of Hearing, 18 June 2013, ICC-01/05-01/08-T-325bis-CONF-ENG ET; ICC-01/05-01/08-T-325bis-Red-ENG WT; Transcript of Hearing, 19 June 2013, ICC-01/05-01/08-T-326-CONF-ENG ET, pp. 23-44; T-326-Red, pp. 23-44; Transcript of Hearing, 19 June 2013, ICC-01/05-01/08-T-326bis-CONF-ENG ET, ICC-01/05-01/08-T-326bis-Red-ENG WT ('T-326bis-Red'); Transcript of Hearings, 20 June 2013, ICC-01/05-01/08-T-327-CONF-ENG ET; ICC-01/05-01/08-T-327-Red-ENG WT; ICC-01/05-01/08-T-327bis-CONF-ENG ET; ICC-01/05-01/08-T-327bis-Red-ENG WT.
[745] Trial Chamber III, T-326bis-Red, p. 28, line 24 to p. 29, line 4.

Mr Kokaté[746] [Redacted].[747] The Chamber notes that P-260 (D-2) and P-245 (D-3) confirmed that Mr Kilolo explicitly instructed them to deny their knowledge of Mr Arido and Mr Kokaté. D-4 participated in the same meetings in the same context as D-2 and D-3. He thereafter provided the same false evidence concerning knowledge of Mr Arido, Mr Kokaté [Redacted]. The Chamber further notes the pattern of instructions that Mr Kilolo gave other defence witnesses concerning their association with members of the Main Case Defence.[748] In the light of the above, the Chamber is convinced that Mr Kilolo corruptly instructed D-4 to falsely deny knowledge of Mr Arido, Mr Kokaté [Redacted].

Testimony of D-6

395. D-6 testified *via* video-link before Trial Chamber III on 21 and 24 June 2014.[749] The VWU cut-off date for contacts between this witness and the Main Case Defence was 13 June 2013.[750]

396. One day before the commencement of D-6's testimony, on 20 June 2013, Caroline Bemba, Mr Bemba's sister, transferred USD 1,335.16 through Western Union to D-6's [Redacted].[751] In her prior recorded testimony, P-264, [Redacted], stated that she and D-6 collected the money at some point in June 2013.[752] Her evidence is mutually corroborative with the relevant Western Union records,

[746] Trial Chamber III, T-326bis-Red, p. 29, lines 5-9.
[747] [Redacted].
[748] *See* paras 363, 389, 392, 399, 434 and 453.
[749] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 21 June 2013, ICC-01/05-01/08-T-328-CONF-ENG ET; ICC-01/05-01/08-T-328-Red2-ENG WT ('T-328-Red2'); ICC-01/05-01/08-T-328bis-CONF-ENG ET; ICC-01/05-01/08-T-328bis-Red2-ENG WT; Transcript of Hearing, 24 June 2013, ICC-01/05-01/08-T-329-CONF-ENG ET ('T-329-CONF'); ICC-01/05-01/08-T-329-Red-ENG WT ('T-329-Red'); ICC-01/05-01/08-T-329bis-CONF-ENG ET; ICC-01/05-01/08-T-329bis-Red-ENG WT.
[750] VWU Table, CAR-OTP-0078-0290 at 0294 (ICC-01/05-01/13-207-Conf-Anx, p. 5).
[751] Prior recorded testimony, introduced pursuant to Rule 68(2) of the Rules, CAR-OTP-0085-0523-R02 at 0529-R02, lines 192-216; *see also* CAR-OTP-0082-0288; CAR-OTP-0082-0267 and CAR-OTP0082-0266. Corrigendum of public redacted version of Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, ICC-01/05-01/13-1478-Red-Corr, paras 102-108.
[752] Prior recorded testimony, CAR-OTP-0085-0523-R02 at 0533, line 359; at 0534, lines 380-406.

which show a transfer of such an amount on 20 June 2013 at 12:12 (local time) from Caroline Bemba.[753] The sender's telephone number is indicated as [Redacted].[754] The same telephone number is identified as that of Caroline Bemba, Mr Bemba's sister, in a document produced by the Registry that reflects the list of telephone contacts for Mr Bemba at the Detention Centre.[755] The same day the transfer was made, 20 June 2013, P-264 collected the money, which was reduced by administration costs to USD 1,309.80, at 16:48 (local time).[756]

397. The Chamber is convinced that the money collected was related to D-6's Main Case testimony for the following reasons: (i) P-264 admitted that she collected and handed over the transferred amount to D-6; (ii) P-264 also indicated D-6's telephone number when providing details to the Western Union agency;[757] (iii) the money transfer was effected one day before the commencement of D-6's testimony; and (iv) like D-2, D-3 and D-4, Mr Kilolo promised D-6 CFAF 600,000.[758] The Chamber, once again, detects that the payment to D-6 forms part of a clear pattern of money transfers, including those made to D-3, D-57 and D-64. As in those cases, the money was not sent to D-6 directly but through another person, so as to conceal any links between the witnesses and Main Case Defence. As a result, the Chamber finds that D-6 received USD 1,309.80 before his Main Case testimony in exchange for giving evidence in

[753] Western Union record, CAR-OTP-0074-0856, tab 68, row 7, columns A, D, G and H. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferor.
[754] Western Union record, CAR-OTP-0074-0856, tab 68, row 7, column F.
[755] List of contacts, CAR-OTP-0074-0059 at 0059 (year 2009), 0060 (year 2010) and 0061 (years 2011-2012).
[756] Western Union record, CAR-OTP-0074-0856, tab 68, row 7, columns AA, AB and AN. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferee.
[757] Western Union record, CAR-OTP-0074-0856, tab 68, row 7, column Z. For the attribution of the telephone number, *see* para. 403.
[758] The Chamber notes that the Western Union payment amounts to CFAF 650,000 and, hence, is more than the payments the other witnesses had been promised (CFAF 600,000) in Yaoundé, *see* Western Union record, CAR-OTP-0074-0856, tab 68, row 7, column AP. However, the Chamber recalls that D-6 admitted before Trial Chamber III that he had received reimbursement of travel expenses from Mr Kilolo in the amount of CFAF 50,000, see Trial Chamber III, T-329-CONF, p. 22, lines 19-24.

Mr Bemba's favour. The Chamber is confident that the money did not constitute a reimbursement for travel costs, as alleged by the Kilolo Defence,[759] since no evidence exists to support this claim, and in particular, no evidence indicates that travel costs of this magnitude did, in fact, arise.

398. The following day, 21 June 2013, D-6 appeared before Trial Chamber III and, complying with Mr Kilolo's instruction, lied that he had '*never*' received any money from the Main Case Defence in exchange for his testimony.[760] D-6 admitted only to having been reimbursed by Mr Kilolo for travel costs incurred.[761] Despite having been directly asked, he did not disclose that he had received through P-264 USD 1,335.16 the day before, on 20 June 2013.

399. When asked whether he had been introduced to Mr Kilolo by a '*committee designed to harmonise the evidence*',[762] D-6 also falsely testified '*[n]ever, not at all. Not a committee. I am here testifying before this Court to tell the truth and nothing but the truth*'.[763] D-6 also falsely testified that he did not know how Mr Kilolo received information about him and that nobody had put him in contact with the Main Case Defence.[764] The Chamber is convinced that the above-mentioned parts of D-6's testimony were untruthful, considering that he belonged to the group of witnesses in Douala gathered for a '*briefing*' by their '*leader*' and '*go-between*' Mr Arido. Given that Mr Kilolo instructed D-3 and D-2 to deny knowing Mr Arido, which is also consistent with a broader pattern of such instructions, the Chamber finds that Mr Kilolo similarly instructed D-6.

400. The Chamber is also satisfied that D-6 lied when claiming during his testimony before Trial Chamber III that he had not discussed anything in

[759] Kilolo Denfence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 90.
[760] Trial Chamber III, T-328-Red2, p. 28, line 25 to p. 29, line 2.
[761] Trial Chamber III, T-328-Red2-, p. 29, lines 14-16; T-329-CONF, p. 22, lines 5-7 and 21-24.
[762] Trial Chamber III, T-328-Red2, p. 29, lines 3-4.
[763] Trial Chamber III, T-328-Red2, p. 29, lines 5-6.
[764] Trial Chamber III, T-329-Red, p. 15, lines 23-25.

relation to the events in the CAR with the Main Case Defence.[765] The Chamber finds that this statement was false since D-6, together with D-2, D-3 and D-4, (i) was interviewed by Mr Kilolo in February 2012 in Douala; and (ii) was given his February 2012 statement at the Yaoundé meeting by Mr Kilolo, who thereafter discussed the statement with D-6, as attested to by P-260 (D-2) and P-245 (D-3). Considering that, when distributing the prior statements in May 2013, Mr Kilolo specifically instructed D-2 and D-3 on selected points in their statements, including the number of their prior contacts or the fact that their statements had not been recorded, the Chamber finds that Mr Kilolo similarly instructed D-6, who was part of the group at the Yaoundé meeting, not to reveal his contacts with the Main Case Defence and their related contents. In this regard, the Chamber considers that this is also consistent with the broader pattern of instructions Mr Kilolo gave witnesses concerning association and meetings with members of the Main Case Defence.

401. The Chamber further finds that D-6 testified incorrectly in the Main Case when testifying that he had not talked to any person he knew to be a Main Case witness.[766] Considering that D-6 joined D-2, D-3 and D-4 in Douala where they were briefed by Mr Arido and introduced to Mr Kilolo, the Chamber concludes that D-6's statement before Trial Chamber III was evidently false. On the basis of the testimonial evidence provided by P-260 (D-2) and P-245 (D-3), and in the light of a pattern of instructions to deny meetings and related details, the Chamber finds that it can infer, as the only reasonable conclusion, that the witness denied knowing any of the other individuals present in Douala and Yaoundé upon Mr Kilolo's instruction.

[765] Trial Chamber III, T-329-Red, p. 19, line 16 to p. 21, line 8; p. 21, line 19 to p. 22, line 2.
[766] Trial Chamber III, T-329-Red, p. 16, lines 1-2.

402. Lastly, D-6 testified that his last contact with Mr Kilolo was on 28 May 2013,[767] when Mr Kilolo entrusted D-6 to the care of the VWU.[768] The Prosecution alleges[769] that this testimony is false, since call data records purportedly demonstrate that D-6 contacted Mr Kilolo on 4 June 2013 and sought to contact him twice on 24 June 2013, the last day of D-6's testimony. The Chamber notes that the call data record concerned, provided by the Belgian authorities, indeed reflects three connections between telephone numbers [Redacted] and [Redacted] (the latter attributable to Mr Kilolo)[770] on 4 June 2013, at 16:54 and on 24 June 2013, at 18:06 and 22:23.[771]

403. The Chamber is satisfied that telephone number [Redacted] is attributable to D-6, taking into account another intercepted telephone contact between the witness and Mr Kilolo. More precisely, the Chamber relies on a telephone call dated 21 October 2013. The call log and corresponding audio recording, originally provided by the Dutch judicial authorities to Pre-Trial Chamber II,[772] and thereafter submitted by the Prosecution,[773] which reflects a connection, indicated in the 16th row from the top,[774] having occurred on 21 October 2013, from 12:55 to 13:04 for approximately 9 minutes, between telephone number [Redacted] and Mr Kilolo's telephone number, [Redacted].[775] The relevant audio

[767] Trial Chamber III, T-328-Red2-, p. 28, lines 13-16 ('*What happened at this second meeting?' 'We met. He had been waiting for me in front of a hotel. We went together to some place where he introduced me to the members of the ICC and we haven't met again thereafter*'); T-329-Red, p. 21, lines 15-17 ('*Never. From the time that counsel put me into the hands of the ICC, never. The ICC team blocked my telephone. They gave me another telephone that I'm using. I have no contact with Defence until today*').
[768] VWU Table, CAR-OTP-0078-0290 at 0294 (ICC-01/05-01/13-207-Conf-Anx, p. 5).
[769] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 161.
[770] *See* para 292.
[771] Call log, CAR-OTP-0072-0391, tab '[Redacted]', rows 37555, 39950 and 40055, columns D, G and I.
[772] The call log (CAR-OTP-0080-1312), as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[773] Call log, CAR-OTP-0080-1312*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[774] Call log, CAR-OTP-0080-1312 at 1312-1313, row 16 from the top; *see also* the historical data of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003, as provided by the Dutch authorities (CAR-OTP-0080-1286)
[775] *See* para. 585.

recording,[776] submitted by the Prosecution, lasts 9:11 minutes and thus duly corresponds to the call log entry concerned. Upon examination of the content of the audio recording and recalling that calls were made between this number and Mr Kilolo's during D-6's testimony, the Chamber is satisfied that the telephone number is D-6's for the following reasons: (i) the issues discussed are specific to the Douala and Yaoundé meetings attended by D-2, D-3, D-4 and D-6 and the proceedings in the Main Case; (ii) Mr Kilolo calls his interlocutor, D-6, by his first name [777] and (iii) Mr Kilolo refers to D-4 by his first name.[778]

404. Nevertheless, the Chamber notes that the first telephone call, dated 4 June 2013, lasted two seconds. Due to the extreme brevity of the call concerned, the Chamber accepts that it cannot be reasonably concluded that a conversation between D-6 and Mr Kilolo took place. The Chamber also notes that, according to the call data record, the two telephone calls, initiated by D-6, were forwarded to Mr Kilolo's voice-mail or to another telephone number.[779] The calls lasted five and four seconds, respectively, and the call data record thus indicates that the witness and Mr Kilolo did not speak with each other at these times. In the light of the foregoing, the Chamber accepts that, although there were (attempted) calls between D-6 and Mr Kilolo during D-6's testimony, there is no evidence of any connection or conversation between them. Consequently, the Chamber cannot find that D-6 lied when he testified that he did not have any contact with the Main Case Defence after 28 May 2013.

[776] Audio recording, CAR-OTP-0080-1332 (ICC-01/05-01/13-438-Conf-AnxB016); Transcript of audio recording, CAR-OTP-0082-0562 (in French).
[777] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0563, lines 5 and 16.
[778] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0569, line 214.
[779] Call log, CAR-OTP-0072-0391 tab '[Redacted]', row 39951, columns A (containing the information 'Forwarding') and B (containing the information 'callForwardWhenNoReply'); row 40056, columns A (containing the information 'Forwarding') and B (containing the information 'callForwardWhenBusy').

v. Aftermath of Testimonies

405. On 21 October 2013, at 12:55, D-6 called Mr Kilolo claiming the CFAF 500,000 purportedly promised to him. The Chamber relies on the above-mentioned intercepted telephone call of 21 October 2013, as provided by the Dutch judicial authorities.[780] In that intercepted conversation, D-6 reminded Mr Kilolo of his promise to pay CFAF 500,000.[781] Mr Kilolo indicated that he did not, at that time, have CFAF 500,000 at his disposal.[782] However, he promised to, on a trip to the region, stop over at D-6's place of residence[783] by the end of the week[784] and give D-4 and D-6 and others CFAF 100,000 each.[785] Indeed, as invoices for a flight ticket and accommodation submitted by the Kilolo Defence[786] demonstrate, Mr Kilolo travelled to Cameroon on 24 October 2013.

406. Towards the end of the intercepted conversation, Mr Kilolo is also recorded as having reassured D-6 that Mr Bemba ('*le sénateur*') was very pleased with the witnesses' performance in court and that Mr Bemba would meet every witness individually once released.[787] As was the case with D-3 and D-55, promises of a non-pecuniary nature were made as a reward for the witnesses' testimony in the Main Case. The information contained in the intercepted communication is further corroborated by the testimonial evidence, as set out below.

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[780] *See* para. 403.
[781] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0563, lines 13-14.
[782] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0563, lines 18-19.
[783] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0564, lines 66-67.
[784] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0564, line 60.
[785] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0564, lines 42-44 (*'we could meet and I'll see if I can find, even … something for everyone, even 100,000, a token, for each person, you know?'*).
[786] Financial documents, CAR-D21-0001-0091 and CAR-D21-0001-0109.
[787] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0568, lines 193-196.

407. As announced in the telephone conversation of 21 October 2013, the sum of CFAF 100,000 was either given in person or transferred to D-2, D-3, D-4 and D-6. The testimonial evidence of P-260 (D-2) and P-245 (D-3) is mutually corroborative in this respect. P-260 (D-2) testified that, after his Main Case testimony, he, together with D-4 and D-6,[788] received another CFAF 100,000 from Mr Kilolo in Douala.[789] He also specified that D-3 received the money *via* bank transfer.[790]

408. Likewise, P-245 (D-3) testified that Mr Kilolo called him in November 2013, inviting him to pick up CFAF 100,000 at the meeting place agreed with the other witnesses.[791] P-245 (D-3) corroborated the evidence of P-260 (D-2), insofar as he testified that D-2 travelled to personally meet Mr Kilolo at the agreed meeting place.[792] He added that he was unable to travel to Douala due to health reasons.[793] P-245 (D-3) further stated that he declined Mr Kilolo's proposal that D-2 collect the money for D-3[794] and, instead, Mr Kilolo agreed to arrange a transfer. P-245 (D-3) testified that Mr Kilolo directed him to nominate a transfer recipient other than himself and his fiancée, as they were known to the Court.[795] P-245 (D-3) stated that, after he nominated [Redacted],[796] Mr Kilolo sent her, through another person,[797] CFAF 100,000, as promised.[798] P-245 (D-3)'s evidence is further corroborated by a self-authenticating receipt of the Express Union agency[799] that P-245 (D-3) provided to the Prosecution in the context of his April 2014 interview. The Chamber notes that, as P-245 (D-3) confirmed during his

[788] T-21-CONF, p. 86, lines 8-11.
[789] T-21-CONF, p. 84, lines 10-11; p. 84, line 25 to p. 86, line 3; T-19-Red2, p. 33, lines 22-24; T-20-CONF, p. 11, line 21 to p. 12, line 4; T-21-CONF, p. 86, line 8.
[790] T-20-CONF, p. 12, lines 1-3; T-21-CONF, p. 86, lines 11-12.
[791] T-23-Red2-, p. 18, lines 11-21; p. 19, lines 16-21.
[792] T-23-CONF, p. 18, lines 18-19.
[793] T-23-Red2, p. 18, line 17; p. 19, line 17.
[794] T-23-Red2, p. 19, lines 17-19.
[795] T-23-Red2, p. 18, lines 19-20; p. 19, lines 2-3; lines 19-21; T-27-Red, p. 45, lines 18-22; p. 46, lines 2-4.
[796] T-23-CONF, p. 19, line 21.
[797] T-23-CONF, p. 22, line 25 to p. 23 line 8.
[798] T-22-Red2, p. 44, lines 22-24; T-23-Red2, p. 18, lines 20-23.
[799] Express Union record, CAR-OTP-0079-1541 at 1542.

testimony, the document is a payment slip for the money transferred by Mr Kilolo and indicates [Redacted].[800] The Chamber also notes P-245 (D-3)'s confirmation that he ultimately received the money,[801] as further corroborated by a series of SMS messages between D-3 and Mr Kilolo, which were extracted from Mr Kilolo's seized telephone.[802]

409. The evidence of P-260 (D-2) and P-245 (D-3) is rich in detail and comprehensive. Critically, their evidence is further corroborated by documentary evidence and fits into the overall narrative emerging from the evidence as a whole. In the light of the 21 October 2013 telephone conversation between D-6 and Mr Kilolo, Mr Kilolo's travel to the agreed meeting point, and the payment confirmation by P-260 (D-2) and P-245 (D-3), the Chamber is convinced, as the only reasonable conclusion, that D-4 and D-6 were also given, on behalf of the Main Case Defence, CFAF 100,000 each as a 'symbolic' token and reward for their Main Case testimonies. Contrary to the allegations of the Kilolo Defence,[803] it cannot conclude that D-3 was given the CFAF 100,000 out of humanity and in relation to his health issues. The witness himself never made this connection when testifying before this Chamber, but instead referred to the sum as '*the money due to me*'.[804]

410. The Chamber observes that the witnesses only received CFAF 100,000 *after* their Main Case testimonies. By this time, the Accused were already aware that they were being investigated under Article 70 of the Statute. In particular, in a telephone conversation on 17 October 2013, Mr Babala had suggested and

[800] T-23-CONF, p. 19, lines 9-13.
[801] T-22-Red2, p. 44, lines 22-24; T-27-Red, p. 36, lines 7-8.
[802] T-23-Red2, p. 21, line 5 to p. 22, line 18; Independent Counsel Report, ICC-01/05-01/13-845-Conf-AnxB-Red, pp. 8-10 (CAR-OTP-0088-0370 at 0377 to 0379).
[803] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 76.
[804] T-23-Red2, p. 19, lines 17-19.

recommended to Mr Kilolo that he should ensure the '*service après-vente*',[805] thus implying that Mr Kilolo should initiate further contacts with and payments to witnesses who had already testified in order to guarantee their loyalty. Nevertheless, the Chamber is not convinced that the payment of CFAF 100,000 was strictly part of the '*service après-vente*' recommended by Mr Babala. Despite its *ex post* nature, the Chamber finds that, in making the payment, Mr Kilolo sought to fulfil a pre-testimony promise to the witnesses and to complement the amount that the witnesses received prior to their testimony.

411. The Chamber bases the above conclusion on the following considerations: (i) the witnesses complained in Yaoundé that they had not received the full amount, as promised by Mr Arido and Mr Kilolo; (ii) CFAF 100,000 was paid after D-6 complained to Mr Kilolo that he expected additional money, as promised; (iii) P-245 (D-3) testified that Mr Kilolo told him the money was a '*gesture*' on his part[806] and during the intercepted conversation of 21 October 2013, Mr Kilolo characterised the payment as '*juste symbolique*',[807] which are formulations similar to those used in the context of payments to other Main Case Defence witnesses, such as D-23; (iv) while D-3 received financial assistance from the Court in his own name,[808] Mr Kilolo sought to conceal the transfer of CFAF 100,000, instructing D-3 to nominate a recipient unknown to the Court; and (v) D-2, D-3, D-4 and D-6 all received the same amount of money, namely CFAF 100,000, around the same time.

[805] Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0545, lines 79-87; *see also* para.781.
[806] T-23-Red2, p. 18, lines 18-19.
[807] Audio recording, CAR-OTP-0080-1332; Transcript of audio recording, CAR-OTP-0082-0562 at 0564, line 43 ('*a token*').
[808] T-27-CONF, p. 46, lines 5-12.

c) Overall Conclusions Regarding D-2, D-3, D-4 and D-6

412. The Chamber finds that, upon Mr Kilolo's instruction, D-2 untruthfully testified that (i) he neither received any form of reimbursement, nor any other sort of benefit; (ii) he did not know Mr Arido [Redacted] and had only heard of Mr Kokaté; and (iii) he never had contacts with the Main Case Defence where he was briefed or provided with a document to refresh his memory.

413. The Chamber finds that, upon Mr Kilolo's instruction, D-3 falsely denied having been reimbursed for any expenses and knowing Mr Arido, Mr Kokaté [Redacted].

414. The Chamber finds that, as instructed by Mr Kilolo, D-4 untruthfully testified that he did not know Mr Arido, Mr Kokaté [Redacted].

415. The Chamber finds that, complying with Mr Kilolo's instructions, D-6 untruthfully testified that (i) he never received any money from the Main Case Defence; (ii) he was not introduced to Mr Kilolo by a '*committee designed to harmonise the evidence*'; (iii) he never had contacts with the Main Case Defence where he discussed the events relevant to the charges in the Main Case; and (iv) he never spoke to any person he knew to be a Main Case witness.

416. The Chamber also finds that Mr Kilolo provided D-2, D-3, D-4 and D-6 during the second meeting in Yaoundé with a document containing their statements given to the Main Case Defence during their first meeting, together with new information that Mr Kilolo added. When going through the documents with the witnesses, he instructed and illicitly coached them on discrete issues of their testimonies before Trial Chamber III that were important to the Main Case Defence. For example, Mr Kilolo provided D-2 with his prior statement, together with new information related to, *inter alia*, logistics and weapons. Mr Kilolo also guided the witness on perceived shortcomings in his previous statement on

specific points and stressed certain issues deemed crucial for the Main Case Defence. In relation to D-3, Mr Kilolo read out the witness's prior statement and instructed him on three points in particular, namely, the arrival dates of MLC troops in Bangui, the killings at the Bangui cattle market, and D-3's participation in acts of pillaging.

417. Mr Kilolo also directed D-2, D-3, D-4 and D-6 to adopt a particular position on a number of other issues related to their upcoming testimony, such as the nature and number of their prior contacts with the Main Case Defence, the recording of prior meetings with the Main Case Defence, the reimbursement of costs or payments of money, non-monetary benefits, and their acquaintance with Mr Arido and Mr Kokaté, as well as others known to be Main Case Defence witnesses.

418. Despite the contact prohibition imposed by Trial Chamber III, Mr Kilolo, in the presence of Mr Mangenda, also distributed new telephones to D-2, D-3, D-4 and D-6 prior to their handover to the VWU, in order to stay in contact with them during their testimonies.

419. In Yaoundé, Mr Kilolo also promised D-2, D-3, D-4 and D-6 a sum of CFAF 600,000 each, and subsequently paid CFAF 540,000 or CFAF 550,000 to each witness shortly before their testimonies in the Main Case as an encouragement to testify in Mr Bemba's favour. He also promised D-3 and D-6 that Mr Bemba would meet the witnesses individually in Kinshasa, DRC, once he was released from detention in order to express his gratitude. After the witnesses' testimonies, Mr Kilolo personally gave or transferred, as a 'symbolic' token, the sum of CFAF 100,000 to D-2, D-3, D-4 and D-6, as part of the payment he promised in Yaoundé.

420. The Chamber further finds that, upon Mr Kilolo's request, Mr Arido, together with Mr Kokaté, recruited D-2, D-3, D-4, and D-6 as witnesses for the Main Case

Defence. He acted as a 'go-between' and relayed the witnesses' concerns to Mr Kilolo. When recruiting potential witnesses, Mr Arido promised the payment of money and relocation to Europe in exchange for testifying as witnesses for the Main Case Defence. For example, he promised D-2 the payment of CFAF 10 million and relocation. When meeting the witnesses in Douala, Cameroon, Mr Arido instructed D-2, D-3, D-4 and D-6 to present themselves as FACA and MLC soldiers. He assigned the witnesses their alleged military ranks and handed out military insignia. For example, he instructed D-2 to present himself as sub-lieutenant and D-3 to present himself as a corporal. Mr Arido personally briefed the witnesses or arranged for another prospective witness to brief them, such as in the case of D-3. He also provided details to the witnesses regarding their purported military background, experience and training. Mr Arido introduced the witnesses to Mr Kilolo in Douala where they were interviewed. After their meeting with Mr Kilolo, the witnesses met Mr Arido again for a de-briefing during which he further guided and instructed the witnesses.

421. The Chamber finds that Mr Mangenda was present when Mr Kilolo distributed new telephones to D-2, D-3, D-4 and D-6. The Chamber also finds that Mr Mangenda knew of the purpose of the new telephones, namely to stay in contact during the witnesses' testimonies. Mr Mangenda was also present at the Yaoundé meeting where Mr Kilolo promised the witnesses the payment of CFAF 600,000.

6. Witness D-23

422. Witness D-23 was called by the Main Case Defence and testified under this pseudonym. He was called by the Prosecution and testified as witness P-261 in the present case.

a) Credibility

423. P-261 (D-23) testified before this Chamber after having been given Rule 74 assurances.[809]

424. The Chamber notes that, throughout his testimony, P-261 (D-23) appeared natural and coherent, and was quick to specify the extent of his knowledge in response to questions that concerned his meetings with Mr Kilolo and Mr Kokaté. His answers were direct and forthcoming and did not change during the Defence examination. He was capable of clearly describing the chronology of meetings and the circumstances under which they took place, demonstrating that he provided first-hand information based on his personal experiences.

425. The Chamber is particularly attentive to the fact that the witness admitted outright that he received money on two occasions, as well as a new laptop from Mr Kilolo, and did not retract his statement when questioned by the Defence. He was also able to give a precise account of the reimbursement of costs by the Prosecution in this case, showing an understanding of how costs incurred by witnesses are typically reimbursed by the Court. The witness also unhesitatingly confirmed, on several occasions, that he had lied before Trial Chamber III.[810] He seemingly made an effort to avoid any further contradictions when testifying before this Chamber.

426. Nevertheless, the Chamber observed a change in the manner that P-261 (D-23) responded to questions concerning his own past conduct, in particular his motivation for accepting money offered by Mr Kilolo or Mr Kokaté's precise instructions. In these instances, the witness appeared evasive or even defensive, responding to questions with his own questions. The Chamber is of the view

[809] Transcript of Hearing, 5 October 2015, ICC-01/05-01/13-T-13-CONF-ENG ET ('T-13-CONF'), p. 8, line 16 to p. 10, line 9.
[810] T-16-Red2, p. 25, line 9, p. 36, line 13.

that the witness clearly felt uncomfortable and sought to protect his own interests, while attempting to fulfil his oath to the tell truth. The Chamber therefore treats those aspects of his testimony with caution.

427. In the light of the foregoing, the Chamber finds witness P-261 (D-23) generally credible and therefore largely relies on his testimony in the present case, in particular regarding the account he gave of meetings with Mr Kokaté and Mr Kilolo, and the receipt of money and a laptop. The Chamber does not, however, rely on the witness's testimony in relation to certain, discrete aspects identified below.

b) Discussion

i. Meeting with Mr Kokaté

428. It is uncontested that, during a visit to Brazzaville, Mr Kokaté, an individual with whom D-23 and his family are well-acquainted,[811] proposed to D-23 that he testify in Mr Bemba's favour in the Main Case.[812] As P-261 (D-23) explained, he agreed to testify[813] and Mr Kokaté facilitated contact between D-23 and Mr Kilolo.[814] P-261 (D-23) emphasised, however, that Mr Kokaté asked him never to reveal to '*anybody anywhere*' that he had put D-23 in contact with the Main Case Defence.[815] When examined by the Kilolo Defence, he vehemently insisted that the instruction came from Mr Kokaté.

429. P-261 (D-23)'s account on these points is coherent and detailed, in particular as regards the circumstances of his encounter with Mr Kokaté and the essence of

[811] T-13-CONF, p. 49, lines 4-9; *see also* p. 50, line 10; p. 52, line 15.
[812] T-13-CONF, p. 50, lines 6-9 ('*And then he made this proposal; notably to put me in contact with somebody who – and then he would be able to tell me everything else, but the essential fact is that "You're going to testify in favour of Jean-Pierre Bemba Gombo as a Central African officer*"').
[813] T-13-CONF, p. 50, lines 10-11.
[814] T-13-CONF, p. 49, lines 21-22; *see also* p. 50, lines 6-7; p. 62, lines 10-13; Transcript of Hearing, 7 October 2015, ICC-01/05-01/13-T-15-Red2-ENG WT ('T-15-Red2'), p. 56, line 5; p. 78, lines 19-20.
[815] T-13-CONF, p. 53, line 16; *see also* p. 55, lines 18-20; T-15-Red2, p. 82, lines 16-18 (*'He said behave as if you did not know me, behave as if I am not the one who put you in touch with Jean-Pierre Bemba's Defence'*).

his conversation with him. The manner in which the witness recalls these events shows that his testimony is evidently based on personal experience, and the Chamber finds the witness reliable in this regard. Accordingly, the Chamber concludes that D-23 received instructions from Mr Kokaté, without the involvement of any Accused in this case, to conceal that Mr Kokaté put D-23 in contact with the Main Case Defence. Further, for reasons developed below, the Chamber finds that Mr Kilolo gave D-23 the impression that he agreed with Mr Kokaté's instruction.

430. From the start of his testimony, P-261 (D-23) testified, quite candidly and without hesitation, that he had never been a member of the CAR armed forces,[816] albeit stressing that he grew up in a military camp and had '*enough knowledge of the army, of the Central African army*'.[817] He also insisted that Mr Kokaté instructed him to testify '*as a soldier*'.[818]

431. P-261 (D-23) testified that, during his meeting with Mr Kokaté, the latter told him that he would testify in[819] and, like '*other people*', be relocated to Europe.[820] The Chamber finds the witness's account reliable as regards Mr Kokaté's promise of relocation. On the evidence, the Chamber finds that this promise was made by Mr Kokaté without the knowledge or involvement, at that time, of any of the Accused, in particular, Mr Kilolo.

ii. First Meeting with Mr Kilolo

432. It is uncontested that, after his encounter with Mr Kokaté, Mr Kilolo called D-23, introduced himself as Mr Bemba's counsel[821] and requested to meet the

[816] T-13-CONF, p. 18, line 7; T-15-Red2, p. 55, lines 13-20.
[817] T-13-CONF, p. 52, line 20; T-15-CONF, p. 17, lines 15-19 and 23-24; p. 57, lines 2-3; p. 88, lines 23-25.
[818] T-15-CONF, p. 18, lines 10-11 and 17-18; T-15-Red2 p. 56, lines 10-15; p. 88, lines 20-22.
[819] T-13-CONF, p. 59, line 21.
[820] T-13-CONF, p. 60, line 8.
[821] T-13-CONF, p. 50, lines 18-19.

next day.[822] It is also uncontested that the meeting took place the following day, 28 March 2012,[823] in a hotel.[824] Mr Kilolo's legal assistant was present[825] and the interview was audio-recorded.[826]

433. P-261 (D-23) affirmed that, in this meeting, he introduced himself as a soldier, following Mr Kokaté's instruction, but did not discuss his alleged FACA membership.[827] This is corroborated by the above-mentioned audio recording, which captures the voices of Mr Kilolo and D-23, as confirmed by P-261 (D-23) before this Chamber.[828] The Chamber notes that P-261 (D-23) testified that he gave false information to Mr Kilolo at the time of the March 2012 interview, but did not suggest that Mr Kilolo, at this meeting, influenced his testimony in any way. This is further corroborated by the audio recording of the interview. In the light of the above, the Chamber considers that Mr Kilolo had no knowledge about D-23's past military experience. Consequently, Mr Kilolo did not influence D-23 with regard to the substance of his testimony on this point at this meeting.

434. P-261 (D-23) consistently and emphatically testified that he informed Mr Kilolo about Mr Kokaté's instruction not to disclose that the latter facilitated

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[822] T-13-CONF, p. 50, lines 22 and 25.
[823] *See* the entry into the metadata field 'Main Date' related to the audio recordings of the interview of D-23, taken by the Main Case Defence at the time, as submitted in the present case (CAR-D21-0006-0002; CAR-D21-0006-0003; CAR-D21-0006-0004; CAR-D21-0006-0005), that reflect the date of '28 March 2012'.
[824] T-13-CONF, p. 62, lines 21-22; p. 63, line 2; T-15-CONF, p. 14, line 23; *see also* invoice for the hotel costs submitted by the Kilolo Defence, CAR-D21-0001-0106.
[825] T-13-CONF, p. 63, lines 7-8; p. 65, lines 18 and 20-22; p. 66, lines 10-11; T-15-Red2, p. 15, lines 19-21 to p. 16, line 1; *see also* E-mail communication to the Court requesting reimbursement of costs for mission by Mr Kilolo together with his legal assistant, CAR-D21-0003-0219 at 0219 and 0220.
[826] T-13-CONF, p. 63, lines 8 and 12; p. 65, lines 22 and 24-25; p. 66, lines 4-7; T-15-Red2, p. 15, lines 2-4; P-261 (D-23) also confirmed that the audio recording took place at the first contact with Mr Kilolo, *see* T-15-Red2, p. 16, lines 23-25; T-16-Red2, p. 34, lines 5-6.
[827] T-13-CONF, p. 63, line 15; *see also* T-15-Red2, p. 57, lines 6-13; p. 58, lines 1-7.
[828] T-15-Red2, p. 15, lines 16-22 (*'I was, however, able to recognise my voice and Maître Kilolo's voice. Those are the main voices on the recording'*). The Chamber notes that the witness was asked to identify the voices of the interlocutors after having listened to the excerpt from audio recording CAR-D21-0006-0005. However, since audio recording CAR-D21-0006-0005 contains part 4 and CAR-D21-0002-0002 contains part 1 of one and the same interview, the Chamber is of the view that the identification of the interlocutors by witness P-261 (D-23) extends to the audio recording CAR-D21-0006-0002 as well. Moreover, the Chamber notes that P-261 (D-23) mentioned that he identified three interlocutors (even though he had listened to only two from audio recording CAR-D21-0006-0005). In the estimation of the Chamber, the witness correctly identified the three interlocutors as contained in CAR-D21-0006-0002, including the female voice of the legal assistant to Mr Kilolo (*'white lady'*), *see* T-15-Red2, p. 15, lines 3 and 19-21.

contact with the Main Case Defence.[829] According to P-261 (D-23), Mr Kilolo reacted with laughter, which he understood to mean[830] that Mr Kilolo agreed with this instruction: '*And then I remember that I said this to Maître Kilolo and he laughed because, of course, if he didn't say anything then he was consenting. (…) And he who says nothing is consenting*'.[831] Indeed, P-261 (D-23) expected that, if Mr Kilolo had not agreed with Mr Kokaté's instruction, he would have advised him, D-23, to speak freely: '*He might have said to me, well, no, no, you can say, but he – he didn't say anything, he laughed*'.[832]

435. The Chamber notes P-261 (D-23)'s demeanour in the courtroom and the spontaneous, yet articulate, manner in which P-261 (D-23) explained his interpretation of Mr Kilolo's reaction. When confronted with his prior statement on the matter and during examination by the Defence, P-261 (D-23) confirmed his position. For these reasons, the Chamber finds that Mr Kilolo implicitly asked D-23 to conceal his knowledge of Mr Kokaté. Conversely, D-23 and Mr Kilolo did not discuss Mr Kokaté's promise of relocation to Europe at this meeting.

436. P-261 (D-23) also affirmed that, after concluding the interview,[833] Mr Kilolo paid him USD 100 in cash which he described as reimbursement for his taxi fare.[834] P-261 (D-23) explained that the taxi fare from his house to his hotel would be about CFAF 1,000 or 1,500.[835] He confirmed that Mr Kilolo gave him more than he had paid for the taxi.[836] After having refreshed his memory with his prior statement, P-261 (D-23) added that Mr Kilolo mentioned that '*[t]his is*

[829] T-13-CONF, p. 57, lines 16-25.
[830] T-13-CONF, p. 58, line 3 (*'everything was going in the sense of saying'*).
[831] T-13-CONF, p. 55, lines 20-23; p. 56, lines 5-10 and 13-16; p. 58, lines 3-5.
[832] T-13-CONF, p. 55, lines 22-23.
[833] T-15-Red2, p. 16, lines 8-10.
[834] T-13-CONF, p. 68, lines 15-17; *see also* p. 69, lines 9-11; T-15-Red2, p. 17, lines 8-9; p. 70, lines 7-10.
[835] T-13-CONF, p. 68, line 22 to p.69, line 8; T-15-CONF, p. 66, lines 20-23.
[836] T-13-CONF, p. 69, line 8.

not corruption. This is refunding you for your taxi expenses'.[837] He nevertheless continued, '*it's not something to say during the testimony that I'm making a gift*',[838] as it was not '*an official gift but I'm doing it on my behalf by love*'.[839] P-261 (D-23) found '*that to be normal*',[840] since this gesture accords with the '*African way*'. More precisely, he testified, '*In Africa you can ask your brother, he can give you 100, 200, $300 and it's like a gift*'.[841] He claimed that he did not think of it as bribery.[842] He nevertheless confirmed that Mr Kilolo asked him not to mistakenly mention during his Main Case testimony that he had received anything from him.[843]

437. The Chamber attaches no weight to the witness's perspective concerning the purpose of the payment or its normal or customary nature. In this regard, the Chamber emphasises the amount of money, exceeding the witness's expenses, and the fact that Mr Kilolo insisted that it was not corruption and asked D-23 not to reveal the payment. In the Chamber's view, this demonstrates that Mr Kilolo considered this transaction to be illicit, and not a 'normal' or 'customary' gesture. What is more, the Chamber notes the witness's explanations which were long and confusing, differing in style and structure compared to the rest of his testimony, suggesting that he struggled to find a response. Accordingly, the Chamber concludes that Mr Kilolo did not consider the money to be a legitimate reimbursement. The Chamber is therefore convinced that Mr Kilolo paid D-23 USD 100 in order to motivate the witness to give certain testimony before Trial Chamber III.

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[837] T-13-CONF, p. 69, lines 21-22.
[838] T-14-Red2, p. 19, lines 5-6; T-16-Red2, p. 48, lines 11-13.
[839] T-14-Red2, p. 19, lines 2-3; T-16-Red2, p. 47, lines 7-9 (*'he told me that he was giving that money on his own account and that it was not an official thing and that he – these were personal gestures that he made towards me'*).
[840] T-13-CONF, p. 69, lines 22-23.
[841] T-14-Red2, p. 17, line 15.
[842] T-14-Red2, p. 17, lines 16-20.
[843] T-16-Red2, p. 47, line 2 to p. 48, line 13.

iii. Handover to the VWU

438. It is uncontested that, shortly before his Main Case testimony,[844] D-23 again met Mr Kilolo, who introduced him to the VWU staff.[845] P-261 (D-23) testified that Mr Kilolo gave him an envelope containing about CFAF 450,000,[846] telling him that '*[t]his is something to help you out for you and your family during the period of your absence*'.[847] He also testified that Mr Kilolo gave him a new laptop,[848] which D-23 had requested Mr Kilolo to buy from Europe.[849] P-261 (D-23) testified that he offered to pay for the computer,[850] but Mr Kilolo declined to accept any money as the laptop was a gift: '*And then he said: "No, there's no need. Take it. It's a present. It's a present. That's all. It's a gift."*'.[851] The Chamber notes that D-23 described the events surrounding the handover of the envelope and the laptop in sufficient detail, in particular the chronology and circumstances of the event. This demonstrates that the information was first-hand. In addition, the Chamber is of the view that P-261 (D-23)'s account about the laptop is consistent and reliable and, therefore, truthful. The details about his initial offer to pay for the laptop were unprompted and reflect a complication to the witness's account that was otherwise unnecessary.

439. However, P-261 (D-23) maintained that Mr Kilolo did not expressly state that he gave him any of the above-mentioned items in exchange for his testimony.[852] Yet, despite the lack of an express declaration in this regard, the Chamber is satisfied that the circumstances and context clearly demonstrated that Mr Kilolo

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[844] T-14-Red2, p. 21, lines 3-7.
[845] T-13-CONF, p. 71, lines 9-17.
[846] T-13-CONF, p. 71, lines 22-25; T-15-Red2, p. 70, lines 20-25.
[847] T-13-CONF, p. 72, lines 1-2 and 12-16.
[848] T-13-CONF, p. 73, lines 1-5 and 14; p. 74, lines 2-3; T-14-Red2, p. 21, lines 8-11.
[849] T-13-CONF, p. 73, line 21; *see also* p. 73, lines 1-3.
[850] T-13-CONF, p. 73, line 16.
[851] T-13-CONF, p. 73, lines 23-24; *see also* lines 17-18.
[852] T-15-Red2, p. 45, lines 15-17; p. 46, lines 17-20 ('*Obviously, he never said I'll give you this and you're going to do that. That's it. He never said, well, I will do this or you testify physically on the telephone. He never said that*').

provided the gifts to D-23 in connection with his upcoming Main Case testimony. Indeed, the money and laptop were provided shortly before D-23's testimony. This is consistent with a pattern of such payments to other witnesses, such as D-2, D-3, D-4, D-6, D-29, D-57 and D-64, shortly before their testimonies. In the Chamber's view, the timing, the amount of the money and the laptop, and the instruction not to reveal them demonstrates that Mr Kilolo provided the money and laptop as an incentive for D-23's testimony in Mr Bemba's favour.

440. The Kilolo Defence implied that Mr Kilolo intended, '*out of humanity*', that the CFAF 450,000, assist D-23 in covering his child's medical costs.[853] P-261 (D-23) indeed confirmed that he asked Mr Kilolo for financial assistance,[854] as his child needed medical care[855] as a result of an event on '*4 March*', but did not further specify the time frame. Nevertheless, the Chamber finds the alternative justification for the payment, as insinuated by the Kilolo Defence, unpersuasive. First, the health problems of D-23's child and the associated financial costs cannot be linked to the CFAF 450,000. Indeed, P-261 (D-23)'s testimony is unclear as to whether his financial concerns, triggered by his child's medical treatment, materialised around the time of his Main Case testimony. Second, P-261 (D-23) remained vague during his testimony about Mr Kilolo's assistance in relation to his child's care and at no time specifically linked the CFAF 450,000 to these medical costs. Third, as already noted, the provision of this money to P-261 (D-23) follows exactly the pattern employed in relation to other Main Case Defence witnesses, such as D-2, D-3, D-4, D-6, D-29, D-57 and D-64. Fourth, this justification contradicts the witness's earlier statement that, when he received

[853] T-15-CONF, p. 46, lines 21-22; p. 48, lines 5-6.
[854] T-15-Red2, p. 48, lines 7-8.
[855] T-15-CONF, p. 46, line 23 to p. 47, line 19.

the envelope, Mr Kilolo assured D-23 that the money was meant to assist him and his family during his absence from home.[856]

441. The Chamber is also not persuaded by the latter assertion, that the money was intended to otherwise assist D-23's family. P-261 (D-23) testified that he was unemployed[857] and had difficulties providing for his family.[858] Upon the enquiry of the Kilolo Defence, he then stated that he had requested the Court's assistance, which was denied.[859] However, it remains unclear to whom and when he addressed this request.[860] Be that as it may, the Chamber notes P-261 (D-23)'s claim that his remark or request at the time was to be considered as '*an SOS signal to the Court*', '*for the others who would come after me*'.[861] When asked by the Kilolo Defence whether he had raised this issue with Mr Kilolo at the material time, his response was unequivocal: '*No*'.[862] In the Chamber's view, P-261 (D-23)'s account of these events was evasive, opaque and even contradictory. The witness tried in vain to establish any legitimate connection with the CFAF 450,000. It is evident that he did not discuss this issue with Mr Kilolo. Therefore, the Chamber cannot accept the alleged justification that the money was intended for family support.

442. The Chamber recalls, as also mentioned in relation to D-29 and D-57,[863] that the expenses incurred by witnesses on account of their Main Case testimony were borne entirely by the Court. Putting P-261 (D-23)'s evidence in context, it is

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[856] T-13-CONF, p. 72, lines 1-2 and 12-16.
[857] T-15-CONF, p. 49, lines 20-21.
[858] T-15-CONF, p. 49, lines 23-24.
[859] T-15-Red2, p. 50, line 8.
[860] The Chamber notes the witness's reference to *'Mr Kweku, the Prosecutor'* which implies that he addressed this request to the Prosecution in this case, and not to members of the Prosecution in the Main Case, *see* T-15-Red2, p. 50, line 22. Later in his testimony, the witness confirmed that he had *'never collaborated'* with the Prosecution before the present proceedings, thus clarifying that he had had no prior relations with the Office of the Prosecutor, *see* T-15-Red2, p. 83, line 6.
[861] T-15-Red2, p. 50, lines 10-12 and 17-18 (*'This is why I said this, to really send out an SOS signal to the Court so that it would be thought about that if the situation arose in the future, one would think about this'*).
[862] T-15-Red2, p. 50, line 25 to p. 51, line 2.
[863] *See* paras 239 and 520-527.

highlighted that, when he received the CFAF 450,000, the witness was entrusted to the care of the VWU. Hence, there was neither need nor justification for Mr Kilolo to 'assist' D-23 in that respect. As D21-9 reliably explained, the VWU not only covered accommodation and travel costs, but also provided attendance allowances[864] and incidental allowances.[865]

443. Moreover, the Kilolo Defence claimed that the money paid by Mr Kilolo was intended to cover expenses typically incurred by witnesses. It drew a comparison with the Prosecution's approach in the present proceedings and maintained that P-261 (D-23) had in fact been paid by the Prosecution for expenses such as travel, loss of income, medical treatment, telephone credit and the production of travel documentation.[866] The Chamber notes that the type of expenses for which a witness, and here D-23, was paid in this case or the Main Case, is not at issue. Importantly, nowhere is it documented that Mr Kilolo paid D-23 at the time for expenses that would be typically reimbursed. Even if the money was paid to cover expenses, it does not explain why Mr Kilolo asked D-23 to conceal the fact of the payment. In addition, the Kilolo Defence does not address the fact that Mr Kilolo paid the witness, shortly before his testimony, an amount of money comparable to that which he had also paid other Main Case Defence witnesses, knowing that their expenses were borne by the Court.

444. For the foregoing reasons, the Chamber does not consider that Mr Kilolo paid D-23 the CFAF 450,000 for legitimate reasons, such as familial assistance or as reimbursement for expenses. Rather, the Chamber finds that Mr Kilolo made the payment with a view to securing D-23's testimony in Mr Bemba's favour.

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[864] Regulation 85 of the Regulations of the Registry; Transcript of Hearing, 9 March 2016, ICC-01/05-01/13-T-42-Red2-ENG WT ('T-42-Red2'), p. 24, lines 22-24.
[865] Regulation 84 of the Regulations of the Registry; T-42-Red2, p. 24, lines 17-21.
[866] T-15-CONF, p. 73, line 14 to p. 77, line 2; ICC documentation of reimbursement, CAR-OTP-0084-1422; CAR-OTP-0087-3699; CAR-OTP-0087-1984; CAR-OTP-0090-2122; Handwritten note of P-261 (D-23), CAR-OTP-0084-1423; Western Union record, CAR-OTP-0085-0488.

445. In addition to the money and laptop, Mr Kilolo also gave D-23 a telephone at the time of the VWU handover. It is uncontested that, in the context of D-23's handover to the VWU, the VWU took his personal telephone. The VWU gave him a new telephone for the duration of his testimony, but advised him that he should not call anyone with it.[867] P-261 (D-23) testified that Mr Kilolo explained that this prohibition would also apply to contacts with Mr Kilolo during D-23's Main Case testimony.[868] He further testified that Mr Kilolo informed him that he wished to stay in contact with him and, for this reason, gave D-23 another telephone.[869] The Chamber finds that, in so doing, Mr Kilolo deliberately circumvented the orders of Trial Chamber III to refrain from contacting witnesses after the VWU cut-off date. He stayed in contact with D-23 to ensure that he testified according to his directions, as will be explained below. In this regard, the Chamber is particularly mindful of D21-9's evidence that the practice of international courts, including Trial Chamber III, was to strictly prohibit the parties from contacting witnesses during their testimonies, as this could impact the quality of the testimony.[870]

iv. Telephone Contacts between D-23 and Mr Kilolo

446. P-261 (D-23) testified, unequivocally, that Mr Kilolo called him '*a number of times*'[871] during his testimony,[872] specifying that '*each evening we called each other*'.[873] The Chamber notes that this evidence is further corroborated by the call sequence tables and corresponding call data records reflecting a number of contacts between D-23 and Mr Kilolo during the material time. The call

[867] T-15-CONF, p. 28, line 25 to p. 29, line 6.
[868] T-13-CONF, p. 74, lines 15 and 25; p. 75, line 1.
[869] T-13-CONF, p. 74, lines 14-16; p. 75, lines 4-6.
[870] T-42-Red2, p. 76, lines 18-24; p. 79, lines 14-23, in particular lines 21-23 (*'I think that's the obvious reason, having any undue influence on the evidence and ensuring, I think, in the words of Judge Fulford, the spontaneity of evidence'*).
[871] T-13-CONF, p. 75, line 15.
[872] T-13-CONF, p. 79, line 25 to p. 80, line 2.
[873] T-13-CONF, p. 75, lines 16-17 and 19-22.

sequence table and corresponding call data records show that, before and during his testimony, D-23 had a number of telephone contacts with Mr Kilolo, including after the VWU cut-off date of 16 August 2013.[874] The Chamber is particularly attentive to the following contacts:

- 19 August 2013, at 20:58 for almost 3 minutes;[875] and at 22:34 for 41½ minutes;[876]
- 20 August 2013, at 22:23, for approximately 1½ minutes,[877] at 22:36, for approximately 18½ minutes,[878] at 22:58, for approximately 1 minute[879] and at 23:02, for almost 1½ minutes;[880]
- 21 August 2013 at 00:32, for approximately 3 minutes;[881] and at 23:48, for approximately 19½ minutes;[882]

447. According to the call sequence table, the above communications involved, for Mr Kilolo, telephone number [Redacted],[883] for which attribution has been established.[884] The second telephone number [Redacted][885] is equally attributable to Mr Kilolo for the following reasons: (i) Mr Kilolo contacted Mr Mangenda using this telephone number on 14 September 2013, at 23:27,[886] and explained that he uses that telephone number for calls to African countries; (ii) in the 14 September 2013 telephone call, Mr Kilolo and Mr Mangenda greet and refer

[874] VWU Table, CAR-OTP-0078-0290 at 0295 (ICC-01/05-01/13-207-Conf-AnxA, p. 6).
[875] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 46; Call Data Record, CAR-OTP-0083-1465, row 15; CAR-OTP-0083-1472, row 15.
[876] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 47; Call Data Record, CAR-OTP-0083-1465, row 22; CAR-OTP-0083-1472, row 22.
[877] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 48; Call Data Record, CAR-OTP-0072-0082, row 4097.
[878] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 51; Call Data Record, CAR-OTP-0072-0082, row 4102.
[879] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 52; Call Data Record, CAR-OTP-0072-0082, row 4104.
[880] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 53; Call Data Record, CAR-OTP-0072-0082, row 4106.
[881] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 54; Call Data Record, CAR-OTP-0072-0082, row 4109.
[882] Call Sequence Table, CAR-OTP-0090-0630 at 0689, row 55; Call Data Record, CAR-OTP-0083-1465, row 30; CAR-OTP-0083-1472, row 30.
[883] Call Sequence Table, CAR-OTP-0090-0630 at 0689, rows 48, 51, 52, 53 and 54; at 0690, row 56.
[884] *See* para. 585.
[885] Call Sequence Table, CAR-OTP-0090-0630 at 0689, rows 46, 47 and 55.
[886] *See* para. 714.

to one another as '*confrère*' and '*Jean-Jacques*',[887] which the Chamber has encountered in many other intercepted communications between the accused; (iii) the Chamber recognises Mr Kilolo's voice from the audio recording of the 14 September 2013 intercepted communication. The Chamber is also satisfied that the call sequence table correctly attributes the numbers [Redacted][888] and [Redacted][889] to D-23, who testified that these were his telephone numbers.[890]

448. During these conversations, P-261 (D-23) testified, at first, that he would discuss with Mr Kilolo in generic terms how the day went[891] or that Mr Kilolo thanked him for his testimony.[892] He thereafter admitted that they would speak about his testimony,[893] albeit claiming that their discussions were not detailed.[894] While the witness first claimed that he was unable to recollect details of specific topics he discussed with Mr Kilolo, he later acknowledged that he discussed with Mr Kilolo, for example, the composition and functions of Bozizé's troops,[895] an individual named '*Paul Sanze*',[896] or the events during the Bozizé rebellion.[897]

449. The degree to which Mr Kilolo intervened when discussing those issues with the witness is described in contradictory terms by P-261 (D-23). On the one hand, P-261 (D-23) claimed that he already knew about the composition of Bozizé's troops or had conducted his own '*research*',[898] and that Mr Kilolo had

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[887] Audio recording, CAR-OTP-0074-1014; Translated transcript of audio recording, CAR-OTP-0082-0112 at 0114, lines 3-5.
[888] Call Sequence Table, CAR-OTP-0090-0630 at 0689, rows 46 and 47.
[889] Call Sequence Table, CAR-OTP-0090-0630 at 0689, rows 48 and 51-55; at 0690, row 56.
[890] T-13-CONF, p. 77, lines 12-24; p. 78, lines 3 and 6; p. 80, line 7. The second number is also indicated in the Court's list of telephone numbers provided by the defence or witnesses in the Main Case, *see* ICC document, CAR-OTP-0077-0942 at 0943, row 27.
[891] T-15-Red2, p. 28, lines 9-16; *see also* Transcript of audio recording, CAR-OTP-0088-1469-R02 at 1471-R02, lines 40-43.
[892] T-15-Red2, p. 39, lines 19-22.
[893] T-14-Red2, p. 5, line 17.
[894] T-13-CONF, p. 75, line 25 ('*Obviously, yes, but not in-depth*'); T-14-Red2, p. 5, lines 7-8 ('*we had discussions so to speak on the testimony and touched a little bit here and there on what happened*').
[895] T-14-Red2, p. 7, lines 10-11; p. 13, lines 24-25; T-15-CONF, p. 31, lines 14-18.
[896] T-14-Red2, p. 14, lines 24-25; p. 15, lines 6-13; T-15-CONF, p. 37, lines 10-16.
[897] T-15-Red2, p. 36, lines 11-22.
[898] T-15-CONF, p. 29, line 16 to p. 30, line 5; p. 31, lines 12-18.

not given directions to add, for example, the name of an individual within the ranks of the Bozizé troops.[899] On the other hand, P-261 (D-23) admitted, albeit halting mid-sentence, that Mr Kilolo did give directives for his testimony: '*Well, sometimes I asked questions; how was my behaviour? How did I do? And he tried to help me. "Yes, that's fine, but you have to really be in control and say exactly" – well, there are too many questions. It's difficult*'.[900] In relation to the name of the specific individual within the ranks of Bozizé's troops, P-261 (D-23) eventually confirmed that Mr Kilolo informed him of his function and told him to add it to his testimony.[901]

450. The Chamber finds the witness's evidence on the nature of Mr Kilolo's intervention to be unreliable. Unlike in other parts of his testimony, the witness suddenly meandered and remained somewhat vague, almost reluctant to recall the content of the conversations, seemingly because he would give evidence reflecting negatively on his own conduct. The Chamber understands that the witness sought to detract from his own behaviour and, therefore, avoided giving specific details. Nevertheless, considering the timing and frequency of the calls between Mr Kilolo and D-23, the Chamber cannot follow the suggestion, as proposed by the Kilolo Defence,[902] that Mr Kilolo enquired in these telephone calls merely about the well-being of D-23 and his family members.[903] In this regard, the Chamber is mindful that P-261 (D-23) testified that he spoke with Mr Kilolo about the substance of his testimony and that Mr Kilolo gave directives that the witness remain in control and '*say exactly*' certain information. The Chamber also considers the recurring pattern of communication with witnesses during their in-court testimony, especially those who were called

[899] T-15-Red2, p. 31, lines 20-25, *see also* p. 32, lines 1-4.
[900] T-13-CONF, p. 75, lines 19-21.
[901] T-14-Red2, p. 12, line 25; *see also* p. 14, lines 6-8 ('*The function that he had in the staff – well, I don't – I'm not certain, but when I spoke to him, Mr Kilolo, he said he was the coordinator of the – of this general staff*').
[902] T-15-Red2, p. 39, lines 19-22; p. 40, line 15; Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Conf-Corr2, paras 129-133.
[903] T-15-Red2, p. 40, line 10 to p. 41, line 20.

during recesses in and adjournments of their testimony, such as witnesses D-25, D-26 and D-54. In the light of the above, the Chamber concludes that Mr Kilolo not only rehearsed but more importantly instructed D-23 concerning specific topics in his upcoming testimony.

v. Testimony of D-23

451. D-23 testified before Trial Chamber III *via* video-link in the morning sessions between 20 and 22 August 2013.[904] During the afternoon sessions, D-26 gave evidence *via* video-link.[905] As P-261 (D-23) confirmed before this Chamber, he testified, following Mr Kilolo's instructions, that he (i) did not know and had not spoken to Mr Kokaté;[906] (ii) had joined the Bozizé rebellion[907] [Redacted],[908] and was [Redacted];[909] and (iii) had not received any payment 'in exchange' for his testimony.[910]

c) Overall Conclusions Regarding D-23

452. The Chamber finds that D-23, upon instruction of Mr Kilolo, incorrectly testified in the Main Case that he did not receive any payment in exchange for his testimony and did not know Mr Kokaté.

453. The Chamber finds that Mr Kilolo provided D-23 a new laptop and, on two occasions, money amounting to USD 100 and CFAF 450,000, respectively,

[904] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 20 August 2013, ICC-01/05-01/08-T-332-CONF-ENG ET ('T-332-CONF'); ICC-01/05-01/08-T-332-Red-ENG WT ('T-332-Red'), pp. 6-54; Transcript of Hearing, 21 August 2013, ICC-01/05-01/08-T-333-CONF-ENG ET ('T-333-CONF'); ICC-01/05-01/08-T-333-Red-ENG WT ('T-333-Red'), pp. 1-59; Transcript of Hearing, 22 August 2013, ICC-01/05-01/08-T-334-CONF-ENG ET ('T-334-CONF'); ICC-01/05-01/08-T-334-Red-ENG WT ('T-334-Red'), pp. 1-51.
[905] Trial Chamber III, T-332-CONF; T-332-Red, pp. 55-83; T-333-CONF; T-333-Red, pp. 60-88; T-334-CONF; T-334-Red, pp. 52-80; Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 23 August 2013, ICC-01/05-01/08-T-335-CONF-ENG ET ('T-335-CONF'); ICC-01/05-01/08-T-335-Red-ENG WT ('T-335-Red').
[906] Trial Chamber III, T-333-Red, p. 59, lines 15-16; T-334-Red, p. 14, line 20 to p. 15, line 15; T-13-CONF, p. 53, lines 1-6; T-14-Red2, p. 16, lines 17-18.
[907] Trial Chamber III, T-332-CONF, p. 15, line 23 to p. 16, line 2.
[908] Trial Chamber III, T-332-CONF, p. 14, line 13; T-16-Red2, p. 36, lines 12-13; p. 38, line 25 to p. 39, line 3.
[909] Trial Chamber III, T-332-Red, p. 30, lines 20-22.
[910] Trial Chamber III, T-334-Red, p. 17, lines 23-25; T-14-Red2, p. 16, line 19 to p. 17, line 6.

shortly before the start of his Main Case testimony, so as to secure D-23's testimony in Mr Bemba's favour. On these occasions, Mr Kilolo also instructed D-23 not to reveal such details during his testimony before Trial Chamber III. Despite the contact prohibition imposed by Trial Chamber III, Mr Kilolo also provided D-23 with a new telephone so as to stay in contact with the witness during his testimony. Mr Kilolo talked to the witness on several occasions, in particular after the VWU cut-off date, and instructed D-23 on specific topics in his upcoming testimony, such as the composition of Bozizé's troops, including the functions of certain individuals therein, and events during the Bozizé rebellion. Finally, Mr Kilolo also implicitly asked the witness not to reveal his acquaintance with Mr Kokaté.

7. Witness D-26

454. Witness D-26 was called by the Main Case Defence and testified under this pseudonym. However, he was not called to testify in the present case.

a) Discussion

455. The Chamber notes that witness D-26 testified before Trial Chamber III *via* video-link during the afternoon sessions between 20 and 22 August, and on 23 August 2013.[911] The Chamber recalls, as noted above, that, during the morning sessions of 20 to 22 August 2013, D-23 testified *via* video-link.[912]

456. The call sequence table and corresponding call data records show that before, during and after his testimony, D-26 had a number of telephone and SMS

[911] Trial Chamber III, T-332-CONF; T-332-Red, pp. 55-83; T-333-CONF; T-333-Red, pp. 60-88; T-334-CONF; T-334-Red, pp. 52-80; T-335-CONF; T-335-Red.
[912] Trial Chamber III, T-332-CONF; T-332-Red, pp. 6-54; T-333-CONF; T-333-Red, pp. 1-59; T-334-CONF; T-334-Red, pp. 1-51.

contacts with Mr Kilolo, including after the VWU cut-off date of 16 August 2013.[913] The Chamber notes the following contacts on the following dates:

- 5 August 2013, at 22:05, for approximately 9 minutes;[914]
- 20 August 2013, at 08:43, for approximately 6½ minutes,[915] at 08:51, for 1 minute,[916] at 11:09, for 2 minutes,[917] at 11:12, for approximately 6 minutes,[918] at 11:20, for approximately 4 minutes,[919] and at 23:23, for approximately 23 minutes;[920]
- 22 August 2013, at 21:22, for 25 minutes,[921] and at 21:57, for approximately 2 minutes;[922] and

457. According to the call sequence table and corresponding call data records, the above communications involved telephone numbers [Redacted],[923] [Redacted][924] and [Redacted],[925] which are attributable to Mr Kilolo.[926]

458. For two communications with D-26 on the morning of 20 August 2013, at 11:09 and 11:12, Mr Kilolo used telephone number [Redacted], which is generally attributed to Mr Mangenda.[927] However, having listened to the audio recordings

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[913] VWU Table, CAR-OTP-0078-0290 at 0295 (ICC-01/05-01/13-207-Conf-Anx, p. 6)*; see also* an e-mail of VWU confirming that Mr Kilolo was not authorized to contact D-26 during overnight adjournments in his testimonies, CAR-OTP-0072-0172.
[914] Call Sequence Table, CAR-OTP-0090-0630 at 0704, row 12; Call Data Record, CAR-OTP-0072-0391, row 46414.
[915] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 19; Call Data Record, CAR-OTP-0072-0082, row 4060.
[916] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 20; Call Data Record, CAR-OTP-0072-0082, row 4061.
[917] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 25; Call Data Record, CAR-OTP-0074-0897 at 0900; CAR-OTP-0077-1024, row 174; CAR-OTP-0079-1507; CAR-OTP-0079-1505; CAR-OTP-0079-1553 at 1566.
[918] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 26; Call Data Record, CAR-OTP-0077-1024, row 173; CAR-OTP-0079-1505; CAR-OTP-0079-1553 at 1566.
[919] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 27; Call Data Record, CAR-OTP-0072-0078, row 1963; CAR-OTP-0072-0396, row 962.
[920] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 28; Call Data Record, CAR-OTP-0072-0082, row 4107.
[921] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 30; Call Data Record, CAR-OTP-0072-0082, row 4179.
[922] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 31; Call Data Record, CAR-OTP-0083-1465, row 35; CAR-OTP-0083-1472, row 35.
[923] Call Sequence Table, CAR-OTP-0090-0630 at 0704, row 12; at 0705, row 27.
[924] Call Sequence Table, CAR-OTP-0090-0630 at 0705, row 31.
[925] Call Sequence Table, CAR-OTP-0090-0630 at 0705, rows 19, 20, 28 and 30; at 0706, row 33.
[926] *See* paras 292, 447 and 585.
[927] See para.565.

of the intercepted communications concerned, the Chamber is satisfied that Mr Kilolo was speaking on the telephone. The Chamber therefore concludes that Mr Kilolo used Mr Mangenda's telephone for the purpose of these two calls.

459. The Chamber is also satisfied that the call sequence table correctly attributes number [Redacted][928] to D-26. The Chamber notes that the number appears in Western Union records reflecting transfers to and by D-26.[929] However, in relation to number [Redacted], the Chamber has been furnished only with the Independent Counsel's analysis.[930] As explained elsewhere, the Chamber cannot, when verifying the attribution of telephone numbers, rely solely on the Independent Counsel's analysis. Rather, such a conclusion must be supported by independent evidence. Lacking that evidence, the Chamber cannot verify that the 5 August 2013 call involving number [Redacted] was between Mr Kilolo and D-26. As a result, the Chamber does not rely on this telephone call.

460. The evidence shows that Mr Kilolo spoke with D-26 during the court recess[931] on 20 August 2013, while D-23 was testifying, at 11:09 and 11:12. A call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[932] and thereafter formally submitted by the Prosecution,[933] indicates in the first and second rows from the top a connection between telephone numbers [Redacted] and [Redacted] between 11:09 and 11:11, and between 11:12 and 11:18.[934] The

[928] Call Sequence Table, CAR-OTP-0090-0630 at 0705, rows 19, 20, 25-28, 30 and 31; at 0706, row 33.
[929] Western Union record, CAR-OTP-0073-0273, tab 11, rows 3-6, column Y (indicating the number [Redacted], without the country code of the country the witness resides in).
[930] Independent Counsel Report, CAR-OTP-0088-0398 at 0417 (ICC-01/05-01/13-845-Conf-AnxC-Red, p. 20).
[931] Trial Chamber III, T-332-Red, p. 30, lines 5-6.
[932] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex A000 and Annex A042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes A001 to A041and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[933] Call log, CAR-OTP-0079-1507*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf AnxA042'.
[934] Call log, CAR-OTP-0079-1507 at 1507, rows 1 and 2 from top; *see also* ICC-01/05-01/13-6-Conf-AnxA042, p. 1, rows 1 and 2 from top; ICC-01/05-01/13-6-Conf-AnxA000, p. 1, rows 1 and 2 from top.

corresponding audio recordings, submitted by the Prosecution,[935] last 02:00 minutes and 06:11 minutes, respectively, and thus correspond to the call log entries concerned.

461. As evidenced by the audio recordings of the two intercepted telephone calls concerned, Mr Kilolo at the outset informed the witness of the purpose of his call by stating, '*Je voudrais un peu répéter les choses-là, si tu peux me suivre attentivement*'.[936] Mr Kilolo thereafter spoke, with almost no interruptions, about a number of salient points that came up in D-23's testimony during the preceding morning session. In this context, he provided the witness with information he was expected to give during his testimony. For the most part, D-26 remained silent and only occasionally sought clarification.

462. Mr Kilolo is recorded to have supplied information on, *inter alia*, the timing of Bozizé's rebellion[937] and the movements,[938] number[939] and composition of Bozizé's troops,[940] including the individual role of various officers.[941] Mr Kilolo

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[935] Audio recording, CAR-OTP-0074-0976 (ICC-01/05-01/13-6-Conf-AnxA001); Transcript of audio recording, CAR-OTP-0077-1356 (in French); Translated transcript of audio recording, CAR-OTP-0091-0064 (English translation); Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 (in French); Translated transcript of audio recording, CAR-OTP-0091-0068 (English translation).

[936] Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1357, lines 6-7 ('*I'd just like to go over those things again, if you could listen carefully'*).

[937] Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1357, lines 13-16 ('*La rebellion (...) a commencé au mois de novembre 2001. Novembre-décembre 2001. Bozizé fuit. Ils vont à Moyenne Sido*'/'*The rebellion (...) began in November 2001. November-December 2001. Bozizé fled. They went to Moyenne Sido'*).

[938] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1360, line 34; at 1361, lines 36-37 and 39 ('*ils ont lancé leur attaque sur Bangui le 25 octobre (...) arrivé à Bangui le 25 octobre, ils ont occupé tous les quartiers que je connais, de PK12 jusqu'au quatrième arrondissement… (...) pendant 5 jours*'/'*they launched their attack on Bangui on the 25th of October.(...) when they got to Bangui on the 25th of October, they occupied all the districts I know, from PK 12 to the Fourth Arrondissement ...(...) for five days'*).

[939] Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1357, lines 18-19 ('*ils étaient comme un bataillon d'environ 600 ou 700 éléments'*/'*they were like a battalion of around 600 or 700 men'*); Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1358, line 35 ('*on peut apprécier à 650 à peu près'*/'*I'd estimate it at around 650'*).

[940] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1360, lines 14-22 ('*la catégorie de gens qui faisaient partie de la rébellion, il y avait les Tchadiens (...), il y avait les déserteurs FACA (...) il y avait aussi des volontaires, des civils centrafricains, mais il y avait aussi… (...) …des Congolais qui étaient réfugiés, des anciens militaires de la … du Zaïre, qui étaient venus comme réfugiés. Et parmi eux, il y avait des cireurs qui étaient là'*/'*the type of people who were part of the rebellion, there were Chadians.(...)…there were FACA deserters,(...) there were also volunteers, Central African civilians, but there*

also recited information to D-26 concerning the crimes allegedly committed by the rebels' troops.[942] After this recitation, D-26 sought clarification: '*Mm, ils amenaient au Tchad?*'; Mr Kilolo replied, '*Oui, il y a beaucoup qui ramenaient ça au Tchad*'.[943] He also dictated the reasons for the commission of the crimes.[944]

463. On at least two occasions, Mr Kilolo highlighted specific points that he deemed most important[945] and asked the witness to adhere to a certain narrative. For example, in relation to the languages spoken by FACA troops, he emphasised, '*Et puis sans oublier que les militaires centrafricains qui parlaient lingala étaient très nombreux sous la présidence de Kolingba. Ça il ne faut pas oublier aussi.*'[946] Overall, Mr Kilolo scripted the course of D-26's testimony, setting out the

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were also ...(...)…Congolese who were refugees, former soldiers from ... from Zaïre, who had come as refugees. And among those, there were some shoe-shiners who were there').

[941] Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1358, lines 45-51 ('*le chef d'état-major, c'était (...) Sabati (...) Logistique: Francis Bozizé. Opérations: (...) Doutingayi, Transmission: Mbayi*'/'*the Chief of Staff was (...) Sabati (...) Logistics: Francis Bozizé. Operations: (...) Doutingayi. Transmissions: Mbayi'*); *see also* Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1360, lines 6-12.

[942] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1361, lines 41-50 ('*ils ont commis beaucoup de crimes. Viols de femmes (...) dans les maisons, dans les rues, pillages…euh…assassinats. (...) on veut prendre ton bien, tu résistes, on te tue. (...) Et…euh…les pillages…ils pillaient tous les matelas, les radios, et ils transportaient ça parfois dans des brouettes, des pousse-pousse, après qu'on mettait dans des véhicules, ils amenaient ça au Tchad*'/'*they committed a lot of crimes. Raping women (...) in houses and in the streets; pillaging ... erm ... killings. (...) they want to take your property, you resist, they kill you (...) And ... erm ... pillaging ... they pillaged all the mattresses and radios and carried them on wheelbarrows or carts, and then loaded them onto vehicles and took them all to Chad'*).

[943] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1361, lines 51-52 (*'D-26: Hmm, they took [it] to Chad? Kilolo: Yes. There were a lot of them who took it to Chad'*).

[944] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1361, lines 54-58 (*'il y a eu beaucoup de pillages aussi parce qu'ils n'avaient pas de salaires. Et puis le ravitaillement alimentaire aussi était insuffisant. (...) [E]t puis il faut aussi savoir que… il y avait des problèmes entre les ethnies en Centrafrique, cela a beaucoup joué aussi dans les crimes'*/'*there was also a lot of pillaging because they weren't being paid. And then food supplies were also inadequate. (...) [A]nd then it's also important to note that ... there were problems between ethnic groups in Central Africa: that was also a significant factor in the crimes'*).

[945] Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1357, lines 9-13 ('*Le plus important (...) c'est ça. Alors le plus…le plus (...) important c'est ça. La rébellion…'*/'*The most important thing (...) is that. So, the most...the most (...) important thing is that. The rebellion ...'*); *see also* Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1361, line 63 ('*pour moi, c'est ça le plus important en fait. C'est ça vraiment le plus important*'/'*that's the most important thing for me. That's really the most important thing'*).

[946] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1361, lines 60-61 (*'And then don't forget that during Kolingba's presidency, there were many Central African soldiers who spoke Lingala. That shouldn't be forgotten either'*).

specific questions to be asked and the corresponding replies to be given. The following excerpt illustrates the directive tone employed by Mr Kilolo:

> **Kilolo**: *Voilà. Et puis je vais aussi te demander pourquoi il y a eu des pillages. Là toi-même tu sais bien expliquer, parce qu'il n'y avait pas de ravitaillement. Pourquoi il y a eu des viols de femmes ? Il y avait aussi des règlements de comptes, les endroits où se commettaient les viols, pourquoi on tuait les gens, ainsi de suite. Et puis aussi, je vais aussi te demander: est-ce que c'est possible de distinguer un Centrafricain et un Congolais quand ils parlaient lingala – les soldats ? Bien sûr impossible …*
> **D-26**: *Mm-mm.*
> **Kilolo**: *… parce que c'est … c'est le même … le même langage. Voilà, donc en gros c'est ça. Je m'arrête là pour ne pas t'embrouiller.*[947]

464. Finally, Mr Kilolo instructed D-26 to testify untruthfully that the last time they spoke to each other was when he was handed over to the VWU: '*la dernière fois que tu m'as parlé c'est …lorsqu'on s'est vu… pour que je te présente ces gens-là, depuis lors tu n'as plus jamais eu de mes nouvelles évidemment*'.[948]

465. The Chamber is cognisant of the fact that the witness gave a statement to the Main Case Defence in 2012[949] in which selected issues rehearsed during the above calls were discussed by D-26, such as the composition of Bozizé's troops[950] and the occurrence of crimes.[951] Yet, the evidence above reveals Mr Kilolo's detailed and succinct directives to D-26, without express reference to or any regard for his prior statement, and with a view to influencing D-26 to testify in a certain manner on a number of substantive topics relevant to the charges in the Main Case and the witness's credibility. As noted above, D-26 remained silent for the most part, sought only limited clarifications and Mr Kilolo dominated the

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[947] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1362, lines 84-91 ('Kilolo: *There we are. And then I'm also going to ask you why there was pillaging. Now, you'll be able to explain that yourself: because there weren't any supplies. Why were women raped? There was also some settling of scores; the places where the rapes were committed; why people were killed; and so on. And then I'm also going to ask you. "Is it possible to tell a Central African from a Congolese when they- the soldiers - spoke Lingala?" Of course, it's impossible ...* D-26*: Mm-mm.* Kilolo: **...** *because it's ... it's the same ... it's the same language. So, basically, that's it. I'll stop there so I don't confuse you'*).
[948] Audio recording, CAR-OTP-0074-0977; Transcript of audio recording, CAR-OTP-0077-1359 at 1362, lines 95-96 (*'the last time you spoke to me was ... when we met ... so that I could introduce you to those people. Since then, you haven't heard anything further from me obviously'*).
[949] Prior recorded testimony, CAR-D21-0004-0546.
[950] Prior recorded testimony, CAR-D21-0004-0546 at 0550-0551.
[951] Prior recorded testimony, CAR-D21-0004-0546 at 0563-0568.

call, dictating, in a monologue, the information that he wished to elicit during D-26's upcoming testimony. Indeed, the Chamber notes Mr Kilolo's choice of words and the fact that the information was given to the witness in a brief time frame and in reference to the information provided by D-23 during the morning session.

466. The Chamber further notes Mr Kilolo's staccato-mannered dictation of specific information that was later given by D-23 in the morning session, before D-26's testimony that afternoon. For example, when describing the different elements among Bozizé's troops, D-23 used the expression 'shoe-shiners' ('*cireurs*').[952] In turn, Mr Kilolo instructed D-26 to testify that '*cireurs*' formed part of Bozizé's troops. Such information did not feature in D-26's 2012 statement to the Main Case Defence.[953] Likewise, as D-23 had indicated that Bozizé's troops numbered about '500 to 600 or 650',[954] Mr Kilolo instructed D-26 to testify that Bozizé's troops comprised between 600 and 700 persons. Ostensibly, D-26 did not have any information on the matter: '*excusez-moi, bataillon, c'est par rapport à l'effectif de l'armée de chaque pays. On peut apprécier à combien?*'[955] Finally, while D-26 had indicated in his prior statement that Bozizé's troops left Bangui on the third day of fighting,[956] he later testified, consistent with Mr Kilolo's instruction and D-23's testimony,[957] that Bozizé's troops left Bangui after five days.[958] The Chamber notes that the date on which Bozizé's troops departed Bangui was key to the Main Case Defence.

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[952] Trial Chamber III, T-332-Red, p. 19, line 7; Transcript of Hearing, 20 August 2012, ICC-01/05-01/08-T-332-CONF-FRA ET, p. 19, line 28.
[953] *See* Prior recorded testimony of D-26, CAR-D21-0004-0546 at 0550 and 0551.
[954] Trial Chamber III, T-332-Red, p. 18, line18; Transcript of Hearing, 20 August 2012, ICC-01/05-01/08-T-332-CONF-FRA ET, p. 19, line 7.
[955] Audio recording, CAR-OTP-0074-0976; Transcript of audio recording, CAR-OTP-0077-1356 at 1357, lines 33-34 (*'I'm sorry - a battalion is relative to the size of a particular country's army. Could you give me an idea of its size?'*).
[956] Prior recorded testimony, CAR-D21-0004-0546 at 0567.
[957] Trial Chamber III, T-332-Red, p. 41, lines 11-14.
[958] Trial Chamber III, T-332-Red, p. 81, lines 1-2.

467. The above demonstrates that Mr Kilolo's intervention was not aimed at merely 'recapitulating' or 'refreshing' information D-26 had provided in his 2012 statement.[959] Rather, Mr Kilolo's intention was to dictate specific information, an exact script, for D-26 to repeat in Court.[960]

468. During the afternoon session of 20 August 2013, D-26 testified on the exact same issues discussed with Mr Kilolo during the above-mentioned morning calls. While he followed Mr Kilolo's specifications as regards the composition of Bozizé's troops and the individual roles of officers therein, the Chamber notes that, on at least two occasions, D-26 deviated from the narrative rehearsed with Mr Kilolo, namely on the arrival of Bozizé's troops in Bangui[961] and the start of Bozizé's rebellion.[962] These deviations did not escape Mr Kilolo's notice.

469. As was the case with other witnesses, such as D-25 and D-54, Mr Kilolo called D-26 after his testimony that day, at 23:23, and spoke with him for approximately 23 minutes, despite the Court-ordered prohibition on contacting witnesses. The following day, 21 August 2013, Mr Kilolo revisited the issue of the arrival of Bozizé's troops in Bangui. D-26 acknowledged his mistake concerning the date of arrival, which he promised to rectify: '*If I said 25 November then that was an error on my part, but we are talking about a time some years ago. I can't be absolutely certain, but now I'm saying it was 25 October 2002*'.[963]

470. When asked by the Prosecution whether he had any contact with the Main Case Defence after he finished his testimony the day before, D-26 denied any such contact: '*I didn't have any contact with anyone since yesterday. I'm staying at the*

[959] Kilolo Defence Submission, ICC-01/05-01/13-600-Corr2-Red2, para. 209.
[960] In this regard, it is noted that D-26 was not present during D-23's earlier testimony – this is prohibited by Rule 140(3) of the Rules.
[961] Trial Chamber III, T-332-Red, p. 79, line 7; *see also* p. 81, lines 11-13.
[962] Trial Chamber III, T-332-Red, p. 65, lines 19-22.
[963] Trial Chamber III, T-333-Red, p. 66, lines 21-23.

hotel. I haven't had contact with anyone'.[964] Further, when asked whether anyone advised him on the date of the arrival of Bozizé's troops in Bangui, D-26 also denied having been briefed about the specific date:

> *No one talked to me about that date. That's what I experienced myself. (…) But if I said that yesterday, today – today I changed the date, but the date – I can confirm the date today. That was the date. Yesterday's date, well, since – you see, it was a long time ago, so I might have made a mistake*.[965]

471. While the Chamber accepts the Kilolo Defence argument that a witness may spontaneously correct details of his testimony,[966] the Chamber is of the view that this is evidently not the case in this particular instance. The Chamber draws upon D-26's indecisive answer on this very question in his 2012 statement ('*C'était le 25 octobre ou novembre 2002*'),[967] Mr Kilolo's instructions during the court recess on 20 August 2013, at 11:00, and Mr Kilolo's further call at 23:23. In the light of this evidence, the Chamber can only conclude that the witness acted as instructed by Mr Kilolo.

472. Lastly, during his testimony on 22 August 2013, D-26 alleged that he knew neither D-23,[968] nor Mr Kokaté, even though he confirmed that he had heard Mr Kokaté's name in relation to the FACA.[969] Western Union records reveal that D-26 received, on 23 October 2006, a sum of money from Mr Kokaté and that, on 14 November 2008, he sent a sum of money to Mr Kokaté.[970] However, contrary to the Prosecution's allegations,[971] the Chamber cannot conclude, on the basis of the Western Union records alone, that D-26 positively knew Mr Kokaté. As was seen in relation to other witnesses, such as D-64 and P-272, senders may execute transfers without necessarily knowing the recipient and *vice versa*. The same

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[964] Trial Chamber III, T-333-Red, p. 69, lines 9-10. The witness repeated the same the following day, Trial Chamber III, T-334-Red, p. 62, lines 7-11 and 14-16.
[965] Trial Chamber III, T-333-Red, p. 69, lines 15-23.
[966] Kilolo Defence Submission, ICC-01/05-01/13-600-Corr2-Red2, para. 211.
[967] Prior recorded testimony, CAR-D21-0004-0546 at 0559 (*'It was the 25th of October or November 2002'*).
[968] Trial Chamber III, T-334-CONF, p. 65, lines 4-5.
[969] Trial Chamber III, T-334-CONF, p. 62, line 21 to p. 64, line 16.
[970] Western Union record, CAR-OTP-0070-0005, tab 4 , rows 23 and 41.
[971] Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 208.

goes for the allegation that D-26 knew D-23. The Chamber lacks evidence to verify that the two individuals knew each other. Absent any evidence to demonstrate that D-26 knew the two individuals concerned, the Chamber cannot find that D-26 falsely testified in this regard.

473. On the evening of 22 August 2013, Mr Kilolo was twice in telephone contact with D-26 for approximately 27 minutes, as set out above. When questioned by the Prosecution on prior contacts with the Main Case Defence the following day, 23 August 2013, the witness testified, as instructed by Mr Kilolo, that, all in all, he had received only two telephone calls from Mr Kilolo and met with him only once.[972] He also denied again having had any recent contacts with Mr Kilolo.[973]

474. In the light of the evidence discussed above, in particular regarding the telephone contacts with the witness and the content of the intercepted telephone calls dated 20 August 2013, the Chamber is of the view that the witness testified untruthfully, upon the instruction of Mr Kilolo, and that Mr Kilolo dictated the content of D-26's testimony, so as to stay consistent with the evidence provided by other witnesses.

b) Overall Conclusions Regarding D-26

475. The Chamber finds that D-26 testified in the Main Case with regard to certain issues relevant to the Main Case that had been dictated to him by Mr Kilolo, in particular concerning the movements and composition of Bozizé's troops. He also untruthfully testified about his contacts with the Main Case Defence, as instructed by Mr Kilolo.

476. The Chamber finds that, despite the contact prohibition imposed by Trial Chamber III, Mr Kilolo had extensive telephone contacts with D-26, before and

[972] Trial Chamber III, T-335-Red, p. 15, lines 3-5; p. 16, lines 2-6 and 12-14; p. 17, lines 2-4.
[973] Trial Chamber III, T-335-Red, p. 19, lines 5-7.

during his testimony. Mr Kilolo instructed D-26 on specific topics pertaining to the subject-matter of the Main Case, such as the movements and composition of the Bozizé's troops. Mr Kilolo expressly instructed D-26 to adhere to a certain narrative and intervened correctively when the witness deviated from the agreed script. In this regard, Mr Kilolo also scripted the course of D-26's testimony, indicating the questions he would ask and the corresponding replies to be given. Mr Kilolo also instructed the witness to lie about the nature and number of his contacts with the Main Case Defence.

8. Witness D-25

477. Witness D-25 was called by the Main Case Defence and testified under this pseudonym. However, he was not called to testify in the present case.

a) Discussion

478. The evidence shows that, on 9 August 2013, Mr Kilolo transferred USD 132.61 to D-25. The Western Union records reflect that Mr Kilolo transferred the money on that day, at 12:41 (local time)[974] and D-25 collected it at 13:34 (local time).[975]

479. The evidence further shows that the witness was paid an unknown amount of money during a mission of the Main Case Defence to Brazzaville from 9 to 17 August 2013 (dates of departure from and return to The Hague). It is uncontested that this mission took place, as evidenced by the ICC application form for approval of the planned mission, signed by Mr Kilolo. Its stated purpose was, *inter alia*, to facilitate the handover of witnesses to the VWU prior

[974] Western Union record, CAR-OTP-0074-0855, tab 40, line 11, column G. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferor.
[975] Western Union record, CAR-OTP-0074-0855, tab 40, line 11, column AA. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferee.

to their testimony.[976] According to the VWU's records, six witnesses were handed over during that mission, including D-25.[977] It is equally uncontested that, in that application, the Main Case Defence requested an advance of EUR 3,400 to cover its expenses.[978] The Chamber also relies on a document seized from Mr Bemba's detention cell. A Registry certified photocopy of this document was produced on 19 December 2013 in the presence of the Independent Counsel and provided to Pre-Trial Chamber II.[979] The document details the costs incurred during the August 2013 mission to Brazzaville, such as EUR 3,850 for '*7 amis du village*', including [Redacted].[980] In the light of the above, in particular, the fact that the document was seized from Mr Bemba's personal belongings in his ICC detention cell, the Chamber is of the view that it is reliable.

480. Turning to the document's content, the Chamber understands the mention of [Redacted] to refer to D-25. It arrives at this conclusion when assessing the document in the light of an intercepted conversation between Mr Kilolo and Mr Bemba on 23 August 2013 on the privileged line of the ICC Detention Centre,[981] in which Mr Kilolo used this expression several times.[982]

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[976] ICC Document, CAR-D21-0003-0162 at 0164.
[977] VWU Table, CAR-OTP-0078-0290 at 0295-0296 (ICC-01/05-01/13-207-Conf-Anx, pp. 6-7).
[978] ICC Document, CAR-D21-0003-0162 at 0165.
[979] *See* Registry stamp on the bottom of Financial document, CAR-OTP-0082-0334 (ICC-01/05-01/13-374-Conf-Anx14).
[980] Financial document, CAR-OTP-0082-0334 (ICC-01/05-01/13-374-Conf-Anx14, p. 1) ('*7 friends from the village*').
[981] The relevant call log, initially provided by the Dutch authorities to Pre-Trial Chamber II (Order of 21 November 2013, p. 3). The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II), and thereafter formally submitted by the Prosecution (Call log, CAR-OTP-0079-1509*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'), indicated on the first row from the top a connection between Mr Bemba's telephone number [Redacted] (*see* para. 297) and Mr Kilolo's telephone number [Redacted] (*see* para. 292) between 07:51 and 07:54 (Call log, CAR-OTP-0079-1509 at 1509, row 1 from top). The corresponding audio recording, submitted by the Prosecution, lasts 03:12 minutes and thus duly corresponds to the call log entry concerned (Audio recording, CAR-OTP-0074-0996 (ICC-01/05-01/13-6-Conf-AnxB001); Transcript of audio recording, CAR-OTP-0079-1644 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0079-1732 (French translation)).

481. Taking into account the costs specified in the document, the Chamber is satisfied that D-25 ([Redacted]) received an unknown part of the total EUR 3,850. However, the VWU produced a document that contains the following remark by the VWU involving, *inter alia*, D-25:

> *Following an agreement between the Registry and the Defence, the VWU advanced 2,000 EUR to the Defence on 7 August 2013 to finance the travel of these video link witnesses to the location of testimony. In an email sent on 6 August 2013 the Defence provided the VWU with the breakdown of costs.*[983]

482. In the light of the evidence as a whole, the Chamber does not conclude that the unknown sum of money was paid in exchange for the witness's testimony during the Brazzaville mission. Indeed, the Chamber cannot exclude the possibility that this money was justifiably paid for costs the witness incurred during his travel to the location of testimony.

483. For the same reasons, the Chamber cannot establish that the payment of USD 132.61 on 9 August 2013 was illegitimate. It cannot be excluded that it was the unknown sum of money, or at least part thereof, which the Main Case Defence legitimately transferred to D-25 in connection with the Brazzaville mission. This applies all the more as the transfer was effected on the first day of

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[982] The Chamber is convinced that Mr Kilolo, in his conversation with Mr Bemba, whom he continually updated (Bemba Defence Submission, ICC-01/05-01/13-599-Conf, para. 145) made the following utterances: *'Et puis immédiatement on prend {Redacted] dans l'après-midi'/'And then immediately, we'll take [Redacted] in the afternoon.'* (Audio recording, CAR-OTP-0074-0996; Translated transcript of audio recording, CAR-OTP-0079-1732 at 1736, line 80) and thereafter *'Donc voilà, voilà, en tout cas, pour [Redacted], j'ai envoyé…on a fait un email chez PETER, avec les points saillants qu'il ne doit pas oublier quoi'/'So there you go, there you go, in any event for [Redacted], I have sent … an e-mail was sent to Peter, with the salient points that he mustn't forget, you know?'* (Audio recording, CAR-OTP-0074-0996; Translated transcript of audio recording, CAR-OTP-0079-1732 at 1736, lines 87-88). It is evident to the Chamber that Mr Kilolo made reference to a defence witness in relation to whom Mr Kilolo had communicated with co-counsel Mr Haynes with a view to stressing the most important points. Indeed, as evidenced by the case records of the present case and that of the Main Case, Friday, 23 August 2013, was the last day of D-26's testimony (ICC-01/05-01/13-139-Conf-Exp-AnxB, pp. 12-13, row 27; ICC-01/05-01/08-T-335-CONF-ENG ET). The examination of D-25 commenced on Monday, 26 August 2013 and was led, on behalf of the Main Case Defence, by Mr Haynes (ICC-01/05-01/13-139-Conf-Exp-AnxB, p. 13, row 28; T-336-CONF; T-336-Red). Taking into account the witness schedule at the time of this intercepted telephone conversation, the Chamber concludes that the expression [Redacted] was used to refer to witness D-25. This evidence is further corroborated by Mr Bemba conceding that in this particular communication he discussed with Mr Kilolo legal strategy and evidence to be elicited from the witness referred to as *[Redacted]* (Bemba Defence Submission, ICC-01/05-01/13-599-Conf, para. 145).

[983] VWU Table, CAR-OTP-0078-0290 at 0295 (ICC-01/05-01/13-207-Conf-Anx, p. 6).

this mission and the payment amount roughly corresponds to what could be reasonably expected as an advance for such a mission.

484. The evidence shows that after the VWU cut-off date of 15 August 2013[984] and prior to the witness's testimony, Mr Kilolo called D-25 several times. The Chamber notes in particular the following contacts:

- 19 August 2013, at 21:08, for approximately 5 minutes;[985]
- 23 August 2013, at 08:29, for approximately 6½ minutes;[986] and
- 25 August 2013, the eve of the witness's testimony, at 21:16, for 4 minutes,[987] and at 21:22, for approximately 5½ minutes.[988]

485. D-25 testified before Trial Chamber III *via* video-link on 26 and 27 August 2013.[989] The telephone communications continued throughout his testimony, as the call sequence table and corresponding call data records shows. Of particular importance to the Chamber are the following telephone calls:

- 26 August 2013, at 23:42, for almost 1½ minutes,[990] and at 23:45, for almost 28 minutes;[991] and
- 27 August 2013, at 06:59, for approximately 4½ minutes.[992]

486. According to the call sequence table, and corresponding call data records, the above communications involved telephone numbers [Redacted] and [Redacted],

[984] VWU Table, CAR-OTP-0078-0290 at 0295 (ICC-01/05-01/13-207-Conf-Anx, p. 6).
[985] Call Sequence Table, CAR-OTP-0090-0630 at 0700, row 62; Call Data Record, CAR-OTP-0083-1465, row 16; CAR-OTP-0083-1472, row 16.
[986] Call Sequence Table, CAR-OTP-0090-0630 at 0700, row 64; Call Data Record, CAR-OTP-0072-0082, row 4188.
[987] Call Sequence Table, CAR-OTP-0090-0630 at 0700, row 66; Call Data Record, CAR-OTP-0083-1465, row 82; CAR-OTP-0083-1472, row 82.
[988] Call Sequence Table, CAR-OTP-0090-0630 at 0700, row 68; Call Data Record, CAR-OTP-0083-1465, row 87; CAR-OTP-0083-1472, row 87.
[989] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 26 August 2013, ICC-01/05-01/08-T-336-CONF-ENG ET ('T-336-CONF'); Transcript of Hearing, 27 August 2013, ICC-01/05-01/08-T-337-CONF-ENG-ET; ICC-01/05-01/08-T-336-Red-ENG WT ('T-336-Red'); ICC-01/05-01/08-T-337-Red-ENG WT ('T-337-Red').
[990] Call Sequence Table, CAR-OTP-0090-0630 at 0701, row 70; Call Data Record, CAR-OTP-0083-1465, row 136; CAR-OTP-0083-1472, row 136.
[991] Call Sequence Table, CAR-OTP-0090-0630 at 0701, row 71; Call Data Record, CAR-OTP-0083-1465, row 137; CAR-OTP-0083-1472, row 137.
[992] Call Sequence Table, CAR-OTP-0090-0630 at 0701, row 72; Call Data Record, CAR-OTP-0083-1465, row 145; CAR-OTP-0083-1472, row 145.

attributable to Mr Kilolo,[993] on the one hand, and [Redacted], on the other hand. The Chamber notes that the call sequence table attributes the number [Redacted] to D-25, relying exclusively on the analysis of the Independent Counsel.[994] However, the Chamber cannot rely solely on the Independent Counsel's attribution and requires independent verification. Since the Chamber has not been provided with additional corroborating evidence allowing it to confirm the correct attribution of the number to D-25 it does not rely on the relevant information set out in the call sequence table and corresponding call data records involving the telephone contacts set out above.

487. The evidence also shows that on the first day of D-25's testimony, 26 August 2013 Mr Mangenda had a telephone conversation with Mr Kilolo at 14:14, who had not been present in the courtroom that day. A call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[995] and thereafter formally submitted by the Prosecution,[996] indicates in the 5th row from the bottom a connection between telephone number [Redacted], which is attributable to Mr Kilolo,[997] and [Redacted] between 14:14 and 14:27.[998] The corresponding audio recording, submitted by the Prosecution,[999] lasts 12:51 minutes and thus duly corresponds to the call log entry concerned. The Chamber is satisfied that the telephone number [Redacted] is attributable to Mr Mangenda, as he

[993] *See* paras 447 and 585.
[994] Independent Counsel Report, ICC-01/05-01/13-845-Conf-AnxC-Red, p. 22 (CAR-OTP-0088-0398 at 0419).
[995] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex A000 and Annex A042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes A001 to A041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[996] Call log, CAR-OTP-0079-1507; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf AnxA042'.
[997] *See* para. 292.
[998] Call log, CAR-OTP-0079-1507 at 1508, row 5 from the bottom; *see also* ICC-01/05-01/13-6-Conf-AnxA042, p. 2, row 5 from bottom; ICC-01/05-01/13-6-Conf-AnxA000, p. 1, row 2 from the bottom .
[999] Audio recording, CAR-OTP-0074-0991 (ICC-01/05-01/13-6-Conf-AnxA037); Transcript of audio recording, CAR-OTP-0080-0365 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0080-0228 (French translation).

confirmed in an interview with the Prosecution.[1000] Moreover, Mr Mangenda is referred to by his interlocutor as '*Jean-Jacques*', Mr Mangenda's first name.[1001]

488. During this intercepted conversation, Mr Mangenda updated Mr Kilolo on the progress of D-25's testimony. Mr Kilolo asked whether D-25 had followed his instructions. [1002] Mr Mangenda replied, '*oui, oui il a bien suivi [les enseignements]*'.[1003] In this context, the Kilolo Defence alleges a translation error in that Mr Mangenda and he did not use the word '*enseignement*' but '*renseignement*', [1004] while the Mangenda Defence avers that the expression '*enseignement*' 'indicates no conduct going beyond permissible witness interviewing' as practised at *ad hoc* international tribunals or in the US legal system.[1005] Without entering a finding on the accuracy of the translation from Lingala, the Chamber observes nevertheless the discrepancy in the explanations offered by the two participants of the telephone call: while Mr Kilolo alleges that they used another word altogether, Mr Mangenda seems to accept the translation but considers it to be indicative of the legitimate conduct of witness interviewing. In the view of the Chamber, even if Mr Kilolo's translation were to be accepted, this does not alter what the two accused actually meant. Contrary to the allegation of the Mangenda and Kilolo Defence, the Chamber is convinced that both accused refer to the instructions which Mr Kilolo gave the witness as part of the illicit coaching. It bases this conclusion on the fact that, when asked whether the witness had followed the '*enseignement*', Mr Mangenda affirmed

[1000] Article 55(2) Statement of Mr Mangenda, CAR-OTP-0074-0717 at 0746, line 998; at 0747, lines 1021-1024.
[1001] Audio recording, CAR-OTP-0074-0991, Translated transcript of audio recording, CAR-OTP-0080-0228 at 0230, line 4.
[1002] Audio recording, CAR-OTP-0074-0991; Translated transcript of audio recording, CAR-OTP-0080-0228 at 0231, line 59.
[1003] Audio recording, CAR-OTP-0074-0991; Translated transcript of audio recording, CAR-OTP-0080-0228 at 0231, line 60 (*'yes, he did indeed follow [the instructions]'*).
[1004] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 153; *see* Audio recording, CAR-OTP-0074-0991; Transcript of audio recording CAR-OTP-0080-0365 (in French and Lingala) at 0367, line 56; Translated transcript of audio recording, CAR-OTP-0800-0228 at 0231, line 59.
[1005] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, paras 126-132.

and answered by explaining the substance of the witness's testimony.[1006] It is clear from the overall context of the conversation that this is not a case of 'putting a party's theory of the case to a witness', as argued by the Mangenda Defence.[1007] Both Mr Kilolo and Mr Mangenda, expected D-25 to state certain facts; the discussion is not about the implementation of a specific technique in interviewing witnesses but about whether D-25 stated precise facts. In any event, in no circumstances does permissible witness coaching encompass specific instructions on the substance of the testimony.

489. Mr Mangenda gave an account of D-25's testimony. The following excerpt illustrates Mr Kilolo's partial disagreement with Mr Mangenda's assessment regarding certain discrete aspects of D-25's testimony as, according to Mr Kilolo, the witness had failed to follow his instructions on these points. Mr Mangenda, in turn, remarked that it was better that D-25 had not mentioned certain information as Main Case Defence co-counsel, Peter Haynes, had not specifically asked for these points and that, otherwise, '*ça peut para[î]tre un peu suspect*'.

> **Mangenda**: *…mais de notre côté vraiment je dirai que…en tout cas il a fait au moins, il a bien fait à 90% …*
> **Kilolo**: *Euh…pour moi non, parce que normalement il fallait…il n'a pas réussi, il y a un autre détail très important (…)*
> **Mangenda**: *Cela allait fragiliser…s'il disait cela ça allait entamer sa crédibilité, ça allait démontrer que nous…nous…nous…nous…*
> **Kilolo**: *Non! Pas automatiquement, après une question…qui l'amène…*
> **Mangenda**: *Bon, je ne…*
> **Kilolo**: *…à répondre à ça.*
> **Mangenda**: *Mais même…mais en tout cas la façon dont le blanc a conduit, si tu étais là, il a commencé à poser des questions, il devait répondre. Mais lui il se limitait…*
> **Kilolo**: *Mh.*
> **Mangenda**: *…à répondre aux questions qu'on lui posait. Maintenant là…euh…on te pose la question A, mais toi, tu réponds jusqu'à Z. Ça démontre déjà…euh… ça peut para[î]tre un peu suspect quoi.*[1008]

[1006] Audio recording, CAR-OTP-0074-0991; Translated transcript of audio recording, CAR-OTP-0080-0228 at 0231, lines 60-72.
[1007] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, para. 127.
[1008] Audio recording, CAR-OTP-0074-0991; Translated transcript of audio recording, CAR-OTP-0080-0228 at 0232, lines 78-96 ('Mangenda: *...but from our side, really, I'd say that...in any event, he did at least, he really did 90%...*Kilolo: *Erm...for me, no, because normally it would need...he didn't manage, there's another very important detail (...)* Mangenda: *That was going to weaken...if he were to say that that would affect his credibility, that would show that we...we...we...we...* Kilolo: *No! Not automatically, after a question...which*

490. At another juncture in the conversation, Mr Mangenda reported that D-25 had volunteered that Mr Bemba spoke to his troops in Lingala as well as French. Mr Mangenda described the reaction of the Trial Chamber III Judges and participants in the courtroom as follows:

> *juste quand lui-même a déclaré en français et en Lingala, tu vois cela a fait bouger les dames-là avec quelques sourires, parce qu'à ce moment-là ils savaient que de ce côté-là si ça corroborait, cela veut dire qu'un entretien s'était tenu secrètement. (…) Mais il n'y avait pas moyen pour qu'ils établissent que… il y a même du côté du Bureau du Procureur, tu vois, il y avait aussi des sourires.*[1009]

It follows from this statement that Mr Mangenda surmised that the Trial Chamber III Judges suspected that D-25 had been illicitly coached but had no means to verify their suspicions. From this conversation, the Chamber understands that the accused were keen on making sure that the witness stayed on script, but were also concerned that their illicit activities may be suspected.

491. Mr Kilolo's illicit coaching efforts in relation to D-25 are further evidenced by a conversation between him and Mr Mangenda on 27 August 2013, after D-25's testimony had concluded. A call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1010] and thereafter formally submitted by the Prosecution,[1011] indicates in the 4th row from the bottom a connection between telephone numbers [Redacted] and [Redacted] between 19:05 and 19:15.[1012] The

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leads him… Mangenda: *Well, I don't …*Kilolo: *…to answer that.* Mangenda: *But even…but in any case, the way in which the white man conducted, if you were there, he started to ask questions, he had to respond. But he restricted himself…* Kilolo: *Mmm.* Mangenda: *…to answering the questions he was asked. Now there…erm…you are asked question A, but you, you reply as far as Z. That already shows…erm…that could look a bit suspicious don't you think?'*).

[1009] Audio recording, CAR-OTP-0074-0991; Translated transcript of audio recording, CAR-OTP-0080-0228 at 0230, lines 28-35 (*'just when he himself stated in French and Lingala, you see that made those women smile, because at that moment, they knew that from this side if that was corroborated, that means that a meeting was held in secret. (...) But there were no grounds for them to establish that…it's the same on the prosecution side, you see, there were also smiles'*).

[1010] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex A000 and Annex A042 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes A001 to A041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.

[1011] Call log, CAR-OTP-0079-1507*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf AnxA042'.

[1012] Call log, CAR-OTP-0079-1507 at 1508, row 4 from the bottom; *see also* ICC-01/05-01/13-6-Conf-AnxA042, p. 2, row 4 from the bottom; ICC-01/05-01/13-6-Conf-Anx000, p. 1, last row.

corresponding audio recording, submitted by the Prosecution,[1013] lasts 09:27 minutes and thus duly corresponds to the call log entry concerned.

492. The Chamber is satisfied that the call log correctly attributes telephone number [Redacted] to Mr Kilolo, as it recognises Mr Kilolo's voice in the recording concerned. This finding is further corroborated by the following facts: (i) there are similar calls in evidence between this number and the telephone number attributable to Mr Mangenda;[1014] (ii) the content of the conversation is particular and specific to the judicial developments in the Main Case, so much so that it is reasonable to conclude that Mr Kilolo is speaking with Mr Mangenda; and (iii) Mr Mangenda refers to his interlocutor as '*confrère*',[1015] just as he refers to Mr Kilolo in numerous other conversations. Likewise, and despite the fact that the country code is not reflected in the call log, the Chamber finds that telephone number [Redacted] is correctly attributed to Mr Mangenda.[1016]

493. In that telephone conversation, Mr Kilolo expressed satisfaction that D-25 had not revealed an illicit coaching meeting and emphasised that he had given D-25 clear instructions to stay on script.

> **Mangenda**: *Il avait complètement nié…on a insisté…est-ce que…vous…avez eu une rencontre seulement avec Maître Kilolo deux fois, est-ce que Maître Kilolo ne vous avez pas présenté à une personnel à un expert militaire (…) pour discuter de l'affaire? Non moi je n'ai vu personne, tout et tout. Bon, là, là aussi ça peut passer, donc, ça peut être soit un oubli bon ou bien en fait…*
> **Kilolo**: *Bon ce qui est bien au moins il a nié, parce-que ça c'était vraiment une erreur grave. Ce qui est bien c'est qu'il a nié, parce-que tu t'imagines s'il avait accepté et puis qu'il dise qu'on était à trois, moi,*

[1013] Audio recording, CAR-OTP-0074-0992 (ICC-01/05-01/13-6-Conf-AnxA038); Transcript of audio recording, CAR-OTP-0079-0075 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0079-0114 (French translation).
[1014] *For example*, Call log, CAR-OTP-0079-1509 (ICC-01/05-01/13-6-Conf-AnxB000), rows 2-4; Audio recording, CAR-OTP-0074-0997 (ICC-01/05-01/13-6-Conf-AnxB002); Translated transcript of audio recording, CAR-OTP-0080-0245 (French translation); Audio recording, CAR-OTP-0074-0998 (ICC-01/05-01/13-6-Conf-AnxB003); Translated transcript of audio recording, CAR-OTP-0082-0107 (French translation); Audio recording, CAR-OTP-0074-0999 (ICC-01/05-01/13-6-Conf-AnxB004); Transcript of audio recording, CAR-OTP-0077-1383 (in French). These conversations go into specifics particular to the Bemba case and the Main Case Defence.
[1015] Audio recording, CAR-OTP-0074-0992, Translated transcript of audio recording, CAR-OTP-0079-0114 at 0116, line 4.
[1016] *See* para. 487.

lui et (…)…tu t'imagines un peu? (…) Oui, mais parce-que le problème est que je lui avais donné des instructions claires, c'est-à-dire que tout ce qui n'est pas clair, vraiment qu'il ne s'engage pas dans cette discussion-là.[1017]

494. The Chamber attaches great weight to Mr Kilolo's admission that the reason D-25 had testified to his satisfaction was due to his 'clear instructions'. The evidence speaks for itself. The Chamber cannot but conclude that Mr Kilolo admitted to having illicitly coached D-25.

495. Mr Mangenda also reported that Mr Bemba was very pleased with D-25's testimony: *'[le client] a vu vraiment que (…) un véritable travail de couleurs a été effectivement fait (…) lui-même il a vraiment senti cela'*.[1018] The use of the expression '*travail de couleurs'* also features in discussions concerning other witnesses, such as D-54 and D-13, and is of particular significance.[1019] As was the case with those witnesses, the Chamber understands that Mr Mangenda refers to the illicit coaching of D-25 prior to and/or during his testimony. This conclusion is further reinforced by Mr Kilolo's comment that Mr Bemba must have realised it because of the precision with which the witness had testified: '*oui, ça il a dû se rendre compte, parce que comment quelqu'un peut lui sortir des vérités? (…) Et puis surtout avec cette precision-là'*.[1020] As a consequence, the Chamber finds the Mangenda Defence's argument unconvincing that the use of the term '*couleurs'* relates to

[1017] Audio recording, CAR-OTP-0074-0992; Translated transcript of audio recording, CAR-OTP-0079-0114 at 0120, lines 153-160; at 0121, lines 179-180 ('Mangenda: *He absolutely denied … he was pressed … did … you … have a meeting only with Mr Kilolo twice, did Mr Kilolo not introduce you to a member of the personnel, to a military expert (…) to discuss the case? No, I didn't see anyone, that's it. Well, there again, that can happen, so that could maybe be a lapse of memory or well, in fact …* Kilolo: *Well, it's good, at least, that he denied it, because that was really a serious error. It's good that he denied it, because just imagine if he had agreed and then had said that there were three of us, me, him and (…)... Can you imagine? (…) Yes, but because the problem is that I had given him clear instructions, that is that with regard to anything that is not clear, really that he shouldn't engage in that discussion'*).

[1018] Audio recording, CAR-OTP-0074-0992; Translated transcript of audio recording, CAR-OTP-0079-0114 at 0118 (as amended in CAR-OTP-0079-0118_01), lines 104-107, ('*[the client] really saw that (…) thorough colour work was effectively carried out (…) he himself truly felt that'*).

[1019] *See* paras 748-761.

[1020] Audio recording, CAR-OTP-0074-0992; Translated transcript of audio recording, CAR-OTP-0079-0114 at 0119, lines 108-111 ('*yes, he must have noticed that, because how can someone tell him those facts? (…) And especially with such precision'*).

pre-testimony meetings where prior statements were merely 'reviewed'.[1021] Also, it cannot be plausibly interpreted to refer to colour codes by way of which strong points in the witnesses' testimonies were highlighted by the Main Case Defence, as alleged by the Kilolo Defence.[1022] In the light of the above, the Chamber concludes that, in the opinion of the accused, D-25's precision was achieved through detailed illicit coaching prior to and/or during his testimony. Finally, apart from Mr Kilolo and Mr Mangenda confirming the illicit coaching activities involving D-25, the Chamber also concludes from the above conversation that Mr Bemba closely followed the illicit coaching activities of Mr Kilolo.

496. Despite the Chamber's decision not to rely on the telephone contacts listed by the Prosecution in its call sequence table, together with the corresponding call data records, the Chamber nevertheless infers that Mr Kilolo and D-25 were in telephone contact after the VWU cut-off date and/or during his testimony in the Main Case. The Chamber bases this on the following two considerations.

497. First, Mr Kilolo's illicit coaching activities after the VWU cut-off date and/or during many witnesses' testimonies – which were aimed at confirming and adding instructions concerning their expected evidence – demonstrate a clear pattern of conduct. The Chamber recalls that Mr Kilolo coached many witnesses, such as D-15, D-23 and D-54, by telephone after the VWU cut-off date and/or during their Main Case testimonies. Such activities were ongoing during the same time period as D-25's testimony. Indeed, in the context of D-29's testimony and as discussed below, Mr Kilolo indicated to Mr Mangenda that it was necessary to illicitly coach witnesses in the immediate run-up to their

[1021] *See*, particularly, Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, paras 133-134 and 190.
[1022] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 155.

testimonies, in order to ensure that they remembered and abided by the agreed script.[1023]

498. Second, the Chamber recalls the telephone conversation between Mr Kilolo and Mr Mangenda on 26 August 2013 during which Mr Kilolo expressed his partial dissatisfaction with D-25's evidence on the first day of his testimony. This must be contrasted with the unanimous satisfaction of the accused, including Mr Kilolo, with D-25's testimony, in particular, its precision, after the second day of his testimony. Indeed, in a telephone conversation on 27 August 2013, Mr Kilolo and Mr Mangenda discussed how the precision in D-25's testimony directly resulted from Mr Kilolo's illicit coaching activities.

499. In the light of the above, in particular, the clear pattern of instructions to witnesses after the VWU cut-off date and/or during their testimonies, and the change in Mr Kilolo's opinion of D-25's testimony, which he claimed was the result of his own illicit coaching activities, the Chamber is satisfied that Mr Kilolo contacted and illicitly coached D-25 after the VWU cut-off date and/or during his testimony.

500. Lastly, the Chamber notes that, during his second day of testimony, D-25, while admitting that certain expenses had been paid by the VWU, denied any payment from the Main Case Defence, including legitimate reimbursement of travel or other expenses.[1024] The Chamber notes that, although the Prosecution first asked D-25 if he had received any benefits '*in exchange for the testimony*',[1025] it then asked more generally if D-25 had received anything from the Main Case Defence, whether as reimbursement of expenses or any form of support.[1026] In

[1023] *See* paras 535-536.
[1024] Trial Chamber III, T-337-Red, p. 40, lines 17-19.
[1025] Trial Chamber III, T-337-Red, p. 40, lines 3-4.
[1026] Trial Chamber III, T-337-Red, p. 40, lines 13-17 ('*Well, I might put the question to you in another manner. Now, apart from the logistics unit, did you ever receive any sum of money from the members of the Defence team, whether it be for reimbursement of expenses or as a form of support for your testimony?*').

the light of the evidence demonstrating the payment of at least USD 132.61, D-25 did not tell the truth.

501. As the Chamber explained in the context of D-57 and D-64,[1027] it notes that other witnesses called by the Main Case Defence were told to deny any payments, including those for legitimate purposes, upon Mr Kilolo's instruction. The Chamber considers that this demonstrates a pattern of conduct on the part of Mr Kilolo. D-25's categorical denial, even of a legitimate payment, is consistent with such instructions. Indeed, the Chamber cannot deduce any other reason why D-25 would have lied about legitimate payments from the Main Case Defence. The Chamber further notes the intercepted communications in which the accused express their satisfaction with the fact that D-25 abided by instructions to stay on script, while at the same time speculating about the suspicions of the Judges and participants concerning their illicit coaching of D-25. In this vein, the Chamber recalls that Mr Kilolo's illicit coaching activities resulted in scripting the entirety of the witnesses' testimonies, including in relation to the questions anticipated from the Prosecution and on matters relating to their credibility. As demonstrated by his instructions to other witnesses, as well as their consistent denial of all Main Case Defence payments, including legitimate ones, the Chamber considers that it was a regular feature of the script Mr Kilolo illicitly rehearsed with the witnesses.

502. Accordingly, in the light of the above, in particular, the pattern of instructions concerning payments and the fact that D-25, without other explanation, categorically denied such payments, the Chamber finds, as the only reasonable conclusion available on the evidence, that Mr Kilolo instructed D-25 to falsely deny all payments, including those which may have been legitimate, from the

[1027] *See* paras 250 and 278.

Main Case Defence. It thus cannot follow the line of argumentation of the Kilolo Defence.[1028]

b) Overall Conclusions Regarding D-25

503. The Chamber finds that, following Mr Kilolo's instructions, D-25 falsely testified in the Main Case regarding any payment of money, including legitimate reimbursement of travel or other expenses.

504. The Chamber finds that Mr Kilolo illicitly coached D-25, including in relation to payments of money from the Main Case Defence. Despite the contact prohibition order imposed by Trial Chamber III, Mr Kilolo, who was not physically present in The Hague during the witness's testimony, also had several telephone contacts with D-25 prior to and during the witness's testimony during which he illicitly coached the witness.

505. The Chamber finds that Mr Mangenda knew about, approved and partook in Mr Kilolo's overall illicit coaching activities by updating Mr Kilolo on the details elicited from D-25. He also discussed whether D-25 had followed Mr Kilolo's instructions during his testimony and relayed Mr Bemba's satisfaction with D-25's testimony. Mr Mangenda alerted Mr Kilolo that, at one point, he suspected that the Trial Chamber III Judges had surmised that D-25 had been illicitly coached.

506. The Chamber finds that Mr Bemba knew about and approved the illicit coaching of D-25 prior to his testimony due to the telephone conversation between Mr Mangenda and Mr Kilolo, in which the former informed the latter of the client's satisfaction regarding the precision of the testimony.

[1028] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 149.

9. Witness D-29

507. Witness D-29 was called by the Main Case Defence and testified under this pseudonym. He was called by the Kilolo Defence and testified as witness D21-3 in the present case.

a) Credibility

508. D21-3 (D-29) testified via video-link as a witness of the defence for Mr Kilolo in the present proceedings on 2 and 3 March 2016, after having been given Rule 74 assurances.[1029]

509. The Chamber observes that D21-3 (D-29) was, in general, a self-confident witness. He articulately expressed himself with ease. He admitted a set of factual allegations outright when examined by the Kilolo Defence, such as the involvement of Mr Kokaté, a series of contacts with the Main Case Defence, the payment of money *via* Western Union, and the circumstances of his request for assistance to relocate his child. The Chamber considers this part of D21-3 (D-29)'s testimony reliable as his evidence remained largely coherent, sufficiently detailed, and did not change during examination by the Prosecution.

510. Nevertheless, D21-3 (D-29)'s demeanour in court was also defensive and often evasive, in particular when questioned by the Prosecution. This was particularly apparent when D21-3 (D-29) refused to answer questions put by the Prosecution[1030] or limited the categories of questions he would be willing answer. For example, he stated, '*I would voluntarily answer questions about the money transfers in the current case*'[1031] and '*I will only give testimony about things that*

[1029] Transcript of Hearing, 2 March 2016, ICC-01/05-01/13-T-40-Red2-ENG WT ('T-40-Red2'), p. 6, line 25 to p. 7, line 9.
[1030] T-40-Red2, p. 50, line 3 ('*No, I don't feel like answering*').
[1031] T-40-Red2, p. 50, line 14.

concern me directly'.[1032] Such statements prompted the Presiding Judge to intervene and clarify that the witness could not direct the participants of the proceedings in that regard.[1033] Moreover, D21-3 (D-29)'s behaviour ostensibly changed when asked to give evidence on factual allegations beyond what he was prepared to admit. For example, when confronted with contradictions between his evidence in the Main Case and this case on contacts with the Main Case Defence, D21-3 (D-29) sought first the advice of his counsel,[1034] responded with a question,[1035] or responded in a different direction than the question put to him.[1036]

511. Another conspicuous element of D21-3 (D-29)'s evidence was his persistent refusal to indicate any dates or even approximate time frames, insisting that he did not remember.[1037] While the Chamber accepts that witnesses may have difficulties in remembering exact dates, the Chamber also noticed that D21-3 (D-29) reacted immediately and did not attempt to reflect or provide an approximate time frame. These elements lead the Chamber to conclude that D21-3 (D-29)'s version of events was intended to protect his own interests and remain consistent with his evidence in the Main Case. The same pattern is evident as regards D21-3 (D-29)'s testimony regarding monetary payments. He justified Mr Kilolo's assistance and gave little significance to the amount of the payment, thus seeking to impress a particular narrative on the Chamber. The Chamber therefore considers D21-3 (D-29)'s credibility to be partially affected.

512. In the light of the foregoing, the Chamber finds that it may rely only on some parts of D21-3 (D-29)'s testimony, in particular his account of Mr Kokaté's

[1032] T-40-Red2, p. 59, lines 18-19.
[1033] T-40-Red2, p. 60, line 5.
[1034] Transcript of Hearing, 3 March 2016, ICC-01/05-01/13-T-41-Red2-ENG WT ('T-41-Red2'), p. 47, line 20.
[1035] T-41-Red2, p. 46, line 11.
[1036] T-41-Red2, p. 47, lines 8-14; p. 48, lines 9-12.
[1037] T-40-Red2, p. 59, line 19; T-41-Red2, p. 34, lines 16-17; p. 41, lines 10-12.

involvement, a series of contacts with the Main Case Defence, and the payment of money *via* Western Union.

b) Discussion

513. During his testimony, D21-3 (D-29) confirmed outright a series of factual allegations which are, in addition, uncontested by the parties. He conceded, without hesitation, that he is acquainted with Mr Kokaté, a friend of his [Redacted],[1038] whom he refers to as Mr 'Djoki'.[1039] It is equally undisputed that, in one of the two meetings with Mr Kokaté,[1040] Mr Kokaté proposed that D-29 testify as a witness for the Main Case Defence and that, if he did so, D-29 would receive reparations from the Court, including monetary compensation.[1041] It is similarly undisputed that Mr Kokaté facilitated contact between D-29 and Mr Kilolo by providing Mr Kilolo with D-29's contact details.[1042] Lastly, D-29 indicated that Mr Kokaté escorted him and his wife to the hotel where they met with Mr Kilolo and his legal assistant, as further explained below.[1043] The Chamber cannot discern from D21-3 (D-29)'s testimony the involvement of the accused at this stage. In particular, the evidence does not suggest that Mr Kokaté's reference to forthcoming reparations, a remark that could be considered an inducement for D21-3 (D-29) to testify, was made on the part of any of the Accused.

[1038] Transcript of Hearing, 2 March 2016, ICC-01/05-01/13-T-40-CONF-ENG ET ('T-40-CONF'), p. 64, lines 12-14.
[1039] T-40-CONF, p. 22, lines 16-17; p. 23, lines 1 and 4-5; p. 63, lines 1-4 and 16-17; p. 64, lines 4-7; Photograph, CAR-OTP-0084-0129 at 0130.
[1040] T-40-Red2, p. 65, lines 2 and 23; p. 68, line 25.
[1041] T-40-Red2, p. 65, lines 12-20.
[1042] T-40-Red2, p. 22, lines 16-17; p. 68, line 25 to p. 69, lines 3, 9-14 and 21-23; p. 72, lines 5-16; T-41-Red2, p. 22, lines 8-12.
[1043] T-40-Red2, p. 69, lines 4-6.

i. Pre-Testimony Contacts Between D-29 and Mr Kilolo

514. As regards the witness's physical meetings with Mr Kilolo, it is undisputed that D-29 met with Mr Kilolo twice at the place of his residence before his Main Case testimony.[1044] Having been accompanied to the hotel by Mr Kokaté,[1045] the first meeting took place in April 2012 in the presence of D-29's wife, D-30, and Mr Kilolo's legal assistant.[1046] Mr Kilolo interviewed D-29 on events relevant to the Main Case.[1047]

515. The second meeting with Mr Kilolo took place on 13 August 2013,[1048] when Mr Kilolo, together with D-29's wife and Mr Mangenda, escorted D-29 to the location of his testimony and entrusted D-29 to the VWU.[1049] VWU records confirm the meeting between the witness, the Main Case Defence and the VWU.[1050] The Chamber observes that, in this context, one point remains contentious, namely whether Mr Mangenda was one of the attendees at the second meeting.

516. The Chamber notes that D21-3 (D-29) did not identify Mr Mangenda by name. Rather, he testified that Mr Kilolo had introduced this person as his '*colleague*',[1051] and further described the person's physical appearance as '*quite large, (…) tall, [with] glasses (…) [and] light skin*'.[1052] Despite D21-3 (D-29)'s contention that he did not know Mr Mangenda personally,[1053] the Chamber is of the view that the person described was indeed Mr Mangenda. To this end, the Chamber notes the

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[1044] T-40-Red2, p. 25, line 10-15; p. 26, lines 6-8.
[1045] T-41-Red2, p. 49, lines 1-2; p. 50, lines 15-17.
[1046] T-40-Red2, p. 26, lines 17-19 and 22-23; p. 67, lines 16-18; p. 69, lines 4-6; T-41-Red2, p. 48, lines 20-21; p. 50, line 13; p. 52, lines 6-11.
[1047] T-40-Red2, p. 26, lines 23-25; T-41-Red2, p. 52, lines 17-22.
[1048] VWU Table, CAR-OTP-0078-0290 at 0296 (ICC-01/05-01/13-207-Conf-Anx, p. 7).
[1049] T-40-Red2, p. 27, lines 8-10; *see also* p. 74, line 11 to p. 75, line 6; T-41-Red2, p. 46, lines 16-17; VWU Table, CAR-OTP-0078-0290 at 0296 (ICC-01/05-01/13-207-Conf-Anx, p. 7).
[1050] VWU Table, CAR-OTP-0078-0290 at 0296 (ICC-01/05-10/13-207-Conf-Anx, p. 7).
[1051] T-40-Red2, p. 74, lines 23-25; p. 75, lines 5-6.
[1052] T-41-Red2, p. 23, line 25 to p. 24, line 2.
[1053] T-40-Red2, p. 42, line 23; p. 74, lines 18-20.

description of and reference to the person concerned as '*colleage*'. Third, and most crucially, the Chamber reads this evidence in the light of an ICC claims form, which the Kilolo Defence asked the Chamber to consider as evidence, indicating a request for reimbursement of costs by Mr Mangenda, who was on official mission with Mr Kilolo in the place of D-29's residence from 9 to 16 August 2013.[1054] Taken together, the Chamber finds the evidence sufficient to conclude that the person present at the second meeting was indeed Mr Mangenda.

517. As admitted by D21-3 (D-29),[1055] it is uncontested that, in the run-up period to the VWU cut-off date of 26 August 2013,[1056] Mr Kilolo and D-29 were in telephone and SMS contact. The witness also confirmed that he sought SMS contact with Mr Kilolo in order to express his support after he had heard that Mr Kilolo had been arrested in the context of the present proceedings.[1057] D-29's testimonial evidence on his prior contacts with Mr Kilolo is further corroborated by the call sequence table and corresponding call data records, which show contacts as early as 19 October 2012 and 10 August 2013[1058] between telephone numbers [Redacted][1059] and [Redacted],[1060] which are attributable to Mr Kilolo,[1061] and [Redacted].[1062] The Chamber is convinced that the latter telephone number is attributable to D-29 since this number appears (i) in the contact list of witnesses provided by the Main Case Defence and Main Case witnesses to the VWU as

[1054] ICC document, CAR-D21-0003-0162 at 0166 and 0167.
[1055] T-40-Red2, p. 27, line 25; *see also* p. 27, lines 13-14; p. 28, lines 12-19; p. 29, lines 7-10; T-41-Red2, p. 53, lines 7 and 17-19.
[1056] VWU Table, CAR-OTP-0078-0290 at 0296 (ICC-01/05-01/13-207-Conf-Anx, p. 7).
[1057] T-40-Red2, p. 44, line 12 to p. 45, line 2; T-41-Red2, p. 61, line 22 to p. 62, line 1.
[1058] Call log, CAR-OTP-0090-0630 at 0707, rows 1-12; CAR-OTP-0072-0391, rows 2839, 11276, 11299, 32087, 41238, 46624, 46999 and 47005; CAR-OTP-0072-0082, rows 3821, 3822, 3881 and 3882.
[1059] Call log, CAR-OTP-0090-0630 at 0707, rows 5-8; CAR-OTP-0072-0082, rows 3821, 3822, 3881 and 3882.
[1060] Call log, CAR-OTP-0090-0630 at 0707, rows 1-4 and 9-12; CAR-OTP-0072-0391, rows 2839, 11276, 11299, 32087, 41238, 46624, 46999 and 47005.
[1061] *See* paras 585 and 292.
[1062] Call log, CAR-OTP-0090-0630 at 0707, rows 1-12; CAR-OTP-0072-0391, rows 2839, 11276, 11299, 32087, 41238, 46624, 46999 and 47005; CAR-OTP-0072-0082, rows 3821, 3822, 3881 and 3882.

that belonging to D-29; and (ii) in financial documents reflecting money transfers to D-29.[1063]

518. It is also undisputed that, when meeting the VWU representatives at the location of D-29's testimony on 13 August 2013, D-29 requested that the VWU assist in relocating his son to his family's place of residence.[1064] According to D21-3 (D-29), the VWU representatives indicated that they would not accede to the request '*for the moment*' but would '*ask the superior the question*'.[1065] D21-3 (D-29) claimed that the VWU never reverted to him on this point.[1066] As regards the nature of the assistance sought, D21-3 (D-29) insisted several times that he asked for assistance in general, but not necessarily of a pecuniary nature. He averred that he requested any assistance that would enable a family reunion.[1067] Accordingly, the Chamber accepts that the request for assistance was put to the VWU, which did not react to it.

519. D21-3 (D-29) testified that, subsequent to his 13 August 2013 meeting with the VWU, he called Mr Kilolo, informing him of VWU's negative response.[1068] He testified that Mr Kilolo told him that he would help and that he '*could approach some people and ask for assistance in sort of a humanitarian kind of way*'.[1069] According to D21-3 (D-29), Mr Kilolo assured him that, since his budget was limited, he would approach certain people in Kinshasa '*qui soutiennent le Sénateur*', meaning

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[1063] Telephone list was provided by the defence and witnesses in the Main Case, *see* ICC Document CAR-OTP-0077-0942 at 0943, row 31; Western Union record, CAR-OTP-0073-0274, tab 28, row 2, column Y, which contains the telephone number without the country code.
[1064] T-40-Red2, p. 31, lines 19-21; p. 32, line 10; p. 73, lines 3-15. T-41-Red2, p. 24, lines 22-23; p. 26, lines 20-22.
[1065] T-41-Red2, p. 25, lines 6-7.
[1066] T-41-Red2, p. 25, line 10.
[1067] T-40-Red2, p. 32, lines 18-21 ('*It wasn't money I asked for. I asked for assistance, help so I could have my child go from [the location in CAR] to join me, meet up with me. But it wasn't money I was asking for. I was asking for assistance, maybe an airline ticket, whatever*'); *see also* p. 73, lines 19-21; T-41-Red2, p. 43, lines 16-18.
[1068] T-41-Red2, p. 26, lines 15-16; *see also* p. 25, lines 17-20.
[1069] T-40-Red2, p. 31, lines 19-24.

Mr Bemba.[1070] From the foregoing, the Chamber concludes that Mr Kilolo liaised with Mr Bemba's associates in Kinshasa to arrange for money to be sent to D-29. In this context, the Chamber observes that D21-3 (D-29) steadfastly asserted throughout his testimony that Mr Kilolo did not personally give him any money.[1071] Mr Kilolo highlighted the same at an earlier stage.[1072] Nevertheless, D21-3 (D-29)'s evidence[1073] is clear that Mr Kilolo facilitated the assistance to be given and therefore contributed to the money transfer, as is analysed below.

ii. Payment of USD 649.43

520. It is undisputed that D-29 received USD 649.43 *via* Western Union.[1074] D21-3 (D-29) admitted spontaneously and without hesitation that he had received a telephone call from Kinshasa the same day or the day after he requested assistance from Mr Kilolo.[1075] He claimed that the person, whom he did not know, asked his name.[1076] D21-3 (D-29) explained that the person told him that he would send some money at Mr Kilolo's behest.[1077] D21-3 (D-29) also confirmed that the person sent him an SMS with the code with which D-29 was able to collect the money from the Western Union agency.[1078] Lastly, D21-3 (D-29) attested that he went to collect the money the same day he received the SMS with the code,[1079] more specifically, after his testimony.[1080] This evidence is corroborated by Western Union records, which reflect that, on 28 August 2013,

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[1070] Prior recorded testimony, CAR-OTP-0085-0628-R02 at 0669-R02, lines 1440-1444; T-41-Red2, p. 32, lines 1-12; p. 32, lines 21-23; p. 44, lines 2-13; p. 48, lines 9-12.
[1071] T-41-Red2, p. 44, line 2.
[1072] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 761.
[1073] T-41-Red2, p. 48, lines 11-12 (*'So he went ahead to contact his contacts, who then contacted me and sent me some money in order for the child to travel'*).
[1074] T-40-Red2, p. 32, line 2.
[1075] T-41-Red2, p. 32, lines 13-16.
[1076] T-41-Red2, p. 33, lines 11-16; Prior recorded testimony, CAR-OTP-0085-0628-R02 at 0671-R02, lines 1485-1488.
[1077] T-41-Red2, p. 33, lines 13-16; Prior recorded testimony, CAR-OTP-0085-0628-R02 at 0671-R02, lines 1488-1489.
[1078] T-40-Red2, p. 32, lines 6-7; T-41-Red2, p. 32, lines 13-16 and 23-24; p. 33, lines 11-21.
[1079] T-41-Red2, p. 33, lines 24-25; p. 35, lines 2-3.
[1080] T-41-Red2, p. 35, lines 2-3; *see also* p. 40, lines 15-19.

at 13:09 (local time), [Redacted], an associate of Mr Kilolo, sent USD 665 from Kinshasa and, on the same day, at 18:13 (local time), D-29 collected USD 649.43 from the Western Union agency located in his place of residence.[1081]

521. It is undisputed that D-29 used the money, *inter alia*, to cover the travel expenses of his son's relocation in the following months.[1082] Yet, the Chamber adverts to D21-3 (D-29)'s testimony that the money actually exceeded the relocation costs. He added that part was also used to pay the person who had taken care of his son, while another part was used to pay the person who accompanied his son during his travel.[1083] D21-3 (D-29) claimed that the money did not influence his Main Case testimony. In this context, he stated that (i) similar assistance from the VWU would not have influenced his testimony;[1084] (ii) he considered this assistance to be a humanitarian gesture on the part of a fellow '*African brother*', Mr Kilolo;[1085] and (iii) he considered this money to be too insignificant to move him to testify falsely before the Court.[1086]

522. The Chamber highlights that, although D21-3 (D-29) claimed to have received this money to finance his son's relocation, different considerations are decisive when it comes to assessing Mr Kilolo's conduct when arranging the payment. For the following reasons, the Chamber finds that this transfer was not legitimate. First, as of 13 August 2013, D-29 was in the VWU's care.[1087] As D21-9 – the former head of the VWU, whom the Chamber considers credible in the

[1081] Western Union record, CAR-OTP-0074-0855, tab 28, row 2, columns A, D, H, X and AB. As was explained by witness P-267, the time indicated in the Western Union database is that in Eastern Standard Time of the United States of America (T-33, p. 19, lines 11-21). The time indicated is the local time of the place of residence of the transferor and transferee.
[1082] T-41-Red2, p. 35, lines 15-24; p. 37, line 25 to p. 38, lines 1 and 6-7 (*'And this money helped me to get the child to travel'*); p. 39, lines 14-17; *see also* Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, footnote 955.
[1083] T-41-Red2, p. 36, lines 7-10.
[1084] T-40-Red2, p. 33, lines 14-16; T-41-Red2, p. 60, lines 19-23.
[1085] T-40-Red2, p. 33, line 24 to p. 34, line 1; T-41-Red2, p. 38, lines 14 (*'He helped me as a brother, as an African'*) and 18-19.
[1086] T-40-Red2, p. 35, lines 2-5.
[1087] VWU Table, CAR-OTP-0078-0290 at 0296 (ICC-01/05-01/13-207-Conf-Anx, p. 7).

light of his professional experience and work methods – explained, '*once the witness is in the care of the VWU, then it is the responsibility of the VWU to look after the needs of that particular witness*'.[1088] D21-9 also indicated that, in case protection issues arose, counsel would typically be obligated to refer the matter to the VWU for follow-up.[1089] The Chamber is convinced that Mr Kilolo, as Mr Bemba's counsel in the Main Case for several years, was well aware of his obligation, at that stage of the proceedings, to refer the matter to the VWU.

523. Second, the payment of USD 649.34 clearly exceeded the relocation costs of D-29's child. Instead, the amount transferred falls within the consistent range of payments that Mr Kilolo illicitly arranged for other witnesses, including D-23, D-57 and D-64. The payment is thus consistent with the clear pattern of payments by Mr Kilolo for the purpose of influencing their testimonies.

524. Third, even in the VWU scheme, a payment for the relocation of the child in the circumstances described by D-29 would not have been eligible for reimbursement and would thus be considered illegitimate. Indeed, D21-9, the former head of the VWU, was asked whether, hypothetically, dependent care could be accorded where a witness resides in a State and his dependent in another. While he acknowledged that it was possible,[1090] on a case-by-case basis,[1091] D21-9 immediately emphasised that such a request would only have merit if the lack of dependent care would prevent the witness from testifying.[1092]

525. Against this backdrop, there was neither need, nor justification for Mr Kilolo to take matters into his own hands and to facilitate the payment through

[1088] T-42-Red2, p. 28, lines 10-11; *see also* p. 74, lines 3-17; p. 83, lines 21-24 (*'And if it's – to me personally, it would appear improper if a witness is in the care of the VWU. What is the reason – what would be the justifiable reason to provide extra funds for that individual while in the care of the VWU by a party? I find it very difficult to find a justifiable reason for that'*).
[1089] T-42-Red2, p. 47, lines 15-20; p. 50, lines 6-9; p. 51, line 25 to p. 52, line 2; p. 52, line 23 to p. 53, line 3.
[1090] T-42-Red2, p. 26, lines 15-21.
[1091] T-42-Red2, p. 84, lines 17-18; *see also* p. 113, lines 8-13.
[1092] T-42-Red2, p. 84, lines 21-25.

Mr Bemba's associates. This is all the more true in D-29's case where, as D21-3 (D-29) himself explained, the VWU representative had not rejected the request outright but merely indicated that consultation with the relevant VWU supervisor was necessary. D21-9's statement that, in principle, a calling party is not prohibited from funding witness requests[1093] does not change the Chamber's assessment. Indeed, Mr Kilolo's conduct must be viewed in the context of the prevailing circumstances at the time.

526. Fourth, the payment was effected in temporal proximity to, namely on the first day of, D-29's testimony, thus indicating an exchange ratio. Furthermore, this is consistent with the pattern of illicit payments arranged by Mr Kilolo to other witnesses, such as D-3, D-6, D-23, D-57 and D-64. Each received payment within the five day period preceding their testimony. As a result of the foregoing, and noting the pattern of payments similarly employed in relation to other witnesses, the only reasonable conclusion to be drawn from the evidence is that Mr Kilolo deliberately circumvented the proper channels through the VWU in order to satisfy D-29's conditions. This was done in an effort to secure D-29's Main Case testimony in Mr Bemba's favour. The fact that D-29 may have used part of the money to relocate his son is irrelevant in this context: the payment in question could have been used for relocation and simultaneously intended to unlawfully secure the witness's favourable testimony.

527. For similar reasons, the Chamber is convinced that Mr Kilolo also instructed D-29 to deny the payment of USD 649.34. It finds this to be true, even though it could not be established that D-29 himself was aware that the payment was illicit in nature. As has been elaborated above, the Chamber is satisfied that Mr Kilolo arranged the payment to ensure certain testimony, in full awareness of the illegitimacy of the payment. It was thus in his interest to ensure that the

[1093] T-42-Red2, p. 113, lines 21-25.

payment would remain secret. Additionally, the pattern of illicit payments arranged by Mr Kilolo consistently includes the instruction not to reveal such payments, as was the case, for example, with D-2, D-3, D-23 and D-54. Against this backdrop, the Chamber is convinced that Mr Kilolo instructed D-29 not to reveal the payment when questioned before Trial Chamber III.

iii. Testimony of D-29

528. D-29 testified before Trial Chamber III on 28 and 29 August 2013 *via* video-link.[1094] He dishonestly testified as regards his prior contacts with the Main Case Defence and his acquaintance with Mr Kokaté. During his second day of testimony, on 29 August 2013, D-29 alleged that his pre-testimony contacts with Mr Kilolo were limited to five occasions, namely when (i) Mr Kilolo called D-29 to introduce himself;[1095] (ii) Mr Kilolo called to inform D-29 that they would meet in a specific hotel;[1096] (iii) Mr Kilolo, together with his legal assistant, met D-29 in that hotel;[1097] (iv) Mr Kilolo called to inform D-29 that the Prosecution wished to speak with him;[1098] and (v) Mr Kilolo introduced D-29 to a person from the Court.[1099] He deliberately withheld all other contacts, including (i) his encounter with Mr Kilolo, together with Mr Mangenda, when they escorted D-29 and D-30 to their meeting with the VWU, and (ii) his telephone call to Mr Kilolo during which he requested assistance in relocating his son.

529. In assessing whether or not the witness testified falsely in the Main Case concerning payments, the Chamber must pay particular attention to the formulation of the Prosecution's questions. Prosecution counsel asked D-29, '*Did*

[1094] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 28 August 2013, ICC-01/05-01/08-T-338-CONF-ENG ET, p. 55; ICC-01/05-01/08-T-338-Red-ENG CT, p. 55; Transcript of Hearing, 29 August 2013, ICC-01/05-01/08-T-339-CONF-ENG ET; ICC-01/05-01/08-T-339-Red-ENG WT ('T-339-Red').
[1095] Trial Chamber III, T-339-Red, p. 36, lines 22-23.
[1096] Trial Chamber III, T-339-Red, p. 20, lines 17-20; p. 36, line 25.
[1097] Trial Chamber III, T-339-Red, p. 20, lines 8-10; p. 36, lines 2-6 and 25 to p. 37, line 1.
[1098] Trial Chamber III, T-339-Red, p. 35, lines 19-22; p. 37, lines 1-3.
[1099] Trial Chamber III, T-339-Red, p. 37, lines 3-4.

the Defence promise you anything - security or anything - in exchange of your testimony?'[1100] and *'Have you been -- have you been promised anything else by anyone else in exchange of your testimony?'*[1101] Thus, in order to establish that the witness's subsequent denial was a false testimony, the Chamber would have to find that D-29 in fact subjectively considered the payment to have been in exchange for his testimony.

530. Several considerations cast doubt on the witness's averment. The Chamber observes that the amount of USD 649.43 exceeded the costs of relocating D-29's son, as admitted by D21-3 (D-29) himself. Further, it was used not only to reunite the family but also to pay other individuals who had purportedly taken care of the child. Furthermore, the payment was in temporal proximity to, notably on the first day of, D-29's testimony. Nonetheless, the Chamber finds that it cannot exclude the possibility that the witness in fact believed the payment to be legitimate and not in exchange for his testimony. In particular, it acknowledges that, although the witness reacted evasively when questioned about receiving money, D21-3 (D-29) remained firm and consistent in claiming that he considered the money to be legitimate and a humanitarian gesture. Therefore, the Chambers cannot find that D-29 gave false testimony with regard to these payments.

531. The Chamber is convinced that the false statements regarding the number of contacts with the Main Case Defence were made upon Mr Kilolo's instruction. In the light of the pattern of instructions concerning contacts with the Main Case Defence given to other witnesses, including D-2, D-15, D-26, D-54 and D-55, who then denied or limited such contact, the Chamber cannot accept D-29's false testimony concerning contacts to be a mere coincidence. Further, the Chamber assesses the above evidence in the context of the two telephone conversations

[1100] Trial Chamber III, T-339-Red, p. 43, lines 6-7.
[1101] Trial Chamber III, T-339-Red, p. 43, lines 18-19.

between Mr Kilolo and Mr Mangenda on 29 August 2013, which are discussed in more detail below. In the first conversation, Mr Kilolo suggests that, if D-29 did not conclude his testimony that day, he should call D-29 and direct him to rectify certain points (*'faire encore la couleur'*). During the second conversation, Mr Kilolo asked Mr Mangenda about D-29's responses to questions regarding his prior contacts so that he could prepare D-30, D-29's wife, accordingly.

532. D-29 also testified on 29 August 2013 before Trial Chamber III that he did not know Mr Kokaté and that Mr Kokaté had provided Mr Kilolo with his contact details.[1102] While the Chamber considers this evidence to be false in the light of his admission before this Chamber to knowing and having met with Mr Kokaté, the Chamber cannot exclude the reasonable possibility that Mr Kokaté, and not Mr Kilolo, instructed D-29 to testify falsely on this point. Unlike witnesses D-4 and D-6, who attended meetings where other witnesses testified to being directly instructed by Mr Kilolo to lie about acquaintances,[1103] there is no such evidence supporting an inference for D-29. Accordingly, it is unable to conclude beyond reasonable doubt that Mr Kilolo directed D-29 to conceal his contacts with Mr Kokaté.

iv. Conversations Between Mr Kilolo and Mr Mangenda

533. On the second day of D-29's testimony, 29 August 2013, Mr Kilolo and Mr Mangenda had telephone conversations at 13:55 and at 14:17. At this juncture, the hearing before Trial Chamber III had been adjourned for the lunch break, *viz.* between 13:27 and 15:17 precisely.[1104] One of the victims' legal representatives was in the course of examining D-29.[1105] The Chamber relies on the call log, originally provided by the Dutch judicial authorities to Pre-Trial

[1102] Trial Chamber III, T-339-Red, p. 21, line 17 to p. 22, line 4.
[1103] See paras 363, 366 and 389.
[1104] Trial Chamber III, T-339-Red, p. 56, lines 5-6.
[1105] Trial Chamber III, T-339-Red, p. 56, lines 15-16.

Chamber II,[1106] and thereafter submitted by the Prosecution,[1107] indicating in the 2nd and 3rd rows from the top a connection on 29 August 2013 between Mr Kilolo's telephone number [Redacted] [1108] and Mr Mangenda's telephone number [Redacted][1109] between 13:55 and 14:08 for approximately 12 minutes, and a further connection between telephone numbers [Redacted] and [Redacted] between 14:17 and 14:22 for approximately 4½minutes.[1110] The corresponding audio recordings, also provided by the Dutch judicial authorities, and subsequently submitted by the Prosecution, last 12:23 minutes [1111] and 04:36 minutes, [1112] respectively, and thus correspond to the call log entries concerned.

534. In relation to the first conversation, the evidence shows that Mr Mangenda updated Mr Kilolo, who was on mission in Cameroon at the relevant time,[1113] on the progress of D-29's testimony. Mr Mangenda disparaged D-29's testimony, in particular, with regard to his testimony on the events in Mongoumba. He stated that the witness had '*vraiment déconné. Il a déconné à mort*',[1114] and that '*il a déconné d'une façon incroyable*'.[1115] According to Mr Mangenda, '*parmi nos témoins, le plus*

[1106] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1107] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1108] *See* para. 492.
[1109] *See* para.487.
[1110] Call log, CAR-OTP-0079-1509 at 1509, rows 2 and 3 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, rows 2 and 3 from the top.
[1111] Audio recording, CAR-OTP-0074-0997 (ICC-01/05-01/13-6-Conf-AnxB002); Transcript of audio recording, CAR-OTP-0080-0380 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0080-0245 (French translation); Translated transcript of audio recording, CAR-OTP-0092-5477 (English translation).
[1112] Audio recording, CAR-OTP-0074-0998 (ICC-01/05-01/13-6-Conf-AnxB003); Transcript of audio recording, CAR-OTP-0080-1398 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-0107 (French translation); Translated transcript of audio recording, CAR-OTP-0089-1391 (English translation).
[1113] Flight booking confirmation, CAR-D21-0001-0102.
[1114] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0247, line 18 (*'He really has messed up. He's made an utter mess of things'*).
[1115] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0252, line 208 (*'he's made an unbelievable mess of things'*).

mauvais, c'est lui, c'est lui qui a maintenant la palme d'or'.[1116] The Chamber is satisfied that, when referring to '*le gars*',[1117] he meant D-29 for the following reasons: (i) the Mongoumba events formed part of D-29's testimony during the hearing on 29 August 2013;[1118] (ii) the accused discussed the upcoming testimony of D-29's wife, who was scheduled to testify next;[1119] and (iii) Mr Mangenda informed Mr Kilolo that the second victims' legal representative, Ms Douzima, was then examining the witness.[1120]

535. Mr Kilolo reacted to this news by recalling what he purportedly always told '*le client*', namely Mr Bemba: '*Tu vois maintenant, le problème que… que j'ai toujours dit au Client, de faire encore la couleur. Un ou deux jours avant que la personne passe, pourquoi? Parce que les gens oublient…tu vois? Les gens ne se souviennent pas de tout avec précision*'.[1121] The accused used coded language throughout the conversation, as demonstrated by the use of the terms '*faire encore la couleur*' or '*Bravo*'.[1122] The Chamber understands that Mr Kilolo referred to prior conversations with Mr Bemba where he clarified the need to properly instruct witnesses concerning their testimonies. The instructive character of Mr Kilolo's intervention with witnesses is further exemplified by his remark to Mr Mangenda that, if D-29 did not conclude his testimony that day, he would contact the witness to ensure that he rectified two or three points.[1123] The

[1116] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0250, lines 11-12 ('*of our witnesses, he's the worst. He gets first prize now*').
[1117] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0247, lines 6, 10 and 26 ('*the guy*').
[1118] *For example*, Trial Chamber III, T-339-Red, p. 17, line 13 to p. 18, line 6.
[1119] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0252, lines 191-201.
[1120] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0247, lines 27-28; at 0248, lines 39-44.
[1121] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0248, lines 50-52 ('*Now you can see the problem that...that I've always told the Client to redo the colour. A day or two before the person appears. Why? Because people forget…you see? People don't remember at all accurately*').
[1122] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0248, lines 50-51; at 0250, lines 124 and 129; *see* paras 748-761.
[1123] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0252, lines 212-214.

Chamber considers that the above excerpt, read also in the light of another telephone conversation the following morning,[1124] demonstrates that Mr Kilolo illicitly coached witnesses, preferably shortly before their testimony, as a strategy intended to instruct them and ensure their favourable testimony on issues important to the Main Case Defence.

536. Mr Mangenda, in turn, confirmed his view that illicit witness coaching was necessary. In his opinion, D-29 performed badly in Court because Mr Kilolo had not illicitly coached him the night before.[1125] He also commented on co-counsel Mr Haynes, speculating that he would now understand how witnesses would perform during their testimony if not first instructed by Mr Kilolo.[1126] The use of the term '*préparation*', in particular, confirms the Chamber's conclusion that witnesses were meant to be '*prepared*' on the substance of their testimony and that Mr Kilolo's intervention typically went beyond merely rehearsing their prior statements.[1127]

537. When Mr Kilolo asked Mr Mangenda if co-counsel Mr Haynes blamed him for what happened during D-29's testimony, the subsequent exchange is particularly revealing:

> **Mangenda**: *Non, même pas, comment il va mettre cela à ta charge, parce que s'il fallait qu'il mette cela à ta charge, il fa … il condamne que les gens qui … qui viennent témoigner nous détruisent. Là dans tel point il y a un témoin qui vient dire la vérité, bon qu'est-ce qu'il veut.*
> **Kilolo**: *Voilà.*
> **Mangenda**: *Alors qu'est-ce qu'il veut, il y a un témoin qui dit la vérité qu'il soit content, voilà.*[1128]

[1124] *See* para. 725.
[1125] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0250, lines 122-123.
[1126] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0253, lines 236-238 ('*Mais maintenant ça damne aussi même sur l'image que PETER se faisait, qu'il voie maintenant comment les témoins allaient se comporter s'il n'y avait pas de préparation, parce qu'il allait avoir ce genre de scènes*'/'*But now, that also even ruins Peter's own perception. He now has to see how the witnesses would have behaved if there hadn't been any preparation, because he was going to have this kind of scenario*').
[1127] Conversely, Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 778.
[1128] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0252, lines 185-190 ('Mangenda: *No. Not even … how's he going to blame you for that? Because if he had to blame you for that, he's … he's censuring only people who … who are speaking, preparing witnesses. Now, on*

Just before saying '*voilà*' in the above exchange, Mr Kilolo can be heard laughing on the recording. Contrary to the Mangenda Defence submissions otherwise,[1129] these excerpts demonstrate that Mr Mangenda not only knew of, but also approved the strategy of illicitly coaching witnesses, as executed by Mr Kilolo.

538. Mr Kilolo's illicit coaching strategy is further evinced in the audio recording of the second conversation on 29 August 2013, which took place between 14:17 and 14:22. Mr Kilolo again called to discuss the progress of D-29's testimony. Mr Mangenda complained that D-29's testimony was detrimental to the Main Case Defence position, as far as the alleged events in Mongoumba were concerned.[1130] Mr Kilolo then asked Mr Mangenda about D-29's responses to questions on prior contacts with the Main Case Defence[1131] and payments[1132] so that Mr Kilolo could prepare D-29's wife, D-30, accordingly.[1133] These topics, in particular, prior contacts and payments, featured prominently in Mr Kilolo's illicit coaching activities involving other witnesses, such as D-6, D-15, D-23, D-26 D-57 and D-64. Mr Kilolo's strategy to intervene and design the testimonial evidence of Main Case Defence witnesses, while also violating the VWU cut-off date is further exemplified by the following statement to Mr Mangenda: '*il faut que tu me dises ce genre des choses parce que je dois savoir comment dire à sa femme,*

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such a point, there's a witness who comes to tell the truth. Right. What does he want ... now? Kilolo: *There we are*. Mangenda: *So, what does he want? There's a witness who's telling the truth. He should be happy. There we are.*').

[1129] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, paras 145-146.

[1130] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0109, line 18 ('*Il a seulement merdé sur…Mongoumba*'/'*He just cocked up with regard to ... Mongoumba*').

[1131] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0109, lines 19-20 ('*Est-ce qu'on lui a aussi posé la question de savoir combien de fois on s'est vu avec lui ?*'/'*Did they ask him how many times we have been seen with him?*').

[1132] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0109, lines 10-11 ('*Euh…est-ce que le Procureur l'a dérangé avec le problème du genre, est-ce que…euh…l'assistance tout ça…la personne en question*'/'*Erm… has ... the Prosecutor bothered him with problems of the kind, have, ... erm ... the assistance and all that ... the person in question?*').

[1133] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0109, line 19.

parce que lui et sa femme, ils ne vont plus se rencontrer, s'il y a des trucs qui concernent…qui sont communs aux deux, il faut me le dire'.[1134]

539. Mr Mangenda, in turn, not only provided the information Mr Kilolo requested[1135] but also participated in developing the strategy for the illicit coaching of D-29 and D-30. In this regard, the Chamber notes that, when discussing D-30's upcoming testimony, Mr Mangenda indicated to Mr Kilolo that a particular response should be elicited from D-30 in court:

> **Mangenda**: … *peut-être qu'ils vont poser à sa femme le même genre des questions, si elle avait entendu des rumeurs comme son mari avait aussi entendu au sujet de Mongoumba…sur les crimes commis par les gens du MLC, là vraiment au moins qu'elle réponde qu'elle ne sait pas.*
> **Kilolo**: *Euh là… là je sais comment nous allons nous entretenir*.[1136]

c) Overall Conclusions Regarding D-29

540. The Chamber finds that, upon Mr Kilolo's instruction, D-29 dishonestly testified in the Main Case regarding his prior contacts with the Main Case Defence.

541. The Chamber finds that Mr Kilolo instructed D-29 to falsely testify about his prior contacts with the Main Case Defence. He also instructed D-29 to deny payments of money. He facilitated the transfer of USD 649.43 by [Redacted], a person from Mr Bemba's circle of associates in Kinshasa, DRC, shortly before D-29's testimony. In doing so, Mr Kilolo deliberately circumvented the proper VWU channels and illicitly transferred money to the witness in an effort to

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[1134] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0110 (as amended in CAR-OTP-0082-0110_01), lines 39-42 (*'You must tell me this kind of thing because I have to know how to tell his wife, because he and his wife, they won't see each other again. So, if there is anything that concerns ... that is common to both of them, you must tell me'*).

[1135] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0109, lines 12, 14-15 and 23.

[1136] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0110, lines 43-47 ('Mangenda: *maybe they'll ask his wife the same kind of questions: whether she had heard rumours as her husband had about Mongoumba ... about the crimes committed by MLC people. Really, for that, at least she should reply that she doesn't know.* Kilolo: *Erm ... as regards that ... as regards that, I know how we are going to talk about it'*).

secure D-29's testimony in the Main Case in favour of Mr Bemba. Moreover, in the context of discussions concerning D-29's testimony, Mr Kilolo overtly discussed the need to illicitly coach witnesses before their testimony.

542. The Chamber also finds that Mr Mangenda approved of and partook in Mr Kilolo's overall illicit coaching strategy. In this particular instance, he assisted by updating Mr Kilolo on the details elicited from witness D-29 so that the latter, *inter alia*, could prepare D-30, D-29's wife, accordingly.

10. Witness D-15

543. Witness D-15 was called by the Main Case Defence and testified under this pseudonym. He was summoned, at the Prosecution's request, and testified as witness P-198 in the present case.

a) Credibility

544. P-198 (D-15) testified *via* video-link on 27 and 28 October 2015, after having been given Rule 74 assurances.[1137]

545. The Chamber notes that, throughout his testimony, P-198 (D-15)'s demeanour was, for the most part, defensive or even openly defiant. For example, he responded to two questions as follows: '*Please look at your notes. I gave you an answer a short while ago*'[1138] and '*I am amused by that question*'.[1139] At the beginning of his testimony, P-198 (D-15) refused to take an oath, as required under Article 69(1) of the Statute. He did so only after further explanations by the Presiding Judge.

[1137] Transcript of Hearing, 27 October 2015, ICC-01/05-01/13-T-29-CONF-ENG ET ('T-29-CONF'), p. 43, lines 13-23.
[1138] Transcript of Hearing, 27 October 2015, ICC-01/05-01/13-T-29-Red2-ENG WT ('T-29-Red2'), p. 70, line 12.
[1139] T-29-Red2, p. 72, line 6.

546. In the estimation of the Chamber, P-198 (D-15), albeit profiting from Rule 74 assurances, clearly felt uncomfortable giving evidence and his assertions came with great difficulty, particularly when questioned by the Prosecution. For most of his testimony, P-198 (D-15) claimed that the questions were not clear and asked for them to be repeated. He often avoided giving clear answers by putting counter-questions or elaborating on points peripheral or even irrelevant to the question posed.

547. At the beginning of the Prosecution's examination, P-198 (D-15) provided information without prompting and out of context. For example, when asked by the Prosecution about the content of his discussions with Mr Kilolo's defence counsel before his testimony in the present case, P-198 (D-15) stated that he was not corruptly influenced by Mr Kilolo in the context of the Main Case.[1140] Similarly, when asked whether Mr Kilolo's defence counsel had asked the witness before his testimony in the present case if he had received money from Mr Kilolo during the course of his Main Case testimony, P-198 (D-15) replied that he knew '*more about the [Main] [C]ase than Mr Kilolo*',[1141] including the matter of the sending of troops to Bangui.[1142] The Chamber observes that this unsolicited information directly relates to Prosecution assertions that Mr Kilolo provided D-15 with such information during the latter's testimony in the Main Case – propositions that the Prosecution had not yet put to the witness. Rather, the witness made a statement – unprompted and out of context – which would pre-emptively contradict accusations of illicit coaching during his Main Case testimony.

548. The Chamber considers that the above behaviour is indicative of P-198 (D-15)'s desire, being aware of the issues at stake in the present proceedings, to

[1140] T-29-Red2, p. 58, lines 16-18.
[1141] T-29-Red2, p. 61, line 13.
[1142] T-29-CONF, p. 61, lines 12-16.

lay down his version of events and anticipate the interpretation of his and Mr Kilolo's conduct. The content and manner of his answers demonstrate that P-198 (D-15)'s account was strategically directed to protect his and Mr Kilolo's interests. The above aspects of the witness's testimony considerably reduce any faith which might otherwise be invested in P-198 (D-15)'s testimony as a whole. In certain instances, in particular, when P-198 (D-15) testified as to Mr Kilolo's behaviour, the Chamber treats his evidence with caution and considers that P-198 (D-15)'s testimony has reduced value. Consequently, it attaches limited weight to these aspects of the witness's evidence.

549. Nevertheless, the Chamber finds that discrete parts of his testimony, such as the recognition of voices or the attribution of telephone numbers, are reliable because the witness readily and spontaneously replied to these questions. Such demeanour is very much in contrast to the rather evasive and defiant manner he generally displayed when questioned on other issues.

550. Lastly, the Chamber recalls that P-198 (D-15) commented on excerpts of intercepted communications between him and Mr Kilolo. Despite the fact that the witness heard only parts of the audio recordings, the Chamber finds that he was able to comment on the contents of the episodes played, which were self-contained and coherent. At the same time, when assessing the witness's testimony, the Chamber remained attentive to the fact that P-198 (D-15) did not hear the entire audio recording.

b) Discussion

551. P-198 (D-15), who was [Redacted] during the period relevant to the charges in the Main Case, confirmed that, during his Main Case testimony, he was in

telephone contact with Mr Kilolo.[1143] While he first conceded having spoken with Mr Kilolo once or twice,[1144] he later testified that he had, on several telephone numbers, contacts with Mr Kilolo in September 2013.[1145] P-198 (D-15)'s somewhat contradictory testimonial evidence is refuted by documentary evidence, which shows that Mr Kilolo had extensive telephone contacts with D-15 before and during his Main Case testimony between 11 and 13 September 2013, including after the VWU cut-off date of 11 July 2013.[1146] The call sequence table and corresponding call data records show that Mr Kilolo and D-15 were, among others, in telephone contact on the following dates:

- 9 September 2013, at 22:56, for 25 minutes[1147] and at 23:23, for 50 minutes;[1148]
- 10 September 2013, at 00:14, for 49 minutes,[1149] at 01:22, for approximately 36 minutes,[1150] at 22:54, for approximately 41 minutes,[1151] at 23:38, for almost 11 minutes,[1152] and at 23:55, for approximately 9 minutes;[1153]
- 11 September 2013, at 20:31, for approximately 34 minutes;[1154]
- 12 September 2013, at 21:00, for approximately 31 minutes,[1155] and at 23:06, for approximately 18½ minutes;[1156] and

[1143] T-29-Red2, p. 67, lines 7-8; Transcript of Hearing, 28 October 2015, ICC-01/05-01/13-T-30-Red2-ENG CT WT ('T-30-Red2'), p. 24, lines 12-13 and 15-16.
[1144] T-29-Red2, p. 67, lines 11-12; *see also* p. 70, lines 15-18.
[1145] Transcript of Hearing, 28 October 2015, ICC-01/05-01/13-T-30-CONF-ENG CT ('T-30-CONF'), p. 82, lines 12-14.
[1146] VWU Table, CAR-OTP-0078-0290 at 0297 (ICC-01/05-01/13-207-Conf-Anx, p. 8).
[1147] Call Sequence Table, CAR-OTP-0090-0630 at 0680, row 88; Call Data Record, CAR-OTP-0083-1472, row 212; CAR-OTP-0083-1465, row 212.
[1148] Call Sequence Table, CAR-OTP-0090-0630 at 0680, row 89; Call Data Record, CAR-OTP-0083-1472, row 216; CAR-OTP-0083-1465, row 216.
[1149] Call Sequence Table, CAR-OTP-0090-0630 at 0680, row 90; Call Data Record, CAR-OTP-0083-1472, row 218; CAR-OTP-0083-1465, row 218.
[1150] Call Sequence Table, CAR-OTP-0090-0630 at 0680, row 92; Call Data Record, CAR-OTP-0083-1472, row 224; CAR-OTP-0083-1465, row 224.
[1151] Call Sequence Table, CAR-OTP-0090-0630 at 0680, row 95; Call Data Record, CAR-OTP-0083-1472, row 235; CAR-OTP-0083-1465, row 235.
[1152] Call Sequence Table, CAR-OTP-0090-0630 at 0681, row 96; Call Data Record, CAR-OTP-0083-1472, row 237; CAR-OTP-0083-1465, row 237. The Chamber considers the starting time of the conversation indicated in the Call Sequence Table as 23:28 to be a typing error and relies on the CDR's for the correct starting time.
[1153] Call Sequence Table, CAR-OTP-0090-0630 at 0681, row 99; Call Data Record, CAR-OTP-0079-1509, row 7; CAR-OTP-0083-1477, row 26; CAR-OTP-0083-1478, row 26; CAR-OTP-0083-1518, row 26.
[1154] Call Sequence Table, CAR-OTP-0090-0630 at 0682, row 102; Call Data Record, CAR-OTP-0079-1509, row 8; CAR-OTP-0083-1477, row 47; CAR-OTP-0083-1478, row 47; CAR-OTP-0083-1518, row 47.
[1155] Call Sequence Table, CAR-OTP-0090-0630 at 0682, row 107; Call Data Record, CAR-OTP-0079-1509, row 13; CAR-OTP-0083-1477, row 99; CAR-OTP-0083-1478, row 99; CAR-OTP-0083-1518, row 99.

- 13 September 2013, at 20:47, for approximately 17½ minutes.[1157]

552. The above communications involved, for Mr Kilolo, telephone numbers [Redacted],[1158] and [Redacted].[1159] The Chamber is satisfied that number [Redacted][1160] is attributable to D-15 as (i) P-198 (D-15) testified that this was his former telephone number;[1161] and (ii) when played excerpts of intercepted telephone calls that were conducted using those numbers, the witness recognised his and Mr Kilolo's voices.[1162] The call sequence table is further corroborated by the following call logs and audio recordings:

(i) the call log, provided by the Belgian authorities to the Court,[1163] which indicates in rows 212, 216, 218, 224, 235 and 237 connections between telephone numbers [Redacted] and [Redacted] on 9 September, between 22:56 and 23:21 and between 23:23 and 00:13; and on 10 September 2013, between 00:14 and 01:03, between 01:22 and 01:58, between 22:54 and 23:36 and between 23:38 and 23:49; and

(ii) the call log, originally provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1164] and thereafter submitted by the Prosecution,[1165] indicating in the 7th, 8th, 13th, 16th, and 17th rows from the top connections

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[1156] Call Sequence Table, CAR-OTP-0090-0630 at 0683, row 108; Call Data Record, CAR-OTP-0079-1509, row 16; CAR-OTP-0083-1477, row 106; CAR-OTP-0083-1478, row 106; CAR-OTP-0083-1518, row 106.
[1157] Call Sequence Table, CAR-OTP-0090-0630 at 0684, row 113; Call Data Record, CAR-OTP-0077-1025, row 64; CAR-OTP-0079-1509, row 17; CAR-OTP-0083-1477, row 135; CAR-OTP-0083-1478, row 135; CAR-OTP-0083-1518, row 135.
[1158] Call Sequence Table, CAR-OTP-0090-0630 at 0680, rows 88, 89, 90, 92 and 95; at 0681, row 96. *See* para. 447.
[1159] Call Sequence Table, CAR-OTP-0090-0630 at 0681, row 99; at 0682, rows 102 and 107; at 0683, row 108; at 0684, row 113; *See* para. 585.
[1160] Call Sequence Table, CAR-OTP-0090-0630 at 0680, rows 88, 89, 90, 92 and 95; at 0681, rows 96 and 99; at 0682, rows 102 and 107; at 0683, row 108; at 0684, row 113.
[1161] T-29-CONF, p. 66, lines 9-13.
[1162] T-30-Red2, p. 15, line 24 to p. 16, line 11; p. 18, lines 19 (*'I listened, Mr Kilolo's voice mostly'*) and 22; p. 25, line 22; p. 41, lines 24-25; p. 50, line 23.
[1163] Call log, CAR-OTP-0083-1465; CAR-OTP-0083-1472.
[1164] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1165] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.

between telephone numbers [Redacted] and [Redacted] on 10 September 2013, between 23:55 and 00:04; on 11 September 2013, between 20:30 and 21:05; on 12 September 2013, between 20:59 and 21:31 and between 23:06 and 23:24; and on 13 September 2013, between 20:47 and 21:05;[1166] and the relevant audio recordings, also provided by the Dutch judicial authorities, and subsequently submitted by the Prosecution, which last 09:18,[1167] 34:19,[1168] 31:30,[1169] 18:55[1170] and 17:51[1171] minutes, respectively, and thus duly correspond to the relevant call log entries provided by the Dutch authorities.

553. As to the content of these conversations, P-198 (D-15) first confirmed that he spoke with Mr Kilolo about issues pertaining to the Main Case[1172] and that Mr Kilolo had asked him to '*stick with his testimony*'.[1173] However, when asked whether he was given the specific questions that Mr Kilolo intended to ask the witness, he responded, '*Counsel, I could not have discussed all these issues with him*'.[1174] He did not provide any further, convincing explanation. The Chamber finds P-198 (D-15)'s testimony implausible. Against the backdrop of the intercepted telephone calls, the Chamber considers that Mr Kilolo did not

[1166] Call log, CAR-OTP-0079-1509 at 1509, rows 7, 8, 13, 16 and 17 from top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, rows 7, 8, 13, 16 and 17 from the top. The call log entries are further corroborated by the historical call data provided by the telephone communication company concerned, CAR-OTP-0083-1477, rows 26, 47, 99, 106 and 135.
[1167] Audio recording, CAR-OTP-0074-1002 (ICC-01/05-01/13-6-Conf-AnxB007); Transcript of audio recording, CAR-OTP-0079-0025 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0148 (French translation); Translated transcript of audio recording, CAR-OTP-0091-0098 (English translation).
[1168] Audio recording, CAR-OTP-0074-1003 (ICC-01/05-01/13-6-Conf-AnxB008); Transcript of audio recording, CAR-OTP-0079-0030 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0154 (French translation); Translated transcript of audio recording, CAR-OTP-0091-1011 (English translation).
[1169] Audio recording, CAR-OTP-0074-1008 (ICC-01/05-01/13-6-Conf-AnxB013); Transcript of audio recording, CAR-OTP-0077-1389 (in French); Translated transcript of audio recording, CAR-OTP-0091-0186 (English translation).
[1170] Audio recording, CAR-OTP-0074-1011 (ICC-01/05-01/13-6-Conf-AnxB016); Transcript of audio recording, CAR-OTP-0077-1407 (in French); Translated transcript of audio recording, CAR-OTP-0091-0151 (English translation).
[1171] Audio recording, CAR-OTP-0074-1012 (ICC-01/05-01/13-6-Conf-AnxB017); Transcript of audio recording, CAR-OTP-0077-1414 (in French); Translated transcript of audio recording, CAR-OTP-0089-1507 (English translation).
[1172] T-29-Red2, p. 68, lines 11-12 ('*But what might be the subject of a conversation between a lawyer before the Court and a witness that he has called if it is not about the case, can it be something else?*').
[1173] T-29-Red2, p. 68, lines 14-15.
[1174] T-29-Red2, p. 70, line 25.

merely ask D-15 to present information based on his personal experiences. Rather, after having listened to the intercepted communications, the Chamber is convinced that Mr Kilolo dictated the replies to be given before Trial Chamber III and advised D-15 on how to conduct himself before the Court, as set out below.

i. 10 September 2013 Call

554. The Chamber is particularly attentive to the intercepted conversation of 10 September 2013, at 23:55, the eve of D-15's testimony in the Main Case. During that conversation, Mr Kilolo instructed D-15 to incorrectly testify that his contacts with Mr Kilolo were limited to one 2- or 3- hour meeting in late April 2012[1175] and three telephone calls.[1176] Mr Kilolo impressed upon D-15 the relevant information on these three telephone contacts, detailing their circumstances and the topics discussed.

555. Not only did Mr Kilolo repeatedly rehearse the anticipated questions, he also provided the answers to be given in court. Meanwhile, D-15 remained passive, confirming to Mr Kilolo that he understood with an occasional '*oui*' or similar utterances.[1177] Indeed, after having listened to the audio recording, P-198 (D-15) himself remarked, '*[t]his was not a discussion. There was a person talking and the*

[1175] Audio recording, CAR-OTP-0074-1002; Translated transcript of audio recording, CAR-OTP-0079-0148 at 0150, lines 11-15 ('*Donc, il y a eu une seule rencontre physique. Euh… c'était l'année passée en 2012. Si je m'abuse pas, ça devrait être vers le mois d'avril. Donc, c'était l'unique rencontre (…) qui a duré deux à trois heures du temps, en compagnie de l'Australienne…euh…'*/'*So there was just one meeting in person. Erm ... it was last year in 2012. If I'm not mistaken, it must have been around April. So that was the only meeting (...) which lasted two or three hours with the Australian woman in attendance ... erm ...'*).

[1176] Audio recording, CAR-OTP-0074-1002; Translated transcript of audio recording, CAR-OTP-0079-0148 at 0150, lines 26-32 ('*Bon, il faut distinguer les contacts que tu as eus avec moi et les contacts que tu as eus avec mes collaboratrices. (…) Avec moi (…) on a eu que trois contacts téléphoniques'*/'*Well, you have to make a distinction between contact you had with me and contact you had with my assistants. (…) With me (...) we have been in telephone contact only three times'*).

[1177] *See also* T-30-Red2, p. 16, lines 4-5 (*'The person who was speaking, who was speaking with Maître Kilolo didn't say much'*).

other side was listening'.[1178] In this regard, the following two examples are particularly illustrative.

(i) When discussing the timing of their last contact, Mr Kilolo told D-15 to testify that *'le dernier contact téléphonique…euh…en ce qui concerne nous deux, on peut considérer que ça remonte…non, on ne va pas mettre l'année passée, mais cette année mais au début de l'année. Donc, je peux dire que le dernier contact qu'on a eu, le troisième, c'était au mois de janvier'*.[1179]

(ii) Mr Kilolo also instructed D-15 to deny that he knows Mr Kilolo well: *'toi et moi, nous ne nous connaissons pas bien…parce qu'on s'est vu (…) seulement une fois, et qu'on avait parlé deux ou trois fois. Donc, on va se rencontrer seulement là demain à l'audience, mais (…) mais…nous ne nous connaissons pas très bien. Aussi la dernière fois que tu m'avais eu, tu avais entendu ma voix, c'était au mois de janvier de cette année. Depuis lors, tu n'as aucune de mes nouvelles…'*.[1180]

ii. 11 September 2013 Calls

Call Between Mr Kilolo and D-15

556. Mr Kilolo's instructions to D-15 extended to the subject-matter of the Main Case.[1181] For example, on the evening of 11 September 2013, at 20:30,[1182] after

[1178] T-30-Red2, p. 19, lines 5-6.
[1179] Audio recording, CAR-OTP-0074-1002; Translated transcript of audio recording, CAR-OTP-0079-0148 at 0152, lines 86-89 (*'the last telephone contact ... erm ... between the two of us, that would be back in ... no, let's not say last year, but this year, but at the start of the year. So I can say that the last contact we had, the third time, was in January'*).
[1180] Audio recording, CAR-OTP-0074-1002; Translated transcript of audio recording, CAR-OTP-0079-0148 at 0152-0153, line 103 to 111 (*'you and I, we don't know each other very well ... because we've seen each other (...) only once, and have spoken two or three times. So we'll only meet tomorrow at the hearing but (...) but ... we don't know each other very well. Also the last time you had me, you heard my voice, was in January this year. You haven't heard from me since then ...'*).
[1181] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 11 September 2013, ICC-01/05-01/08-T-343-CONF-ENG ET; ICC-01/05-01/08-T-343-Red-ENG WT; Transcript of Hearing, 12 September 2013, ICC-01/05-01/08-T-344-CONF-ENG ET ('T-344-CONF'); ICC-01/05-01/08-T-344-Red-ENG WT ('T-344-Red'); Transcript of Hearing, 13 September 2013, ICC-01/05-01/08-T-345-CONF-ENG ET; ICC-01/05-01/08-T-345-Red-ENG WT ('T-345-Red').

D-15's first day of testimony, Mr Kilolo again called D-15 and scripted his replies on three specific questions that Mr Kilolo would put to D-15 the following day. This script concerned (i) the names and roles of MLC commanders in the CAR; (ii) former members of Mobutu's *Division spéciale présidentielle* who remained in the CAR after Mobutu fled from the DRC; and (iii) Mr Bemba's alleged control over MLC troops in the CAR. The intercepted telephone conversation records Mr Kilolo systematically going through the topics, several times, in a question-and-answer fashion, impressing upon D-15 the answers to be given. As before, D-15 remained rather silent, for the most part expressing agreement with the instruction ('*oui*' or '*ok*'), or occasionally seeking clarification.[1183] Indeed, when P-198 (D-15) listened to an excerpt of the audio recording, he characterised the episode played as a '*monologue*'.[1184]

557. Mr Kilolo's concrete instructions in this intercepted call encompass the following topics: (i) the presence of '*cireurs*' (shoe-shiners), former members of the DRC military units, in the CAR[1185] and the language they spoke;[1186] (ii) the

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[1182] Audio recording, CAR-OTP-0074-1003 (ICC-01/05-01/13-6-Conf-AnxB008); Transcript of audio recording, CAR-OTP-0079-0030 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0154 (French translation); Translated transcript of audio recording, CAR-OTP-0091-1011 (English translation).

[1183] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0158, line 106 ('*Bombayaké…Bombayaké était…était adjoint au chef de l'état-major?*'/'*Bombayaké...Bombayaké was...was the deputy Chief of Staff?*'); *see also* Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0161, line 212 ('*je ne sais pas…je ne sais pas si je peux*'/'*I don't know ... I don't know if I can*').

[1184] T-30-Red2, p. 25, lines 17-18. ('*Yes, but it is not really a conversation as such. It is a monologue. I did not hear the other party respond in any way*').

[1185] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0156, lines 23-30 ('*Et puis, je vais te demander, il y avait combien de gardes avec lui [Mobutu] là-bas ? Tu me dis le nombre, à peu prés 3, 4000. Et enfin, je te demande : mais Mobutu, quand il fuit, où est partie sa garde ? À ce moment-là, tu m'expliques que ceux qui étaient à Kinshasa, à la DSP ont traversé à Brazza et ceux qui étaient à Gbadolite ont traversé à Bangui. Et d'autres se sont (...) transformés en faisant des petits boulots, des cireurs et … et ils sont restés à Bangui depuis des années et vivent là-bas. D'autres même jusqu'à ce jour*'/'*And then I'll ask you, how many guards were there with him [Mobuto]? You give me the figure, around three to four thousand. And lastly, I'll ask you: But when Mobuto fled, where did his guard go? Then, you explain to me that those who were in Kinshasa, at the DSP [Division speciale presidentielle – Special Presidential Division] crossed over to Brazza and those in Gbadolite crossed over to Bangui. And others were (...) converted by doing odd jobs, shoe-shiners and ... and they stayed in Bangui for years and they live there. Others even to this day*').

[1186] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0156, lines 32-34 ('*Donc, ces gens-là (...) ils parlent très bien le lingala et aussi, ils parlent très bien le sango*'/'*So, those people (...) they speak Lingala very well and they also speak Sango very well*').

names and functions of various commanders of the MLC troops in the CAR;[1187] (iii) the arrival of MLC troops in the CAR;[1188] (iv) the dates and composition of the CCOP reconnaissance mission in the CAR;[1189] and (v) Mr Bemba's command and control over MLC troops operating in the CAR.[1190] In relation to the latter topic, Mr Kilolo remarked that D-15 had not given evidence in a satisfying manner during his first day of testimony, reminding D-15 that he was expected to follow a specific narrative.[1191]

[1187] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0157 (as amended in CAR-OTP-0079-0157_01), lines 54-63 ('*Donc, je viendrai simplement avec trois questions demain, te demander de me mettre les noms. Donc, comme ça, tu me mets Bombayaké, Mazi et Lengbé. De me mettre ça, les noms des chefs militaires (...) qui…qui exerçaient le commandement et le contrôle des troupes MLC en Centrafrique. Quand on termine ces trois choses-là …euh… enfin, tu peux me mettre comme tu avais mis, Dambi, Mazi, Bombayaké, Lengbé. Et il y a eu aussi Bemondombi qui avait remplacé Lengbé. Bon. Ce dont (...) tu te souviendras, tu me mets sur papier, tu signes.*'/'*So tomorrow I'll come with just three questions. I will ask you to put down the names. So that way you put down Bombayaké, Mazi and Lengbe. Put down that for me, the names of the military leaders (...) who ...who had command and control of the MLC troops in Central Africa. When we finish with those three things ...erm ...well, you can put down for me as you had put, Dambi, Mazi, Bombayaké and Lengbe. And there was also Bemondombi who replaced Lengbe. Well, what (...) you remember, you'll put it down on paper for me and you'll sign*').

[1188] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0165, lines 349-352 ('*ils vont te montrer une lettre de …signée par Charlie Mike, qui affirme …ça, je t'en avais déjà parlé, qui écrit aux Nations Unies pour dire que les troupes ont traversé le 27 octobre. Donc là, tu peux dire clairement qu'il s'est trompé, parce que le 27 octobre, c'était la réunion que vous avez tenue. La traversée a eu lieu le 30, comme tu as dit*'/'*they'll show you a letter from ...signed by Charlie Mike, which states ...that, I've already told you about it, who wrote to the United Nations to say that the troops crossed over on the 27th of October. So then you can say clearly, he was mistaken because the 27th of October was when you held the meeting. The crossing took place on the 30th, as you said*').

[1189] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0162, lines 249-255 ('*Alors, la réponse que tu peux donner, c'est que ce n'était pas nécessaire d'en parler, parce qu'on vous avait déjà fait rapport de cela le même 26. L'état–major avait déjà (...) communiqué le rapport du 26. Le même soir. (...) Donc, ce n'était pas nécessaire, le 27, d'en parler*'/'*So the answer you can give is that it wasn't necessary to discuss it because it had already been reported to you on the same day, the 26th. The General Staff had already (...) communicated the report of the 26th. The same evening. (...) So it wasn't necessary to talk about it on the 27th*').

[1190] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0157-0158, lines 71-81 ('*Troisième question, de conclusion, je te dirai (...) euh…d'après (...) une certaine théorie, Jean-Pierre Bemba (...) était le chef militaire en Centrafrique, parce qu'il exerçait le commandement et le contrôle des troupes de la brigade de Mustapha à Bangui. Quelle est ta réaction ? Mais là, vraiment, si tu peux m'aligner plusieurs arguments militaires, pour expliquer que c'était impossible*'/'*Third question. To conclude, I'll say to you (...) erm ... according (...) to one theory, Jean-Pierre Bemba (...) was the military leader in Central Africa, because he exercised command and control over the troops in Mustapha's brigade in Bangui. What's your reaction? So there, really, if you can string several military arguments together for me to explain that it was impossible*').

[1191] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0157, lines 43-45 ('*J'ai essayé ça audjourd'hui, mais tu t'es juste limité en me disant que tu étais perplexe. Tu n'es pas allé dans les détails*'/'*I tried that today but you just restricted yourself to saying you were confused. You didn't go into any detail*').

558. Further, the Chamber notes that various parts of the script did not feature in D-15's prior statement to the Main Case Defence, including (i) the names of commanders other than '*Bombayaké*';[1192] (ii) the date of the CCOP mission;[1193] and (iii) the term '*cireurs*',[1194] which also featured in D-23's scripted testimony,[1195] and demonstrates Mr Kilolo's efforts to harmonise the evidence. The absence of the above information from D-15's prior statement clearly explains why Mr Kilolo repeatedly rehearsed the various topics, in particular, commanders' names, over the course of the call.

559. For example, at one point, D-15 proposed the name of a certain individual responsible for logistics. Mr Kilolo immediately corrected him, explaining that this was not possible since heavy weaponry was always with the presidential guard. Mr Kilolo added that this is also a well-known fact for all the countries in Africa. D-15 made no attempt to contradict and merely agreed with Mr Kilolo.[1196] As this episode shows, this exercise was indispensable for D-15 to memorise the new information and repeat it in court.

560. It is particularly striking that, despite P-198 (D-15)'s affirmation that he knows about African armies,[1197] he would have confused or not known the functions of the commanders of the MLC troops in the CAR. In fact, when asked by the Kilolo Defence whether he knew the commanders mentioned by Mr Kilolo, P-198 (D-15) did not answer. He instead side-tracked on other issues.[1198] Also,

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[1192] Prior recorded testimony, CAR-D21-0004-0709-R01 at 0733-R01 (*'Bombayaké et les autres qui étaient là'/' Bombayaké and the others who were there'*).
[1193] The witness only had made reference that he had visited Bangui sometime in October, November, or December 2002, at the request of Mr Bemba, *see* Prior recorded testimony, CAR-D21-0004-0709-R01 at 0743-R01; at 0744-R01.
[1194] Prior recorded testimony, CAR-D21-0004-0709-R01.
[1195] *See* para. 466.
[1196] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 1058, lines 95-105.
[1197] T-30-CONF, p. 31, line 1.
[1198] T-30-Red2, p. 73, lines 1-6.

his professional experience, as highlighted by the Kilolo Defence,[1199] does not, in itself, refute the fact that Mr Kilolo dictated to D-15 the commanders' names and functions.

561. The Chamber also notes the following two episodes during the same intercepted conversation, which self-evidently exemplify Mr Kilolo's control over D-15's testimony. The first example involves Mr Kilolo's exchanges with D-15 concerning the language Mr Bemba used when talking to his troops. Mr Kilolo emphasised that this point was of cardinal importance for the Main Case Defence, thus impressing upon D-15 the need to stick to the script on this point. Besides the instruction on what to testify, Mr Kilolo also instructed D-15 as to *how* to testify. For example, he specified that D-15 should not respond spontaneously, so as to disperse any suspicion in the courtroom.

> **Kilolo**: *Mais attention, s'ils reviennent sur ça demain, on te demande dans quelle…en quelle langue est-ce que Bemba a parlé à PK12 ? En tout cas, tu dis que là, tu ne sais pas. Tu n'as pas ce détail-là. Parce que comme tu n'y étais pas, c'est un détail trop pointu. Si tu donnes ça, ça va paraître suspect. Tu n'en sais rien. (…)*
> **D-15**: *Vous dites que je…que je dise que je n'en sais rien sur la langue qu'il utilisée.*
> **Kilolo**: *Oui, exactement. Affirmatif, affirmative. Tu n'en sais rien.*
> **D-15**: *Ah, mais non, mais ça, ça paraîtra quand même suspect de dire que je n'en sais rien. Parce que bon, ben…parce que si je dis que c'est pas ce que m'avait rapporté, on sait exactement que bon, ben, il s'adresse aux troupes souvent en lingala.*
> **Kilolo**: *Non, tu peux dire que tu ne te souviens plus. Ou alors, tu réponds, mais avec beaucoup d'hésitation pour montrer que ça date de longtemps…c'est un détail que tu n'as plus en tête.*
> **D-15**: *Bon si je dis qu'il…qu'il s'est adressé aux troupes en lingala, ça a quelle conséquence ?*
> **Kilolo**: *Non, ils peuvent penser que c'est un montage. Ils peuvent penser que c'était un montage. C'est long à t'expliquer maintenant pourquoi.*
> **D-15**: *Un montage ?*
> **Kilolo**: *Non, c'est-à-dire, ils vont penser…ils vont…ils vont…parce que le problème de langue pour nous est capital. Si tu dis que tu te souviens…ils vont avoir l'impression que quelqu'un te l'a soufflé récemment. Voilà.*
> **D-15**: *Mais…mais il faut que je…je donne une réponse d'emblée à cela. Je sais…*
> **Kilolo**: *Non, non, non…*
> **D-15**: *…qu'il leur parlé en lingala.*
> **Kilolo**: *…non, non, non. Il ne faut pas…. Il ne faut surtout pas en parler d'emblée. Tu peux en parler uniquement si on te pose la question, mais après hésitation et réflexion. Pas spontanément, pas trop vite.*

[1199] T-30-CONF, p. 61, lines 10-15; p. 76, line 14 to p. 77, line 12; Prior recorded testimony, CAR-D21-0004-0102 at 0108-0110.

D-15: *Ah, d'accord*.[1200]

562. In the second example, Mr Kilolo asked D-15 to change his evidence regarding his attendance at the Pretoria preparatory meetings for the Sun City negotiations. At first, D-15 rejected Mr Kilolo's instruction to testify that he, D-15, was only present for one week.[1201] He claimed that he could provide a precise response[1202] and proposed to testify that he had attended preparatory meetings over the period of three to four months.[1203] Mr Kilolo did not agree and instructed D-15 to change his testimony to the effect that his attendance was limited to a maximum of two to three weeks:

> **Kilolo**: *…je te suggère…c'est bon, mais je te suggère de réduire …*
> **D-15**: *Oui.*
> **Kilolo**: *…le temps que tu as passé à Prétoria. Si tu peux réduire ça à 2…2 semaines ou 3 semaines maximum.*
> **D-15**: *Ok. D'accord.*
> **Kilolo**: *C'est mieux, parce que…tu n'étais pas dans les pourparlers, là, de …de Prétoria 1 et Prétoria 2. Tu es venu vers le fin, mais comme toi, tu venais juste pour finaliser, bon, tu es venu, tu es resté peut-être 2 semaines et puis, tu es rentré, c'est tout*.[1204]

[1200] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0168-0169, lines 479-482 and 496-516 ('Kilolo: *But be careful: if they come back to that tomorrow, they'll ask you in which ... in which language Bemba spoke at PK 12. In any case, say that you don't know about that. You don't have that exact information. Because since you weren't there, it's too precise a detail. If you give that, it's going to look suspicious. You don't know anything about that. (...)* D-15: *You're saying that I ... that I should say that I don't know anything about the language he used.* Kilolo: *Yes, exactly. Affirmative, affirmative. You don't know anything about it.* D-15: *Oh, but no - but it, it'll look suspicious even so if I say that I don't know anything about it. Because, right, well ... because if I say it isn't what was reported back to me, we know full well that, well, he often addresses the troops in Lingala.* Kilolo: *No. You can say that you don't remember. Or reply, but with a great deal of hesitation, to show that it's a long time ago ... it's a detail you no longer recall.* D-15: *Right. If I say that he ... that he addressed the troops in Lingala, what's the consequence?* Kilolo: *No, they might think that it's a fabrication. They might think that it was a fabrication. It'll take too long now to explain why.* D-15: *A fabrication?* Kilolo: *No, that is, they're going to think ... they're going to ... they're going to ... because the language issue is crucial for us. If you say you remember ... they're going to get the impression that someone's recently told you what to say. You see.* D-15: *But ... I have to ... I have to reply to that straight away. I know ...* Kilolo: *No. no, no* ...D-15: *... that he spoke to them in Lingala.* Kilolo: *... no, no, no. You mustn't ... you absolutely mustn't mention it straight away. You can mention it only if they ask you the question, but after hesitation and reflection. Not spontaneously; not too quickly.* D-15: *Oh, alright'*).

[1201] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0164, lines 305-310.

[1202] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0164, line 311.

[1203] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0164, lines 323-328.

[1204] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0165, lines 333-341 ('Kilolo: *... I suggest you ... it's fine, but I suggest you reduce ...* D-15: *Yes.* Kilolo: *... the time you spent in Pretoria. If you can reduce it to two ... two weeks or three weeks maximum.* D-15: *OK. Alright.* Kilolo: *It's better because ... you weren't part of the talks, there, ... for Pretoria 1 and Pretoria 2. You came*

563. The intercepted call also demonstrates that Mr Kilolo was not interested in whether the witness himself actually had first-hand knowledge of the facts he was told to provide in court. In addition to the example above, the Chamber further notes that, when instructing D-15 to state that the former DRC soldiers stationed in Kinshasa fled to Brazzaville after the end of Mobutu's reign, Mr Kilolo further dictated that D-15 himself was probably one of them. However, he never asked D-15 if that was true. Equally, D-15 never confirmed if that was the case and did not offer to provide his own account of these events.[1205]

564. During this call, while instructing D-15, Mr Kilolo grew impatient at times and clearly expected D-15 to blindly follow his instructions. As noted above, D-15 mostly signalled his agreement or asked for clarifications, actually having no real say over the content of his upcoming testimony.

Call Between Mr Mangenda and Mr Kilolo

565. After his conversation with D-15 on 11 September 2013, Mr Kilolo and Mr Mangenda also communicated by telephone concerning D-15's testimony. The call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1206] and thereafter submitted by the Prosecution,[1207] indicates in the 10th row from the top a connection between telephone numbers [Redacted] and [Redacted], attributable to Mr Kilolo,[1208] on 11 September 2013, between 23:09

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towards the end, but like you, you just came to finalise, well, you came, you stayed maybe two weeks and then you went back, that's it').

[1205] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0157, lines 63-70.

[1206] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.

[1207] Call log, CAR-OTP-0079-1509*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.

[1208] *See* para. 585.

and 23:13 for approximately 4 minutes.[1209] The corresponding audio recording, initially provided by the Dutch judicial authorities, and subsequently submitted by the Prosecution, lasts 04:12 minutes[1210] and thus duly corresponds to the call log entry concerned. The Chamber is satisfied that telephone number [Redacted] is attributable to Mr Mangenda based on the content of the conversation and the fact that Mr Mangenda is referred to by his interlocutor, as in other phone conversations, as '*Jean-Jacques*',[1211] Mr Mangenda's first name.

566. Mr Kilolo updated Mr Mangenda about his earlier telephone conversation with D-15. Mr Kilolo recapitulated at least two of the three questions that he would pose to D-15 the following day.[1212] Mr Mangenda signalled his agreement.[1213] Contrary to the allegations of the Mangenda Defence,[1214] the Chamber concludes from this conversation that Mr Kilolo updated Mr Mangenda on the details of his illicit coaching activities.

[1209] Call log, CAR-OTP-0079-1509 at 1509, row 10 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 10 from top. The call log entry is further corroborated by the historical call data provided by the telephone communication company concerned, CAR-OTP-0083-1477, row 49.

[1210] Audio recording, CAR-OTP-0074-1005 (ICC-01/05-01/13-6-Conf-AnxB010); Transcript of audio recording, CAR-OTP-0080-0392 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0080-0604, (French translation).

[1211] Audio recording, CAR-OTP-0074-1005; Translated transcript of audio recording, CAR-OTP-0080-0604 at 0606; line 4.

[1212] Audio recording, CAR-OTP-0074-1005; Translated transcript of audio recording, CAR-OTP-0080-0604 at 0607-0608, lines 63-71 ('*Bon on s'est mis d'accord pour juste trois questions. (…) les premières questions c'est de reprendre…euh…les noms de… les au…les chefs militaires qui commandaient…les troupes (…) La deuxième chose… je vais lui demander…comment est-ce que…euh…je vais lui demander en disant bon…euh….le…euh…lorsque Mobutu a été déchu. Qu'est que vous, vous aviez fait […]*' / '*Good, we have agreed to just three questions. (…) the first question is to repeat … erm … the names of … the … the military leaders who were in command of … the troops (…). The second thing … I am going to ask him … how is it that … erm … I am going to ask him by saying well … erm … the erm … when Mobuto was deposed. What did you do? […]*').

[1213] Audio recording, CAR-OTP-0074-1005; Translated transcript of audio recording, CAR-OTP-0080-0604 at 0607, lines 64 and 67.

[1214] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, paras 151-157.

iii. 12 September 2013 Calls

Call Between Mr Kilolo and Mr Bemba

567. Early in the morning of 12 September 2013, at 07:58, Mr Kilolo had a telephone conversation with Mr Bemba on his privileged line at the Detention Centre. The call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1215] and thereafter submitted by the Prosecution,[1216] indicates in the 11th row from the top a connection between Mr Kilolo's telephone number [Redacted][1217] and Mr Bemba's telephone number [Redacted][1218] on 12 September 2013 between 07:58 and 08:01 for approximately 3 minutes.[1219] The corresponding audio recording[1220] lasts 03:16 minutes and thus duly corresponds to the call log entry concerned.

568. Mr Kilolo reported to Mr Bemba that he had rehearsed with D-15 the three questions he would put to him in court that day: *'trois points seulement'*;[1221] *'les noms de gens à mentionner dans le document'*;[1222] *'le problème de la DSP comment ils avaient pris la fuite'*;[1223] and *'je reviens à la question d'hier'*.[1224] Mr Bemba expressly

[1215] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1216] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1217] *See* para. 585.
[1218] *See* para. 297.
[1219] Call log, CAR-OTP-0079-1509 at 1509, row 11 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 11 from the top. The call log entry is further corroborated by the historical call data provided by the telephone communication company concerned, CAR-OTP-0083-1477, row 51.
[1220] Audio recording, CAR-OTP-0074-1006 (ICC-01/05-01/13-6-Conf-AnxB011); Transcript of audio recording, CAR-OTP-0079-1654 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-1744 (French translation); Translated transcript of audio recording, CAR-OTP-0091-0127 (English translation).
[1221] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1746, line 21 (*'just three points'*).
[1222] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1746, line 23 (*'the names of people to be mentioned in the document'*).
[1223] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1746, line 25 (*'the problem of the DSP [Division speciale presidentielle - Special Presidential Division] how they fled'*).
[1224] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1746, line 29 (*'going back to yesterday's question'*).

approved the three questions: '*Ok, non ces trois trucs là, c'est bon, c'est bon*'.[1225] He also provided feedback on specific issues, particularly when he felt that Mr Kilolo had handled them wrongly: '*Non, no. Attention, attention, attention, les gens sont en train de faire quoi… Il faut … faut, pas. Attention, attention.*'[1226] The Chamber is therefore satisfied that Mr Bemba knew about and was directly involved in planning Mr Kilolo's illicit coaching activities concerning D-15. It alos shows Mr Bemba's authoritative control over the presentation of evidence.

First Call Between Mr Kilolo and D-15

569. As evidenced by an intercepted call of 12 September 2013, at 21:00,[1227] after D-15's second day of testimony, Mr Kilolo complimented D-15 on his performance in the courtroom[1228] and conveyed Mr Bemba's satisfaction.[1229] Thereafter, Mr Kilolo again disclosed three questions he would put to D-15 in court the following day.[1230] He then embarked on a monologue, dictating to D-15 the responses to be given. As before, D-15 remained passive for most of the conversation, occasionally acknowledging Mr Kilolo's instructions with '*oui*', or '*ah, d'accord*'.

570. One of the most noteworthy moments in the conversation is Mr Kilolo's instruction that D-15 correct his previous testimony concerning his knowledge of crimes in the CAR. In Mr Kilolo's view, D-15's testimony was not satisfactory:

[1225] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1748, line 73 (*'OK. No. Those three things - that's fine; that's fine'*).
[1226] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1747, lines 50 and 53 (*'No, no. Be careful, be careful, be careful. The people are in the process of, what? …We should…shouldn't. Be careful, be careful'*).
[1227] Audio recording, CAR-OTP-0074-1008 (ICC-01/05-01/13-6-Conf-AnxB013); Transcript of audio recording, CAR-OTP-0077-1389 (in French); Translated transcript of audio recording, CAR-OTP-0091-0186 (English translation).
[1228] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1391, lines 44-45.
[1229] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1391, lines 60-61 and 68.
[1230] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1395-1396, lines 206-208.

> *La première question, je voulais revenir sur le problème de RFI [Radio France Internationale]. Parce qu'on t'a posé la question: « Est-ce que vous aviez entendu parler des crimes, tout ça? » Tu dis : « Oui, par la radio RFI. » Alors (…) sur le plan juridique, ça peut …si on laisse ça comme ça, ça peut nous embêter, parce que ça va créer l'élément connaissance. La seule façon de casser ça (…) c'est de démontrer que ce que vous avez entendu, d'étaient de simples rumeurs vagues. Il n'y avait rien de précis. RFI n'a jamais cité le nom en disant que voilà, un soldat portant tel nom, ou appartenant à telle…à telle section ou à tel peloton, tel jour, à telle heure (…) à tel endroit, a volé telle chose appartenant (…) à telle victime. Tu vois ? Donc, on n'a jamais eu rien de précis.*[1231]

571. Mr Kilolo further dwelt on that subject-matter and instructed D-15 not to mention rape or murder, and to testify that he had only heard of '*stolen goods*'.[1232] Later, D-15 asked to rehearse this topic again.[1233] Mr Kilolo repeated the expected answer in full detail.[1234]

572. The Chamber is also attentive to P-198 (D-15)'s response to the Kilolo Defence examination as to whether Mr Kilolo had suggested that the witness modify his version of the events in relation to the commission of the crimes. P-198 (D-15) countered by using effective rhetorical techniques to avoid answering the question. For example, he stated, '*[A]nd what could counsel propose or suggest to me that might compare to the position or responsibility that I hold that could in anyway compare to it? My conscience – counsel, could he in any way force my conscience? That is my answer*'.[1235] In the Chamber's view, P-198 (D-15), once again, evaded the

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[1231] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1396, lines 214-228 (*'For the first question, I wanted to return to the RFI [Radio France Internationale] issue. Because you were asked, "Had you heard about the crimes and all that?" You reply, "Yes, on RFI." So (...) from a legal point of view, that could ... if we leave it like that, it could be awkward for us because it will create the element of knowledge. The only way of stifling that (...) is to show that what you heard were merely vague rumours: nothing specific. RFI never mentioned names - it never said, "Right, a soldier named So-and-So, or belonging to such ... such-and-such a section or such-and-such a platoon, on such-and-such a day, at such-and-such a time (...) in such-and-such a place, stole such-and-such a thing belonging (...) to such-and-such a victim." You see? So, we never had any precise details'*).

[1232] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1397, lines 265-270 ('*J'aimerais qu'on limite (...) ça vraiment au strict minimum, en parlant simplement des bien volés. (...) Voilà. Donc, c'était pour réduire l'élément connaissance. Ça c'était ma première préoccupation'*/*'I'd really like that to be limited (...) to the absolute minimum, by merely mentioning stolen goods. (...) There we are. So, that was to mitigate the element of knowledge. That was my primary concern'*).

[1233] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1404, lines 514-516.

[1234] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1404-1405, lines 517-539.

[1235] T-30-CONF, p. 69, lines 2-5.

question and added nothing with the potential to impact the Chamber's assessment of the contents of the intercepted call analysed above.

573. A second striking aspect of this conversation is Mr Kilolo's discussion with D-15 concerning Mr Bemba's command and control over the MLC troops in the CAR, a topic on which D-15 had testified earlier the same day.[1236] In an effort to encourage and strategically direct D-15's further testimony on this topic, Mr Kilolo explained to D-15 the legal consequences of his testimony.[1237] In the course of their discussion, Mr Kilolo disclosed the follow-up question that he would put to D-15 the following day in court,[1238] with a view to triggering his response that Mr Bemba had no control over the MLC troops in the CAR. In this context, Mr Kilolo also stressed where the emphasis in D-15's testimony should lie.[1239] From the above, it is clear that Mr Kilolo scripted the conduct of the testimony and instructed D-15 to follow a particular narrative favourable to the Main Case Defence.

Call Between Mr Mangenda and Mr Kilolo

574. Shortly after the above conversation with D-15 on 12 September 2013, Mr Kilolo called Mr Mangenda concerning, *inter alia*, the questions of the victims' legal representatives, which he had promised to provide to D-15.[1240] The

[1236] Trial Chamber III, T-344-Red, p. 13, line 25 to p. 19, line 4.
[1237] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1401, line 411.
[1238] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1403, lines 481-485 (*'En fait, là, je vais prendre ça en te posant la question: "Quelles sont les conditions qu'il faut réunir ? » Non, ou alors, je vais simplement te poser une question. Je dis « Je voudrais clarifier cela : Est-ce que M. Jean-Pierre Bemba, à cette époque, réunissait les conditions requises pour retirer les troupes (...) et les ramener au Congo? »'/'Actually, now. I'm going to take that up by asking you. "What conditions have to be met?" No. Or then I'll simply ask you a question. I'll say, "I'd like some clarification on this: did Mr Jean-Pierre Bemba, at that time, meet the necessary conditions to withdraw the troops (...) and take them back to the Congo?'*).
[1239] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1404, lines 512-513 ('*Voilà. Donc, à part le côté logistique, c'est important de donner cet argument-là, parce que cet argument-là est trop fort'/'There. So, apart from the logistics angle, it's important to put forward that argument, because that argument is so powerful'*).
[1240] Audio recording, CAR-OTP-0074-1008; Transcript of audio recording, CAR-OTP-0077-1389 at 1393, lines 114-116.

call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1241] and thereafter submitted by the Prosecution,[1242] indicates in the 14th row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1243] and [Redacted], attributable to Mr Mangenda,[1244] on 12 September 2013 from 21:48 to 21:51 for approximately 2 minutes.[1245] The corresponding audio recording, initially provided by the Dutch judicial authorities, and subsequently submitted by the Prosecution, lasts 02:05 minutes[1246] and thus duly corresponds to the call log entry concerned.

575. Mr Kilolo asked Mr Mangenda to send the confidential questions that the victims' legal representatives would pose to witness D-15.[1247] Mr Kilolo mentioned twice that D-15 wanted to sleep and was awaiting the promised questions,[1248] which demonstrates that Mr Mangenda planned to send the questions to D-15.

576. The evidence shows that Mr Mangenda complied with Mr Kilolo's request shortly after this call. He sent via e-mail, at 22:58, the two confidential filings of the legal representatives of victims[1249] containing their questions. To this end, the Chamber relies on (i) the Independent Counsel's report, which included the

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[1241] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1242] Call log, CAR-OTP-0079-1509*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1243] *See* para. 585.
[1244] *See* para. 487.
[1245] Call log, CAR-OTP-0079-1509 at 1509, row 14; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 14. The call log entry is further corroborated by the historical call data provided by the telephone communication company concerned, CAR-OTP-0083-1477, row 103.
[1246] Audio recording, CAR-OTP-0074-1009 (ICC-01/05-01/13-6-Conf-AnxB014); Transcript of audio recording, CAR-OTP-0079-1662 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-1754 (French translation); Translated transcript of audio recording, CAR-OTP-0089-1503 (English translation).
[1247] Audio recording, CAR-OTP-0074-1009; Translated transcript of audio recording, CAR-OTP-0079-1754 at 1756, line 7 ('*Les questions, les questions…les questions de gens du village*'/'*The questions ... the questions ... the questions of people from the village'*).
[1248] Audio recording, CAR-OTP-0074-1009; Translated transcript of audio recording, CAR-OTP-0079-1754 at 1756, line 11 and at 1757, lines 35-36.
[1249] *See* ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.

contents of the 12 September 2013 e-mail, together with the first page of the two annexed filings, as forensically extracted from the contents of Mr Kilolo's e-mail account;[1250] and (ii) Mr Kilolo's statement to D-15 in his telephone conversation on 12 September 2013, at 23:06, confirming that he had received the questions.[1251] Contrary to the allegations of the Mangenda Defence,[1252] the Chamber is thus convinced that Mr Mangenda had broad and detailed knowledge concerning the purpose and the content of Mr Kilolo's contacts with D-15.

Second Call Between Mr Kilolo and D-15

577. Less than ten minutes after Mr Mangenda e-mailed the confidential questions of the victims' legal representatives, Mr Kilolo again called D-15 on 12 September 2013, at 23:06.[1253] During this call, as was also the case with D-54,[1254] Mr Kilolo disclosed to D-15 the questions of the two victims' legal representatives. The Chamber notes that the questions proposed by the victims' legal representatives were notified to the parties on a confidential basis in advance of D-15's testimony.[1255] Before this Chamber, P-198 (D-15) claimed that he followed the Main Case proceedings on television and that he heard similar questions, including their structure and length, posed by the victims' legal representatives to other witnesses.[1256] The Chamber finds the witness's explanation unrealistic in view of the intercepted communications.

578. Indeed, Mr Kilolo's directive intervention went beyond the mere disclosure of the confidential questions of the victims' legal representatives. The Chamber

[1250] CAR-OTP-0088-0504 at 0505 to 0507 (Independent Counsel Report, ICC-01/05-01/13-670-Conf-AnxC-Red, pp. 2-4).
[1251] Audio recording, CAR-OTP-0074-1011; Translated transcript of audio recording, CAR-OTP-0077-1407 at 1408, line 4.
[1252] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, para. 152.
[1253] Audio recording, CAR-OTP-0074-1011 (ICC-01/05-01/13-6-Conf-AnxB016); Transcript of audio recording, CAR-OTP-0077-1407 (in French); Translated transcript of audio recording, CAR-OTP-0091-0151 (English translation).
[1254] *See* para. 632.
[1255] *See* ICC-01/05-01/08-2720-Conf; ICC-01/05-01/08-2725-Conf.
[1256] T-29-Red2, p. 70, line 25 to p. 71 line 6.

notes that Mr Kilolo also instructed D-15 as regards the subject-matter of the Main Case.[1257] As on previous occasions, Mr Kilolo sought to instil in D-15 the expected answers to the questions he disclosed. For example, one of the victims' legal representatives planned to ask whether, upon their arrival in the CAR, MLC soldiers had committed the crimes of murder, pillaging and rape. Mr Kilolo, repeating his prior instruction on this topic, instructed D-15 to respond that he had heard only of pillaging.[1258] In other instances, Mr Kilolo also added information. For example, when rehearsing the question of whether there had been convictions at the domestic level for alleged crimes, Mr Kilolo instructed, '*La réponse est oui. Maintenant, moi, j'ajoute ceci, la personne qui est responsable pour l'exécution des peines prononcées par un tribunal, c'est toujours l'auditeur. C'est lui qui délivre le billet d'écrou pour exécuter la peine*'.[1259] Throughout this conversation, D-15 was mostly listening, interrupting only to express his agreement ('*oui*', or '*mm-mm*') or to signal that he understood ('*j'ai bien suivi, bien, bien suivi, Maître*').[1260] The manner in which this conversation was conducted demonstrates D-15's understanding that he had to adhere to the agreed narrative.

579. The evidence reflected above in relation to the telephone contacts between Mr Kilolo and D-15 on 10, 11 and 12 September 2013 reveals the detailed and vast set of directions Mr Kilolo gave the witness during a series of 'briefing' sessions, with a view to securing a certain statement or ensuring that D-15 withheld information on a number of topics relevant to the charges in the Main

[1257] Audio recording, CAR-OTP-0074-1011; Transcript of audio recording, CAR-OTP-0077-1407 at 1408, lines 35-37.
[1258] Audio recording, CAR-OTP-0074-1011; Transcript of audio recording, CAR-OTP-0077-1407 at 1409, lines 71-78.
[1259] Audio recording, CAR-OTP-0074-1011; Transcript of audio recording, CAR-OTP-0077-1407 at 1413, lines 198-200 (*'The answer is "Yes." Now, what I'd add is this: the person responsible for enforcing the sentences handed down by a court is always the prosecutor. He's the one who issues the detention order to have the sentence carried out'*).
[1260] Audio recording, CAR-OTP-0074-1011; Transcript of audio recording, CAR-OTP-0077-1407 at 1413, lines 212 (*'I've understood, I've understood fully counsel.'*) and 201 ('*J'ai suivi*'/'*I've understood*').

Case or the witness's credibility. The instructive character of Mr Kilolo's monologues is underlined by his tone and language, such as the recurrent use of '*tu dois dire*',[1261] '*n'oublie pas*',[1262] '*tu dois leur expliquer*',[1263] '*il faut simplement insister sur le fait*,'[1264] '*il faut dire*',[1265] '*il faut être ferme*',[1266] '*tu ne dises pas*',[1267] and '*limite-toi à*'.[1268] This language signified to D-15, in a directive and unambiguous manner, the testimony expected of him. Mr Kilolo also indicated to the witness *when* to make a particular statement in an effort to prevent any suspicions surrounding D-15's testimony before Trial Chamber III. For example, the Chamber notes the following instruction:

> *là, tu pourras en parler avec le Procureur, pas avec moi. Parce que comme on a déjà vidé ça, ils vont trouver suspect, tu n'en as pas parlé aujourd'hui, que demain, tu entres dans ces détails-là avec moi. Je préfère que tu entres dans ces détails uniquement quand le Procureur va t'y amener*.[1269]

580. As a final remark, the Chamber notes P-198 (D-15)'s testimony that he simply listened to Mr Kilolo and that the information was not new to him.[1270] He also asserted that he never modified anything in his testimony upon Mr Kilolo's

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[1261] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0167, line 427 (*'you have to say'*); at 0162, lines 238-239 (*'tu dis que c'est'/'say that it is'*); at 0168, lines 474 (*'tu dises'/'you should say'*) and 480 (*'tu dis'/'you say'*); at 0160, lines 161-162 (*'je préfère que tu dises que'/'I would prefer you to say'*).

[1262] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0162, line 241; at 0167, line 440; at 0168, lines 449 and 463; at 0170, line 531 (*'don't forget'*).

[1263] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0163, line 289 (*'you have to explain to them'*); at 0157, line 66 (*'tu m'expliques'/'you explain to me'*); at 0164, line 305 (*'tu peux aussi expliquer'/'you can also explain'*); at 0168, line 471 (*'tu peux expliquer'/'you can explain'*).

[1264] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0163, line 270 (*'You must simply stress that'*).

[1265] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0165, line 357 (*'you have to say'*).

[1266] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0168, lines 464-465 (*'you've got to be firm'*).

[1267] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0163, line 277 (*'don't say'*).

[1268] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0162, line 237 (*'stick to'*); *see also* Mr Kilolo's direction, Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0161, lines 190-191 (*'Donc, je pense que ce serait bon, si tu dois te limiter à deux officiers que tu as vu'/'So I think it'll be fine if you have to limit yourself to the two officers that you saw'*).

[1269] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 1059, lines 124-127 (*'at that point, you could talk about it with the Prosecutor, not with me. Because as we've already covered that, they will find it suspicious that if you didn't mention it today, tomorrow you go into these details with me. I would prefer you to go into these details only when the Prosecutor brings up the subject'*).

[1270] T-30-Red2, p. 29, lines 19-20.

direction.[1271] P-198 (D-15) insisted that Mr Kilolo '*did not have anything to teach*' him,[1272] as he was the expert in military-related affairs[1273] and his account was based on his personal experiences.[1274] The Chamber attaches no weight to such generic assertions and considers them to be nothing more than an attempt to downplay the illicit nature of Mr Kilolo's conduct. The Chamber is of the view that the relevant intercepted conversations form a coherent whole that disproves P-198 (D-15)'s contention that he was not influenced by Mr Kilolo. The attitude and remarks of both Mr Kilolo and D-15, as reflected in the intercepted conversations, speak for themselves.

iv. Testimony of D-15

581. The transcripts of D-15's testimony in the Main Case demonstrate that Mr Kilolo advanced questions exactly as they had been disclosed, scripted and rehearsed with D-15 in the telephone conversations during the evening calls prior to his testimony.[1275] Likewise, the victims' legal representatives put the questions in court on 13 September 2013[1276] as they had been disclosed, in breach of their confidential classification, to D-15 during the briefing session on 12 September 2013, at 23:06. In turn, D-15's testimony strictly followed the narrative that Mr Kilolo had dictated over the telephone, as set out above.[1277]

[1271] T-30-Red2, p. 69, line 16.
[1272] T-30-Red2, p. 74, line 25.
[1273] T-30-CONF, p. 75, lines 6-13.
[1274] T-30-CONF, p. 80, lines 2-5.
[1275] Trial Chamber III, T-344-Red, p. 3, lines 17-22 (question of Mr Kilolo to D-15 to note the names and functions of MLC commanders); p. 13, line 25 to p. 14, line 4; p. 17, lines 17-22; p. 18, lines 20-24 (question of Mr Kilolo to D-15 on the allegation that Mr Bemba had command and control over the MLC in the CAR); p. 6, lines 3, 6 and 11-12; p. 7, lines 1-3, 7-10 and 14-16; p. 8, lines 4-6, 8-10 and 16-18 (question of Mr Kilolo as to the whereabouts and names of former Mobutu's guards); T-344-CONF, p. 19, lines 18-21 (question of Mr Kilolo on the Sun City negotiations); T-345-Red , p. 96, lines 21-25 (question of Mr Kilolo on the deployment of MLC troops in the CAR); p. 97, lines 16-19 (question of Mr Kilolo on Mr Bemba's control over the MLC in the CAR).
[1276] Trial Chamber III, T-345-Red, p. 57, line 4 to p. 79, line 4 (questions put by Ms Douzima-Lawson); p. 80, line 4 to p. 92, line 19 (questions put by Mr Zarambaud Assingambi).
[1277] Trial Chamber III, T-344-Red, p. 4, line 6 to p. 5, line 2 (response of D-15 as to the names and functions of MLC commanders); p. 14, line 5 to p. 19, line 4 (response of D-15 on the allegation that Mr Bemba had command and control over the MLC in the CAR); p. 6, lines 7-10 and 13-25; p. 7, lines 4-6, 11-13 and 17 to p. 8, lines 3, 7 and 11-15 (response of D-15 as to the whereabouts and names of former Mobutu's guards); T-344-

582. On 13 September 2013, D-15 testified incorrectly, as instructed, that he had three contacts with Mr Kilolo, the last of which was in January 2013.[1278] P-198 (D-15) explained that this answer concerned the last time he met Mr Kilolo in person, as he preferred to discuss '*serious matters*' in person and not over the telephone.[1279] When confronted with the actual wording of the question that was put to him in the Main Case, namely, when was the last time he had spoken with Mr Kilolo, P-198 (D-15) suggested that the question was unclear at the time, as it may have referred to contacts in person or over the telephone. His contention that the question put to him was confusing is unconvincing and the Chamber does not accept the witness's explanation. The Chamber believes that P-198 (D-15) evaded the question and, in doing so, merely sought to protect his and Mr Kilolo's interests.

583. Therefore, the Chamber finds that Mr Kilolo manipulated D-15's testimony before Trial Chamber III by providing him with the answers to questions in advance and instructing him on how to react and respond during his upcoming testimony. D-15 (P-198) testified in accordance with these instructions and in doing so gave false testimony with regard to the prior contacts he had with Mr Kilolo.

v. Aftermath of D-15's Testimony

584. After his testimony, on 13 September 2013, at 20:47,[1280] Mr Kilolo again called D-15. The relevant call log, initially provided by the Dutch judicial authorities to

CONF, p. 19, line 22 to p. 20, line 19 (response of D-15 as to the Sun City negotiations); T-345-Red, p. 97, lines 1-15 (response of D-15 on the deployment of MLC troops in the CAR); p. 97, line 20 to p. 98, line 14 (response of D-15 as to Mr Bemba's control over the MLC in the CAR).

[1278] Trial Chamber III, T-345-Red, p. 5, lines 11-17; p. 9, line 7 to p. 10, line 22.

[1279] T-30-Red2, p. 22, lines 10-14.

[1280] Audio recording, CAR-OTP-0074-1012 (ICC-01/05-01/13-6-Conf-AnxB017); Transcript of audio recording, CAR-OTP-0077-1414 (in French); Translated transcript of audio recording, CAR-OTP-0089-1507 (English translation).

Pre-Trial Chamber II,[1281] and thereafter formally submitted by the Prosecution,[1282] indicates in the 17th row from the top a connection between telephone numbers [Redacted] and [Redacted] from 20:47 until 21:05 for approximately 17½ minutes.[1283] The relevant audio recording, submitted by the Prosecution,[1284] lasts 17:51 minutes and thus duly corresponds to the call log entry concerned.

585. The Chamber is satisfied that telephone number [Redacted] is attributable to Mr Kilolo as the Chamber recognises the voice in the recording concerned to be that of Mr Kilolo. This finding is further corroborated by the following: (i) Mr Kilolo's interlocutor refers to him as '*Maître*' throughout the conversation;[1285] (ii) the content of the conversation revolves mainly around D-15's testimony in the Main Case; and (iii) P-198 (D-15) recognised Mr Kilolo's voice when played intercepts linked to this telephone number.[1286] Finally, the Chamber notes that Mr Kilolo admits that he spoke to D-54 on 30 and 31 October 2013.[1287] The relevant log for these calls indicates telephone number [Redacted].[1288]The Chamber is also satisfied that telephone number [Redacted] is

[1281] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1282] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1283] Call log, CAR-OTP-0079-1509 at 1509, row 17 from the top; ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 17 from the top.
[1284] Audio recording, CAR-OTP-0074-1012 (ICC-01/05-01/13-6-Conf-AnxB017); Transcript of audio recording, CAR-OTP-0077-1414 (in French); Translated transcript of audio recording, CAR-OTP-0089-1507 (English translation).
[1285] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1415 (as amended in CAR-OTP-0077-1415_01), lines 5 and 33; at 1416, line 58; at 1420, line 189; at 1421, line 231; at 1422, line 273; at 1424, lines 325 and 331.
[1286] T-30-Red2, p. 15, line 18; Audio recording, CAR-OTP-0074-1003; Audio recording, CAR-OTP-0074-1002.
[1287] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 192.
[1288] Call Sequence Table CAR-OTP-0090-0630 at 0715-0716, rows 66, 68, 70, 75 and 81; Call Data Record, CAR-OTP-0080-1286 at 1289, rows 12 and 39; at 1290, rows 22, 27 and 34.

attributable to witness D-15, as he testified before this Chamber that this was his former telephone number.[1289]

586. During this conversation, Mr Kilolo thanked D-15 personally[1290] and on Mr Bemba's behalf.[1291]

587. The Prosecution alleges that, during the 13 September 2013 call, D-15 recommended that Mr Kilolo thoroughly prepare D-54 for his testimony.[1292] In this regard, the Chamber notes that Mr Kilolo asked D-15 whether he had any general advice for the Main Case Defence.[1293] D-15 responded:

> *Bon, bien, je préférais véritablement… (…) …qu'il y ait une très très bonne préparation… (…)…une très, très bonne préparation avec des gens qui ne sont pas vraiment très bien outillés. (…) Il vous faut bien, bien et alors très bien les préparer… (…) et surtout entrer dans l'intelligence de l'Accusation pour sortir tout… toutes les questions possible que l'Accusation peut poser… (…) et mettre ça à la disposition de quelqu'un qui n'est pas bien outillé et peut-être lui faire répéter ça en fait. (…) Parce que, bon, bien, s'il n'a pas la… si la personne n'a pas le verbe facile, s'il n'a pas…s'il n'est pas intelligent et malin, et puis ces personnes-là peuvent le déstabiliser, le … le détruire automatiquement, quoi*.[1294]

588. This excerpt demonstrates that D-15's response was general, without any specific reference to D-54. Furthermore, his remarks do not change in the light of Mr Kilolo's prior comment that D-54 would be the last witness.[1295] This comment did not immediately precede D-15's response, as reflected above. Given the developments in the Main Case at the time of the conversation, the question of

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[1289] T-29-CONF, p. 66, lines 6-13.
[1290] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1415, line 8.
[1291] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1415, lines 21-23.
[1292] Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 104.
[1293] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1421, line 237.
[1294] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1421, line 238 to 1422 (as amended in CAR-OTP-0077-1422_01), line 257 (*'Right. Well, I really would prefer ...(...)... ... there to be a very thorough preparation ...(...)...a very, very thorough preparation of the people who aren't really very well equipped.(...) You really, really, really need to prepare them thoroughly ...(...) and above all, get into the Prosecution's mind to come up with...all the possible questions that the Prosecution might ask ...(...) and make that available to somebody who isn't very well equipped, and perhaps actually have him rehearse it.(...) Because, well, right, if he doesn't have ...if the person isn't a good speaker; if he doesn't have ... if he isn't clever and smart, then these people can unsettle him,...fundamentally destroy him, you know?'*).
[1295] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1420, lines 196-197.

whether further witnesses would be called by the Main Case Defence was still very much under discussion and Mr Kilolo may have had other reasons to make this remark to D-15. Also, whenever Mr Kilolo asked D-15 specific questions concerning D-54, such as in relation to his language skills[1296] and whether, in D-15's view, D-54 was a witness who could '*deal with it all*',[1297] he was given a specific answer. In the light of the foregoing, the Chamber cannot conclude that D-15 advised Mr Kilolo to specifically prepare D-54 thoroughly.

c) Overall Conclusions Regarding D-15

589. The Chamber finds that D-15, upon instructions of Mr Kilolo, untruthfully testified in the Main Case regarding his prior contacts with the Main Case Defence.

590. The Chamber also finds that, despite the contact prohibition order imposed by Trial Chamber III, Mr Kilolo had extensive telephone conversations with D-15 prior to and during the witness's testimony in the Main Case so as to ensure that D-15 followed a narrative favourable to the Main Case Defence position. To this end, Mr Kilolo disclosed the questions he would ask in court, as well as those of the victims' legal representatives that had been made available to the parties in the Main Case on a confidential basis. Mr Kilolo extensively rehearsed, instructed, corrected and scripted the expected answers on a series of issues pertaining to the Main Case that were followed by the witness scrupulously. Mr Kilolo instructed the witness on how to conduct himself before the Court and dictated the expected evidence on the timing and number of contacts with the Main Case Defence. Mr Kilolo also emphasised to D-15 that he should falsely testify that '*nous ne nous connaissons pas bien*'.

[1296] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1422, lines 258-260.
[1297] Audio recording, CAR-OTP-0074-1012; Transcript of audio recording, CAR-OTP-0077-1414 at 1420, lines 192-197.

591. The Chamber finds that Mr Mangenda was firmly involved in and approved of Mr Kilolo's illicit coaching activities involving D-15, in particular the fact that Mr Kilolo was rehearsing questions to be posed by the Main Case Defence and the victims' legal representatives. Indeed, he was updated by Mr Kilolo on the illicit coaching of D-15 and provided Mr Kilolo with the questions of the victims' legal representatives, knowing that they would be used for illicit purposes.

592. Mr Bemba was updated by Mr Kilolo on the questions rehearsed with D-15. The Chamber finds that Mr Bemba knew about and approved Mr Kilolo's illicit coaching activities. He also provided feedback on how specific issues should be handled when he felt they were handled wrongly by Mr Kilolo.

11. Witness D-54

593. Witness D-54 was called by the Main Case Defence and testified under this pseudonym. He was summoned, at the request of the Prosecution, and testified as witness P-201 in the present case.

a) Credibility

594. P-201 (D-54) was summoned to testify[1298] before this Chamber *via* video-link after having been given Rule 74 assurances.[1299]

595. Overall, the witness was elusive, sometimes contradictory, and cautious in his answers. He responded to various questions only in relation to discrete topics or after having been confronted with documentary evidence or the transcripts of his testimony before Trial Chamber III. Also, on several occasions – for example, when asked about the content of his conversations with Mr Kilolo at the time of

[1298] Decision on the 'Prosecution's Requests under Articles 64(6)(b) and 93 of the Rome Statute to Summon Witnesses', 6 October 2015, ICC-01/05-01/13-1343-Conf; a public redacted version was registered on 3 December 2015, ICC-01/05-01/13-1343-Red.
[1299] Transcript of Hearing, 26 October 2015, ICC-01/05-01/13-T-28-Red2-ENG WT ('T-28-Red2'), p. 11, line 24 to p. 12, line 10.

his testimony before Trial Chamber III – P-201 (D-54) avoided the question, instead elaborating on peripheral or even irrelevant points. P-201 (D-54) also insisted several times on a particular explanation without any relevance to the question. For example, he stated, '*Mr Kilolo is a lawyer. He can call me just to remind me*'.[1300] This gives the impression that such an explanation was P-201 (D-54)'s last resort. Moreover, although no technical issues with the video-link were apparent and the questions posed to P-201 (D-54) were objectively clear and comprehensible, the witness sometimes requested that they be repeated, an apparent stalling tactic. Likewise, P-201 (D-54) frequently requested to consult his counsel before giving evidence, even on matters where Rule 74 counsel clearly could not provide assistance, such as concerning the sound quality of intercepts played in court.[1301] The Chamber had the impression that the witness did so in order to stall and evade the questions.

596. The above aspects of the witness's testimony considerably reduce any faith which might be invested in his testimony as a whole. In the view of the Chamber, the witness, despite benefiting from Rule 74 assurances, clearly felt uncomfortable giving evidence on his own conduct and that of Mr Kilolo. In such instances, in particular when P-201 (D-54) testified as to the accused's behaviour, the Chamber treated his evidence with caution and considered, with great circumspection, the weight to be attached to individual aspects of the witness's testimony.

b) Discussion

597. The evidence set out below demonstrates that between 29 August and 1 November 2013, before, during and after D-54's testimony in the Main Case, Mr Bemba, Mr Kilolo, Mr Mangenda and/or D-54 were in regular contact

[1300] T-28-Red2, p. 32, line 25; p. 33 lines 3, 7 and 10; p.42 line 19; p. 55 line 4.
[1301] T-28-Red2, p. 37, lines 2-5; *see also* p. 29, line 7; p. 43, lines 6-7; p. 46, line 14.

concerning the latter's testimony. The witness was initially scheduled to testify in the Main Case from 30 September 2013 onwards and eventually testified from 30 October to 1 November 2013.

i. 29 August 2013 Call

598. The evidence shows that two telephone calls took place between Mr Kilolo and Mr Mangenda on 29 August 2013, one of which at 14:17.[1302]

599. During the conversation, Mr Kilolo, referring to D-54 by his name,[1303] said, amongst other things, '*Même [pour] [D-54], il [le client] est en train de me presser pour que je dise que [D-54] va venir. Mais [D-54] je ne l'ai encore interrogé en profondeur. Je vais l'interviewer sur base de quoi, je ne vais pas comme ça parler aux nuages*'.[1304] At the time of the conversation, D-54 had not yet been called to testify in the Main Case.[1305] While the Chamber accepts that Mr Kilolo may not have questioned the witness thoroughly at the time of this conversation, this conversation must be assessed in the light of subsequent events.

ii. 30 August 2013 Call

600. The evidence also shows that, on 30 August 2013, Mr Kilolo and Mr Mangenda spoke again on the telephone. A call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1306] and thereafter formally

[1302] *See* paras 533 and 538-539.
[1303] Transcript of Hearing, 26 October 2015, ICC-01/05-01/13-T-28-CONF-ENG ET ('T-28-CONF'), p. 16, lines 7-9.
[1304] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0110 (as amended in CAR-OTP-0082-0107 at 0110_01), lines 70-72 (*'Even [for] [D-54], he [the client] is putting pressure on me to say that [D-54] will come. But, I've not yet questioned [D-54] thoroughly. I'm going to interview him and then I won't be talking to the clouds'*).
[1305] Trial Chamber III, T-339-Red, p. 67, lines 10-17.
[1306] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex A000 and Annex A042 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes A001 to A041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.

submitted by the Prosecution,[1307] indicates in the last row a connection between telephone numbers [Redacted] and [Redacted], which is attributable to Mr Kilolo,[1308] for approximately 17 minutes between 13:29 and 13:46.[1309] The relevant audio recording, submitted by the Prosecution,[1310] lasts 17:10 minutes and thus duly corresponds to the call log entry concerned. For the following reasons, the Chamber is satisfied that number [Redacted] is also attributable to Mr Mangenda and that it was him who spoke on this specific telephone call with Mr Kilolo. First, the telephone number is assigned by the Court to the Main Case Defence team. In 2013, the Court designated it a privileged telephone number for Mr Bemba.[1311] Even though it is listed under Mr Kilolo's name, the Chamber is convinced that this line was accessible to the entire Main Case Defence team, including Mr Mangenda. Second, Mr Kilolo referred to Mr Mangenda as '*Jean-Jacques*', Mr Mangenda's first name.[1312] Third, in that conversation Mr Kilolo gave his interlocutor specific directions regarding his assistance to the Main Case Defence.[1313] Considering that Mr Mangenda was advising Mr Kilolo also on legal matters, the Chamber is convinced that Mr Kilolo spoke on the phone to Mr Mangenda, who was referred to by his first name.

601. During this conversation, Mr Mangenda relayed Mr Bemba's directives concerning D-54 to Mr Kilolo. As Mr Kilolo advised Mr Mangenda at the

[1307] Call log, CAR-OTP-0079-1507*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf AnxA042'.
[1308] *See* para. 492.
[1309] Call log, CAR-OTP-0079-1507 at 1508, last row; *see also* ICC-01/05-01/13-6-Conf-AnxA042, p. 2, last row; ICC-01/05-01/13-6-Conf-AnxA000, p. 2, last row.
[1310] Audio recording, CAR-OTP-0074-0995 (ICC-01/05-01/13-6-Conf-AnxA041); Transcript of audio recording, CAR-OTP-0079-0016 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0131 (French translation); Translated transcript of audio recording, CAR-OTP-0091-0074 (English translation).
[1311] ICC document, CAR-OTP-0074-0067 at 0072, row 2.
[1312] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 4; at 0139, line 247.
[1313] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0138, lines 204-219.

beginning of the conversation,[1314] the interlocutors used coded language and sought to conceal information, such as names. Accordingly, D-54 is not referred to by name, but by the code [Redacted],[1315] which stands for [Redacted][1316] and correspond to the witness's initials.

602. The Kilolo Defence argued that this code did not concern D-54 but another '*prospective witness*' who never testified.[1317] Likewise, Mr Bemba averred that the code concerned [Redacted] *or the commander of the MLC contingent in the CAR* [Redacted].[1318] However, at the time of the conversation, [Redacted].[1319] Accordingly, there was no reason [Redacted]. Likewise, the plural reference to [Redacted] and [Redacted] are too unspecific to necessarily refer to one particular person. As a result, considering the content of the conversation concerned, in particular the topics discussed, the trial schedule of Trial Chamber III at the time of the conversation and – importantly – the subsequent testimony of D-54, the Chamber cannot but conclude that Mr Mangenda and Mr Kilolo referred to D-54.

603. Reference is also made in this conversation to '*notre blanc*'.[1320] The Chamber is satisfied that this code pertains to Peter Haynes, Main Case Defence co-counsel. In this regard, the Chamber notes that, as acknowledged by the Bemba Defence, '*the only "blanc" of consequence in the Bemba defence team was Peter Haynes (Kate*

[1314] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 22.
[1315] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 20.
[1316] Document, CAR-OTP-0085-0202.
[1317] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 194.
[1318] Bemba Defence Submission, ICC-01/05-01/13-599-Conf, para. 79.
[1319] ICC-01/05-01/13-139-Conf-Exp-AnxB, p. 6, row 15.
[1320] *For example*, Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, lines 23 and 32; at 0134, lines 36 and 47 (*'our white guy'*).

Gibson being a 'blanche')'.[1321] Further, Mr Mangenda described him during the conversation as '*celui qui est avec nous ici*'[1322] and '*celui qui travaille avec nous*'.[1323]

604. In the same vein, neither of the two interlocutors used Mr Bemba's name. Instead, they refer to him as '*il*' or '*notre frère*'.[1324] The Bemba Defence maintained that the Prosecution merely conjectured that the reference to '*notre frère*' is directed at Mr Bemba.[1325] Yet, the Chamber is satisfied that, taking into account the context of the conversation, the person referred to as '*il*' or '*notre frère*' was Mr Bemba. Two elements, in particular, support this conclusion. First, at the beginning of their conversation, Mr Mangenda insists that Mr Kilolo take notes,[1326] underlining the importance of the information to be given. Second, Mr Kilolo was instructed by '*notre frère*' to finish all business with D-54 before '*notre blanc*', Mr Haynes, spoke with the witness.[1327] The Chamber considers that such instructions to lead counsel, in particular, on important matters concerning the conduct of the defence team, likely emanate from the client. No other person would normally be in a position to instruct lead counsel in this manner.

605. The Chamber considers that the information communicated to Mr Kilolo through Mr Mangenda was not merely proposed by Mr Bemba. Rather, the suggestions advanced by Mr Bemba are concrete instructions, both as regards the topics to be addressed and the manner in which D-54 was expected to

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[1321] Bemba Defence Submission, ICC-01/05-01/13-599-Conf, para. 77; *see also* para. 136.
[1322] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 25 *('the one who's here with us'*).
[1323] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 27 *('the one who works with us'*).
[1324] *For example*, Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 15; at 0134, line 35 ('*our brother*'); at 0137, line 168.
[1325] Bemba Defence Submission, ICC-01/05-01/13-599-Conf, para. 77.
[1326] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0133, line 17.
[1327] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0134, lines 35-39 ('*C'est pour cela que notre frère a dit qu'il faut que toi tu fasse tout, de façon que tu termines toutes tes affaires avant, parce que le mardi…notre blanc… ira là-bas pour s'entretenir avec lui par téléphone, il faudrait qu'il constate qu'il est vraiment posé*' '/'*That's why our brother said that you'll need to do everything, so that you get everything done beforehand, because on Tuesday ... our white guy ... will go there to speak to him on the phone, he needs to see that he is really dependable*').

testify. This is evidenced by the language Mr Mangenda used throughout the conversation, when he specifies that the witness '*should clearly state*',[1328] '*has to say*',[1329] or '*[i]s going to say*'.[1330] Mr Bemba's instructions also pertain to D-54's behaviour when testifying. As Mr Mangenda told Mr Kilolo,

> *et puis, il [Bemba] a dit lorsqu'il [D-54] va commencer à répondre aux questions, que ce ne soit pas un système … du tic au tac. Parce que ce n'est pas tout à fait agréable. Donc c'est-à-dire à un certain moment, il pose même une petite question… (…) c'est comme ça que lui-même a demandé car il [Bemba] insistait là-dessus, ç'est pour cela que je t'en parle*.[1331]

This direction demonstrates Mr Bemba's interest in concretely predicting D-54's testimony.

606. As relayed by Mr Mangenda, the Chamber is satisfied that Mr Bemba directed that D-54 be influenced to: (i) deny any knowledge of events in Mongoumba;[1332] (ii) deny having had any power, despite being a member of the '*organe qui dirigeait la guerre*';[1333] (iii) testify that '*on avait mélangé les troupes*';[1334] (iv) testify about when the troops arrived at PK 12; (v) testify that he was a member of '*le*

[1328] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0135, line 97; *see also* Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0137, lines 151-152.

[1329] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0136, line 139.

[1330] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0137, line 150.

[1331] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0135, lines 70-77 *('and then, he [Bemba] said that when [D-54] starts answering questions, it shouldn't be a system ... a quick-fire system. Because that is not all that pleasant. In other words, at a certain point, he slips in a little question ... (...) that's how he himself asked because he [Bemba] insisted on it, that's why I'm talking to you about it')*.

[1332] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0134, lines 63-66. Mr Mangenda referred to the location not by name but as '*l'endroit qui nous a causé beaucoup d'ennuis hier*'. Noting that D-29 was testifying on 29 August 2013, the Chamber is satisfied that reference was made to the testimony of D-29 who also testified on the alleged commission of crimes by MLC troops in Mongoumba (Trial Chamber III, T-339-Red, p. 53, lines 1-9). Considering the call between Mr Mangenda and Mr Kilolo of 29 August 2013, in which Mr Mangenda 'complained' about D-29's damaging testimony for the defence of Mr Bemba, specifically in relation to the alleged crimes in Mongoumba (Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0247, lines 14-15), the Chamber is convinced that the unnamed location in the telephone conversation at issue was Mongoumba.

[1333] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0137, line 150 (*'the body conducting the war'*).

[1334] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0137, lines 151-152 (*'the troops had been intermingled'*).

truc de ces gens-là, qui commandaient toute la guerre'[1335] until December 2012, when he was replaced;[1336] (vi) pretend that he went to visit family members at a certain location;[1337] (vii) explain the size of the group of soldiers crossing '*into a war zone*', namely the CAR;[1338] and (viii) not forget to mention '*les évènements qu'ils filmaient*',[1339] as well as the '*deux grands véhicules qu'ils avaient vus*'.[1340] In relation to this last point, the Chamber notes, in particular, Mr Mangenda's remark that Mr Bemba insisted[1341] that the witness does not forget.[1342]

iii. 1 September 2013 Call

607. The evidence shows that, on 1 September 2013, Mr Kilolo and Mr Mangenda again spoke on the telephone. The relevant call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1343] and thereafter formally submitted by the Prosecution,[1344] indicates in the 4th row from the top a connection between Mr Kilolo's telephone number [Redacted] [1345] and Mr Mangenda's telephone number [Redacted][1346] between 13:47 and 13:54.[1347]

[1335] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0136, line 132 (*'those people who were in charge of the whole war'*).
[1336] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0136, lines 127-133.
[1337] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0137, lines 168-173.
[1338] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0136, lines 116-122.
[1339] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0134, line 50 (*'the events that they were filming'*).
[1340] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0134, line 54 (*'the two large vehicles that they had seen'*).
[1341] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0134, line 52.
[1342] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0134, lines 46-55.
[1343] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1344] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1345] *See* para. 492.
[1346] *See* para. 487.
[1347] Call log, CAR-OTP-0079-1509, row 4 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 4 from the top.

The relevant audio recording, submitted by the Prosecution,[1348] lasts 6:51 minutes and thus duly corresponds to the call log entry concerned.

608. During this conversation, Mr Kilolo confirms to Mr Mangenda that '*j'ai parlé avec l'autre, là, [Redacted]*.[1349] The two accused again refer to D-54 as *[Redacted]*,[1350] not his real name.[1351] Using such code, Mr Kilolo informed Mr Mangenda of D-54's willingness to testify in the Main Case.[1352]

609. However, in relation to D-54's membership of the CCOP, Mr Kilolo declared:

> *Mais par contre, pour le CCOP, en tout cas il dit que lui, il n'a jamais été au CCOP. Là, vraiment, il m'a dit : « Non, non, non, cette histoire du CCOP-là »…euh…il a dit que c'était [nom]. (…) Mais, en tout cas, il n'est vraiment pas d'accord d'être (…) au CCOP*.[1353]

Concerned about the witness's credibility, Mr Mangenda asked, '*comment est-ce qu'il doit justifier sa connaissance sur le commandement alors ? Parce que s'il n'était pas impliqué au… (…) CCOP, c'est ça le problème aussi'*.[1354] Mr Kilolo responded, '*Je vais essayer encore de le convaincre (…) pour voir s'il peut accepter d'être le (…) observateur au CCOP, ne fussent que quelques jours'*.[1355] In the Chamber's opinion, Mr Kilolo clearly expressed his intention to convince D-54 to testify on a proposition that he had supposedly and fervently rejected beforehand.

[1348] Audio recording, CAR-OTP-0074-0999 (ICC-01/05-01/13-6-Conf-AnxB004); Transcript of audio recording, CAR-OTP-0077-1383 (in French); Translated transcript of audio recording, CAR-OTP-0091-0084 (English translation).
[1349] Audio recording, CAR-OTP-0074-0999; Transcript of audio recording, CAR-OTP-0077-1383 at 1384, line 33 *('I spoke with the other one, there, [Redacted]')*.
[1350] Audio recording, CAR-OTP-0074-0999; Transcript of audio recording, CAR-OTP-0077-1383 at 1384, line 33; and at 1387, lines 121-122.
[1351] *See* paras 601-602.
[1352] Audio recording, CAR-OTP-0074-0999; Transcript of audio recording, CAR-OTP-0077-1383 at 1384, line 35.
[1353] Audio recording, CAR-OTP-0074-0999; Transcript of audio recording, CAR-OTP-0077-1383 at 1385, lines 69-71; at 1386, lines 101-102 *('But on the other hand, as regards the CCOP, in any case, he says that he was never in the CCOP. Really, he told me "No, no, no, that thing about the CCOP" ... erm ... he said it was [name]. (...) But in any case, he doesn't really agree to be (...) in the CCOP')*.
[1354] Audio recording, CAR-OTP-0074-0999; Transcript of audio recording, CAR-OTP-0077-1383 at 1386, lines 77-80 (*'so how should he justify his knowledge of the command then? Because if he wasn't involved in ... (...) the CCOP, that's also the problem')*.
[1355] Audio recording, CAR-OTP-0074-0999; Transcript of audio recording, CAR-OTP-0077-1383 at 1387, lines 109-112 *('I'll try again to persuade him (...) to see if he will agree to be the (...) observer at the CCOP, even if only for a few days')*.

iv. 9 September 2013 Call

610. The evidence shows that, a few days later, on 9 September 2013, Mr Kilolo and Mr Mangenda were again in telephone contact. The relevant call log, initially provided by the Dutch judicial authorities to the Pre-Trial Chamber II,[1356] and thereafter formally submitted by the Prosecution,[1357] indicates in the 6th row from the top a connection between Mr Kilolo's telephone number [Redacted][1358] and Mr Mangenda's telephone number [Redacted][1359] between 11:49 and 12:00 for approximately 10½ minutes.[1360] The relevant audio recording, submitted by the Prosecution,[1361] lasts 10:36 minutes and thus duly corresponds to the call log entry concerned.

611. The Chamber is convinced that Mr Kilolo, greeted as '*confrère*',[1362] and Mr Mangenda, referred to as '*Jean-Jacques*',[1363] are the interlocutors. The two accused speak about – then potential – witness D-54, who is referred to by his full name.[1364] More specifically, Mr Kilolo is recorded discussing certain aspects of D-54's potential testimony, including his involvement with the CCOP. The Chamber is convinced that the two accused discussed how to ensure the consistency of D-54's testimony with the rest of the evidence. Mr Mangenda, in particular, stressed the following:

[1356] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 to the mentioned Order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1357] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1358] *See* para. 292.
[1359] *See* para. 487.
[1360] Call log, CAR-OTP-0079-1509 at 1509, row 6 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 6 from the top.
[1361] Audio recording, CAR-OTP-0074-1001 (ICC-01/05-01/13-6-Conf-AnxB006); Transcript of audio recording, CAR-OTP-0079-1648 (in Lingala); Translated transcript of audio recording, CAR-OTP-0079-1737 (French translation); Translated transcript of audio recording, CAR-OTP-0091-0091 (English translation).
[1362] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737, at 1739, line 4 ('brother').
[1363] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737 at 1739, line 3; at 1740, line 60.
[1364] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737, at 1739, line 35.

Bon, en fait le problème qui était là, c'était plus qu'il soit en conformité avec la lettre du Client, qu'il n'y ait pas de contradictions. Donc pour le reste là il peut dire il est rentré… (…) ce qui importe le plus est que…euh…toutes ses déclarations, correspondent à ce qui est écrit dans la lettre de la personne que tu connais, c'est ça.[1365]

612. Further, the accused are recorded discussing the need to keep their instructions to D-54 simple so as to avoid any contradictions on D-54's part. Discussing a possible rationale proposed by Mr Kilolo regarding D-54's presence at a certain location ,[1366] Mr Mangenda insisted, as follows:

non, là ce sera trop… ça deviendra trop compliqué, parce que s'ils demandent la logique cela veut dire qu'il était rentré d'abord, on risque encore de lui poser beaucoup de questions, il risque de…de beaucoup se contredire…contredire…(…)…parce que ça deviendra compliquer…bon première, première traversée tu as passé combien de temps, deuxième tu es rentré comment, tu as vu qui, qu'est-ce qu'on t'a dit exactement et puis tu es parti comment, tu as vu qui. Donc ça va créer encore, susciter plusieurs autres sous questions. (…) Vaux…vaux mieux garder cela plus simple même pour lui-même aussi.[1367]

613. Following this conversation, the Main Case Defence requested that D-54 testify *via* video-link as of 30 September 2013, which was subsequently approved by Trial Chamber III.[1368] The Chamber further notes that, on 13 September 2013, as previously discussed above,[1369] Mr Kilolo and D-15 discussed D-54 and details concerning his testimony. However, the Chamber cannot conclude that D-15 advised Mr Kilolo to prepare D-54 thoroughly, as alleged by the Prosecution.[1370]

[1365] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737 at 1741, lines 103-104 and 109-110 (*'Well, actually, the problem there was more that it should be in line with the Client's letter, that there shouldn't be any inconsistencies. So, as for the rest, he can say he went back ... (...) what matters most is that ... erm ... all his statements tally with what's written in the letter from the person you know, that's it'*).

[1366] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737, at 1740, line 70.

[1367] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737 at 1740, lines 72-74, and at 1741, lines 76-81 (*'No, that'll be too ... it'll become too complicated, because if they're looking for logic, that means he went back first, he risks being asked a lot of questions, he could ... contradict himself a lot ... contradict ...(...)... because it'll become complicated ...OK, the first, the first time you went across, how long did you spend there? The second, how did you come back? Who did you see? What were you told exactly? And then, how did you leave? Who did you see? So that's going to create, raise yet more sub-questions. (...) It would be better ... better to keep it simple, for him too'*).

[1368] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the defence's 'Submission on the anticipated witness schedule and the testimony of Witness D04-54' (ICC-01/05-01/08-2806-Conf), 17 September 2013, ICC-01/05-01/08-2818, para. 4 and p. 7.

[1369] *See* paras 584-588.

[1370] Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, paras 104 and 110.

614. On 1 October 2013, Trial Chamber III noted the unavailability of D-54 to testify on 30 September 2013 and postponed his appearance 'until further notice'.[1371]

v. 17 October 2013 Calls

615. The evidence shows that, on 17 October 2013, Mr Kilolo and Mr Bemba had four telephone conversations on the privileged line of the Detention Centre. The relevant call log,[1372] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1373] indicates, *inter alia*, in the 7th row from the top a connection between Mr Bemba's telephone number [Redacted] [1374] and Mr Kilolo's telephone number [Redacted] [1375] between 16:24 and 16:36 for approximately 12 minutes.[1376] The corresponding audio recording, submitted by the Prosecution,[1377] lasts 12:24 minutes and thus duly corresponds to the call log entry concerned.

616. The Chamber is convinced that Mr Kilolo, in his conversation with Mr Bemba, uttered, '*n'oubliez pas, nous avons beaucoup arrangé avec… euh… [Redacted] et vraiment c'est des heures*'.[1378] The utterance is clearly audible and Mr Kilolo speaks the words *[Redacted] et vraiment c'est des heures*'. In the view of the Chamber, this

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[1371] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses' written statements, 1 October 2013, ICC-01/05-01/08-2824, footnote 7.

[1372] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.

[1373] Call log, CAR-OTP-0080-1312*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403/ICC-01/05-01/13-438-Conf-AnxB'.

[1374] *See* para. 297.

[1375] *See* para. 585.

[1376] Call log, CAR-OTP-0080-1312 at 1312, row 7 from the top; see *also* the historical data of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003, as provided by the Dutch authorities (CAR-OTP-0080-1286). The same telephone numbers are involved for the contacts between 13:01 and 13:43 (row 4); 14:45 and 14:48 (row 5); 18:26 and 19:17 (row 9).

[1377] Audio recording, CAR-OTP-0080-1323 (ICC-01/05-01/13-438-Conf-AnxB007); Transcript of audio recording, CAR-OTP-0082-0489 (in English, French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-0618 (French translation); Translated transcript of audio recording, CAR-OTP-0089-1414 (English translation).

[1378] Audio recording, CAR-OTP-0080-1323; Translated transcript of audio recording, CAR-OTP-0082-0618 at 0623, lines 129-130 (*'don't forget, we arranged a lot with ... erm ... [Redacted] and really it's hours'*).

particular utterance is not affected by the problems identified by expert witness D20-1 because this communication was provided by the Dutch authorities, and not the Registry. However, the utterance, as such, does not indicate with certainty that Mr Kilolo was speaking about his illicit coaching activities regarding D-54. That said, the Chamber considers that the assessment of this statement is context-dependent and will therefore be considered in the light of the following events.

vi. 19 October 2013 Call

617. The evidence demonstrates that Mr Kilolo and Mr Mangenda were in telephone contact on 19 October 2013 at least twice. The relevant call log[1379] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1380] indicates, *inter alia*, in the 11th and 13th rows from the top connections between telephone numbers [Redacted] and [Redacted], which is attributable to Mr Mangenda,[1381] between 12:36 and 12:48 and between 20:49 and 21:05.[1382] The corresponding audio recordings, submitted by the Prosecution,[1383] last 11:29 minutes and 15:47 minutes, respectively, and thus duly correspond to the call log entries concerned.

[1379] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.

[1380] Call log, CAR-OTP-0080-1312*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.

[1381] *See* para. 565.

[1382] Call log, CAR-OTP-0080-1312 at 1312, rows 11 and 13*; see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA002, as provided by the Dutch authorities (CAR-OTP-0080-1280).

[1383] Audio recording, CAR-OTP-0080-1416 (ICC-01/05-01/13-438-Conf-AnxB011); Transcript of audio recording, CAR-OTP-0082-1244 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-1349 (French translation); Translated transcript of audio recording, CAR-OTP-0089-1402 (English translation); Audio recording, CAR-OTP-0080-1329 (ICC-01/05-01/13-438-Conf-AnxB013); Transcript of audio recording, CAR-OTP-0082-0691 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-0814 (French translation); Translated transcript of audio recording, CAR-OTP-0089-1422 (English translation).

618. The Chamber is satisfied that telephone number [Redacted] is attributable to Mr Kilolo as the Chamber recognises his voice in the relevant recording. This finding is further corroborated by the following: (i) the contents of the two conversations are particular and specific to the judicial developments in the Main Case; and (ii) Mr Mangenda refers to his dialogue partner as '*confrère*',[1384] the same manner in which Mr Mangenda addresses Mr Kilolo in numerous other intercepted communications.

619. The Chamber is satisfied that, during the first conversation of 19 October 2013, at 12:36, Mr Kilolo and Mr Mangenda discussed the payment of a '*certain montant*' to a '*monsieur qui doit venir*', whom Mr Kilolo was trying to reach, but had not yet been able to.[1385] At that point of the Main Case proceedings, several defence witnesses, including D-54, were expected to testify.[1386] Therefore, as it is not clear that the above utterance was made in relation to D-54 specifically, the Chamber cannot conclude with certainty that Mr Kilolo and Mr Mangenda discussed the payment of money in relation to D-54.

620. This conclusion does not change in the light of the telephone conversation between the two accused later the same day, at 20:49. Mr Kilolo stated, '*Mais en même temps il faut s'exécuter le plus vite possible, parce que … il faut que ça se fasse*

[1384] Audio recording, CAR-OTP-0080-1416; Translated transcript of audio recording, CAR-OTP-0082-1349 at 1351, line 5; Audio recording, CAR-OTP-0080-1329; Translated transcript of audio recording, CAR-OTP-0082-0814 at 0816, line 5.

[1385] Audio recording, CAR-OTP-0080-1416; Translated transcript of audio recording, CAR-OTP-0082-1349 at 1352, lines 54-66 ('Mangenda*: Bon pour le monsieur qui doit venir, qu'aviez vous convenu?* Kilolo: *Hum, je ne l'ai pas encore eu, mais je le cherche, parce que…il faut…qu'il reçoive aussi assistance.* Mangenda: *Mais, c'est ça aussi, est-ce que notre frère est…il…* Kilolo: *Combien est-ce qu'on lui avait donné ? Je ne me rappelle même plus, c'est 5… ah il restait 15 (…) Hum, tu as dit, bon, il faut l'appeler, obligatoirement il faut que je lui donne un certain montant de 5 maintenant et avant son arrivé, le reste sera environ 3-4, il aura l'autre…(…) pour qu'il soit à l'aise*'/'Mangenda: *So, for the man who is to come, what had you agreed?* Kilolo: *Hm, I haven't had it yet, but I am looking for him because ... he must ... also receive his assistance.* Mangenda: *But, it's that too, it's that too, is our brother ... he ...* Kilolo: *How much was he given? I don't even remember any more, it's 5 ... that left 15.* Mangenda: *What did you say?* Kilolo: *That left ... 1.5 eh?* Mangenda: *Erm, OK.* Kilolo: *Hm, you said, good, he must be called, I absolutely must give him a certain amount of 5 now and before he arrives, the rest will be approximately 3-4, he will have the other … (...) to put him at ease')*.

[1386] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of 'Second decision on issues related to the closing of the case', 18 October 2013, ICC-01/05-01/08-2837-Red, para. 25.

cette semaine parce que la semaine prochaine…je…je crois que nous serons avec [D-54]. Parce que je viens de parler avec lui'.[1387] While Mr Kilolo admits that he had just spoken with D-54 on the telephone, this does not establish that the accused's telephone conversation earlier in the day specifically concerned D-54, as submitted by the Prosecution.[1388] Nevertheless, the intercepted telephone conversation reveals in more general terms that Mr Kilolo was discussing with Mr Mangenda the provision of money to witnesses.

621. Less than a week after the above telephone conversations, on 23 October 2013, Trial Chamber III decided to hear D-54 on 30 October 2013.[1389]

vii. Calls Between Mr Kilolo and D-54 Before and During His Testimony

622. While P-201 (D-54) admitted before this Chamber that Mr Kilolo called him during his testimony before Trial Chamber III between 31 October and 1 November 2013,[1390] he stated that he could not estimate how often Mr Kilolo called him during this period.[1391] The Chamber is convinced that there were a significant number of contacts between Mr Kilolo and D-54 prior to his testimony commencing on 30 October 2013 before Trial Chamber III,[1392] including after the VWU cut-off date of 29 October 2013.[1393] The call sequence table and corresponding call data records reflect contacts, either by telephone or

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[1387] Audio recording, CAR-OTP-0080-1329; Translated transcript of audio recording, CAR-OTP-0082-0814 at 0818, lines 81-83 (*'But at the same time we have to move as quickly as possible, because … it must be done this week because next week... I... I believe that we will be with [D-54]. Because I have just spoken to him'*).
[1388] Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 114.
[1389] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the testimony of Witnesses D04-54, D04-14, D04-41 and D04-44, 23 October 2013, ICC-01/05-01/08-2842, p. 7.
[1390] T-29-Red2, p. 33, lines 16-17.
[1391] T-28-Red2, p. 26, lines 9-10.
[1392] *See* Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 30 October 2013, ICC-01/05-01/08-T-347-CONF-ENG ET ('T-347-CONF'); ICC-01/05-01/08-T-347-Red-ENG WT ('T-347-Red'); Transcript of Hearing, 31 October 2013, ICC-01/05-01/08-T-348-CONF-ENG ET ('T-348-CONF'); ICC-01/05-01/08-T-348-Red-ENG WT ('T-348-Red'); Transcript of Hearing, 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET ('T-349-CONF'); ICC-01/05-01/08-T-349-Red-ENG WT ('T-349-Red').
[1393] VWU Table, CAR-OTP-0078-0290 at 0297 (ICC-01/05-01/13-207-Conf-Anx, p. 8).

SMS, between Mr Kilolo and D-54 from as early as 22 August 2013 until at least 2 November 2013.[1394] The Chamber is particularly attentive to the following calls:

- 22 August 2013, at 17:20, for almost 34 minutes;[1395]
- 9 September 2013, at 12:02, for almost 50 minutes;[1396]
- 24 September 2013, at 08:54, for approximately 13 minutes,[1397] at 09:22, for approximately 19 minutes [1398] and at 21:54 and 22:45, for 50 minutes, respectively;[1399]
- 25 September 2013, at 22:04, for 50 minutes[1400] and at 22:55, for approximately 43½ minutes;[1401]
- 29 October 2013, at 21:31, for almost 64 minutes [1402] and at 22:41, for approximately 7 minutes;[1403]
- 30 October 2013, at 19:31, for approximately 17 minutes[1404] and at 21:12, for approximately 61 minutes;[1405] and
- 31 October 2013, at 06:46, for approximately 46 minutes,[1406] at 21:11, for approximately 62½ minutes[1407] and at 23:09, for approximately 10 minutes.[1408]

[1394] Call Sequence Table, CAR-OTP-0090-0630 at 0710 to 0717.
[1395] Call Sequence Table, CAR-OTP-0090-0630 at 0710, row 3; Call Data Record, CAR-OTP-0072-0082, row 4153.
[1396] Call Sequence Table, CAR-OTP-0090-0630 at 0711, row 15; Call Data Record, CAR-OTP-0083-1465, row 196; CAR-OTP-0083-1472, row 196.
[1397] Call Sequence Table, CAR-OTP-0090-0630 at 0713, row 40; Call Data Record, CAR-OTP-0083-1465, row 377; CAR-OTP-0083-1472, row 377.
[1398] Call Sequence Table, CAR-OTP-0090-0630 at 0713, row 41; Call Data Record, CAR-OTP-0083-1465, row 380; CAR-OTP-0083-1472, row 380.
[1399] Call Sequence Table, CAR-OTP-0090-0630 at 0714, rows 47 and 48; Call Data Record, CAR-OTP-0083-1465, rows 416 and 418; CAR-OTP-0083-1472, rows 416 and 418.
[1400] Call Sequence Table, CAR-OTP-0090-0630 at 0714, row 49; Call Data Record, CAR-OTP-0083-1465, row 425; CAR-OTP-0083-1472, row 425.
[1401] Call Sequence Table, CAR-OTP-0090-0630 at 0714, row 50; Call Data Record, CAR-OTP-0083-1465, row 427; CAR-OTP-0083-1472, row 427.
[1402] Call Sequence Table, CAR-OTP-0090-0630 at 0715, row 63; Call Data Record, CAR-OTP-0083-1454, tab '[Redacted]', row 102.
[1403] Call Sequence Table, CAR-OTP-0090-0630 at 0715, row 65; Call Data Record, CAR-OTP-0083-1454, tab '[Redacted], row 108.
[1404] Call Sequence Table, CAR-OTP-0090-0630 at 0715, row 66; Call Data Record, CAR-OTP-0080-1138 at 1224; CAR-OTP-0080-1286 at 1290, row 34.
[1405] Call Sequence Table, CAR-OTP-0090-0630 at 0715, row 68; Call Data Record, CAR-OTP-0080-1138 at 1229; CAR-OTP-0080-1286 at 1290, row 27.
[1406] Call Sequence Table, CAR-OTP-0090-0630 at 0715, row 70; Call Data Record, CAR-OTP-0080-1138 at 1234; CAR-OTP-0080-1286 at 1290, row 22.
[1407] Call Sequence Table, CAR-OTP-0090-0630 at 0716, row 75; Call Data Record, CAR-OTP-0080-1138 at 1235; CAR-OTP-0080-1286 at 1289, row 39.
[1408] Call Sequence Table, CAR-OTP-0090-0630 at 0716, row 81; Call Data Record, CAR-OTP-0080-1138 at 1241; CAR-OTP-0080-1286 at 1289, row 12; CAR-OTP-0080-1312 at 1315, row 14.

623. The Chamber is satisfied that the call sequence tables correctly attribute the telephone numbers [Redacted],[1409] and [Redacted][1410] to D-54, as he testified before this Chamber that these were his telephone numbers.[1411] During his testimony, P-201 (D-54) did not recall telephone number [Redacted][1412] as his own[1413] but eventually indicated that it would 'probably' be his old number.[1414] Indeed, the Chamber finds from the following that this number is also attributable to P-201 (D-54): (i) in the evening conversations of 30 and 31 October 2013, conducted using this particular telephone number, Mr Kilolo analysed the witness's testimony of the day;[1415] (ii) Mr Kilolo said on 31 October 2013 that the testimony of his interlocutor would finish '*demain*';[1416] (iii) Mr Kilolo's interlocutor, explaining his relationship to another person, mentioned his own name;[1417] and importantly, (iv) P-201 (D-54) recognised his own voice in a

[1409] Call Sequence Table, CAR-OTP-0090-0630 at 0711, row 15; Call Data Record, CAR-OTP-0083-1465, row 196; CAR-OTP-0083-1472, row 196.
[1410] Call Sequence Table, CAR-OTP-0090-0630 at 0710, row 3; Call Data Record, CAR-OTP-0072-0082, row 4153.
[1411] T-28-CONF, p. 24, lines 4-6 and 22; p. 25, line 22; p. 63 line 16.
[1412] Call Sequence Table, CAR-OTP-0090-0630 at 0713, rows 40-41; at 0714, rows 47-50; at 0715, rows 63, 65-66, 68 and 70; at 0716, row 75 and 81; Call Data Record, CAR-OTP-0083-1465, rows 377, 380, 416, 418, 425, 427; CAR-OTP-0083-1472, rows 377, 380, 416, 418, 425, 427; CAR-OTP-0083-1454, tab '[Redacted]', rows 102, 108; CAR-OTP-0080-1286 at 1289, rows 12 and 39; at 1290, rows 22, 27 and 34.
[1413] T-28-CONF, p. 24, line 24; p. 63, lines 16-17 (witness testified that he needed to 'cross-check').
[1414] T-28-CONF, p. 67, lines 18-19.
[1415] *For example*, Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0883, lines 191-195 (*'quand vous m'avez dit aujourd'hui que Jean-Pierre Bemba était venu, il a causé avec les troupes en français, en Lingala, vous vous rappelez de cela? (...) Alors, cela a créé une petite confusion'/'when you told me today that Jean-Pierre Bemba had come, he chatted to the troops in French, and in Lingala, do you remember that? (...) Well, that led to a bit of confusion'*); at 0888, lines 377-378 (*'je vous ai interrogé aujourd'hui, je vous ai demandé, comment se présentait l'articulation de dispositifs des troupes sur le terrain de Bangui jusqu'à PK 12'/'I questioned you today, I asked you how the troops were deployed on the ground from Bangui as far as PK12'*); at 0880, lines 58-59 (*'tu vois lorsque je parlais avec vous aujourd'hui, je vous ai posé des questions sur des dates'/'you see, when I was speaking to you today, I questioned you about dates'*) ; Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1111, lines 22-24 ('*Vraiment c'était bien. C'était bien…euh…tu leur répondais, simplement de cette façon. Tu as même vu la dame-là du milieu, celle qui semblait être énervée à un moment lorsque tu déposais…'/'Really it was fine. It was fine ... erm ... you answered them, simply like that. You must have seen that lady in the middle, the one who seemed annoyed at one point when you were testifying ... '*).
[1416] Audio recording, CAR-OTP-0080-1371; Translated transcript of audio recording, CAR-OTP-0082-0903 at 0907, lines 80-81 *('because I believe you are going to finish your testimony tomorrow'); see also* Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1113, lines 101-102 (*'parce que tu vois eux aussi vont terminer demain. Alors viendra le tour des victimes'/'because you see they will also finish tomorrow. Then it will be the victims' turn'*).
[1417] Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1120, lines 318-324 (*'I also started to avoid him, I don't call him anymore. (...) At one point, ('he started*

number of intercepted conversations of 30 and 31 October 2013 that had been conducted using this telephone number.[1418]

624. For Mr Kilolo, the relevant call sequence tables and corresponding call data records indicate numbers [Redacted],[1419] [Redacted][1420] and [Redacted],[1421] which the Chamber has already attributed to Mr Kilolo.[1422] The above evidence is further corroborated by P-201 (D-54), who testified that he spoke to Mr Kilolo on the telephone several times, including during his testimony before Trial Chamber III.[1423] Mr Kilolo also conceded that he had conversations with D-54 on 30 and 31 October 2013.[1424]

625. During those conversations, Mr Kilolo went through the substance of D-54's upcoming testimony, revealing the questions to be asked by the Main Case Defence and the other participants, indicating the answers to be given and suggesting particular in-court behaviour. To this end, the Chamber relies in particular on the intercepted telephone conversations dated 30 and 31 October 2013. Some of the following excerpts are striking examples of Mr Kilolo's directive intervention, enabling the Chamber to determine the true extent of Mr Kilolo's illicit interference with D-54's upcoming testimony.

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complaining saying "Why doesn't [first name of D-54] call me anymore?" All that. That's why at one point I called him just to say hello').

[1418] T-28-Red2, p. 32, line 13; *see also* p. 40, lines 18-19 (recognizing his voice in a telephone conversation of 31 October 2013 at 06:46); p. 51, lines 21-22 (recognizing his voice in a telephone conversation on 31 October 2013 at 21:00); p. 57, lines 6-7 (recognizing his voice in a telephone conversation on 30 October 2013 at 19:31); p. 57, lines 22-23 (recognizing his voice in a telephone conversation on 30 October 2013 at 21:12).

[1419] Call Sequence Table, CAR-OTP-0090-0630 at 0710, row 3; at 0715, rows 66, 68 and 70; at 0716, rows 75 and 81; Call Data Record, CAR-OTP-0072-0082, row 4153; CAR-OTP-0080-1286 at 1289, rows 12 and 39; at 1290, rows 22, 27 and 34.

[1420] Call Sequence Table, CAR-OTP-0090-0630 at 0711, row 15; at 0713, rows 40 and 41; at 0714, rows 47-50; Call Data Record, CAR-OTP-0083-1465, rows 196, 377, 380, 416, 418, 425, 427; CAR-OTP-0083-1472, rows 196, 377, 380, 416, 418, 425 and 427.

[1421] Call Sequence Table, CAR-OTP-0090-0630 at 0715, rows 63 and 65, Call Data Record, CAR-OTP-0083-1454, tab '[Redacted], rows 102 and 108.

[1422] *See* paras 447, 585 and 618.

[1423] T-28-Red2, p. 23, line 25; p. 25, line 22; *see also* p. 64, lines 9-10 (*'Mr Prosecutor, I recognized the numbers here. This means that there was communication'*); T-29-Red2, p. 26, line 20; p. 28, lines 22-23.

[1424] Kilolo Defence Submission, ICC-01/05-01/13-600-Conf-Corr2, para. 192.

626. In relation to the date of Mr Bemba's arrival in Bangui, Mr Kilolo is recorded having had the following exchange with D-54 on 30 October 2013, at 21:12:

> **Kilolo**: *ils vous demanderont quand Bemba est venu à Bangui, à quelle date ? Est-ce que vous avez la réponse ce côté-là ? (…)*
> **D-54**: *Là, Maître, là si je regarde ces histoires-là, vraiment il n'y a pas une date fixe, mais c'était juste vers…fin euh… fin novembre et début décembre. Je pense c'est ça.*
> **Kilolo**: *Non, non, non, Bemba est venu le…le…début décem…début novembre, parce que quand Bemba est venue vous n'aviez pas encore soumis votre rapport, il est venu vers le 7, le 8 novembre.*
> **D-54**: *Hm.*
> **Kilolo**: *Parce qu'ils vous dérangeront vous aussi à quelle date vous êtes arrivé, vous mettrez juste comme vous l'avez déjà mis disons début novembre, vous dites seulement que vous êtes arrivé vers le premier décembre, quand vous êtes arrivé là vers le premier décembre une semaine après Bemba aussi…est arrivé, nous mettrons que Bemba est arrivé le 7.*
> **D-54**: *Hm.*
> Kilolo: *Hum, nous allons mettre comme ça.*[1425]

627. The date of Mr Bemba's arrival in Bangui was again discussed the following morning, 30 October 2013, during the conversation held at 06:46. Witness D-54 asked Mr Kilolo to go through the dates once more as he was concerned he might forget the expected answers. In response, Mr Kilolo repeated the dates he expected from the witness.[1426]

628. The evidence also demonstrates that Mr Kilolo instructed D-54 in relation to the dates of MLC troop movements. Mr Kilolo's directions on the evening of 30 October 2013 are particularly illustrative of his intention to ensure that D-54 followed one narrative during his testimony and stayed in line with the

[1425] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0886, lines 303-319 ('Kilolo: *they'll ask you when Bemba came to Bangui, on what date? Do you have the answer to that? (...)* D-54: *Counsel, if I look at those accounts, there's really no fixed date, it was just towards ... late erm ... late November and early December. I think that's it.* Kilolo: *No, no, no. Bemba came on the ... the ... in early Decem ... early November, because when Bemba came, you hadn't yet submitted your report, he came on about the 7th or 8th of November.* D-54: *Hm.* Kilolo: *Because they'll also push you about the date you arrived, just put what you've already put let's say early November, just say that you arrived on about the first of December, when you arrived there on about the first of December a week later, Bemba also ... arrived, we'll put that Bemba arrived on the 7th.* D-54: *Hm.* Kilolo: *Hm, that's how we'll put it*').

[1426] Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1093-1094, lines 183-203.

testimony of other witnesses.[1427] Mr Kilolo called the witness later the same evening with a view to rehearsing again this particular aspect of his testimony:

> **Kilolo**: *Autre chose, ils vont vous brandir la date du 26, ils …ils vont chercher à vous piéger, vous demander à quelle heure il…ils avaient quitté ? C'est pour cela que je vous rappelle que votre message était à 6 heures du matin, donc, cela veut dire qu'ils avaient quitté vers 5 heures parce que…*
> **D-54**: *Hein.*
> **Kilolo**: *si par mégarde vous commettez une erreur, vous dites que non, ils avaient quitté peut-être vers 10 heures, là ils vont chercher à vous attraper, ils diront mais voilà, vous mentez parce que le message indique 6 heures du matin et vous vous dites 10 heures c'est faux et plus ça deviendra très compliqué. Ils avaient quitté à 5 heures….*[1428]

629. Likewise, on the evening of 30 October 2013, Mr Kilolo identified questions that D-54 might be asked and dictated the responses he expected D-54 to give on various topics, such as Mr Bemba's command position, his military role,[1429] the withdrawal of the MLC troops from the CAR[1430] and the motivations underlying the MLC's intervention in the CAR.[1431] Upon D-54's request, the latter topic, namely, the MLC's motivations, was rehearsed again the next morning, prior to

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[1427] Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0872, lines 156-161 (*'Bon, une autre chose, c'est celle-ci: ils vont revenir sur les problèmes du 26, ils vont te dire, mais tu as dit qu'ils avaient fait un aller-retour, dis-nous l'heure à laquelle ils sont partis et l'heure à laquelle ils sont rentrés. N'oublie pas que ton message, tu l'avais envoyé à 6 heures du matin, donc cela veut dire que les gens-là pour traverser, ils avaient traversé vers 5 heures. Bon, à quelle heure ils étaient rentrés, tu peux dire qu'ils étaient rentrés vers 18 heures, parce que [nom d'un témoin] avait déjà déclaré quelque chose de ce genre'/'Well, another thing is this: they'll go back to the problems of the 26th, they'll say, but you said that they made a round trip, tell us what time they left and what time they returned. Don't forget that you sent your message at 6 o'clock in the morning, so that means that those people crossed around 5 a.m. So, what time did they come back, you can say they came back around 6 p.m., because [name of a witness] had already said something similar'*).

[1428] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0879, lines 19-27 ('Kilolo: *Another thing, they're going to mention the date of the 26th, they ... they're going to try to trick you, and ask you what time he ... they left. That's why I'm reminding you that your message was at 6 o'clock in the morning so, that means that they left at around 5 a.m., because ...* D-54: *Huh?* Kilolo: *if you inadvertently make a mistake, you say that, no, they left at around maybe 10 a.m., they're going to try and catch you out there, they'll say but look, you're lying because the message shows 6 o'clock in the morning, and you're saying 10 a.m., that's not true and then it'll get very complicated. They left at 5 a.m. ...*').

[1429] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0880, lines 53-57. *See also* Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0871, lines 121-126; Audio recording, CAR-OTP-0080-1364; Translated transcription of audio recording, CAR-OTP-0082-0877 at 0879, lines 15-17.

[1430] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0891, lines 506-517.

[1431] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0890, lines 482-488.

D-54's testimony. D-54 sought assurance that this aspect of his testimony would accord with Mr Kilolo's instructions, as provided the night before.[1432]

630. Mr Kilolo also provided express directions regarding the physical appearance of persons the witness should mention in his testimony, for example, concerning Eric and Thierry Lengbe. While P-201 (D-54) spoke with equivocation in his testimony before this Chamber as to whether Mr Kilolo could have called him to talk about Eric or Thierry Lengbe,[1433] the Chamber is confronted with the intercepted conversations in which this aspect was prominently discussed, at least during the telephone call on the evening of 30 October 2013.[1434] Given the evasive nature of P-201 (D-54)'s evidence and the clarity of the evidence contained in the intercepted conversations, the Chamber finds that this aspect of the witness's testimony was discussed over the telephone with Mr Kilolo.

[1432] Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1097, lines 315-344 ('D-54: *Alors, euh…vous avez dit qu'on pouvait continuer juste pour quelques petites précisions sur…l'intervention de l'ALC à Bangui, pourquoi il a fait… est-ce qu'il en avait le droit, tout ça, là, je veux aussi en parler un peu.* Kilolo *: Hum.* D-54:*… il avait le droit de faire ça. Car eux, ils posent des questions sur certaines choses qui sont un peu…qui ne sont plus dans le cadre juridique, et ça devient presque de petits pièges, c'est euh… (…) alors, c'est normal, moi j'avais … le MLC, c'était le MLC qui était le voisin de Bangui, alors, étant donné que président élu démocratiquement était en détresse, il ne pouvait qu'intervenir. Pour moi, je considère que c'était une intervention vraiment fondée et que, par conséquent, il ne pouvait pas rester les bras croisés, il devait absolument intervenir.* Kilolo: *Hum, exactement comme les Blancs ont l'habitude de le faire, les Français…*'/'D-54*: So, erm ... you said you could continue just with a few small clarifications about ...the ALC intervention in Bangui, why he did ... did he have the right, all of that, I want to talk a bit about that too.* Kilolo: *Hm.* D-54: *... he had the right to do that. Because, they're asking questions about certain things that are a bit ... that are no longer in a legal context, and then they are kind of little trick questions, it's erm ... (…) so, it's normal, I had ... the MLC, it was the MLC that was close to Bangui so, given that the democratically elected president was in distress, he could not but intervene. For me, I believe it was a wholly justified intervention and that, consequently, he couldn't stand there doing nothing, he absolutely had to intervene.* Kilolo: *Hm, exactly as the whites are in the habit of doing, the French ...'*).

[1433] T- 28-CONF, p. 30, line 4 ('*He can -- he could have called me and mentioned that name*').

[1434] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0882, lines 143-155; *see also* at 0882, lines 143-155 ('Kilolo: *…ils vous demanderont d'abord, que mais vous dites que…parce que vous voyez au lieu de dire Thierry Lengbe à un certain point vous vous êtes trompé, vous avez dit Eric Lengbe, au lieu de dire Thierry Lengbe, alors ils reviendront là-dessus pour vous dire que, mais euh… vous… peut-être que vous ne le connaissez même pas, si vraiment vous le connaissez, dites-nous comment il est physiquement ? Est-ce que vous êtes capable de le décrire physiquement ou pas ?... Si vous n'êtes pas capable dites que je vous le dise.* D-54: *Je suis… en tout cas là j'ai oublié, Maître.* Kilolo: *Bon, Thierry Lengbe de CCOP, il était mince, élancé, il a un profil des Tutsi voilà, quelque chose comme ça ?* D-54: *Hum-mm.*' /'Kilolo: *... they'll ask you first, but you say that ... because you see instead of saying Thierry Lengbe, at a certain point you made a mistake, you said Eric Lembe instead of saying Thierry Lengbe, so they'll come back to that and say, but erm ... you ... perhaps you don't even know him, if you really know him, tell us what he looks like physically. Are you able to describe him physically or not? … If you aren't able, say so and I'll tell you.* D-54: *I'm ... anyway I've forgotten, Counsel.* Kilolo: *Right, Thierry Lengbe of the CCOP, he was thin, slender, had the profile of a Tutsi, you see, something like that.* D-54: *Hm-mm')*.

631. Later, during the overnight adjournment of D-54's testimony, Mr Kilolo rehearsed the questions of the victims' legal representatives, which had previously been submitted on a confidential level to Trial Chamber III.[1435] Mr Kilolo read out the questions, which concerned, *inter alia*, Mr Bemba's role, the deployment and withdrawal of troops to and from the CAR, and the motivations behind the MLC's intervention.[1436] Mr Kilolo then dictated the responses, for example, as follows:

> **Kilolo**: *Maintenant, ils te poseront une autre question. Ils te diront ceci, « Qui a pris la décision, qui a pris la décision de l'envoi des troupes du MLC en Centrafrique et de leur retrait ? »*[1437] *Bon, voici ce que tu leur diras, pour ce qui est de l'envoi…euh…l'envoi des troupes, le 'décision politique pouvait être prise collégialement au niveau de Gbadolite, le commandant en chef, entouré de ses conseillers, ont pris la décision politique, elle n'est pas militaire. La décision politique de l'envoi des troupes, ensuite, [HAMULI], en tant que Chef d'Etat-major va maintenant prendre la décision militaire pour mettre en œuvre cette décision politique. Donc, c'est lui qui désigne Mustapha à cette brigade ; il leur donne l'ordre : vous traversez tel jour, à telle heure, etc. C'est ça le….le…le truc. Il et faut maintenant distinguer la décision politique de la décision militaire, pour mettre en œuvre la décision politique.*
> **D-54**: *Hum.*
> **Kilolo**: *Alors, pour ce qui concerne le retrait des troupes, euh…de Centrafrique pour rentrer à Zongo, tu fais de nouveau la même distinction. Tu dise, « Non, Jean-Pierre Bemba, ce qui a été dit dans la presse, c'est la décis… c'est la volonté politique de dire que politiquement nous voulons que nous troupes rentrent. C'est normal. Mains, maintenant sur le plan de la mise ne œuvre militaire, c'est le Chef d'Etat-major de FACA. Hier, même, j'ai appris que c'était normalement [Bombayake] qui a pris cette décision. Ou bien, tu ne cites aucun nom, tu dis seulement le Chef d'Etat-major des FACA.*[1438]

[1435] *See* ICC-01/05-01/08-2817-Conf (CAR-OTP-0088-1626) and ICC-01/05-01/08-2819-Conf (CAR-OTP-0088-1630).

[1436] Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1122, lines 420-423.

[1437] *See* ICC-01/05-01/08-2817-Conf, p. 3, question 7 (CAR-OTP-0088-1626 at 1628) *('*Kilolo: *Now, they'll ask you another question. They'll say this, Who took the decision, who took the decision to deploy the MLC troops to Central Africa and to withdraw them?')*; ICC-01/05-01/08-2819-Conf, p. 3, question 4 (CAR-OTP-0088-1630 at 1632) (*'Kilolo: Autre question : Au niveau du MLC, quelle autorité avait pris la décision d'envoyer des troupes en Centrafrique ? / Another question: At the MLC, which authority took the decision to deploy the troops to Central Africa?'*); Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1127, lines 586-589.

[1438] Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1128, lines 607-624 *('Well, here's what you'll tell them, regarding the deployment ... erm ... the deployment of troops, the political decision could have been taken jointly in Gbadolite, the commander-in-chief, surrounded by his advisers, took the political decision, it wasn't military. The political decision to deploy troops, then [Hamuli], as Chief of Staff will now take the military decision to implement this political decision. So, it was he who appointed Mustapha to this brigade; he gave them the order: you cross over on such and such a day, at such and such a time, etc. That's the ...the ...the thing. Now you have to make the distinction between the political decision and the military decision, to implement the political decision.* D-54: *Hm.* Kilolo: *So as regards the withdrawal of the troops, erm ...from Central Africa to return to Zongo, you make the same distinction again. You say, "No, Jean-Pierre Bemba, what was reported in the press was the decis ... was the political will to say that politically we want our troops to return. That's normal. But, now as regards military implementation, it's the FACA Chief of Staff. I found out only yesterday that it was normally [Bombayake] who took that decision. Or otherwise, don't*

632. When rehearsing the questions of the victims' legal representatives, Mr Kilolo also provided scripted responses concerning the languages spoken by the MLC soldiers.[1439] He explained the purpose of related questions, as follows:

> **Kilolo**: *Une autre chose qu'ils te demanderont, « les soldats du MLC parlaient quelle langue principalement ? » Bon, voici la raison pour laquelle ils te la posent ; parce que beaucoup de victimes disent, « non, ces gens sont venus et ils nous ont fait mal. Ils parlaient plus lingala ». C'est pour ça qu'ils te posent cette question. « Principalement, ils parlaient quelle langue ? » Parce que si tu dis Lingala, ils établiront le lien.*
> **D-54**: *Hum.*
> **Kilolo**: *Bon. Je ne sais pas ce que nous pouvons faire à ce niveau. Pour moi, tu feras apparaître les autres…comme étant les gens de Mustapha, tu diras ceci « non, la plupart parlait le swahili, parmi ceux qui ont traversé ; parce que le plus grand nombre était de la brigade de Mustapha, il venait de l'est. Ils parlaient souvent le swahili. Un petit groupe parlait lingala. Allô ?*
> **D-54**: *Je suis à l'écoute Maître.*
> **Kilolo**: *Hum Ils parlent swahili ; certains parlaient lingala ; d'autres encore parlaient français. Bon je ne sais pas tu pourrais aussi ajouter d'autres langues parlées dans l'Equateur, le ngbandi, et autres, tu en ajoutes.*[1440]

633. During his testimony before this Chamber, P-201 (D-54) stated that MLC troops indeed spoke Swahili and Lingala, clarifying that his response rested on his personal experience[1441] and '*not because Mr Kilolo said something*'.[1442] However,

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mention any names, just say the FACA Chief of Staff"); *see also* Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1131, lines 746-750 ('*Tu vois que lui aussi reviens là-dessus…ils insistent beaucoup sur ça. D-54 : Hum. Kilolo : Euh pour ça, tu réponds comme nous nous sommes convenus. Tu expliques le niveau politique et le niveau militaire.'/'You see he is also bringing it up again... they are focusing on that a lot*. D-54: *Hm.* Kilolo: *Erm for that, you answer as we agreed. You explain the political level and the military level'*); Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1127, lines 586-589 (*'Alors, autre chose, "Quelles sont les attributions de Jean-Pierre Bemba en tant que Commandant en Chef de MLC?" Bon. OK…pour ça tu diras seulement que, en tant que Commandant en Chef du MLC, il était comme un président de la république. C'est tout. Donc c'est-à-dire c'était l'autorité politique. Comme tu l'as dit, lorsque tu parlais de l'espace politique'/'So, another thing, "What is Jean-Pierre Bemba's remit as MLC Commander-in-Chief?" Well. OK...for that just say that as MLC Commander-in-Chief, he was like a President of the Republic. That's all. So that means he was the political authority. Like you said, when you spoke about the political arena'*).

[1439] *See* ICC-01/05-01/08-2819-Conf, p. 3, question 9 (CAR-OTP-0088-1630 at 1632).

[1440] Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1133, lines 813-828 ('Kilolo: *Another thing they'll ask you, "What language did the MLC soldiers mainly speak?" Right, this is why they'll ask you that, because a lot of victims are saying, "no, these people came and they did us harm. They spoke mostly Lingala." That's why they'll ask you this question. "What language did they mainly speak?" Because if you say Lingala, they'll put two and two together.* D-54: *Hm.* Kilolo: *Right. I don't know what we can do in that respect. For me, you could portray the others ... as being Mustapha's people, say this: "no, the majority of those who crossed over spoke Swahili; because most of them were from Mustapha's brigade. They came from the East. They often spoke Swahili. A small group spoke Lingala." Hello?* D-54: *I'm listening, Counsel.* Kilolo: *Hm. They speak Swahili, some of them spoke Lingala; and others spoke French. Well I don't know - you could also add other languages spoken in Equateur: Ngbandi and others, you could add some'*).

[1441] T-28-CONF, p. 52, line 8; p. 55, lines 3-4.

[1442] T-28-Red2, p. 52, lines 8-9.

given P-201 (D-54)'s general demeanour during his testimony, and the clarity of the intercepted telephone conversation, the Chamber is satisfied that this topic was not only discussed between Mr Kilolo and D-54 but that Mr Kilolo also dictated the expected responses.

634. The evidence also shows that Mr Kilolo gave concrete directions as to the identity of the perpetrators of the crimes in the CAR. In his conversations on 31 October 2013, Mr Kilolo insisted that D-54 adopt a specific narrative with regards to this aspect of his testimony. The following intercepted conversation reflects the manner in which the witness was directed:

> **D-54**: *…et par rapport à ce que vous dites, alors, quelle est votre avis là-dessus ?*
> **Kilolo**: *Non, non, toi tu diras que tu n'as pas trouvé ces crimes dont les gens du MLC sont accusés, et tu n'as pas vu leur commission non plus, mais la population civile t'a dit : nous sommes contents depuis que nous avons été libérés par les gens du MLC et les loyalistes FACA.*
> **D-54**: *Hum.*
> **Kilolo**: *…mais aucun plainte n'a été reçue ni de viole, ou, ni de … de euh… concernant le MLC.*
> **D-54**: *Hum.*
> **Kilolo**: *La chose…ce rapport, c'est le président de la commission généra …euh…le lieutenant […] qui t'a informé…*
> **D-54**: *Hum.*
> **Kilolo**: *…du fait que ces crimes étaient commis du côté des gens de Bozizé. Personnellement, tu n'as pas entendu la plainte, c'est [la personne] qui t'a donné ce rapport, parce que, lui, il avait ses gens en grand nombre, qui circulaient partout. (…) Alors que les gens …*
> **D-54**: *Hum.*
> **Kilolo**: *… de Bozizé fuyaient, se repliaient et abandonnaient la ville, ils commettaient des actes de pillages durant leur fuite, ils prenaient des choses…*
> **D-54**: *Hum.*
> **Kilolo:** *et ils s'enfuyaient avec ça au Tchad*.[1443]

[1443] Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1098-1099, lines 384-399 and 422-427 ('D-54: *... and regarding what you say, then, what do you think?* Kilolo: *No, no, you'll say that you did not find these crimes that the MLC people are being accused of, and you didn't see them being committed either, but civilians told you: we are happy since we've been liberated by the MLC and the FACA loyalists.* D-54: *Hm.* Kilolo: *... but no complaints were received either of rape, or, or of ... of erm ... concerning the MLC.* D-54: *Hm.* Kilolo: *The thing ... this report, it was the president of the general commission ... erm ... Lieutenant [...] who informed you ...* D-54: *Hm.* Kilolo: *… that these crimes were committed by Bozizé's people. Personally, you did not hear the complaint, it was [the person] who gave you the report, because, he, he had a lot of his men, who were moving around freely. (...). Whereas, the people ...* D-54: *Hm.* Kilolo: *… Bozizé's [men], fled, withdrew and abandoned the town, they committed acts of pillage as they fled, they took things ...* D-54: *Hm.* Kilolo: *and they fled with those things to Chad'); see also* Audio recording, CAR-OTP-0080-1368; Translated transcript of audio recording, CAR-OTP-0082-0659 at 0661, lines 12-18 (*'Euh…concernant les pillages… donc aujourd'hui vous ne vous êtes pas vraiment bien expliqué là-dessus. Maintenant, cet aspect-là vous allez en profiter pour y revenir vraiment en profondeur, et vous allez dire: Si…(…) il y a eu pillage, s'il y a eu des meurtres, s'il y a eu des viols ce que nous avions appris, c'était ce que les populations elles-mêmes se plaignaient, ils disaient que ce sont les hommes de Bozizé qui les avaient*

It is particularly striking that, upon D-54's enquiry, Mr Kilolo provided a long and exhaustive response. It is clear that Mr Kilolo did not simply rehearse the matter and remind D-54 of the answers that he had given previously. Rather, Mr Kilolo instilled D-54 with specific information.

635. Mr Kilolo also instructed D-54 to testify that there were no complaints and no evidence found to support the allegations of any criminal activity by MLC soldiers and that, therefore, Mr Bemba could not have been aware of the purported crimes. Mr Kilolo is recorded speaking about this aspect of the witness's testimony numerous times, such as on the evening of 30 October 2013 and again on the morning and evening of 31 October 2013, seeking to cement the script.[1444] One salient example of Mr Kilolo's rehearsal of the testimony (which appears in similar forms throughout his telephone conversations with D-54) can be found in the morning conversation of 31 October 2013:

> **D-54**: *Bon, euh…et maintenant, par rapport à ma déclaration, comme on a fait l'enquête, il ne s'agit pas toujours de ce genre de crimes…*
> **Kilolo**: *Hum.*
> **D-54**: *…et par rapport à ce que vous dites, alors, quel est votre avis là-dessus ?*
> **Kilolo**: *Non, non, toi tu diras tu n'as pas trouvé ces crimes dont les gens du MLC sont accusés, et tu n'as pas vu leur commission non plus, mais la population civile t'a dit : nous sommes contents depuis que nous avons été libérés par les gens du MLC et les loyalistes FACA.*
> **D-54**: *Hum.*
> **Kilolo**: *…mais aucune plainte n'a été reçue, ni de viol, ou, ni de…de euh… concernant le MLC.*
> *(…)*
> **Kilolo**: *Donc, et puis… c'est aussi ma question, et puis la dernière question que je vais te poser : si je vous disais que Jean-Pierre Bemba aurait dû savoir que les troupes de l'ALC en Centrafrique avaient commis des exactions, meurtres, viols, crimes, parce que vous-même personnellement, vous étiez là-bas dans la commission, vous avez constaté qu'il y a eu des crimes, et vous avez…euh…donc, forcément, Jean-Pierre Bemba aussi aurait dû savoir, quel est votre réaction ? Ce sera ma toute dernière question, ensuite je vais m'assoir.*
> **D-54**: *Hum.*
> **Kilolo**: *Hum. Là, tu vas répéter seulement, et tu diras : il est vrai que je me suis rendu là-bas, mais je n'ai reçu aucune plainte, nous n'avons vu aucune victime, qu'elle soit de viol, de meurtre, ou de*

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commis'/'Erm ... about the pillaging ... you didn't really explain that very well today. Now, as regards that you'll take advantage of this opportunity to go back to it in depth, and you'll say: If ... (...) there was pillaging, if there were murders, if there were rapes, what we heard was what the people themselves were complaining about, they were saying that it was Bozizé's men who had committed them').

[1444] This included going through the related question to be advanced by one of the victims' legal representatives during D-54's testimony, *see* ICC-01/05-01/08-2819-Conf, p. 4, question 21 (CAR-OTP-0088-1630 at 1633).

pillage…euh…aucune plainte, aucune plainte n'a été portée, euh… nous avons posé des questions, nous avons interrogé tout le monde : les civils, les militaires, nous avons fait des perquisitions, en tout cas, rien n'a été trouvé. Moi je m'arrête là, et je m'assoie.
D-54: *Hum.*[1445]

636. The Chamber concludes from the above that Mr Kilolo directed the witness to adopt a specific narrative on various matters relating to the merits of the Main Case, including, but not limited to, Mr Bemba's role and position of command, the date of his arrival in the CAR, motivations underlying the MLC intervention in the CAR, the perpetrators' identity, appearance and language, the criminal activity of MLC soldiers, and the MLC's deployment to and withdrawal from the CAR. It is clear from the above that Mr Kilolo scripted the responses to be given in court and gave further advice on the information for D-54's better understanding.

637. Lastly, on numerous occasions during his conversations on 30 and 31 October 2013, Mr Kilolo instructed D-54 as to responses to anticipated questions

[1445] Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1098-1099, lines 380-391; at 1104, lines 612-627; at 1101-1102, lines 499-510 ('D-54: *OK, erm ... and now, regarding my statement, as the investigation has been done, it is not always this kind of crime ...* Kilolo: *Hm.* D-54: *... and regarding what you say, then, what do you think?* Kilolo: *No, no, you'll say that you did not find these crimes that the MLC people are being accused of, and you didn't see them being committed either, but civilians told you: we are happy since we've been liberated by the MLC and the FACA loyalists.* D-54: *Hm.* Kilolo: *... but no complaints were received, either of rape, or, or of ... of erm ... concerning the MLC. (…)* Kilolo: *So, and then ... this is also my question, and then the last question I'll ask you: if I said to you that Jean-Pierre Bemba should have known that ALC troops in Central Africa had committed acts of violence, murders, rapes, crimes, because you personally, you were there during the commission, you saw that crimes were being committed and you ... erm ... so Jean-Pierre Bemba must also have known. What is your response? This will be my very last question, then I'll sit down.* D-54: *Hm.* Kilolo: *Hm. Here, you'll only repeat, and you'll say: it is true that I went there, but I received no complaints, we saw no victims, whether of rape, murder or pillaging ... erm ... no complaints, no complaints were made, erm ... we asked questions, we questioned everybody: civilians, soldiers, we carried out searches, in any case, nothing was found. I'll stop there, and I'll sit down.* D-54: *Hm'*); *see also* Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0897, lines 750-767; Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1125-1126, lines 527-550 ('Kilolo: *…une autre chose, ils te demanderont, maintenant « Êtes-vous au courant des crimes commis par l'ALC, dans les différentes villes qu'elles ont conquises? » Ça tu diras, non aucun, crime n'a été commis, parce que nous avons vérifié. Il n'y a eu aucune plainte non plus. Dis, les crimes, c'est vous qui en parlez maintenant. Lorsque nous étions dans à la commission il n'y avait rien. (...) tu as dit que lorsque tu circulais, tu demandais aux populations civiles, à Damango…en tout cas, on te disait que la population était vraiment très contente'*/'Kilolo: *… another thing, they'll ask you now, "Are you aware of the crimes committed by the ALC, in the various towns they captured?" You will say, no, no crime was committed because we checked. There was no complaint either. Say, you're the ones talking about crimes now. When we were in at the commission there was nothing. (...) you said when you moved around, you would ask civilians, in Damango ... in any case, you were told that the people were really very happy'*); Audio recording, CAR-OTP-0080-1368; Translated trasncription of audio recording, CAR-OTP-0082-0659 at 0661, lines 9-28.

involving his prior contacts with and payments from the Main Case Defence. The following intercepts exemplify Mr Kilolo's repeated attempts to make the witness dishonestly deny (i) any recent contacts or interaction with the Main Case Defence, except meeting Mr Nkwebe, Mr Bemba's former counsel, in 2011, and (ii) any reimbursement sent by Mr Bemba or anyone on his behalf in connection with his Main Case testimony. In this regard, Mr Kilolo called D-54 on 30 October 2013, at 19:31, and instructed him as follows:

> **Kilolo**: *Euh, la première chose, surtout n'oublie pas la question qu'ils poseront: moi et toi, si nous nous sommes entretenus et à quel moment, la dernière fois. Donc, vraiment de cette côté-là, n'oublie pas que …euh…le dernier jour que moi et toi, nous sommes entretenus, en tout cas…euh…ça fait au moins à peu près un mois.*
> **D-54**: *Euh.*
> **Kilolo**: *Mais, ce n'était qu'en bref d'ailleurs, et que ce n'était que pour te demander si tu es disponible pour témoigner, c'est tout.*
> *(…)*
> **Kilolo**: *Eh, même en ce qui concerne les entretiens comme ça, tu dis simplement, non, nous nous sommes entretenus à peu près 5-6 fois, mais, à chaque fois c'était toujours moi qui t'appelais, pour insister afin que nous puissions nous rencontrer, mais toi aussi tu répondais toujours niet, pas question de ces histoires, euh…moi je ne viendrai que si j'obtiens l'autorisation de les…les…les…des autorités.*[1446]

638. Mr Kilolo called the witness again the same day, at 21:12, and continued:

> *et puis autre chose, ils vous poseront la question, vous avez combien de numéros de téléphone ? Dites seulement, un numéro de téléphone là…celui que la Cour connait, ne donnez même pas les autres là, dites que vous n'en avez pas, j'ai seulement un numéro de téléphone… est-ce que…ne vont-ils pas vous piéger, que, est-ce que quelqu'un ne vous a pas appelé pendant la nuit ? (…) Personne ne vous a appelé…personne de la Défense ne vous a appelé la nuit pour vous préparer, en disant faites attention demain, dites ceci, dites cela, jamais, jamais, jamais.*[1447]

[1446] Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0869, lines 45-51; at 0870, lines 80-84 ('Kilolo: *Erm, the first thing, most importantly don't forget the question that they'll ask: you and I, if we've spoken and when, the last time. So, really as far as that's concerned, don't forget that ... erm ... the last time that you and I spoke, in any case ... erm ... it was roughly a month ago at least.* D-54: *Erm.* Kilolo: *But, it was only briefly anyway, and it was just to ask you if you were available to testify, that's all. (...)* Kilolo: *Ah, even with regard to interviews like that, just say, no, we spoke approximately 5-6 times, but that each time I was always the one who called you to stress that we needed to meet, but that you always replied oh, no, don't talk to me about those stories, erm ... I would only come if I got authorisation from the ...the ... the ... from the authorities'*).

[1447] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0899, lines 814-822; *see also* at 0893-0894, lines 607-652 (*'and then another thing, they'll ask you how many telephone numbers you have? Just say one phone number there ... the one that the Court knows, don't even give the other ones, say you don't have any, I only have one telephone number ... did ... they'll try and catch you out, didn't someone call you during the night?(...) No one called you ... no one from the Defence called you during the night to prepare you, telling you to be careful tomorrow, say this and say that, never, never, never'*).

As to whether the witness received any money, Mr Kilolo said:

> *alors on va vous demander, est-ce que vous n'avez pas perçu de l'argent? Est-ce que vous n'avez pas reçu de promesse, selon laquelle si vous parlez correctement demain ils vont…euh…que s'il sort et qu'il a une fonction, il va vous mettre peut-être à un poste privilégié ? Donc, ça il ne faut jamais l'accepter.*[1448]

639. Mr Kilolo reverted to this aspect of the testimony the next morning, on 31 October 2013, and emphatically repeated the following expected responses:

> *ils vont d'abord te demander…euh…Maître Kilolo vous a appelé combien de fois? Bon, s…euh…, tu vas dire que tu n'as pas compté, peut-être cinq fois, peut-être six fois, mais tu n'as pas compté. Ils vont te demander pour la première fois, c'était quand ? Bon, tu vas dire que pour la première fois, il a commencé à m'appeler seulement quand on avait appris à la radio que Maître Nkwebe était mort. C'était en 2012, tu vois comment tu vas placer ça c'était… il a commencé à appeler.*[1449]

He also insisted that D-54 testify that he did not know Mr Kilolo but only Mr Nkwebe, Mr Bemba's deceased counsel, whom he allegedly met in 2011:

> *d'ailleurs, ce Maître Kilolo dont on parle, je ne le connais pas, je ne l'ai jamais vu de toute ma vie. La seule personne que je pourrais affirmer connaître un petit peu, puisqu'on s'est rencontré, c'est Nkwebe. Bon, et Nkwebe, quand est-ce que vous vous êtes rencontrés ? Bon, alors tu diras … on s'est rencontré … on s'est rencontré en 2011… (…) Bon, en quel mois? Tu diras, bon…tu diras…bon…au milieu de l'année.*[1450]

[1448] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0893, lines 593-596 (*'so, you're going to be asked, didn't you get any money? Weren't you promised that if you say the right thing tomorrow, they'll ... erm ... if he is released and gets a position, he'll perhaps make sure you get a good job?" So, you should not agree to that'*).

[1449] Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1090, lines 63-68 (*'... first they'll ask you ... erm ... How many times did Mr Kilolo call you? Well, s ... erm ..., you'll say that you didn't count, maybe five times, maybe six times, but you didn't count. They'll ask you when was the first time? Well, you'll say that for the first time, he started calling me only after it had come over the radio that Mr Nkwebe was dead. That was in 2012, you see how you're going to put that, it was ... he started to call'*); *see also* at 1092, lines 121-127 ('*tu n'étais plus en contact avec moi, en tout cas, ça fait un mois. Ce sont seulement les gens de la Cour qui sont à Kinshasa qui t'appellent pour organiser ton voyage, jusqu'au moment où tu es venu, c'est tout. (…) Et puis, ils vont revenir…ils vont dire : bon, ça c'était le téléphone, et alors par email ? En tout cas, par email rien du tout, on n'a pas eu un seul contact par email, et puis…euh…c'est tout'/'you were no longer in contact with me, in any case, it's been a month. It's just the people from the Court who are in Kinshasa who are calling you to organise your journey, until you came, that's all. (…) And then, they'll come back … they'll say: good, that was the telephone, and now by e-mail? In any case, nothing at all by e-mail, there has been no contact whatsoever by e-mail, and then … erm … that's all'*).

[1450] Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1093, lines 163-170 (*'besides, this Mr Kilolo you mention, I don't know him, and I've never seen him in my life. The only person I could say that I know vaguely, because we've met, is Nkwebe. OK, and Nkwebe, when did you meet? Well, then, you'll say ... we met ... we met in 2011 ... (...) Good, which month? You will say, well ... you will say ... well ... around the middle of the year'*); *see also* Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0869, lines 61-69.

640. When testifying before this Chamber, P-201 (D-54) admitted that he lied before Trial Chamber III when stating that his last contact with the Main Case Defence was only two months before his Main Case testimony.[1451] The Chamber is therefore convinced that Mr Kilolo instructed the witness to falsely testify about his prior contacts with the Main Case Defence.

641. The evidence reflected above reveals that, during a series of 'briefing' sessions,[1452] Mr Kilolo gave D-54 detailed and thorough directions to make a certain statement or withhold information on a number of topics relevant to the charges in the Main Case or the witness's credibility. Mr Kilolo's tone and language underline the instructive character of these sessions, including the use of *'vous dites'*,[1453] *'tu dois répondre'*,[1454] *'selon moi la justification peut s'arrêter là'*,[1455] *'vous vous arrêtez là'*,[1456] *'donc ça il ne faut jamais l'accepter'*,[1457] *'n'oublie pas'*,[1458] *'tu te limites juste à cela'*,[1459] or *'là vraiment il faudra le nier'*.[1460] Mr Kilolo's language was

[1451] T-28-Red2, p. 59, lines 8-15.
[1452] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0893, line 592*; see also* at 0901, lines 921-923, Mr Kilolo's question in the evening of 30 October 2013 whether he should call D-54 in the morning of 31 October 2013 again.
[1453] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0879, line 24; at 0880, line 55; at 0887, line 324, 328 and 334; at 0895, lines 659 and 691 (*'you say'*). *Similarly* Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0871, line 121; at 0872, line 160; Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1090, line 66; at 1094, line 199 ('*tu vas dire'/'you're going to say'*); at 1091, lines 82 and 98; at 1093, line 159; at 1094, line 202; at 1098, lines 359, 369, 373 and 385; at 1104, lines 605 and 621 (*'tu diras'/'you'll say')*; Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1117, line 225; at 1125, line 529 (*'dis'*).
[1454] Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0870, line 89 *('you must answer')*; *similarly* Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1103, lines 545-546 (*'tu vas me répondre tu vas insister, en disant'/'when you answer me you'll emphasise, saying that'*).
[1455] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0881, lines 91-92 (*'so in my opinion the justification can stop there'*).
[1456] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0891, line 517; at 0896, line 709 (*'you stop there'*); Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1127, line 591; at 1131, line 744.
[1457] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0893, line 596 (*'you must not agree to that'*).
[1458] Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0869, line 46 (*'don't forget'*).
[1459] Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0869, line 58 (*'you just stick to that'*). Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1125, line 523.

direct and unambiguous as to what testimony was expected. Indeed, D-54, who listened attentively to Mr Kilolo, understood the importance of following Mr Kilolo's instructions. He occasionally asked for clarification[1461] and took notes during their conversations.[1462]

642. With a view to ensuring that D-54's testimony would accord with the evidence given by other witnesses, Mr Kilolo also intervened correctively, such as when D-54 described the military posture of the MLC and the FACA in the field, which did not coincide with Mr Kilolo's proposition. Mr Kilolo corrected the witness, urging him to stay in line with the evidence given by other witnesses:

> *Mon…mon frère, ça c'est une théorie militaire, mais moi je suis en train de vous parler du procès, ici nous n'avons pas de théorie militaire, nous avons un procès, c'est une lutte (…). Alors, dans le cadre de la lutte en question, il faudra que ça sorte comme s'ils étaient mélangés, et vous n'êtes pas le seul, d'autres officiers aussi sont passé ici et ils ont soutenu la même thèse.*[1463]

Also, when D-54 suggested testifying that he had received intelligence service reports on the situation in Bangui, Mr Kilolo objected strongly and discouraged the witness from adding this aspect to his testimony:

> **Kilolo**: *Euh… donc, vous voulez ajouter que le service de renseignement vous donnait le rapport de la situation qui prévalait à Bangui ?*
> **D-54**: *Euh, je voulais ajouter cela.*
> **Kilolo**: *Non, non, très mauvais, très mauvais, parce que justement, il ne faut pas que ça sonne comme si ce service de renseignement opérait à Bangui, non, ce n'est pas bon.*[1464]

[1460] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0899, line 844 (*'you really have to deny that'*); *see also* Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1135, lines 901-902 ('*il faut le réfuter catégoriquement'/'you've got to categorically deny that'*); at 1137, line 949 ('*En tout cas, ça tu le nies, c'est tout'/'In any case, just deny it, that's all'*).

[1461] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0896, line 726*; see also* Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1114, line 141.

[1462] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0887, lines 347-348.

[1463] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0889, lines 424-429 (*'My ...my brother, that's military theory, but I'm in the process of asking you about the trial, we don't have military theory here, we have a trial, it's a fight (...) So, in the context of the fight in question, it's got to appear as if they were intermingled, and you're not the only one, other officers have appeared here and have made the same point'*).

[1464] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0891-0892, lines 533-537 ('Kilolo: *Erm...so, you'd like to add that the intelligence service reported to you on the*

643. P-201 (D-54) testified that his entire Main Case testimony was consistent with the information that he had disclosed to Mr Nkwebe, Mr Bemba's former counsel.[1465] The Chamber finds this *ex post* explanation irreconcilable with the fact that Mr Kilolo felt it necessary to keep in contact with this witness during his testimony or to correctively intervene whenever the witness expressed a different scenario on substantive matters discussed before Trial Chamber III.

644. Besides the instructions as regards the substance of his testimony, the Chamber also notes that Mr Kilolo practically scripted the course of D-54's testimony, including the order of questions and when he would sit down.[1466] The understood instruction to adhere to the agreed narrative is captured best in Mr Kilolo's final advice to D-54 on the evening of 30 October 2013: '*si ils vous amènent d'autres choses sur lesquelles vous et moi nous ne nous sommes pas convenus, vous ne voyez que du flou, vous ne savez pas quoi répondre, vous leur dites seulement que vous ne savez pas ou bien vous dites que ça fait longtemps j'ai oublié*'.[1467] The next evening, Mr Kilolo complimented D-54 who had stuck to the narrative as

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prevailing situation in Bangui? D-54: *Erm, I wanted to add that.* Kilolo: *No, no, very bad, very bad, because it absolutely mustn't sound as if that intelligence service was operating in Bangui, no, that's not good'*).

[1465] T-29-Red2, p. 9, lines 3-9.

[1466] *For example*, Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1104, lines 617-618.

[1467] Audio recording, CAR-OTP-0080-1364; Translated transcript of audio recording, CAR-OTP-0082-0877 at 0901, lines 909-911 ('*if they confront you with other things that you and I haven't agreed on, you just find it confusing, you don't know what to answer, just tell them you don't know or that you've forgotten as it was a long time ago'*); *see also* Audio recording, CAR-OTP-0080-1363; Translated transcript of audio recording, CAR-OTP-0082-0866 at 0874, lines 253-254 ('*il faut que, tout à l'heure, je t'appelle, pour que nous nous entretenions et que j'attire ton attention sur des choses sur lesquelles ils voudront t'attraper'/I will have to call you later so that we can talk and I will draw your attention to some things that they'd like to catch you out on'*). Mr Kilolo is recorded having stressed that point again in the morning call of 31 October 2013, Audio recording, CAR-OTP-0080-1366; Translated transcript of audio recording, CAR-OTP-0082-1087 at 1106-1107, lines 697-708 (*'s'ils te dérangent avec quelque chose que tu ne connais pas, tu leur dis seulement que tu ne sais pas, ou bien tu dis: ça fait longtemps, 10 ans passés, j'ai oublié, c'est tout. (...) ne cherche surtout pas à trop parler. (...) si tu vois que c'est un sujet sur lequel on ne s'est pas mis d'accord (...) et que toi-même, dans ta conscience, tu vois que tu ne connais pas la bonne réponse, alors tu dis seulement que tu ne sais pas, ou bien que ça fait longtemps (...) donc, toi, tu dois rester seulement dans l'axe dont on a discuté'*/'*if they bother you with something you don't know, you just say you don't know, or you say: it was a long time ago, 10 years ago, I've forgotten, that's all. (...) above all try not to talk too much. (...) if you see that it's a subject we haven't agreed on (...) and that you, in your conscience, you see that you don't know the right answer, then you just say that you don't know, or that it was a long time ago (...) so you, you just need to keep to the line that we've discussed'*). Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1131, line 749 ('*Euh pour ça tu réponds comme nous nous sommes convenus'*/'*Erm for that you answer as we agreed'*).

agreed: *'Là, tu as bien répondu. Tu sais que de ce côté-là quand il a commencé à en parler, je suis dit « Oh la-la » Parce que toi et moi n'avions pas préparé cela'*.[1468]

645. P-201 (D-54) testified before this Chamber that Mr Kilolo did not have any authority or influence over him.[1469] Yet, he also stated that he just listened to Mr Kilolo during the telephone conversations. He regretted having been *'timid'*; however, he explained that Mr Kilolo *'is a lawyer and I could'nt stop him'*.[1470] The Chamber is of the view that D-54's consistent attitude and remarks as reflected in the intercepted conversations speak for themselves. The Chamber therefore finds that witness D-54 indeed followed Mr Kilolo's instructions.

viii. Testimony of D-54

646. As per Mr Kilolo's instructions during the briefing sessions prior to and during D-54's testimony from 30 October 2013 to 1 November 2013,[1471] D-54 testified before Trial Chamber III that (i) the local Commission had not received any complaints about crimes committed by MLC soldiers from the civilian population;[1472] (ii) the soldiers spoke mainly Swahili, as well as some Lingala and Nwgwandi;[1473] (iii) he was contacted by and met late counsel Nkwebe in May or June 2011;[1474] (iv) his last contact with Mr Kilolo was approximately *'two months ago'*;[1475] (v) he was contacted by Mr Kilolo two or three times;[1476] (vi) he actually did not know Mr Kilolo;[1477] (vii) he never received any money or

[1468] Audio recording, CAR-OTP-0080-1367; Translated transcript of audio recording, CAR-OTP-0082-1109 at 1130, lines 691-692 (*'You answered well there. You know that, about that, when he started talking about that, I thought to myself "Oh-oh!" Because you and I hadn't prepared that'*).
[1469] T-29-Red2, p. 5, lines 22-24.
[1470] T-29-Red2, p. 8, lines 7-20.
[1471] *See* Trial Chamber III, T-347-CONF; T-347-Red; T-348-CONF; T-348-Red; T-349-CONF; T-349-Red.
[1472] Trial Chamber III, T-348-Red, p. 52, lines 1-3.
[1473] Trial Chamber III, T-349-Red, p. 50, line 23 to p. 51, line 18.
[1474] Trial Chamber III, T-349-Red, p. 39, line 12 to p. 43, line 3, in particular p. 42, line 15.
[1475] Trial Chamber III, T-349-Red, p. 43, line 10.
[1476] Trial Chamber III, T-349-Red, p. 43, line 14.
[1477] Trial Chamber III, T-349-Red, p. 44, lines 5 and 8.

promise in exchange of his testimony from the defence of Mr Bemba;[1478] and (viii) he received no instruction concerning the contents of his testimony.[1479]

647. In the light of the corroborated and clear evidence of repeated contacts between D-54 and Mr Kilolo, the Chamber finds that D-54 lied, consistent with Mr Kilolo's instructions, concerning his contacts with the Main Case Defence. While D-54 also followed Mr Kilolo's instructions to deny payments, the Chamber recalls that it has not been able to conclude on the evidence that D-54 received payments from the Main Case Defence. It is therefore unable to conclude that D-54 falsely testified in this regard.

ix. 1 November 2013 Call

648. The evidence also shows that, on 1 November 2013, Mr Kilolo spoke with Mr Bemba on the telephone at 07:47. The relevant call log,[1480] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1481] indicates in the 56th row from the top a connection between Mr Bemba's telephone number [Redacted][1482] and Mr Kilolo's telephone number [Redacted][1483] between 07:47 and 07:52 for approximately 5½ minutes.[1484] The corresponding audio recording, submitted by the Prosecution,[1485] lasts 5:33 minutes and thus duly corresponds to the call log entry concerned.

[1478] Trial Chamber III, T-349-Red, p. 44, line 21 to p. 45, line 6.
[1479] Trial Chamber III, T-349-Red, p. 45, line 9.
[1480] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1481] Call log, CAR-OTP-0080-1312*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1482] *See* para. 297.
[1483] *See* para. 585.
[1484] Call log, CAR-OTP-0080-1312 at 1315, row 56*; see also* the historical data of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003, as provided by the Dutch authorities (CAR-OTP-0080-1286).
[1485] Audio recording, CAR-OTP-0080-1372 (ICC-01/05-01/13-438-Conf-AnxB056); Transcript of audio recording, CAR-OTP-0082-0524 (in English, French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-0669 (French translation); Translated transcript of audio recording, CAR-OTP-0089-1472 (English translation).

649. During this conversation, Mr Kilolo declared, '*si, si, en fait, c'est qui ça m'a beaucoup épuisé. La personne que vous connaissez*'.[1486] In the Chamber's view, this particular utterance is not affected by the problems identified by expert witness D20-1, as this intercepted communication was provided by the Dutch authorities and not the Registry. Mindful that, as explained above, Mr Kilolo was twice on the telephone with D-54 the night before, the Chamber understands that Mr Kilolo's tiredness stems from his dealings with D-54, whom he had to prepare for his last day of testimony before Trial Chamber III.

c) Overall Conclusions Regarding D-54

650. The Chamber finds that D-54 untruthfully testified in the Main Case regarding prior contacts with the Main Case Defence.

651. The Chamber also finds that Mr-Kilolo had extensive telephone conversations with D-54 prior to and during the witness's testimony in the Main Case, seeking to ensure that D-54 followed a particular narrative favourable to and consistent with the Main Case Defence position. To this end, Mr Kilolo disclosed the questions he would ask in Court, as well as those of the victims' legal representatives, and other questions he anticipated. Mr Kilolo extensively rehearsed, instructed, corrected and scripted the expected answers on a series of issues pertaining to the Main Case. The Chamber also finds that Mr Kilolo instructed D-54 to testify incorrectly about his prior contacts with the Main Case Defence. D-54 abided by these instructions. Mr Kilolo also instructed D-54 on how to conduct himself before the Court and to deny any payments from the Main Case Defence.

652. The Chamber finds that Mr Mangenda knew that Mr Kilolo intended to and did illicitly coach D-54. Indeed, Mr Mangenda conveyed Mr Bemba's

[1486] Audio recording, CAR-OTP-0080-1372; Translated transcript of audio recording, CAR-OTP-0082-0669 at 0671, lines 15-16 (*'yes, yes, actually, that is who, it really wore me out. That person you know'*).

instructions to Mr Kilolo to influence D-54 to testify to certain, specific matters. Mr Kilolo notified Mr Mangenda of D-54's agreement to testify. Together, they discussed the best approach to ensure consistency with other evidence and avoid contradictions on D-54's part.

653. The Chamber finds that Mr Bemba knew about, approved and directed (through Mr Mangenda) Mr Kilolo's illicit coaching activities in relation to D-54.

12. Witness D-13

654. Witness D-13 was called by the Main Case Defence and testified under this pseudonym. However, he was not called to testify in the present case.

a) Discussion

655. D-13 was initially scheduled to testify as a Main Case Defence witness between 19 November and 13 December 2012.[1487] D-13's testimony was later rescheduled for 21 to 24 May 2013;[1488] however, he did not appear.[1489] Subsequently, on 27 June 2013, the Main Case Defence informed Trial Chamber III that, due to an alleged incident involving D-13, it was ultimately not in a position to call him.[1490] The Main Case Defence subsequently requested that D-13 testify *in lieu* of another witness *via* video-link. Trial Chamber III

[1487] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing, 8 November 2012, ICC-01/05-01/08-T-269-Red2-ENG, p. 2, lines 3-18.
[1488] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the order of appearance of witnesses to be called by the defence following Witness D04-56, 15 May 2015, ICC-01/05-01/08-2630, paras 5-7.
[1489] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731, para. 10.
[1490] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731, para. 15; Transcript of Hearing, 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET, p. 24, line 11 to p. 25, line 18.

granted this request on 7 November 2013, under the proviso that the testimony be concluded no later than 15 November 2013.[1491]

656. The Chamber is convinced that there were a number of telephone contacts between Mr Kilolo and D-13 before his Main Case testimony from 12 to 14 November 2013.[1492] The call sequence tables and corresponding call data records reflect at least four telephone contacts between Mr Kilolo and D-13 on 8 November 2013,[1493] prior to the VWU cut-off date of 11 November 2013.[1494] The Prosecution alleges that Mr Kilolo and D-13 were also in telephone contact between 9 and 13 November 2013. The call sequence table and corresponding call data records contain, *inter alia*, the following contacts:

- 8 November 2013, at 20:34, for approximately 49½ minutes,[1495] at 22:56, for approximately 18 minutes,[1496] at 23:16, for 24 minutes[1497] and at 23:41, for approximately 21½ minutes;[1498]
- 9 November 2013, at 11:37, for 26 minutes,[1499] at 12:08, for approximately 22½ minutes,[1500] at 12:51, for approximately 20½ minutes,[1501] at 13:24, for approximately 20 minutes,[1502] and at 13:53, for approximately 43½ minutes;[1503]

[1491] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the defence's 'Motion to replace a witness' of 7 November 2013, 8 November 2013, ICC-01/05-01/08-2865-Red, para. 9.
[1492] *See* Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcripts of Hearing, 12 November 2013, ICC-01/05-01/08-T-350-CONF-ENG; ICC-01/05-01/08-T-350-Red-ENG WT, 13 November 2013, ICC-01/05-01/08-T-351-CONF-ENG; ICC-01/05-01/08-T-351-Red-ENG WT, 14 November 2013, ICC-01/05-01/08-T-352-CONF-ENG; ICC-01/05-01/08-T-352-Red-ENG WT ('T-352-Red').
[1493] Call Sequence Table, CAR-OTP-0090-0630 at 0662 to 0664.
[1494] VWU Table, CAR-OTP-0078-0290 at 0297 (ICC-01/05-01/13-207-Conf-Anx, p. 8).
[1495] Call Sequence Table, CAR-OTP-0090-0630 at 0663, row 76; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 301.
[1496] Call Sequence Table, CAR-OTP-0090-0630 at 0664, row 78; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 303.
[1497] Call Sequence Table, CAR-OTP-0090-0630 at 0664, row 79; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 305.
[1498] Call Sequence Table, CAR-OTP-0090-0630 at 0664, row 80; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 309.
[1499] Call Sequence Table, CAR-OTP-0090-0630 at 0664, row 85; Call Data Record, CAR-OTP-0083-1454, tab '[Redacted]', row 325.
[1500] Call Sequence Table, CAR-OTP-0090-0630 at 0665, row 87; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 331.
[1501] Call Sequence Table, CAR-OTP-0090-0630 at 0665, row 89; Call Data Record, CAR-OTP-0083-1454, tab '[Redacted]', row 338.
[1502] Call Sequence Table, CAR-OTP-0090-0630 at 0665, row 91; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 346.

- 10 November 2013, at 18:12, for approximately 14 minutes,[1504] at 19:56, for 20 minutes, [1505] at 20:17, for 66 minutes [1506] and at 21:50, for almost 45 minutes;[1507]
- 11 November 2013, at 10:28, for approximately 26 minutes,[1508] at 11:01, for approximately 10½ minutes,[1509] at 20:15, for 12 minutes,[1510] and at 22:12, for 7½ minutes;[1511]
- 12 November 2013, at 19:33, for approximately 12 minutes,[1512] at 19:47, for approximately 11 minutes,[1513] at 20:34, for approximately 21½ minutes,[1514] and at 21:34, for approximately 6 minutes;[1515] and
- 13 November 2013, at 21:34, for 28 minutes.[1516]

657. According to the call sequence table, the communications involved the telephone numbers [Redacted] and [Redacted], on the one hand and [Redacted], on the other hand, which is attributable to Mr Kilolo.[1517] The Chamber is satisfied that the table correctly attributes telephone number [Redacted] to D-13 because he indicated himself that this was his telephone number in a declaration he

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[1503] Call Sequence Table, CAR-OTP-0090-0630 at 0665, row 92; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 347.
[1504] Call Sequence Table, CAR-OTP-0090-0630 at 0666, row 99; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 377.
[1505] Call Sequence Table, CAR-OTP-0090-0630 at 0666, row 100; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 382.
[1506] Call Sequence Table, CAR-OTP-0090-0630 at 0666, row 101; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 388.
[1507] Call Sequence Table, CAR-OTP-0090-0630 at 0667, row 104; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 397.
[1508] Call Sequence Table, CAR-OTP-0090-0630 at 0668, row 109; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 409.
[1509] Call Sequence Table, CAR-OTP-0090-0630 at 0668, row 111; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 411.
[1510] Call Sequence Table, CAR-OTP-0090-0630 at 0668, row 112; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 440.
[1511] Call Sequence Table, CAR-OTP-0090-0630 at 0668, row 113; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 444.
[1512] Call Sequence Table, CAR-OTP-0090-0630 at 0669, row 120; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 459.
[1513] Call Sequence Table, CAR-OTP-0090-0630 at 0669, row 122; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 461.
[1514] Call Sequence Table, CAR-OTP-0090-0630 at 0670, row 124; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 469.
[1515] Call Sequence Table, CAR-OTP-0090-0630 at 0670, row 125; Call Data Records, CAR-OTP-0083-1454, tab '[Redacted]', row 470.
[1516] Call Sequence Table, CAR-OTP-0090-0630 at 0671, row 135; Call Data Records, CAR-OTP-0083-1454, row 484.
[1517].*See* para. 618.

produced using a Court template.[1518] In relation to telephone number [Redacted], however, the Chamber has only been furnished with the Independent Counsel's report, which attributed this number to D-13.[1519] The call data records provide raw data on the telephone connection but do not allow any attribution. Lacking any evidence, the Chamber is unable to verify independently whether the attribution made by Independent Counsel was correct. As a result, the Chamber cannot rely on the telephone calls allegedly made between Mr Kilolo and D-13 on 9, 10, 11 and 12 November 2013, which were conducted using telephone number [Redacted].

658. The above communications on 8 November 2013 are critical in understanding the backdrop against which the following telephone conversation of 10 November 2013, at 19:04 between Mr Kilolo and Mr Mangenda took place. The relevant call log,[1520] initially provided by the Dutch authorities to Pre-Trial Chamber II and thereafter submitted by the Prosecution,[1521] indicates, *inter alia*, in the 62th row from the top a connection between telephone numbers [Redacted] and [Redacted] between 19:04 and 19:17.[1522] The corresponding audio recording, submitted by the Prosecution,[1523] lasts 12:31 minutes and thus duly corresponds to the call log entry concerned. In the view of the Chamber, the call log correctly

[1518] Witness declaration, CAR-D21-0004-0179; *see also* the list of telephone numbers provided by the Main Case Defence and the defence witnesses to the VWU in the Main Case, ICC Document, CAR-OTP-0077-0942 at 0943, row 35.
[1519] *See* Independent Counsel Report, ICC-01/05-01/13-845-Conf-Exp-AnxC-Red, pp. 40-42, 44, 46-48, 53-65 (ICC Document, CAR-OTP-0088-0398 at 0437-439, 0441, 0443-0445, 0450-0462).
[1520] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1521] Call log, CAR-OTP-0080-1312*; see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1522] Call log, CAR-OTP-0080-1312 at 1316, row 62*; see also* the historical data of telephone number '[Redacted]'in ICC-01/05-01/13-438-Conf-AnxA002, as provided by the Dutch authorities (CAR-OTP-0080-1280).
[1523] Audio recording, CAR-OTP-0080-1419 (ICC-01/05-01/13-438-Conf-AnxB062); Transcript of selected parts of the audio recording, CAR-OTP-0082-1054 (in French and Lingala); Translated transcript of selected parts of the audio recording, CAR-OTP-0082-1140 (French translation).

attributes telephone number [Redacted] to Mr Kilolo[1524] and telephone number [Redacted] to Mr Mangenda,[1525] as previously established.

659. As regards the content of the conversation between Mr Kilolo and Mr Mangenda, Mr Kilolo remarked:

> *Moi, par exemple, je suis occupé avec LES COULEURS de cette personne parce que tu vois le type... comme ça faisait déjà longtemps, dans sa tête il savait qu'il n'allait plus venir, donc il avait... il n'avait plus ces choses-là dans sa tête. Donc j'ai juste essayé avec lui comme ça ... même ce qu'il nous avait dit lors de notre rencontre avec KATE, il n'en peut plus […]. Donc j'ai dû tout recommencer à zéro, donc ça m'a pris du temps…ça m'a fatigué à fond.*[1526]

660. The Chamber understands from the above that Mr Kilolo referred to D-13 as '*cette personne*', since he (i) was only recently, namely on 7 November 2013, re-scheduled to testify and (ii) due to the time lapse, in Mr Kilolo's view, would no longer remember 'things'. The Chamber also notes the use of coded language: Mr Kilolo uses the expression '*les couleurs*' to describe what has been occupying him in relation to D-13. That expression is used repeatedly and in varied forms ('*faire […] la couleur*'[1527] or '*couleur*'[1528]) by the accused, mainly Mr Kilolo and Mr Mangenda, throughout their conversations in relation to (potential) defence witnesses.[1529] In the present context, the Chamber understands that Mr Kilolo refers to the illicit coaching of D-13 before his testimony, as was the case with other witnesses, such as D-54.[1530]

[1524] *See* para. 292.
[1525] *See* para. 565.
[1526] Audio recording, CAR-OTP-0080-1419; Translated transcript of selected parts of the audio recording, CAR-OTP-0082-1140 at 1142, lines 10-16 (*'I, for example, am dealing with that person's COLOURS because you see, the chap… as it had already been a long time, in his mind he knew that he was no longer coming, so he had…he no longer had those things in mind. So I just tried with him, like that … even what he had said at our meeting with Kate, he can't take it any more (…). So, I had to start again from the beginning, and that took me some time…it really tired me out'*).
[1527] Audio recording, CAR-OTP-0074-0997; Translated transcript of selected parts of the audio recording, CAR-OTP-0080-0245 at 0248, lines 50-51.
[1528] Audio recording, CAR-OTP-0080-1419; Translated transcript of selected parts of the audio recording, CAR-OTP-0082-1140 at 1146, line 143 and 154.
[1529] *See* paras 748-761.
[1530] *See* paras 607-612.

661. The evidence also demonstrates that Mr Kilolo complained about the efforts he expended on illicit coaching activities relating to D-13. Indeed, he lamented that he started '*à zero*', which profoundly tired him. The Chamber concludes therefrom that Mr Kilolo illicitly coached D-13.

662. On the last day of his testimony, 14 November 2013, the Presiding Judge of Trial Chamber III asked D-13 whether he had had any contacts with Mr Kilolo or anyone else from the Main Case Defence. D-13 responded that his last telephone contact with Mr Kilolo dated back several weeks before his testimony.[1531] In the light of the foregoing, this statement was evidently false.

663. Considering the frequency and duration of contacts prior to the testimony on 8 November 2013, Mr Kilolo's reference to his occupation with '*les couleurs*' in his conversation with Mr Mangenda on 10 November 2013, and the fact that the same pattern was employed in relation to other witnesses, such as D-2, D-3, D-23, D-15 and D-54, the Chamber infers, as the only reasonable conclusion available on the evidence, that Mr Kilolo illicitly prepared and coached D-13 with regard to the content of his testimony in the Main Case.

664. Furthermore, the Chamber infers that Mr Kilolo instructed D-13 to give an untruthful account of the number of contacts he had had with the Main Case Defence. It does so for the following reasons. First, where intercepts of the telephone conversations between Mr Kilolo and defence witnesses exist, it shows that he instructed them to deny contacts. Second, D-13 did testify incorrectly in this regard. Third, the evidence shows that the Accused, in particular, Mr Kilolo, expended great effort and time on illicit witness coaching activities. An honest account of the contacts between D-13 and the Main Case Defence would have not only made this effort futile, but might have entailed criminal prosecution. Against this backdrop, the Chamber finds the only

[1531] Trial Chamber III, T-352-Red, p. 35, lines 19-20.

reasonable conclusion to be that Mr Kilolo instructed D-13 to dishonestly testify with regard to the number of contacts with the Main Case Defence.

b) Overall Conclusions Regarding D-13

665. The Chamber finds that D-13 incorrectly testified in the Main Case regarding his prior contacts with the Main Case Defence.

666. The Chamber also finds that Mr Kilolo was in extensive telephone contact with D-13 prior to his testimony during which he illicitly coached D-13 as regards his expected testimony. It further finds that Mr Kilolo instructed D-13 to give an incorrect account of the number of contacts with the Main Case Defence when testifying before Trial Chamber III.

667. The Chamber finds that Mr Kilolo discussed his illicit coaching activities with Mr Mangenda over the telephone. They both used coded language during their conversation.

C. EVIDENTIARY DISCUSSION: MODES OF LIABILITY

1. Direct Perpetration

668. Pre-Trial Chamber II confirmed the charge against Mr Arido of having committed the offence of corruptly influencing witnesses D-2, D-3, D-4 and D-6 pursuant to Article 70(1)(c) of the Statute, in conjunction with Article 25(3)(a), first alternative, of the Statute.

669. As set out in detail in the evidentiary discussion above,[1532] Mr Arido recruited witnesses D-2, D-3, D-4 and D-6 and promised them money and relocation to Europe in exchange for testifying as witnesses for the Main Case Defence. Mr Arido instructed D-2, D-3, D-4 and D-6 to present themselves to Mr Kilolo

[1532] *See* Section IV.B.5.

and to the Court as soldiers. Mr Arido personally briefed the witnesses, or arranged for another Prospective Witness to brief them, such as in the case of D-3, and provided details regarding the witnesses' purported military background, experience and training. He also assigned the witnesses their alleged military ranks and handed out military insignia. After their meeting with Mr Kilolo, the witnesses met Mr Arido again for a de-briefing, during which he further guided and instructed the witnesses.

670. The Chamber is satisfied that Mr Arido's *mens rea* is demonstrated by his conduct and interaction with the witnesses. On the evidence, he meant to engage in the conduct of corruptly influencing the witnesses. In arriving at its conclusion, the Chamber relied on the following two factors taken together.

671. First, as established above, Mr Arido purposefully and deliberately instructed the witnesses to provide certain information about their professional background, without concern for its truth, during their testimonies before Trial Chamber III.[1533] In his Article 55(2) statement,[1534] Mr Arido stated his belief that D-2, D-3, D-4 and D-6 had not been military persons.[1535]

672. Second, the Chamber recalls that Mr Arido promised the witnesses a significant financial reward and relocation to Europe as an encouragement to give certain evidence.[1536] Mr Arido made them believe that this arrangement would lead to a better life for them. Not only did Mr Arido formulate those promises to the witnesses, he also specifically instructed them to write their conditions (both payment of money and relocation destination) on a piece of

[1533] *See* paras 321-323, 328, 334 and 338.
[1534] Decision on Bemba and Arido Defence Requests to Declare Certain Materials Inadmissible, 30 October 2015, ICC-01/05-01/13-1432, paras 22-28; Decision on Requests to Exclude Western Union Documents and other Evidence Pursuant to Article 69(7), 29 April 2016, ICC-01/05-01/13-1854, paras 74-75.
[1535] Article 55(2) Statement of Mr Arido, CAR-OTP-0074-1065-R02 at 1066-R02 and 1068-R02.
[1536] *See* paras 320, 328 and 342.

paper which he would personally convey to Mr Kilolo as their 'leader' or 'go-between'.[1537]

673. The Chamber did not rely on the additional factors presented by the Prosecution for the reasons set out below. What is more, in the Chamber's estimation these points are not necessary to conclude that Mr Arido acted with intent.

674. The Prosecution contends that Mr Arido arranged the meeting between the witnesses and Mr Kilolo 'knowing that they would be illicitly coached on what to say when testifying in court and paid in exchange for their false testimony'.[1538] On the evidence, the Chamber finds that Mr Arido indeed knew that Mr Kilolo would pay the witnesses for their services as witnesses for the Main Case Defence since he conveyed their conditions to Mr Kilolo and assured them that they would be paid. Yet, the Chamber cannot find any evidentiary support for the allegation that Mr Arido knew, at the time of the 2012 meeting in Douala, that Mr Kilolo would illicitly coach the witnesses on what to say in court at the May 2013 meeting in Yaoundé.

675. The Prosecution also argues that Mr Arido cautioned witnesses 'about how they communicated with him, advising against using social media because it would be viewable by others'.[1539] To this end, it relies on an e-mail dated 11 February 2013 in which Mr Arido tells D-2 to communicate with him outside '*facebook*'.[1540] However, reading the e-mail in the context of Mr Arido's recurring submission that he had security concerns as a result of his involvement in the

[1537] *See* para. 341.
[1538] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 257(vii).
[1539] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 257(ii).
[1540] Email Communication, CAR-OTP-0075-0762.

Main Case at the time relevant to the charges,[1541] the Chamber cannot conclude, to the requisite evidentiary standard, that the cautioning as expressed in the email is connected with Mr Arido's illicit instructions to D-2.

676. Further, the Prosecution maintains that Mr Arido knew of Mr Kilolo's role as Mr Bemba's counsel in the Main Case,[1542] and that his military background enabled him 'to appreciate the importance of the information given as false testimony by the witnesses'.[1543] The Chamber reiterates that it will not make any findings regarding the truth or falsity of testimonial evidence regarding the merits of the Main Case. Additionally, the Chamber does not find the argument that Mr Arido was able to appreciate the importance of the testimonies for the Main Case Defence sufficient to further demonstrate Mr Arido's intent to corruptly influence the witnesses.

677. Lastly, the Prosecution avers that Mr Arido had received money from Mr Kilolo in 2012,[1544] which he allegedly denied in his Article 55(2) statement.[1545] The Chamber recalls that Mr Arido admitted to having received certain amounts from Mr Kilolo, explaining that these were remunerations for the expert reports he had prepared and submitted for the Main Case Defence.[1546] Contrary to the Prosecution's allegations, Mr Arido declared in his Article 55(2) statement that, beyond those payments, '*je me réserve le droit de m'en expliquer ultérieurement*'.[1547]

[1541] Article 55(2) Statement of Mr Arido, CAR-OTP-0074-1065-R02 at 1070-R02; Arido Defence Submission, ICC-01/05-01/13-598-Conf, paras 177-180, 183; Arido Closing Statements, 1 June 2016, ICC-01/05-01/13-T-49-CONF-ENG ET, p. 80, lines 13-25.
[1542] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 257(iii).
[1543] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 257(v).
[1544] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 257(iv); Western Union record, CAR-OTP-0070-0005, tab 1 (Narcisse Arido), row 73 (USD 157.77 on 2 February 2012); row 74 (USD 157.11 on 14 February 2012); row 75 (USD 834.32 on 18 February 2012); row 77 (USD 450 on 20 April 2012).
[1545] Article 55(2) Statement of Mr Arido, CAR-OTP-0074-1065-R02 at 1067-R02, section 2.
[1546] Article 55(2) Statement of Mr Arido, CAR-OTP-0074-1065-R02 at 1067-R02; *see* also Arido Defence Submission, ICC-01/05-01/13-598-Red, para. 123 (Mr Arido acknowledged having received the total amount of USD 6,028 for his services to the Main Case Defence).
[1547] Article 55(2) Statement of Mr Arido, CAR-OTP-0074-1065-R02 at 1067-R02, fourth paragraph from top ('*I reserve the right to provide an explanation at a later date*').

In the light of the foregoing, the Chamber cannot follow the Prosecution in its conclusion that Mr Arido 'denied' any payments by Mr Kilolo in 2012.

2. Co-Perpetration

678. The Pre-Trial Chamber held that Mr Bemba, Mr Kilolo and Mr Mangenda 'played an essential role in the design and implementation of the overall strategy' of 'defending Mr Bemba against the charges in the Main Case by means which included the commission of offences against the administration of justice'.[1548] It found that 'Mr Bemba, as the ultimate beneficiary, was the coordinator of the offences; Mr Kilolo, as lead counsel in the Main Case, was mainly in charge of the implementation of the overall strategy, while Mr Mangenda, as "case manager", was liaising between Mr Kilolo and Mr Bemba'.[1549] Accordingly, it committed Mr Bemba, Mr Kilolo and Mr Mangenda to trial for having committed, as co-perpetrators, the offences of corruptly influencing 14 witnesses and presenting false evidence.

679. In determining whether Mr Bemba, Mr Kilolo and Mr Mangenda are criminally responsible as co-perpetrators for the offences charged, this Chamber considered, first, whether an agreement or common plan existed between the three accused; second, whether the contribution of the three accused amounted to an 'essential' contribution; and third, whether the Prosecution has proved the required mental elements on the part of the accused.

a) Existence of an Agreement or Common Plan

680. The Chamber notes that Pre-Trial Chamber II chose the term 'overall strategy' in the context of its analysis of the accused's responsibility as co-perpetrators.[1550]

[1548] Confirmation Decision, para. 52.
[1549] *Ibid*.
[1550] The Chamber notes that the Prosecution adopted the language of the Pre-Trial Chamber, albeit clarifying in its Pre-Trial Brief and Closing Brief that '[b]y its terms, the overall strategy is properly legally characterised as a

The Chamber understands the notion 'overall strategy' to be only another way of legally characterising the requirement of an agreement or common plan. However, it adopts the notions 'agreement' or 'common plan' which accords with the technical terminology typically employed in the context of Article 25(3)(a) of the Statute.

681. The Chamber notes the Prosecution's failure in its closing statements to clearly articulate a definition of what it considered to be the common plan between Mr Bemba, Mr Kilolo and Mr Mangenda, for the purposes of assessing their responsibility under Article 25(3)(a) of the Statute. That being said, the Chamber is satisfied that, on its reading of the evidence, Mr Bemba, Mr Kilolo and Mr Mangenda jointly committed the offences of corruptly influencing the 14 witnesses and presenting false evidence as part of an agreement or common plan. The Chamber is convinced that Mr Bemba, Mr Kilolo and Mr Mangenda, in the context of defending Mr Bemba from the charges in the Main Case, agreed to illicitly interfere with witnesses in order to ensure that those witnesses would provide evidence in Mr Bemba's favour. More precisely, Mr Bemba, Mr Kilolo and Mr Mangenda agreed to instruct or motivate defence witnesses to give a specific testimony, knowing the testimony to be false, at least in part, by giving monies, material benefits or promises, and subsequently to present these witnesses to the Court.

682. To establish the existence of the common plan between the co-perpetrators, the Chamber inferred its existence from Mr Bemba's, Mr Kilolo's and Mr Mangenda's concerted actions, also involving the two co-accused, Mr Babala and Mr Arido, and other third persons. The fact that actions performed by Mr Babala and Mr Arido are taken into account in the context of the present assessment does not render Mr Babala and Mr Arido co-perpetrators. Rather, it

common plan', *see* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 237; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, footnote 1097.

allows the Chamber to fully and comprehensively assess the actions of the three co-perpetrators.

683. In establishing the existence of an agreement among the three co-perpetrators, the Chamber, in its assessment of the evidence as a whole, relied on evidence demonstrating the (i) planning of acts; (ii) payments and non-monetary promises to witnesses; (iii) illicitly coaching witnesses either over the telephone or in person, including to testify falsely; (iv) taking (other) measures to conceal the implementation of the plan, such as the use of coded language, destruction of evidence, concealing of illicit coaching activities from other members of the Main Case Defence and circumvention of the Registry's monitoring system at the Detention Centre, through the abuse of the Registry's privileged line; and finally, (v) the co-perpetrators' remedial measures after learning that they were being investigated.[1551]

i. Planned Nature of Offences Against the Administration of Justice

684. The acts of corruptly influencing the 14 witnesses in the Main Case were not spontaneous or coincidental, but the result of a carefully planned and deliberate strategy. That they were planned is demonstrated, for example, by the evidence that the Chamber discussed in the context of D-23, D-29, and D-54.

685. On 29 August 2013, at 13:55, Mr Kilolo told Mr Mangenda over the telephone that he had told Mr Bemba of the need to illicitly rehearse and instruct witnesses ('*faire encore la couleur*') as to what the witnesses were expected to testify. According to Mr Kilolo, this had to be done in the immediate run-up to the witnesses' testimony to ensure that the witnesses closely followed the instructions and answered questions with sufficient precision.[1552] Having been informed by Mr Mangenda that D-29 had not performed as expected, Mr Kilolo

[1551] *See also* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 238.
[1552] *See* para. 535.

remarked that he would contact the witness to ensure that he rectified two or three points of his testimony the following day.[1553]

686. Further examples include the telephone calls between Mr Kilolo and Mr Mangenda concerning the preparation of D-54's testimony long before its commencement on 30 October 2013. The Chamber found that, in the 30 August 2013 conversation, Mr Mangenda relayed Mr Bemba's precise instructions regarding D-54's testimony to Mr Kilolo, both as regards the topics to be addressed and the manner in which D-54 was expected to testify.[1554] Mr Bemba also instructed that Mr Kilolo should finish his business with D-54 before co-counsel, Mr Haynes, spoke to the witness.[1555] In another call on 1 September 2013, Mr Kilolo expressed his intention to convince the witness to testify as to his alleged membership of the 'CCOP'. D-54 had fervently rejected this proposition, but Mr Bemba insisted on it.[1556] Likewise, in the 9 September 2013 conversation, Mr Mangenda and Mr Kilolo discussed how to ensure the consistency of D-54's testimony with the rest of the evidence and the need to keep their instructions to D-54 simple so as to avoid any contradictions on D-54's part.[1557]

687. The deliberate strategy of Mr Bemba, Mr Kilolo and Mr Mangenda to corruptly influence the witnesses is further underscored by the precise instructions that witnesses, such as D-2,[1558] D-54[1559] and D-23,[1560] received as regards their prior contacts with the Main Case Defence or the payment of money. Likewise, as further developed below, the manner in which such contacts and payments were made demonstrates the deliberate and planned

[1553] *Ibid.*
[1554] *See* paras 600-606.
[1555] *See* paras 603-604.
[1556] *See* paras 606 and 609.
[1557] *See* para. 612.
[1558] *See* para. 360.
[1559] *See* paras 637-638.
[1560] *See* paras 434 and 436.

nature of the illicit coaching activities, as do the measures taken to conceal them and the measures taken in response to information concerning an Article 70 investigation.

Overall Conclusions

688. In sum, the evidence, assessed together with other evidence discussed in this section, demonstrates that the three co-perpetrators planned, carefully and in advance, the commission of offences against the administration of justice. Mr Bemba gave directives as to what and how the witnesses should testify. Mr Kilolo implemented Mr Bemba's instructions and prepared the witnesses accordingly. Mr Mangenda liaised between Mr Bemba and Mr Kilolo. He also consulted with and advised Mr Kilolo in the course of planning the illicit coaching activities, as will be discussed below.

ii. Payments of Money and Non-Monetary Promises to Witnesses

689. A significant number of witnesses received, either personally or through others,[1561] nearly the same amount of money or other valuable goods from Mr Kilolo in connection with their upcoming testimonies. The Chamber notes the timing of the payments or transactions concerned, which, in its view, was noticeably similar in all instances, namely, shortly before the commencement of the witnesses' testimonies before Trial Chamber III.

690. As previously found, and as a way of example, in May 2013, when they were handed over to the VWU, D-2, D-3, D-4, and D-6 each received CFAF 540,000/550,000 from Mr Kilolo.[1562] After the witnesses' testimonies, in October and November 2013, Mr Kilolo personally gave or transferred, as a 'symbolic' token, the sum of CFAF 100,000 to D-2, D-3, D-4 and D-6 as part of

[1561] For a discussion on the money transfers through third persons, *see* para. 746.
[1562] *See* paras 373-378.

the payment he had promised in May 2013.[1563] D-6 received, one day prior to his testimony in the Main Case, the sum of USD 1,335.16 that had been sent by Mr Bemba's sister to his then girlfriend.[1564] On the day of his travel to The Hague, D-57 received USD 665 from Mr Babala *via* his wife.[1565] Likewise, when D-64 travelled to The Hague, his daughter received USD 700 in two transfers from Mr Babala's driver.[1566] At the time of his handover to the VWU, shortly before his testimony, D-23 was given USD 100 as 'taxi reimbursement', an envelope containing CFAF 450,000, and a new laptop by Mr Kilolo.[1567] Finally, D-29 received USD 649.43 *via* Western Union transfer on the first day of his testimony.[1568]

691. As reasoned in the evidentiary discussion involving the 14 witnesses (section IV.B.), the Chamber is convinced that the money was given as an encouragement to testify in favour of Mr Bemba. This is based, *inter alia*, on the identification of a recurring pattern: the money was typically given or transferred shortly before the witnesses' testimonies in the Main Case and nearly the same amount of money was involved, irrespective of the individual needs of the witnesses. A further factor was a series of Mr Kilolo's remarks to witnesses – for example, D-2, D-6 and D-23 – that the money was given as a '*gift*', a '*token*', and that it was not to be considered as '*corruption*'.[1569]

692. Some of the witnesses were given non-monetary promises with the aim of ensuring that their testimonies were favourable to Mr Bemba. For example, Mr Kilolo promised D-3 that Mr Bemba, once released, would meet him

[1563] *See* paras 407-410.
[1564] *See* para.396.
[1565] *See* paras 242-246.
[1566] *See* paras 268-271.
[1567] *See* para. 438.
[1568] *See* para. 520.
[1569] *See* paras 374 and 436-438.

individually in Kinshasa.[1570] Likewise, Mr Kilolo told D-6, after his testimony, that Mr Bemba had been pleased with his evidence and that he would meet the witness personally once released.[1571] Prior to his testimony, D-55 spoke with Mr Bemba on the telephone and was promised that he would benefit from Mr Bemba's good graces.[1572]

693. Mr Bemba was involved in this payment scheme extensively. This is demonstrated by a significant body of evidence which proves that Mr Babala, who was Mr Bemba's financier, would seek authorisation from or inform Mr Bemba before making any payment to Mr Kilolo or other persons. This included funds that Mr Babala or Mr Kilolo illicitly transferred to the witnesses. To this end, the Chamber relies on extracts from several intercepts provided by the ICC Detention Centre, as submitted by the Prosecution,[1573] such as the following conversations:

- 2 March 2012, between 11:04 and 11:23, for 19:26 minutes;[1574]
- 25 May 2012, between 16:53 and 16:55, for 01:33 minutes;[1575]

[1570] *See* para. 373.
[1571] *See* para. 406.
[1572] *See* paras 293-298.
[1573] The following audio recordings and related transcripts are set out in chronological order: Call on 2 March 2012: Audio recording, CAR-OTP-0074-0478 (19:26 minutes); Transcript of audio recording, CAR-OTP-0080-0343 (in Lingala); Translated transcript of audio recording, CAR-OTP-0080-0466 (French translation); Call on 25 May 2012: Audio recording, CAR-OTP-0074-0697 (01:33 minutes); Transcript of audio recording, CAR-OTP-0077-1175 (in Lingala); Translated transcript of audio recording, CAR-OTP-0077-1341 (French translation); Call on 28 September 2012: Audio recording, CAR-OTP-0074-0590 (04:33 minutes); Transcript of audio recording, CAR-OTP-0077-1017 (in Lingala); Translated transcript of audio recording, CAR-OTP-0077-1084 (French translation); Call on 13 November 2012: Audio recording, CAR-OTP-0074-0636 (13:42 minutes); Transcript of audio recording, CAR-OTP-0077-1161 (in Lingala); Translated transcript of audio recording, CAR-OTP-0077-1324 (French translation); Call on 22 November 2012: Audio recording, CAR-OTP-0074-0624 (01:50 minutes); Transcript of audio recording, CAR-OTP-0077-1147 (in Lingala); Translated transcript of audio recording, CAR-OTP-0077-1307 (French translation); Call on 30 November 2012: Audio recording, CAR-OTP-0074-0628 (02:40 minutes); Transcript of audio recording, CAR-OTP-0077-1153 (in Lingala); Translated transcript of audio recording, CAR-OTP-0077-1316 (French translation); Call on 26 April 2013: Audio recording, CAR-OTP-0074-0490 (01:01 minutes); Transcript of audio recording, CAR-OTP-0079-1638 (in Lingala); Translated transcript of audio recording, CAR-OTP-0079-1724 (French translation); Call on 29 April 2013: Audio recording, CAR-OTP-0074-0514 (04:07 minutes); Transcript of audio recording, CAR-OTP-0079-1640 (in Lingala); Translated transcript of audio recording, CAR-OTP-0079-1727 (French translation); Call on 6 May 2013: Transcript of audio recording, CAR-OTP-0087-2093 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0087-2258 (French translation).
[1574] ICC call log, CAR-OTP-0079-0220, row 4829.
[1575] ICC call log, CAR-OTP-0079-0220, row 4207.

- 28 September 2012, between 10:21 and 10:26, for 04:33 minutes;[1576]
- 13 November 2012, between 10:34 and 10:48, for 13:36 minutes;[1577]
- 22 November 2012, between 20:05 and 20:07, for 01:51 minutes;[1578]
- 30 November 2012, between 14:03 and 14:05, for 02:40 minutes;[1579]
- 26 April 2013, between 11:48 and 11:49, for 01:01 minutes;[1580]
- 29 April 2013, between 11:52 and 11:56, for 04:07 minutes;[1581] and
- 6 May 2013, between 11:10 and 11:18, for 08:04 minutes.[1582]

694. The call logs concerned confirm the above information and indicate a connection involving telephone number [Redacted], attributable to Mr Bemba,[1583] and [Redacted][1584] and [Redacted],[1585] attributable to Mr Babala.[1586] The third telephone number [Redacted][1587] is also attributable to Mr Babala since this number has been registered by the ICC Detention Centre as the number belonging to Mr Babala.[1588] The corresponding audio recordings, submitted by the Prosecution, last 19:26 minutes, 01:33 minutes, 04:33 minutes, 13:42 minutes, 01:50 minutes, 02:40 minutes, 01:01 minutes, 04:07 minutes and 08:04 minutes, respectively, and thus duly correspond to the call log entries concerned.

695. Mindful of the misalignment problems affecting the intercepted recordings from the Detention Centre,[1589] the Chamber does not rely on the entirety of the intercepted conversations but only on selected utterances of Mr Babala and Mr Bemba, and only to the extent that they stand alone. On this basis, the

[1576] ICC call log, CAR-OTP-0079-0221, row 3364.
[1577] ICC call log, CAR-OTP-0079-0221, row 3049.
[1578] ICC call log, CAR-OTP-0079-0221, row 2967.
[1579] ICC call log, CAR-OTP-0079-0221, row 2921.
[1580] ICC call log, CAR-OTP-0079-0221, row 2021.
[1581] ICC call log, CAR-OTP-0079-0221, row 1992.
[1582] ICC call log, CAR-OTP-0079-0221, row 1933.
[1583] *See* para. 265.
[1584] This telephone number was used for the conversations on 2 March, 25 May, 28 September and 13 November 2012.
[1585] This telephone number was used for the conversations on 26 and 29 April 2013 and 6 May 2013.
[1586] *See* paras 265 and 779.
[1587] This telephone number was used for the conversations on 22 and 30 November 2012.
[1588] ICC Document, CAR-OTP-0074-0059 at 0061, row 30.
[1589] *See* paras 226-227. The Chamber notes that at the end of all recordings concerned clearly the two channels of the speakers are not aligned. It can therefore not be ruled out that the questions and responses recorded have been spoken in a different sequence than they have been recorded, and by extension, transcribed. However, despite the irregularities, the Chamber relies on those recordings for the reason that, as confirmed by the Bemba Defence expert, the recordings nevertheless accurately reflect the utterances by the individual speakers.

Chamber notes the discrete statements of Mr Babala asking Mr Bemba for authorisation to proceed with the transfer or payment of money to Mr Kilolo. These statements clearly demonstrate Mr Bemba's direct involvement and knowledge of the payments effected, including illicit payments to witnesses. For example, Mr Babala said:

- On 2 March 2012: '*hier soir le Collègue d'en Haut a demandé cinq grands. (…) … non je souhaite seulement savoir si c'est OK ou pas*';[1590]
- On 28 September 2012: *'Le Collègue d'en Haut… m'a demandé de lui envoyer 1 kg, êtes-vous d'accord?'*;[1591]
- On 30 November 2012: *'…premièrement je demande la confirmation de 1½ kg et 400 dollars pour… le Collègue d'en Haut qui a dit c'est pour l'enfant qui se trouve à ses côtés'*;[1592]
- On 26 April 2013: '*j'attends que… euh… vous puissiez me donner votre quoi ça… euh… votre appréciation pour les kilos du Collègue d'en Haut… pour que je les prépare le lundi matin*';[1593]
- On 6 May 2013: '*Sinon rien de tout… bon, moi j'attends juste le GO, hein. Dès j'ai le go j'exécute conformément à ce que le Collègue d'en Haut avait dit, hein*';[1594]

696. Mr Babala also informed Mr Bemba about the status of money transactions, *inter alia*, to Mr Kilolo. The Chamber pays heed, for example, to the following:

- On 25 May 2012: '*Charly ok, Charly ok, Eke ok, ok. Mama Leki ok, euh… Le Collègue d'en Haut ok…. Hum (…) Charly est déjà euh… c'est déjà parti et même déjà retiré*';[1595]
- On 29 April 2013: '*Non, rien d'autre. Bon, le Collègue d'en Haut a été servi*'.[1596]

[1590] Audio recording, CAR-OTP-0074-0478; Translated transcript of audio recording, CAR-OTP-0080-0466 at 0468, lines 7-10 (*'Last night the Colleague from Up There asked for five big ones. (...) ... no, I only want to know if it's OK or not'*).

[1591] Audio recording, CAR-OTP-0074-0590; Translated transcript of audio recording, CAR-OTP-0077-1084 at 1087, line 58 (*'The Colleague from Up There ... asked me to send him 1kg, is that OK with you?'*).

[1592] Audio recording, CAR-OTP-0074-0628; Translated transcript of audio recording, CAR-OTP-0077-1316 at 1318, lines 5-6 (*'... firstly, I am asking for confirmation for 1 ½ kg and 400 dollars for ... the Colleague from Up There who said it's for the child who is with him'*).

[1593] Audio recording, CAR-OTP-0074-0490; Translated transcript of audio recording, CAR-OTP-0079-1724 at 1726, lines 9-10(*'I'm waiting ... erm ... you can give me your you know, that ... erm ... your assessment for the kilos of the Colleague from Up There ... so I can prepare it on Monday morning'*).

[1594] Translated transcript of audio recording, CAR-OTP-0087-2258 at 2262, lines 82-83(*'Otherwise, nothing at all ... OK, I'm just waiting for the go-ahead. As soon as I get the go-ahead, I will act in accordance with what the Colleague from Up There said, you know'*).

[1595] Audio recording, CAR-OTP-0074-0697; Translated transcript of audio recording, CAR-OTP-0077-1341 at 1343, lines 14-18 (*'Charly OK, Charly OK, Eke ok, ok. Mama Leki OK, erm ... The Colleague from Up There OK ... Hum (...) Charly is already erm ... he has already left and even already retired'*).

697. Importantly, Mr Bemba authorised Mr Babala to proceed with the payments of money:

- On 13 November 2012: '*Ok. Elle donnera 2kg, 1 kg ira chez quelqu'un que 07, qui le Collègue d'en Haut te dira, et l'autre kilo, chez le Collègue d'en Haut tu comprends? Tu comprends?'*;[1597]
- On 22 November 2012: '*…alors regardez chez… qui… euh… demain pour ½ kg, alors tu vas contacter … le Collègue d'en Haut il va te dire les détails, hein…'*.[1598]

698. It is evident from the above that the accused are speaking in coded language. The Chamber understands that the notion '*Collègue d'en Haut'* in the above intercepts is an alternative reference to Mr Kilolo, as confirmed by the Bemba Defence.[1599] Also, the reference to '*cinq grands'* in the intercept of 22 March 2012 pertains to 'USD 5000', as confirmed by the Bemba Defence.[1600] Likewise, it is also undisputed that the reference to '*½ kg*' in the intercept of 22 November 2012 is an alternative reference to 'USD 500', as confirmed by the Bemba Defence.[1601] Finally, the Chamber understands that the notion '*charly*' is a code for Cameroon.[1602]

[1596] Audio recording, CAR-OTP-0074-0514; Translated transcript of audio recording, CAR-OTP-0079-1727 at 1730, lines 58-59 (*'No, nothing else. Good, the Colleague from Up There has been served'*).
[1597] Audio recording, CAR-OTP-0074-0636; Translated transcript of audio recording, CAR-OTP-0077-1324 at 1328, lines 79-80 (*'OK. She will give you 2 kg, 1 kg will go to someone that 07, who the Colleague from Up There will let you know, and the other kilo, to the Colleague from Up There, do you understand? Do you understand?'*).
[1598] Audio recording, CAR-OTP-0074-0624; Translated transcript of audio recording, CAR-OTP-0077-1307 at 1309, lines 29-30 (*'so look, at … who … erm … tomorrow for ½ kg, so you'll contact … the Colleague from Up There he'll give you the details, you know?'*).
[1599] Bemba Defence Submission, ICC-01/05-01/13-599-Red2, para. 101 ('The Suspect acknowledges that the "*collègue d'en haut*" is, indeed KILOLO').
[1600] Bemba Defence Submission, ICC-01/05-01/13-599-Red2, para. 114 ('The Suspect rather instructed his friend and advisor BABALA to transfer "*5 grands*", namely 5000 USD. This amount covers the sum demanded by KILOLO, in an E-mail on 1 March 2012, for the reimbursement of expenses that both he and Kate Gibson (a legal assistant on ICC-01/05-01/08) had incurred on their joint investigative mission to Cameroon between 20 February 2012 and 28 February 2012').
[1601] Bemba Defence Submission, ICC-01/05-01/13-599-Red2, para. 112 ('In this conversation dated 22 November 2012, the Suspect apparently coordinates with BABALA a payment to KILOLO of 500 USD or EUR ["1/2kg"]').
[1602] *See* paras 785-786.

699. Furthermore, the Chamber is particularly attentive to the conversation between Mr Kilolo and Mr Babala on 21 October 2013 at 10:07,[1603] as discussed below, during which Mr Babala asked whether Mr Kilolo, who requested the transfer of money, had 'talked' with the client, Mr Bemba. Reading the evidence in context, it proves that payments could not be effected without prior authorisation of Mr Bemba.

700. Additionally, on the basis of an overall assessment of the evidence, the Chamber is convinced that Mr Bemba knew that at least some of the payments he discussed and authorised over the phone served also illegitimate purposes. For this conclusion, the Chamber refers, as a prominent example, to its findings in relation to D-64 where it found that, on 16 October 2012, Mr Babala advised Mr Bemba to give money to D-64 ('*donner du sure aux gens*'), as was done in relation to D-57's wife earlier the same day. On the following day, 17 October 2012, the day of D-64's travel to The Hague, Mr Babala's driver illegitimately transferred USD 700 in two transactions to D-64's daughter.[1604]

701. Furthermore, this finding is corroborated by the fact that Mr Bemba circumvented the ICC Detention Centre's monitoring system with regard to his telephone calls with Mr Babala by falsely listing Mr Babala's telephone number as a privileged line with Mr Kilolo.[1605] Similarly, the Chamber is convinced that Mr Bemba and Mr Babala discussed payments in coded language, as elaborated above, to conceal discussions on illegitimate payments. Mr Bemba's knowledge of illegitimate payments is further corroborated by his reaction to learning of the Article 70 investigations, for example, his suggestion to Mr Kilolo that, in the worst case scenario, he deny everything with regard to the allegations.[1606]

[1603] *See* para. 798.
[1604] *See* paras 265-271.
[1605] *See* paras 737-738.
[1606] *See* paras 783-785.

Overall Conclusions

702. In sum, the evidence, assessed together with other evidence discussed in this section, demonstrates that the co-perpetrators gave or facilitated the giving of money and other non-monetary promises to Main Case Defence witnesses in order to secure their testimony in favour of Mr Bemba. The timing of the payments, the amount of money, Mr Kilolo's occasional remarks that the money be considered as a 'gift' or 'not an official thing', and his instructions to witnesses to name third persons to whom the money would be sent, convince the Chamber that this was not a matter of pure coincidence. On the contrary, the repeated pattern of witness payments was a deliberate approach on the part of the co-perpetrators to influence the testimony of the witnesses and secure their testimony in the Main Case in Mr Bemba's favour.

703. Furthermore, the Chamber concludes that Mr Bemba was in control of the payment scheme as he was aware of and authorised the transfers that Mr Babala, his financier, would effect. This included the money transfers that were used by Mr Babala and Mr Kilolo for illegitimate payments to the witnesses. As demonstrated by the phone calls between Mr Bemba and Mr Babala, Mr Bemba tried to conceal their conversations about illegitimate payments by using coded language and circumventing the ICC Detention Centre's monitoring scheme, which indicates his knowledge that at least some of the payments were illegitimate.

iii. Illicit Coaching of Witnesses Contrary to the Administration of Justice

704. The three co-perpetrators illicitly coached Main Case Defence witnesses. The illicit coaching activity encompassed instructions to (i) testify according to a particular script concerning the merits of the Main Case, regardless of the truth or falsity of the information therein; (ii) testify falsely on the number of contacts with the Main Case Defence; (iii) testify falsely about payments, material and

non-monetary benefits received from the Main Case Defence; and (iv) testify falsely about acquaintances with other persons. As discussed below, it emerges from the evidence that the three co-perpetrators fulfilled different tasks. Mr Bemba gave directives to the other two co-perpetrators on what and how the witnesses were expected to testify. Mr Kilolo executed the illicit coaching either over the telephone or in personal meetings and Mr Mangenda conveyed Mr Bemba's instructions to and assisted and advised Mr Kilolo on the illicit coaching activities. The Chamber will discuss below the role of each of the co-perpetrators and their interplay in the illicit coaching activity.

Mr Kilolo

705. Mr Kilolo planned the illicit coaching activities, often with Mr Mangenda's assistance.[1607] When Mr Kilolo was not in the courtroom, he requested to be furnished with information so that he could effectively and illicitly coach the witnesses and streamline their evidence in favour of the defence. In this regard, the intercepted conversation with Mr Mangenda on 29 August 2013, at 14:07, is particularly revealing.[1608] Mr Kilolo asked about the sort of questions put to D-29 and the replies the witness gave so that he could illicitly coach D-29's wife, who was scheduled to testify next in the Main Case, accordingly.[1609]

706. During in-person meetings or over the telephone, including during overnight adjournments and early in the morning before they took the stand, Mr Kilolo illicitly coached witnesses upon key aspects bearing on the subject-matter of the charges in the Main Case, such as the arrival time of MLC troops in Bangui, the

[1607] *See* paras 534-535, 538-539, 565-566, 649 and 659-661.
[1608] *See* para. 538.
[1609] Audio recording, CAR-OTP-0074-0998; Translated transcript of audio recording, CAR-OTP-0082-0107 at 0110, lines 39-42 (*'Il faut que tu me dises ce genre des choses parce que je dois savoir comment dire à sa femme, parce que lui et sa femme, ils ne vont plus se rencontrer, s'il y a des trucs qui concernent… qui sont communs aux deux, il faut me dire'/'You must tell me this kind of thing because I have to know how to tell his wife, because he and his wife, they won't see each other again. So, if there is anything that concerns ... that is common to both of them, you must tell me'*).

languages spoken by and identities of perpetrators of the crimes, and Mr Bemba's role and command of troops. The evidence regarding D-15, D-26, and D-54 is replete with examples of illicit coaching with this intensity. As demonstrated by the instructions he gave, for example, to D-2, D-3, D-4, and D-6, Mr Kilolo amended witnesses' prior statements and added information that went beyond information they previously related to the Main Case Defence.[1610]

707. Mr Kilolo's instructions also related to matters bearing on the credibility of the Main Case Defence witnesses. He directed witnesses – including D-2, D-3, D-4, D-6,[1611] D-26,[1612] D-13,[1613] D-15,[1614] D-29,[1615] D-54,[1616] D-55,[1617] D-57 [1618] and D-64[1619] – to testify falsely about the number of contacts they had with the Main Case Defence, as well as the timing and nature of such contacts. Mr Kilolo also gave directions to witnesses – for example, D-2, D-3, D-4, D-6,[1620] D-23,[1621] D-25,[1622] D-55,[1623] D-57[1624] and D-64,[1625] – to testify untruthfully that they had not received any payments or other material benefits from the Main Case Defence. The purpose of this direction was clear: Mr Kilolo told D-2 to do so in order to give the impression that he was a '*real witness*'.[1626] Mr Kilolo also directed witnesses – including D-2,[1627] D-3, D-4, D-6[1628] and D-23[1629] – not to reveal their acquaintance with certain individuals associated with the Main Case Defence. Mr Kilolo knew

[1610] *See* paras 356-359.
[1611] *See* paras 359-360 and -366.
[1612] *See* para. 464.
[1613] *See* para. 664.
[1614] *See* paras 554 and 581-582.
[1615] *See* para. 531.
[1616] *See* paras 622-624 and 637-639.
[1617] *See* para. 299.
[1618] *See* para. 251.
[1619] *See* para. 277.
[1620] *See* paras 363, 366, 389, 392 and 398.
[1621] *See* paras 436-437.
[1622] *See* paras 500-501.
[1623] *See* para. 302.
[1624] *See* para. 250.
[1625] *See* para. 278.
[1626] *See* para. 360.
[1627] *See* para. 389.
[1628] *See* paras 392, 394, 400-401.
[1629] *See* para. 434.

that if the witnesses truthfully answered questions on the above-mentioned topics, their credibility would be severely damaged. Also in that regard, the repetitious instructions to witnesses show a clear pattern on the part of Mr Kilolo, which is not coincidental.

708. Mr Kilolo ensured that the evidence of Main Case Defence witnesses concerning the above topics was manipulated and their testimonies aligned. For example, in relation to D-26, who testified in the afternoon hearings from 20 to 23 August 2013, Mr Kilolo dictated particular information over the telephone so that D-26's evidence was aligned with that of D-23, who testified in the morning hearings from 20 to 22 August 2013.[1630] Likewise, during the telephone conversation of 29 August 2013, Mr Kilolo asked Mr Mangenda about D-29's answers to the question of prior contacts with the Main Case Defence so that he could instruct D-29's wife, D-30, accordingly.[1631]

709. Another example of Mr Kilolo's alignment efforts can be found in the following incident involving D-15. The Chamber is also convinced that Mr Kilolo prompted D-15 to state that he had not met D-19 and D-45 in Bangui at the time relevant to the charges in the Main Case, and to avoid mentioning them during his testimony, even though D-15 had mentioned in his prior statement that he had met D-45 in Bangui.[1632] Mr Kilolo's purpose was to align D-15's testimony with that of D-19 and D-45,[1633] as demonstrated by the following extract from the intercepted telephone call between Mr Kilolo and D-15 on 11 September 2013:[1634]

[1630] *See* para. 466.
[1631] *See* para. 538.
[1632] Prior recorded testimony, CAR-D21-0004-0709-R01 at 0743-R01.
[1633] D-19 testified between 25 February and 13 March 2013, *see* ICC-01/05-01/13-139-Conf-Exp-AnxB, pp. 6-7, row 15; D-45 testified between 14 and 22 March 2013, *see* ICC-01/05-01/13-139-Conf-Exp-AnxB, pp. 7-8, row 16.
[1634] *See* paras 556-559.

> **Kilolo**: *Alors, n'oublie pas, ils vont… ils vont te déranger sur ta visite à Bangui.* ***Alors, je préfère que tu dises que tu es allé seul, que tu ne puisse pas impliquer d'autres officiers****.*
> **D-15**: *Bien sûr. Bien sûr que je suis allé seul.*
> **Kilolo**: *Alors, on va aussi te demander si tu avais rencontré [D-19]. Bon. Est-ce qu'on peut dire que tu ne l'as pas rencontré ? Pourquoi, parce qu'on avait déjà posé la question à [D-19]. (…)*
> **D-15**: [*D-45] ? [D-45] que j'ai rencontré.*
> **Kilolo**: *Euh…****non, parce que même [D-45], on lui a posé la question, il a dit qu'il n'y a jamais eu d'officier de l'ALC à Bangui****.*[1635]

710. Also, in the same telephone call, Mr Kilolo instructed D-15 to attest to the presence of '*cireurs*' (shoe-shiners), former members of the DRC military units, in the CAR – a notion used by D-23 in his testimony before Trial Chamber III – so as to corroborate the evidence given by other defence witnesses.[1636]

711. With a view to making his illicit coaching activities concerning the above topics most effective, Mr Kilolo (i) informed the witnesses of the questions they would be asked by the Main Case Defence and other participants, including improperly sharing the specific questions to be posed by the victims' legal representatives, which had been disclosed to the Main Case Defence on a confidential basis; (ii) instructed the witnesses to adhere to a certain narrative; (iii) corrected their rehearsed answers; and (iv) provided instructions to dissemble when giving evidence in order to counter suspicion that might arise in the courtroom.[1637] Mr Kilolo kept close contact with the witnesses shortly before and during their testimonies so as to ensure that they complied with his instructions.[1638] He did so deliberately and ignored the contact prohibition order imposed by Trial Chamber III after the handover to the VWU.[1639]

[1635] Audio recording, CAR-OTP-0074-1003; Translated transcript of audio recording, CAR-OTP-0079-0154 at 0160, lines 161-173 ('Kilolo: *So don't forget, they'll ... they'll badger you about your visit to Bangui. So I'd prefer you to say that you went alone, so that you can't implicate other officers.* D-15: *Of course. Of course I went alone.* Kilolo: *Now, they'll also ask you if you met [D-19]. Well. Can we say that you didn't meet him? Why? Because [D-19] has already been asked. (...)* D-15: *[D-45]? [D-45] that I met.* Kilolo: *Erm ... no because even [D-45], he was asked, he said there were never any ALC officers in Bangui*').
[1636] *See* paras 556- 557.
[1637] *See* paras 574-578 and 631-632.
[1638] In an effort to demonstrate that Mr Kilolo was in contact with defence witnesses, in violation of the contact prohibition order of Trial Chamber III, the Prosecutor also advances the allegation that Mr Kilolo was in contact with witness D-18 on 8 June 2013, who testified from 5 to 11 June 2013, *see* Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 43, footnote 99. However, as this factual allegation would exceed the facts and

712. The instructive character of Mr Kilolo's coaching activities is underlined by his tone and language, such as the recurrent use of expressions including '*tu dois dire*', '*il faut dire*', '*tu ne dises pas*' and '*limite-toi à*'.[1640] Such language signified, in a directive and unambiguous manner, what the witness was expected to testify. In response and in the light of this tone and language, some witnesses – for example, D-26 – remained silent during Mr Kilolo's 'monologue'.[1641] In the view of the Chamber, Mr Kilolo's illicit interference rendered it difficult, if not impossible, for Trial Chamber III to differentiate between what emanated genuinely from the witnesses and what emanated from him. On at least two occasions – during intercepted conversations concerning D-25 and D-13 – Mr Kilolo admitted that he illicitly coached these witnesses, ordering D-25 to stay on script and expressing his relief that the witness had not revealed an illicit coaching meeting.[1642] The Chamber takes from the instructive, ordering manner in which Mr Kilolo coached the witnesses that he told them to testify to information regarding the merits of the Main Case, irrespective of whether such information was true or false or whether it coincided with the witnesses' personal experiences.

713. Mr Kilolo also took the decision about witnesses coming to testify based on whether they were willing to follow the specific narrative dictated by him. For example, in the intercepted telephone conversation of 29 August 2013,[1643] Mr Mangenda reported to Mr Kilolo on how, from the defence perspective, D-29 had performed badly during his testimony before Trial Chamber III that day. In

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circumstances set out in the Confirmation Decision, the Chamber does not include them into its assessment and refrains from entering a respective finding.

[1639] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 18 November 2010, ICC-01/05-01/08-1016.

[1640] *See* paras 578-579.

[1641] *See* paras 463-465.

[1642] *See* paras 487-489, 491-494 and 659-661; Audio recording, CAR-OTP-0080-1419; Translated transcript of audio recording, CAR-OTP-0082-1140 at 1142, lines 10-12.

[1643] *See* paras 533-536.

the light of D-29's disadvantageous performance, Mr Kilolo stated that he hesitated to call D-29's wife, D-30, to testify, as she would not testify that the perpetrators of crimes were MLC soldiers.[1644] This latter aspect was seemingly a crucial point in the Main Case Defence position, since Mr Kilolo illicitly coached other witnesses on this matter extensively, such as D-54 and D-15.[1645]

714. A second example can be found in the same conversation concerning a potential witness named '*Bravo*'.[1646] Mr Kilolo contended that he would only call this witness if he agreed to be briefed by Mr Kilolo '*all day and every night*'.

> **Kilolo**: *Parce que BRAVO en question je constate lorsque je m'entretiens avec lui comme il est un peu âgé. (…) Parfois il y a des choses où il revient naturellement à des choses que lui il sait qui sont vraies, il faut chaque fois les recadrer. Alors s'il vient, il est en Afrique nous nous entretenons d'accord. Mais si seulement lui aussi vient, malgré le travail qu'on a fait,* ***mais si je n'ai pas la possibilité que tous les jours et chaque soir, que je fasse encore les briefings avec lui. Ça peut être aussi mauvais****.*
> **Mangenda**: ***Alors là il faut carrément que tu lui dises****.*
> **Kilolo**: *Ça va diminuer les dégâts sensiblement. Ça va diminuer les dégâts sensiblement. C'est sûr, mais quand même ça va pas atteindre le niveau, le seuil qu'on attend.*
> **Mangenda**: *Ah mais là… il faut,* ***il faut le dire au Client, que… que c'est… lui-même qu'il pèse le pour et le contre.*** *Il faut lui dire cet aspect-là des choses, parce que s'il vient et que… il merde c'est… le Client qui perd la face hein?*[1647]

[1644] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0252, lines 191-203.
[1645] *See* paras 556-561 and 625-631.
[1646] The Chamber is satisfied that the term 'BRAVO' refers to Ferdinand Bombayake. Mindful of the co-perpetrators' use of coded language, including the use of NATO alphabet for names or places, the Chamber understands that the term 'BRAVO' stands for the first letter of Ferdinand Bombayake's last name. The Chamber's conclusion rests on a combined reading of this exchange together with another intercepted recording held on 14 September 2013 between 23:23 and 23:27 between Mr Kilolo and Mr Mangenda. The relevant call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II (ICC-01/05-01/13-6-Conf-AnxB000) and thereafter submitted by the Prosecution (CAR-OTP-0079-1509), indicates on the 19th row a connection between the telephone numbers [Redacted], attributable to Mr Kilolo (*see* para. 292), and [Redacted], attributable to Mr Mangenda (*see* para. 487), for approximately 3 minutes 30 seconds between 23:23 and 23:27. The relevant audio recording (ICC-01/05-01/13-6-Conf-AnxB019), submitted by the Prosecution (CAR-OTP-0074-1014), lasts 03:42 minutes, and thus duly corresponds to the call entry concerned. In the conversation of 14 September 2013, Mr Kilolo informs Mr Mangenda that 'BRAVO' had been promoted to the rank of '*chef d'état-major des forces armées'*, *see* Audio recording, CAR-OTP-0074-1014; Translated transcript of audio recording, CAR-OTP-0082-0112 at 0114, lines 7-11. The Chamber also notes a contemporaneous press article dated 11 September 2013 in which the promotion of Ferdinand Bombayake by the then President of the CAR to the '*chef d'état-major des forces de défense centrafricaine*' is reported, *see* Press article, CAR-OTP-0082-0377 at 0377.
[1647] Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0251 (as amended in CAR-OTP-0080-0251_01), lines 161-173, (emphasis added) ('Kilolo: *Because [the] Bravo in question, I notice when I speak to him that he's quite old. (...) Sometimes, there are some things that he naturally returns to, things which he knows to be true: they have to be reframed every time. So, if he comes, he's in Africa - we will talk, alright? But also, if only he comes, despite the work that's being done. but if I don't have the opportunity to conduct briefings with him again every day and evening. That could be equally bad.*

715. The exchange between the co-perpetrators highlights the illicit coaching strategy and Mr Kilolo's reluctance to call witnesses unless he had briefed them extensively. It also shows the close collaboration and interplay between the three co-perpetrators. It demonstrates Mr Mangenda's and Mr Bemba's knowledge and approval of the illicit coaching strategy and, furthermore, clearly shows Mr Bemba's ultimate control over who would be called to testify.

716. Lastly, the Chamber notes the Prosecution's argument that Mr Kilolo organised meetings with witnesses to instruct them on their respective testimonies.[1648] As explained above, the Chamber is satisfied that, during the meeting in Yaoundé in May 2013, Mr Kilolo instructed witnesses D-2, D-3, D-4 and D-6 to lie about certain matters in their upcoming testimonies and otherwise illicitly coached them.[1649] The Prosecution also argues that Mr Kilolo's illicit coaching activities are underscored by the fact that witnesses, who were formally interviewed by Mr Kilolo in the presence of other members of the Main Case Defence team, were also illicitly coached before and after such interviews. To this end, reference is made to the (de-)briefing meetings of D-2, D-3, D-4 and D-6 with Mr Arido and Mr Kokaté in Douala in February 2012.[1650] However, as the Chamber has elaborated above, there is no evidence that Mr Kilolo or the other two co-perpetrators were involved in or aware of any illicit activity on the part of Mr Kokaté or Mr Arido during this meeting. Accordingly, the Chamber does not rely on these factual allegations when assessing the co-perpetrators' illicit coaching activities.

Mangenda: *So you have to tell him straight out.* Kilolo: *That will significantly reduce the damage. That will significantly reduce the damage. That's a fact, but even so, it won't reach the level, or threshold, expected.* Mangenda: *Oh. but now ... you have to ... have to tell the Client that ... that it's ... he's the one who needs to weigh up the pros and cons. He has to be told that side of things, because if he comes and ... he screws up, it's ... the Client who'll lose face, isn't it?'*).

[1648] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 42.

[1649] *See* paras 355-363.

[1650] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, paras 37 and 41.

Mr Mangenda

717. Mr Kilolo and Mr Mangenda were regularly exchanging information on the illicit coaching of witnesses. Mr Kilolo updated Mr Mangenda on his activities with witnesses, such as D-13, D-15, D-54 and D-29.[1651] In turn, in particular when Mr Kilolo was not present in the courtroom, Mr Mangenda reported to Mr Kilolo on the testimony of witnesses, such as D-25 and D-29.[1652] He advised on the points on which witnesses performed badly or needed instruction and made proposals on how best to carry out the illicit witness preparation. For example, in relation to D-29, he confirmed the need for illicit pre-testimony coaching, given the witness's poor performance in court, and advised Mr Kilolo on which particular response to elicit from the witness.[1653] In relation to D-54, Mr Mangenda advised Mr Kilolo on the witness's lack of knowledge about the 'CCOP' and how to ensure the consistency of D-54's testimony with the rest of the defence evidence.[1654]

718. An intercepted telephone call dated 24 October 2013 between Mr Kilolo and Mr Mangenda illustrates Mr Mangenda's active role in the illicit coaching executed by Mr Kilolo. The relevant call log,[1655] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1656] indicates in the 45th row from the top a connection between telephone number [Redacted], attributable to Mr Mangenda[1657] and telephone number [Redacted], lasting for

[1651] *See* paras 565-566, 534-535, 611-612 and 659-661; *see also* the example of the telephone conversations of 28 and 29 August 2013 discussed below.
[1652] *See* paras 488-490 and 533-536.
[1653] *See* paras 533-536.
[1654] *See* paras 609 and 611-612.
[1655] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1656] Call log, CAR-OTP-0080-1312; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1657] *See* para. 565.

approximately 4½ minutes between 18:02 and 18:07.[1658] The corresponding audio recording, submitted by the Prosecution,[1659] lasts 04:44 minutes and thus duly corresponds to the call log entry concerned. The Chamber is satisfied that telephone number [Redacted] is attributable to Mr Kilolo as it recognises the voice in the recording concerned to be his. This finding is corroborated by the following facts: (i) Mr Mangenda refers to his interlocutor as '*confrère*'[1660], just as he refers to Mr Kilolo in numerous other conversations; and (ii) the content of the conversation is so particular and specific to the judicial developments in the Main Case that it is the only reasonable conclusion is that Mr Mangenda is speaking with Mr Kilolo.

719. During that telephone conversation, the two co-perpetrators again spoke about potential witness '*Bravo*' whom Mr Kilolo was only willing to call if he accepted to be briefed.[1661] Mr Mangenda informed Mr Kilolo, who was absent from the court at the time, that the Registry was about to present a report on the availability of the prospective defence witness '*Bravo*'. Mr Mangenda cautioned Mr Kilolo to call this witness, if he has not yet spoken to him.

> **Mangenda**: *Bon, en fait moi… Donc, moi…moi, quand j'ai vu le rapport…Quand j'ai lu le rapport, j'ai compris que nous n'avons pas encore parlé avec Bravo. Il ne savait pas qu'il serait contacté, et quelle réponse il faut donner.*
> **Kilolo**: *Euh…non, non, je n'ai pas réussi à le joindre, en fait.*
> **Mangenda**: *C'est ça le problème maintenant.*
> **Kilolo**: *Mais je l'appelle…*[1662]

[1658] Call log, CAR-OTP-0080-1312 at 1315, row 45; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA002, as provided by the Dutch authorities (CAR-OTP-0080-1280).
[1659] Audio recording, CAR-OTP-0080-1361 (ICC-01/05-01/13-438-Conf-AnxB045); Transcript of audio recording, CAR-OTP-0082-0509 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0082-0644 (in French).
[1660] Audio recording, CAR-OTP-0080-1361; Translated transcript of audio recording, CAR-OTP-0082-0644 at 0648, line 77.
[1661] *See* paras 714-715.
[1662] Audio recording, CAR-OTP-0080-1361; Translated transcript of audio recording, CAR-OTP-0082-0644 at 0647, lines 57-62 ('Mangenda: *Well, in fact I … So, I … I, when I saw the report … When I read the report, I realised that we had not yet spoken to Bravo. He didn't know that he would be contacted, and what response he needed to give.* Kilolo: *Erm … no, no, in fact, I didn't manage to get hold of him.* Mangenda: *That's the problem now.* Kilolo: *But I'll call him …*').

720. It is clear from the evidence that Mr Mangenda advised Mr Kilolo on approaching the potential witness and illicitly coaching him on the content of his testimony. The evidence thus shows the close collaboration and interplay between these two accused.

721. Mr Mangenda also provided Mr Kilolo with the questions that victims' legal representatives intended to put to the witnesses knowing that Mr Kilolo would send the questions to the witnesses in order to prepare them beforehand.[1663] He also conveyed messages from Mr Bemba and made Mr Kilolo aware of what Mr Bemba wished to implement.

722. The following excerpts of two intercepted telephone calls between Mr Kilolo and Mr Mangenda on 28 August 2013 and 29 August 2013 show that the two co-perpetrators were concerned that their colleague in the defence team, Mr Haynes, might have suspected that Mr Kilolo and Mr Mangenda were involved in illicit coaching activities regarding defence witnesses in the Main Case.

723. The call log,[1664] originally provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1665] and thereafter submitted by the Prosecution,[1666] shows in the 39th and 40th rows from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1667] and [Redacted] and [Redacted], attributable to Mr Mangenda,[1668] on 28 August 2013 between 13:37 and 13:48 for

[1663] *See* paras 574-578.
[1664] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex A000 and Annex A042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned Order in annexes A001 to A041and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1665] Call log, CAR-OTP-0079-1507; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxA042'.
[1666] Call log, CAR-OTP-0079-1507 at 1508, rows 39 and 40 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxA042, p. 2, rows 39 and 40 from the top; ICC-01/05-01/13-6-Conf-AnxA000, p. 2, rows 39 and 40 from the top.
[1667] *See* para. 492.
[1668] *See* paras 487 and 565.

approximately 11 minutes, and on 29 August 2013 between 08:38 and 08:48 for approximately 9½ minutes, respectively. The relevant audio recordings, submitted by the Prosecution,[1669] last 11:04 minutes and 09:41 minutes, respectively, and thus duly correspond to the call log entries concerned.

724. In the telephone conversation of 28 August 2013, the two co-perpetrators had the following exchange:

> **Kilolo**: *En fait, en fait tu vois quand il a varié là, il y a un truc aussi qu'il a dit…mais d'une manière intelligente. Il a dit non : 'Des gens que nous avons vu récemment* ***et peut être on a même interviewé une seconde fois'. Il a mis un point d'interrogation.*** *En fait en réalité…*
> **Mangenda**: *Mm.*
> **Kilolo**: *… euh…****il nous soupçonne que nous avions rencontré ces gens en question et que nous leur avions donné ces éléments-là****.*
> **Mangenda**: *E…ça ne le regarde pas ? C'est nous qui sommes en charge de…*
> **Kilolo**: *Tu dis ?*
> **Mangenda**: ***Ça ne le regarde pas… Où est son problème ? Lui 'n a qu'à interroger, c'est tout. Il n'a qu'à interroger.***
> **Kilolo**: *C'est ça. Est-ce que le Client est satisfait ou pas ? Le client lui-même?*
> **Mangenda**: *On était avec le Client dans la salle d'audience, il est satisfait. Il est satisfait.*[1670]

725. The next morning, Mr Kilolo spoke with Mr Mangenda on the telephone again and told him that he had spoken to [Redacted] the previous evening.[1671] Mr Kilolo announced that he would send an e-mail that Mr Mangenda ought to

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[1669] Audio recording, CAR-OTP-0074-0993 (ICC-01/05-01/13-6-Conf-AnxA039); Transcript of audio recording, CAR-OTP-0079-0082 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0122 (French translation); Translated transcript of audio recording, CAR-OTP-0092-5469 (English translation); Audio recording, CAR-OTP-0074-0994 (ICC-01/05-01/13-6-Conf-AnxA040); Transcript of audio recording, CAR-OTP-0080-0374 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0080-0238 (French translation).

[1670] Audio recording, CAR-OTP-0074-0993; Translated transcript of audio recording, CAR-OTP-0079-0122 at 0126, lines 98-109 ('Kilolo: *Actually, actually you see when he changed tack then, there's something else he said ... but in a clever way. He said "No, some people that we saw recently and maybe even interviewed a second time". He added a question mark. In fact, in reality ...* Mangenda: *Mm.* Kilolo: *... Erm ... he suspects us of having met those people and that we gave them that information.* Mangenda: *E... That's none of his business. We're the ones in charge of ...* Kilolo: *What did you say?* Mangenda: *That's none of his business ... What's his problem? He just needs to ask questions, that's all. He just needs to ask questions.* Kilolo: *That's right. Is the Client satisfied or not? The Client himself?* Mangenda: *We were with the Client in the courtroom. He's satisfied. He's satisfied'*).

[1671] Audio recording, CAR-OTP-0074-0994; Translated transcript of audio recording, CAR-OTP-0080-0238 at 0240, lines 13-14 and 16-17. In the telephone conversation of 28 August 2013, Mr Kilolo had stated at the end of the conversation that he would call D-29 and ask him to refuse to commence his testimony that day and to start the following day, *see* Audio recording, CAR-OTP-0074-0993; Translated transcript of audio recording, CAR-OTP-0079-0122 at 0129, lines 221-222 (*'C'est mieux qu je lui dise qu'il refuse de commencer aujourd'hui, qu'il vienne commencer demain'/'It would be better if I told him to refuse to start today, that he should start tomorrow'*).

read to Mr Bemba in the courtroom. Following the court schedule at the time, and bearing in mind that the co-perpetrators spoke in coded language using the NATO alphabet, the Chamber understands that the reference to [Redacted] pertained to witness D-29.[1672] After Mr Kilolo had tasked Mr Mangenda with conveying this message to Mr Bemba, they both talked again about Mr Haynes' suspicion. The following excerpt reflects the two co-perpetrators' intention to keep their illicit coaching activities secret from other members of the defence team in the Main Case.

> **Kilolo**: *Hum…maintenant il lui a demandé, il a demandé si nous avons rencontré cette personne là… non, il ne faut pas accepter que nous…nous sommes entretenus avec lui avant.*
> **Mangenda**: *Non, non, non, dans cela la seule logique est que nous ne sommes rencontrés qu'au moment de faire le handover, c'est tout.*
> **Kilolo**: *Mm.*
> **Mangenda**: *C'est tout.*
> **Kilolo**: *Ah ! Il t'a donc demandé si nous nous sommes rencontrés et que nous nous sommes entretenus. En fait, en d'autres termes c'est pour savoir, est-ce que c'est vous qui lui avez dit?*
> **Mangenda**: *Non, je lui ai répondu…que les témoins sont…*
> **Kilolo**: *Si quelqu'un a déjà dit qu'on ne s'est pas rencontré, comment il pose encore une question?*
> **Mangenda**: *Les témoins…ils…moi…mon discours est que les témoins sont là on ne s'est vu qu'au moment, de les prendre et d'aller les remettre pour faire le handover, c'est tout.*[1673]

726. The above two excerpts of the recordings demonstrate the emergence of suspicion within the defence team in the Main Case about the actions of the two co-perpetrators. In the first telephone call, Mr Kilolo expressed his concern that Mr Haynes may have understood the co-perpetrators' illicit coaching strategy. Both co-perpetrators agreed that the most important thing was that Mr Bemba was satisfied. In the second telephone call, the two co-perpetrators' intention comes to the fore, namely, to keep their illicit coaching activities secret from

[1672] The Chamber notes that the first name of witness D-29 is '[Redacted] which corresponds to the alias [Redacted].

[1673] Audio recording, CAR-OTP-0074-0994; Translated transcript of audio recording, CAR-OTP-0080-0238 at 0240-0241 (as amended in CAR-OTP-0080-0241_01), lines 31-44 ('Kilolo: *Hmm … now he asked him, he asked if we had met that person … no, we must not admit that we … we spoke to him before.* Mangenda: *No, no, no, the only the only logical thing is that we didn't meet him until it was time for the handover, that's it.* Kilolo: *Hmm.* Mangenda: *That's it.* Kilolo: *Ah! So he asked you if we had met and we had spoken. In fact, in other words, just to know, was it you who told him?* Mangenda: *No, I answered … that the witnesses are …* Kilolo: *If somebody has already said that there was no meeting, why is he still asking?* Mangenda: *The witnesses … they … I … my line is that the witnesses are there, we didn't meet until they were picked up to be taken to the handover, that's it'*).

other members of the defence team in the Main Case. They furthermore illustrate strikingly that Mr Mangenda discussed defence strategies, including the illicit coaching of the defence witnesses, on an equal footing with Mr Kilolo.

Mr Bemba

727. Mr Bemba was in detention during the time relevant to the charges in the present proceedings. As the ultimate beneficiary of illicit coaching, whom both Mr Kilolo and Mr Mangenda intended to keep satisfied, his role consisted in approving the coaching strategy and giving directions.

728. Mr Bemba was kept updated about the illicit coaching activities at all times. In the intercepted telephone call with Mr Mangenda on 29 August 2013, at 13:55, Mr Kilolo told Mr Mangenda that he had told Mr Bemba about the need to conduct illicit coaching (*'faire encore la couleur'*) in the immediate run-up to the witnesses' testimony so as to ensure that they followed the instructions closely and answered questions with sufficient precision.[1674]

729. Mr Bemba also personally planned, directed and authorised the illicit coaching activities. For example, in relation to D-54, Mr Bemba gave precise and comprehensive directives to Mr Kilolo, through Mr Mangenda, concerning the topics on which to brief and instruct the witness.[1675] Mr Bemba's instructions even went so far as to dictate *how* D-54 was expected to behave when testifying: '*et puis, il [Bemba] a dit lorsqu'il [D-54] va commencer à répondre aux questions, que ce ne soit pas un système … du tic au tac'*.[1676] After the conclusion of D-54's testimony, Mr Kilolo even complained to Mr Bemba in an intercepted telephone call on 1 November 2013 that he was tired from his coaching activities with D-54 during

[1674] *See* para. 535.
[1675] *See* para.605.
[1676] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0135, lines 70-71 (*'and then, he [Bemba] said that when [D-54] starts answering questions, it shouldn't be a system ... a quick-fire system'*).

the last days of his testimony.[1677] In the context of D-15's upcoming testimony, Mr Kilolo informed Mr Bemba over the telephone on 12 September 2013 that he had rehearsed with D-15 three questions he would put to him in court that day. Mr Bemba not only approved Mr Kilolo's three questions and instructions to D-15, but he also gave feedback on how to handle certain issues.[1678] These instances show Mr Bemba's expectations that his directions will be implemented. More generally, they also manifest his close collaboration and interplay with the other two co-perpetrators.

730. In addition to the above evidence, the Chamber also attaches significant weight to a statement by Mr Mangenda in another intercepted telephone call with Mr Kilolo on 17 October 2013, at 12:03. The relevant call log,[1679] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1680] indicates in the 1st row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1681] and [Redacted], attributable to Mr Mangenda,[1682] for approximately 29½ minutes between 12:03 and 12:33.[1683] The corresponding audio recording, submitted by the Prosecution,[1684] lasts 29:41 minutes and thus duly corresponds to the call log entry concerned.

[1677] *See* para. 649.
[1678] *See* paras 567-568.
[1679] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1680] Call log, CAR-OTP-0080-1312; see *also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1681] *See* para. 585.
[1682] *See* para. 565.
[1683] Call log, CAR-OTP-0080-1312 at 1312, row 1 from the top; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003, as provided by the Dutch authorities (CAR-OTP-0080-1286).
[1684] Audio recording, CAR-OTP-0080-1317 (ICC-01/05-01/13-438-Conf-AnxB001); Transcript of audio recording, CAR-OTP-0082-1192 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0082-1293 (French translation).

731. During that telephone conversation, Mr Kilolo recalled a meeting with Mr Bemba (*'notre frère-là'*). Mr Mangenda responded that he had witnessed a similar situation in which Mr Bemba gave instructions concerning the witness and his testimony.[1685] The Chamber concludes from this evidence that Mr Bemba gave instructions on the expected contents and topics of the witnesses' testimonies.

732. Mr Bemba would also express satisfaction or dissatisfaction with the testimony of the coached witnesses and Mr Kilolo's illicit coaching activities which further underscores that he was fully involved. For example, in the intercepted telephone call on 27 August 2013, Mr Mangenda stated that Mr Bemba was satisfied with Mr Kilolo's pre-testimony coaching activities involving D-25.[1686]

Overall Conclusions

733. The evidence, assessed together with other evidence discussed in this section, demonstrates that the co-perpetrators executed the illicit coaching activities in collaboration with each other and following a division of tasks. The illicit coaching activities encompassed instructions to (i) testify according to a particular script concerning the merits of the Main Case, regardless of the truth or falsity of the information therein; (ii) testify falsely on the number of contacts with the Main Case Defence; (iii) testify falsely about payments, material and non-monetary benefits received from the Main Case Defence; and (iv) testify falsely about acquaintances with other persons. The evidence shows that there

[1685] Audio recording, CAR-OTP-0080-1317; Translated transcript of audio recording, CAR-OTP-0082-1293 at 1301, lines 231-232 (*'Mais…mais…oui, mais…j'y… ai déjà assisté une fois, et…et quand il donnait les instructions pour le témoin. Comment il devait deposer.'/'But … but … yes, but … I've … already taken part once, and … and when he gave the instructions for the witness. How he was to testify'*).

[1686] *See* para. 495; Audio recording, CAR-OTP-0074-0992; Translated transcript of audio recording, CAR-OTP-0079-0114 at 0118 (as amended in CAR-OTP-0079-0118_01), lines 104-107, ('*[le client] a vu vraiment que (…) un véritable travail de couleurs a été effectivement fait (…) lui-même il a vraiment senti cela*'/'*[the client] really saw that (…) thorough colour work was effectively carried out (…) he himself truly felt that*').

was a deliberate strategy on the part of the co-perpetrators to approach defence witnesses in advance and to influence the testimony of the witnesses and secure their testimony in the Main Case in Mr Bemba's favour.

734. Mr Bemba authorised and gave instructions on the illicit coaching of witnesses, and was kept abreast by Mr Kilolo. He also gave direct instructions to the two co-perpetrators on what and how witnesses were expected to testify, at least implicitly also regarding the false testimony. Mr Kilolo, leading as counsel the Main Case Defence investigation activities, executed the illicit coaching in personal meetings or over the telephone. He gave the witnesses precise instructions on what to say, scripted the replies, rehearsed the expected testimony and intervened correctively, if necessary. Mr Mangenda advised and assisted Mr Kilolo in the execution of the illicit coaching activities and briefed Mr Kilolo on the witnesses' testimonies whenever he was not in the court.

iv. Measures to Conceal the Implementation of the Plan

735. The Chamber also finds that, in order to cover up the witness interference, the co-perpetrators took precautionary measures when illicitly coaching the witnesses, such as (i) the circumvention of the Registry's monitoring system at the Detention Centre through the abuse of the Registry's privileged line; (ii) money transfers through third persons; (iii) distribution of new telephones after the VWU cut-off date; and (iv) the use of coded language.

Abuse of the Registry's Privileged Line

736. Pursuant to Regulation 174(1) of the Regulations of the Registry, the ICC Detention Centre passively monitors all detained persons' telephone calls, other than those, *inter alia*, with counsel, their assistants entitled to legal privilege, or diplomatic and consular representatives. Passive monitoring, as laid out in Regulation 174(2) of the Regulations of the Registry, entails the recording of

these telephone calls without simultaneous listening. Regulation 175(1) of the Regulations of the Registry allows the Chief Custody officer to actively monitor the telephone calls in certain cases. These cases include, *inter alia*, those where reasonable grounds exist to believe that the detained person or the interlocutor may be attempting to interfere with a witness or the administration of justice.[1687] Thus, the privileged line with, in particular, counsel as identified in Regulation 174(1) of the Regulations of the Registry, is not subject to this monitoring scheme.

737. In knowledge of these regulations, Mr Bemba, who was in detention at the time relevant to the charges, directed the commission of the offences from the ICC Detention Centre, using his privileged telephone line with his counsel to talk unmonitored and candidly not only with Mr Kilolo but also with Mr Mangenda and Mr Babala, and other individuals not entitled to legal privilege, including witnesses. In so doing, Mr Bemba, together with the other two co-perpetrators, circumvented the Registry's monitoring system, enabling them to communicate improperly for the purpose of implementing the plan to illicitly interfere with defence witnesses to ensure that these witnesses would provide evidence in favour of Mr Bemba.

738. Mr Bemba used the privileged line, *inter alia*, to talk to Mr Babala without being recorded. The ICC Detention Centre's documentation for the years 2012 and 2013 reveal that the privileged telephone numbers for Mr Bemba included telephone number [Redacted], which was indicated as belonging to Mr Kilolo.[1688] Yet, this telephone number actually belonged to Mr Babala, who was not entitled to a privileged - and thus unmonitored - line with Mr Bemba. In making

[1687] Regulation 175(1)(b) and (c) of the Regulations of the Registry.
[1688] ICC Document, CAR-OTP-0074-0067 at 0071 and 0072. The Court's Registry registered the telephone numbers of, in particular, the defence team of Mr Bemba so that privileged communication be ensured. The list of telephone numbers is preceded by the following text element 'Mr Bemba is allowed to have privileged phone conversations with the following persons'.

this finding, the Chamber relies on the information contained in the contact list that was forensically extracted from Mr Kilolo's cell phone.[1689]

739. The arguments made by the Babala Defence to refute this conclusion are not convincing. The assertion that calls were forwarded between telephone number [Redacted] and another telephone number also belonging to Mr Kilolo[1690] are purely speculative. The Babala Defence does not present any evidence to corroborate this claim. Equally, the Chamber does not follow the assertion that it is impossible to attribute the SIM card from which the number [Redacted] was extracted to Mr Kilolo.[1691] The Independent Counsel, instructed by the Chamber to review the seized material, indicated that the SIM card in question was transmitted in a sealed manner by the Belgian authorities and that Mr Kilolo was indicated as the owner.[1692] Additionally, when the Independent Counsel received the material, members of the Registry were present to observe the unsealing.[1693] In the view of the Chamber this is sufficient to establish the authenticity of the SIM card, as well as Mr Kilolo's ownership of it.

740. The call data records reveal that, while Mr Bemba was on the telephone with Mr Kilolo, the latter would facilitate contact with third parties, including defence witnesses, and other accused, allowing Mr Bemba to communicate directly without being monitored by the Registry. For example, on 5 October 2012, while Mr Bemba was in contact with Mr Kilolo, the call records show that there was a time overlap of 3½ minutes with a call from the same telephone with

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[1689] ICC Document, CAR-OTP-0090-1872 at 1873.
[1690] Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, paras 158-167.
[1691] Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, paras 168-173.
[1692] *See* Rapport du Conseil indépendant sur la levée des scellés et l'analyse de pièces saisies par les autorités françaises et les autorités belges (Décisions ICC-01/05-01/13-41 et ICC-01/05-01/13-366 et 446), ICC-01/05-01/13-845-Conf, paras 23-26; Addendum au Rapport du Conseil indépendant sur la levée des scellés et l'analyse de pièces saisies par les autorités françaises et les autorités belges (Décisions ICC-01/05-01/13-41 et ICC-01/05-01/13-366 et 446), ICC-01/05-01/13-1035-Conf, paras 4-7.
[1693] *See* Rapport du Conseil indépendant sur la levée des scellés et l'analyse de pièces saisies par les autorités françaises et les autorités belges (Décisions ICC-01/05-01/13-41 et ICC-01/05-01/13-366 et 446), ICC-01/05-01/13-845-Conf, para. 24.

D-55.[1694] The Chamber concludes that during this overlap, Mr Kilolo enabled a multi-party call in which these telephone calls were interconnected so that each of the three parties could simultaneously communicate with all other parties. To arrive at this conclusion, the Chamber relied on the following considerations. First, P-214 (D-55) stated in his testimony that Mr Kilolo, before testifying, facilitated a telephone conversation between P-214 (D-55) and Mr Bemba.[1695] Second, the Kilolo Defence admitted that Mr Kilolo facilitated a conversation between P-214 (D-55) and Mr Bemba.[1696]

741. Likewise, the Chamber finds that Mr Kilolo enabled another multi-party call *via* his privileged line between Mr Bemba and D-19 on 4 October 2012. The call data records show a connection on 13 January 2013, at 15:22, for approximately 88 minutes between Mr Bemba and Mr Kilolo involving the same telephone numbers as in the above-cited call of 4 October 2012.[1697] The call data records also reflect a call connection shortly thereafter at 16:32, for approximately 17 minutes, between Mr Kilolo's telephone number [Redacted] and number [Redacted], attributable to D-19. [1698] Accordingly, the entire 17-minute conversation with D-19 overlapped with the last part of the telephone conversation between Mr Kilolo and Mr Bemba. The Chamber finds it unreasonable and far-fetched that one of the interlocutors would be on hold for such a substantial period. The Chamber further gives weight to the fact that it

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[1694] *See* para. 296; Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', rows 709-710.
[1695] *See* paras 293-298.
[1696] Kilolo Defence Submission, ICC-01/05-01/13-674-Conf-Anx3, p. 21, row 69 (*'Me Kilolo n'a jamais admis avoir facilité des contacts téléphoniques entre M. Bemba et des témoins visés dans l'acte d'accusation, à part D-55'/'Mr Kilolo did not admit to having facilitated telephone contact between Mr Bemba and the witnesses referred to in the document containing the charges, apart from D-55'*); *see also* Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, para. 209.
[1697] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 16728. The 2013 ICC Detention Centre call log reflects an official call between Mr Bemba and Mr Kilolo's above-mentioned telephone number on 13 January 2013 at 15:22 for 01:28 hours, *see* CAR-OTP-0074-0066, row 21.
[1698] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 16732; the attribution of the telephone number to D-19 is based on ICC documentation in which this telephone number was registered to the Court by the witness or the Main Case Defence as belonging to D-19, *see* ICC Document, CAR-OTP-0077-0942 at 0942, row 16 from the top.

established in the case of D-55 that Mr Kilolo did enable such a multi-party call the following day. It finds it can thus rely on the fact that Mr Kilolo had the technical abilities as well as the idea for such a multi-party call in mind as early as 4 October 2012. Therefore, the Chamber finds that the only reasonable conclusion is that Mr Kilolo interconnected the telephone lines to enable a multi-party call between D-19 and Mr Bemba on 4 October 2012.

742. However, the Chamber cannot conclude that Mr Kilolo enabled such a multi-party call on his privileged line between Mr Bemba and D-51 on 4 October 2012. The call data records of the kpn Group Belgium reflect on 4 October 2012, at 15:24, a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1699] and [Redacted], attributable to defence witness D-51,[1700] for approximately 11½ minutes.[1701] The call data records show that two minutes later, at 15:26, a connection was effected between telephone number [Redacted], attributable to Mr Bemba,[1702] and Mr Kilolo's telephone number, [Redacted], for approximately 22 minutes.[1703] The call time between Mr Kilolo and D-51 ended while Mr Kilolo was on the telephone with Mr Bemba. The call data records reveal that at 15:45, Mr Kilolo again called D-51 for almost 3 minutes.[1704] The records thus reveal an overlap of 9 minutes and another of 3 minutes between Mr Kilolo's telephone calls with both parties. However, the Chamber finds that the longest continuous overlap of 9 minutes between 15:26 and 15:35 is not long enough to exclude the possibility that either Mr Bemba or D-51 or both in alternation were put on hold during these 9 minutes. It can therefore not

[1699] *See* para. 292.
[1700] ICC Document, CAR-OTP-0077-0942 at 0942, row 10; the telephone number was registered to the Court by the witness or the defence as belonging to D-51.
[1701] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]' row 356.
[1702] *See* para. 297.
[1703] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]' row 357. The connection is also recorded in the 2012 call log of the Court's Detention Centre. The 2012 ICC Detention Centre call log reflects an official call between Mr Bemba and Mr Kilolo's above-mentioned telephone number on 4 October 2012 at 15:27 for 21:30 minutes, *see* CAR-OTP-0074-0065, row 678.
[1704] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted], row 364. The telephone numbers were the same as during the first phone call.

conclude that a multi-party call took place between Mr Kilolo, Mr Bemba and D-51 on this occasion.

743. For the same reason, the Chamber cannot conclude that Mr Kilolo arranged such a multi-party call through his privileged line between Mr Bemba and D-64 on 27 October 2012. The call data records show a connection on 27 October 2012, at 19:04, for approximately 53½ minutes between Mr Bemba and Mr Kilolo involving the same telephone numbers as in the above-cited call of 4 October 2012.[1705] The call data also records reflect four call connections, including one at 19:20 for approximately 1 minute, and another at 19:25 for approximately 10 minutes,[1706] between Mr Kilolo's telephone number [Redacted] and number [Redacted], attributable to D-64.[1707] The longest continuous overlap in the connection times thus took place between 19:25 and 19:35. The Chamber concludes again, that it does not find it entirely unreasonable to imagine that such an overlap of ten minutes could have resulted from Mr Kilolo putting one or both of the interlocutors on hold. Therefore, the Chamber does not conclude that Mr Kilolo facilitated a multi-party call between Mr Bemba and D-64 on this occasion.

744. The Chamber cannot make any finding as to whether the privileged line at the ICC Detention Centre was also abused in order to facilitate multi-party telephone calls between the co-perpetrators and other co-accused. In particular, it cannot conclude that such a multi-party call took place including Mr Babala on 4 October 2012. The 'kpn Group Belgium' call data records show that shortly after Mr Kilolo spoke with D-51 on 4 October 2012, at 15:24,[1708] and while

[1705] Call Data Record, CAR-OTP-0072-0391, tab ''[Redacted]' row 3842. The 2012 ICC Detention Centre call log reflects an official call between Mr Bemba and Mr Kilolo's above-mentioned telephone number on 27 October 2012 at 19:04 for 53:33 minutes, *see* CAR-OTP-0074-0065, row 732.
[1706] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', rows 3846-3849, in particular rows 3847 and 3849.
[1707] For the attribution of the telephone number to D-64, *see* para 263.
[1708] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', rows 356.

Mr Kilolo was still on the telephone with Mr Bemba,[1709] a connection was effected at 15:41, for approximately 7 minutes between telephone numbers [Redacted], attributable to Mr Babala,[1710] and [Redacted], attributable to Mr Kilolo.[1711] Four minutes thereafter, at 15:45, Mr Kilolo called D-51 for almost 3 minutes.[1712] However, the overlap in the connection time between 15:45 and 15:48 of only 3 minutes is too short and insignificant to allow the Chamber to conclude that Mr Kilolo facilitated, through a multi-party call, communication between Mr Bemba, Mr Babala, D-51 and himself.

745. Similarly, the Chamber cannot conclude that Mr Babala was included in a multi-party call with Mr Bemba and Mr Kilolo on 5 October 2012. The call data records show that on that day, Mr Bemba was on the telephone with Mr Kilolo from 19:49 until approximately 20:21, during which time Mr Bemba spoke with D-55.[1713] After this multi-party call, and while still on the telephone with Mr Bemba, Mr Kilolo sent an SMS at 20:16[1714] to telephone number [Redacted], attributable to Mr Babala.[1715] After two minutes, at 20:18, Mr Babala, using the number [Redacted], called[1716] Mr Kilolo on his Belgian telephone number [Redacted], for almost three minutes until approximately 20:21, the time at which Mr Kilolo terminated his call with Mr Bemba. The overlap of the connections between 20:18 and 20:21 could indicate that Mr Babala was included into the telephone conversation between Mr Kilolo and Mr Bemba as a multi-party call. However, the overlap of only three minutes is too short to rule out the alternative explanation that either Mr Bemba or Mr Babala were waiting on

[1709] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 357.
[1710] *See* para. 739.
[1711] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 363.
[1712] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 364; *see* para. 749.
[1713] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', rows 709-710; *see* paras 293-298. The phone call between Mr Bemba and Mr Kilolo commenced at 19:49 and lasted for approximately 32½ minutes (1962 seconds), *i.e.* approximately until 20:21.
[1714] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 714.
[1715] *See* para. 265.
[1716] Call Data Record, CAR-OTP-0072-0391, tab '[Redacted]', row 716.

hold. The Chamber consequently does not conclude that Mr Kilolo facilitated through a multi-party call communication between Mr Bemba, Mr Babala and himself on this occasion.

Money Transfers through Third Persons

746. The co-perpetrators also used third persons to effect money transfers to defence witnesses, such as D-3, D-6, D-29, D-57 and D-64.[1717] Mr Kilolo requested from the witnesses the names and contact details of persons other than the witnesses themselves. The Kilolo Defence claims that the argument that third persons were involved to protect the anonymity of the witnesses concerned is not convincing.[1718] Had those expenses been legitimate, there was no reason for the co-perpetrators to conceal any link. Considerations of confidentiality actually speak against involving any third person in the first place. In the light of the timing of the bank transfers, the fact that witnesses were told not to reveal any payments, the fact that, at the material time, the VWU was mandated to cover any expenses, and the similarity of amounts transferred, the Chamber is convinced that the purpose for which third persons were involved was to conceal the payments of money by the Main Case Defence. The actual intention is best exemplified by Mr Kilolo's suggestion that D-3 name a third person *unknown* to the Court for the purpose of making the bank transfer.[1719]

Distribution of New Phones after the VWU Cut-Off Date

747. The illicit coaching shortly before and during the defence witnesses' testimonies before Trial Chamber III was made possible by, *inter alia*, distributing new telephones to the witnesses with whom Mr Kilolo stayed in contact past the VWU cut-off date and in violation of the contact prohibition

[1717] *See* paras 242-248, 268-271, 396, 407-408 and 520.
[1718] Kilolo Defence Submission, ICC-01/05-01/13-674-Red, paras 275 and 280.
[1719] *See* paras 407-408.

ordered by Trial Chamber III.[1720] Thus, Mr Kilolo ensured that the witnesses kept their expected answers precise and consistent with his coaching instructions. The telephones were distributed secretly, unbeknownst to the VWU. The new telephone numbers on which the witnesses were contacted were not registered with the Court. The evidence shows that Mr Kilolo distributed new cell phones to defence witnesses, such as D-2, D-3, D-4, D-6[1721] and D-23[1722] around the time the witnesses were entrusted to the care of the VWU which would take away their personal telephones. Mr Mangenda was present and assisted in the distribution of the new telephones to the witnesses.[1723] Mr Kilolo explained to the witnesses that the VWU would take their telephones away. He also explained the purpose of the new telephones that were distributed to them.[1724]

Use of Coded Language

748. The Prosecution alleges that in order to conceal their plan, the co-perpetrators used coded language in their communications. The Bemba Defence argued that Mr Bemba and Mr Babala conversed in coded language out of fear that the DRC authorities might intercept their communications since Mr Babala, a resident in Kinshasa, is a political opponent to the current government.[1725] The Chamber understands that this explanation makes reference to the use of coded language in discussions between the long-time political allies about political affairs in the DRC. However, this does not explain (i) the use of coded language by Mr Bemba and Mr Babala when discussing matters arising from the proceedings before the Court; and (ii) the fact that Mr Kilolo and Mr Mangenda, who are not involved in DRC politics, used the same coded language in communications with

[1720] Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 18 November 2010, ICC-01/05-01/08-1016.
[1721] *See* paras 367-371.
[1722] *See* para. 445.
[1723] *See* para. 367.
[1724] *See* paras 368 and 445.
[1725] Bemba Defence Closing Statements, T-48-Red, p. 64, lines 1-5.

Mr Bemba or among themselves. The Chamber stresses that the accused did not simply continue to use coded language, as a matter of habit, since new code terms and code names were invented for the Main Case witnesses and introduced by Mr Kilolo and Mr Mangenda. Also, as will be addressed further below, the fact that Mr Mangenda insisted that Mr Kilolo brief Mr Bemba in codes cannot be explained with the necessity that Mr Bemba and Mr Babala used codes in discussions involving DRC politics. The Bemba Defence argument is therefore not tenable.

749. Making reference to documents and decisions of the Registry and Pre-Trial Chambers II and III, the Bemba Defence also contended that the coded language used by Mr Bemba in 2008 and 2009 had been found not to be indicative of witness interference. It alleged that the same coded language used a few years later could not be interpreted to mean that Mr Bemba had interfered with witnesses.[1726] The Chamber finds the Bemba Defence argument flawed for the following reasons. First, this Chamber is not legally bound by the findings of another chamber of the Court and will make its own assessment on the basis of the details of the case before it. Second, the Registry and Pre-Trial Chambers II and III made a finding on the use of coded language between Mr Bemba and others in 2008 and 2009 in the context of the charges of crimes against humanity and war crimes in the Main Case. This task of this Chamber is to make findings on the use of coded language in the context of events that took place between 2011 and 2013 and with regard to charges of offences against the administration of justice. For these reasons, the Bemba Defence argument cannot be sustained.

750. Moreover, the Mangenda Defence alleged that the coded language was used to prevent any leakage of information and to protect the Main Case Defence

[1726] Bemba Defence Closing Statements, T-48-Red, p. 64, lines 6-15.

witnesses from improper contacts.[1727] The Chamber concludes that this explanation is not convincing either. The justification advanced by the Mangenda Defence may explain the use of coded language for protecting the identity of (potential) witnesses, but certainly cannot explain why coded language was used with regard to the illicit coaching activities or the sums of money that were transferred to Main Case Defence witnesses. In any event, the Chamber observes that the Accused's explanations are not consistent with one another.

751. The co-perpetrators' use of coded language was consciously and scrupulously followed. It assisted in keeping the illicit coaching and bribing activities hidden from others, including the Court's officials. The co-perpetrators endeavoured to speak to one another in coded language at all times when on the telephone and would remind each other to do so.

752. Of relevance in this respect are two intercepted conversations on 23 August 2013 and 17 October 2013.[1728] The call log pertaining to the 23 August 2013 call initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1729] and thereafter formally submitted by the Prosecution,[1730] indicates in the 27th row from the top a connection between telephone numbers [Redacted], attributable to Mr Bemba,[1731] and [Redacted], attributable to Mr Kilolo,[1732] for approximately 12½ minutes between 19:41 and 19:53.[1733] The relevant audio recording,

[1727] Mangenda Defence Closing Brief, ICC-01/05-01/13-1900-Red, para. 209.
[1728] For the telephone call of 17 October 2013, *see* paras 730-731. The Prosecution proposed two further intercepted calls from the ICC Detention Center in this regard (CAR-OTP-0078-0390 and CAR-OTP-0077-1035), which the Chamber decided not to rely upon as these calls are affected by the misalignment problems.
[1729] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex A000 and Annex A042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned order in annexes A001 to A041and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1730] Call log, CAR-OTP-0079-1507; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'ICC-01/05-01/13-6-Conf-AnxA042'.
[1731] *See* para. 297.
[1732] *See* para. 292.
[1733] Call log, CAR-OTP-0079-1507 at 1508, row 27; *see also* ICC-01/05-01/13-6-Conf-AnxA000, p. 1, row 27; ICC-01/05-01/13-6-Conf-AnxA042, p. 2, row 27.

submitted by the Prosecution,[1734] lasts 12:39 minutes and thus duly corresponds to the call log entry concerned.

753. During the telephone conversation on 23 August 2013, Mr Bemba reminded Mr Kilolo to use code when speaking to a woman referred to as '*la maman*'.

> **Bemba**: *…ou bien je vais appeler la maman vers 20 heures 20, avant de terminer avec elle, je vais lui demander de t'appeler pour qu'elle te demande, qu'elle t'envoie un message.*
> **Kilolo**: *Ok.*
> **Bemba**: *Pour vérifier si tu l'as eu, si tu l'as eu, bon…**nous savons comment nous nous parlons par des codes**, tu me dis un peu comment ça se passe quoi.*[1735]

754. The same occurred in the conversation on 17 October 2013, when Mr Mangenda insisted that Mr Kilolo brief Mr Bemba in coded language.

> *Non! Ca… ça … ça il faut d'abord que vous cherchiez le moyen de le briefer d'abord… le briefer au téléphone.* ***Briefez-le d'abord. Briefez, briefez, briefez-le d'abord. En code qu'il comprenne****. (…) Mais il faut le briefer, briefez-le en codes.*[1736]

755. The Chamber is satisfied that in their communications, the co-perpetrators used coded language, referring, for example, to other individuals not by their actual names but using terms representing the individuals' initials,[1737] or other expressions, such as '*le client*',[1738] '*le blanc*',[1739] '*collègue d'en haut*',[1740] '*½ kg*',[1741] '*cinq grands*',[1742] or [Redacted].[1743]

[1734] Audio recording, CAR-OTP-0074-0986 (ICC-01/05-01/13-6-Conf-AnxA027); Transcript of audio recording, CAR-OTP-0079-0067 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0102 (French translation).
[1735] Audio recording, CAR-OTP-0074-0986; Translated transcript of audio recording, CAR-OTP-0079-0102 at 0110, lines 207-211 ('Bemba: *… or I will call the mother at around 8.20 p.m., before I finish with her, I will ask her to call you so that she can ask you, for her to give you a message.* Kilolo: *OK.* Bemba: *To check that you got it, that you got it, well … we know how we speak using code, you tell me something about how that works, you know?'*).
[1736] Audio recording, CAR-OTP-0080-1317; Translated transcript of audio recording, CAR-OTP-0082-1293 at 1303, lines 326-327 and 332 (*'No! That … that, you need to find a way of briefing him first … briefing him over the telephone. Brief him first. Brief, brief, brief him first. In a code he understands. (…) But he has to be briefed, brief him in code'*).
[1737] *See* paras 601-602, 616 and 725.
[1738] *See* paras 495, 535, 599 and 611.
[1739] *See* paras 603-604.
[1740] *See* para. 698.
[1741] *See* para. 698.
[1742] *See* para. 698.
[1743] *See* para. 480.

756. The Chamber is convinced that the term '*faire la couleur*' or variant forms thereof were used in the context of defence activities relating to D-13,[1744] D-25,[1745] D-29[1746] and D-54.[1747] Considering the term's usage and the relevant context, the Chamber finds that '*faire la couleur*' and variances thereof were used to refer to the illicit coaching or bribing of defence witnesses. For example, on 29 August 2013, at 13:55, Mr Kilolo emphasised that he had explained to Mr Bemba that the '*faire la couleur*' needed to happen one or two days in advance of the witnesses' testimony because the witnesses were likely to forget.[1748] The Chamber further notes that, on 9 September 2013, at 11:49,[1749] Mr Mangenda referred to '*les couleurs*' when discussing with Mr Kilolo how to align D-54's testimony as regards his departure from the DRC with the rest of the Defence evidence.

> **Kilolo**: *Pour toi, il a traversé quand en Centrafrique? (…)*
> **Mangenda**: *Non mais c'est comme on en a discuté, il faut qu'ils sachent… pour que ça soit logique. Il faut qu'il parte, et que ça corresponde qu'il est parti le 30, c'est tout.* ***Dans le cadre de la Couleur. Juste comme on en a discuté****.*
> **Kilolo**: *Le 30…euh il développe…attends, attends je sais euh…*
> **Mangenda**: *Parce que dans le lettre du Client, le Client avait écrit qu'il était parti le 10. Dans la lettre du Client, le Client avait écrit qu'était parti le 30…*[1750]

757. From the above, the Chamber understands that Mr Mangenda advised Mr Kilolo to instruct D-54 to testify in such a way that his evidence accorded with the '*lettre du Client*'. Furthermore, it finds this to be indicative of the directive character of Mr Bemba's involvement and of the intention of the co-perpetrators to illicitly change the testimony of the witnesses. In particular, by

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[1744] *See* paras 658-659.
[1745] *See* para. 495.
[1746] *See* para. 535.
[1747] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737 at 1740, lines 41-50.
[1748] *See* para. 535.
[1749] *See* paras 610-614.
[1750] Audio recording, CAR-OTP-0074-1001; Translated transcript of audio recording, CAR-OTP-0079-1737 at 1740, lines 41-50 (emphasis added) ('Kilolo: *As far as you're concerned, when did he cross over into Central Africa? (...)* Mangenda: *No, but it's as we discussed, they need to know for it to make sense. He has to leave, and for that to tally ... for it to make sense. He has to leave, and for that to tally, he has to have left on the thirtieth, that's all. As part of the "Colours". Exactly as we discussed.* Kilolo: *The thirtieth ... erm, then he'll expand ... wait, wait, I know erm ...* Mangenda: *Because in the Client's letter, the Client wrote that he left on the tenth. In the Client's letter, the Client wrote that he left on the thirtieth ...* ').

highlighting that this should occur '*[d]ans le cadre de la Couleur'*, followed by the comment '*juste comme on en a discuté*', it is clear that Mr Mangenda implies that D-54 should be instructed according to the pre-determined narrative. Indeed, the evidence shows that Mr Kilolo illicitly coached D-54 extensively and in detail on a series of issues. Once more, it also shows that Mr Mangenda's role was more than that of a mere case-manager but that he advised Mr Kilolo on illicit coaching activities on equal footing.

758. Variant forms of '*faire la couleur'* were also used by Mr Kilolo and Mr Mangenda when discussing whether potential defence witnesses would follow instructions. A conspicuous example is to be found in the intercepted conversation between Mr Kilolo and Mr Mangenda on 7 November 2013. The relevant call log,[1751] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1752] indicates in the 60th row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1753] and [Redacted], attributable to Mr Mangenda,[1754] for approximately 11 minutes between 15:57 and 16:08.[1755] The corresponding audio recording, submitted by the Prosecution,[1756] lasts 11:20 minutes and thus duly corresponds to the call log entry concerned.

[1751] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1752] Call log, CAR-OTP-0080-1312; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1753] *See* para. 292.
[1754] *See* para. 487.
[1755] Call log, CAR-OTP-0080-1312 at 1316, row 60; s*ee also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA001, as provided by the Dutch authorities (CAR-OTP-0080-1273).
[1756] Audio recording, CAR-OTP-0080-1376 (ICC-01/05-01/13-438-Conf-AnxB060); Transcript of audio recording, CAR-OTP-0082-0528 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0082-0674 (French translation).

759. During that telephone conversation, Mr Kilolo and Mr Mangenda discussed the possibility of calling a witness and expressed their concerns as to the consequences if the witness did not follow instructions.

> **Mangenda**: *Je comprends, je comprends, qu'il va venir là-bas, l'Homme Aux Yeux, il faut…*
> **Kilolo**: *Euh, euh, euh…euh.*
> **Mangenda**: *…c'est une question qu'on lui dise ceci et cela. C'est com… j'ai compris très bien, j'ai très bien compris.*
> **Kilolo**: *Mais tu comprends aussi les conséquences s'il refuse, et puis…euh…il dévoile.*
> **Mangenda**: *Bon oui, oui c'est…c'est bon. Si on a la possibilité, possibilité de …euh…**qu'on y mettre Un Peu De Couleur. C'est bon. S'il va… s'il accepte La Couleur c'est bon**.*[1757]

760. Lastly, the Chamber is also attentive to the intercepted telephone conversation of 30 August 2013[1758] in which Mr Kilolo admits to Mr Mangenda that if his activities involving '*faire les couleurs*' were to be discovered, he would be the first person targeted. Mr Kilolo said:

> *Bon, maintenant tu m'as mis, parce que moi aussi je voulais t'expliquer, tu vois pour moi le problème très important est que tu me fasses toujours les rapports de gens qui sont en train de passer. Pourquoi? **Parce que tu vois comme moi je suis en train de faire Les Couleurs, c'est-à-dire, je me trouve dans un état tel que lorsque les choses se passent là-bas… ça doit être clair… parce que tu vois si ça bardait, nous tous….mais la première personne c'est bien moi**. Non seulement dans le cadre de mes fonctions, mais dans le cadre aussi qu'en réalité Les Couleurs c'est aussi… moi. Donc je suis conscient donc c'est-à-dire si quelqu'un déconnait, il citera le nom de quelqu'un. Bon pendant que je suis en train de travailler avec Bravo, mais mon cœur est là-bas (…).*[1759]

[1757] Audio recording, CAR-OTP-0080-1376; Translated transcript of audio recording, CAR-OTP-0082-0674 at 0678, line 113 to 0679, line 119 (emphasis added) ('Mangenda: *I understand, I understand, that he is coming there, the Man With the Eyes, we must …* Kilolo: *Erm, erm, erm … erm.* Mangenda: *… it's a question, he should be told this and that. It's as … I have fully understood, I have understood very well.* Kilolo: *But you also understand the consequences if he refuses, and then … erm … he reveals something.* Mangenda: *Well yes, yes it's … it's OK. If we get the opportunity, the opportunity to … erm … to give him A Bit of Colour. That's OK. If he will … if he agrees. The Colour is good'*).

[1758] *See* para. 600.

[1759] Audio recording, CAR-OTP-0074-0995; Translated transcript of audio recording, CAR-OTP-0079-0131 at 0139, lines 222-229 (emphasis added) (*'Right. Now you've.....put me in a spot, because I also wanted to explain to you ... you see, the important issue for me is that you should always make a record of people who are passing. Why? Because you see, as I, I'm currently doing The Colours, I mean, I'm in such a state that when things happen over there ... it needs to be clear... because you see, if all hell broke loose, all of us ...but the first person would be me. Not just in a professional capacity, but also because, in actual fact, The Colours that's also ... me. Not just in a professional capacity, but also because, in actual fact, The Colours, that's also me. So I am aware, then in other words, if someone were to mess up, he would mention someone's name. OK while I'm working with Bravo, but my heart is over there (...)'*).

761. The Chamber is satisfied that Mr Kilolo clearly implies that the '*faire les couleurs*' activities are illicit in nature and that he knows about the consequences for the co-perpetrators.

Concealment of Activities from Other Members of the Main Case Defence

762. The co-perpetrators knew that their activities involving '*les couleurs*' were illicit in nature and wished to conceal that fact from other members of the Main Case defence team, as shown by two intercepted telephone conversations dated 2 October 2013. The relevant call log pertaining to the calls, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1760] and thereafter formally submitted by the Prosecution,[1761] indicates in the 34th and 35th row from the top a connection between telephone numbers [Redacted], attributable to Mr Mangenda, [1762] and [Redacted], attributable to Mr Kilolo, [1763] for approximately 18 minutes and 6 minutes between 00:01 and 00:19 and 00:19 and 00:25, respectively. [1764] The relevant audio recordings, submitted by the Prosecution,[1765] last 18:06 minutes and 06:17 minutes, respectively, and thus duly correspond to the call log entries concerned.

763. In the first conversation, Mr Kilolo informs Mr Mangenda about, *inter alia*, Mr Haynes' complaint when he was not asked to join any field missions, since

[1760] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 and Annex B042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II.
[1761] Call log, CAR-OTP-0079-1509; see *also* the entry into the relevant metadata field 'Title' labelling the document as 'lCC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1762] *See* para. 565.
[1763] *See* para. 292.
[1764] Call log, CAR-OTP-0079-1509 at 1509, rows 34 and 35 from the top; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, rows 34 and 35 from the top.
[1765] Audio recording, CAR-OTP-0074-1025 (ICC-01/05-01/13-6-Conf-AnxB034); Transcript of audio recording, CAR-OTP-0080-1405 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-0116 (French translation); Audio recording, CAR-OTP-0074-1026 (ICC-01/05-01/13-6-Conf-AnxB035); Transcript of audio recording, CAR-OTP-0080-0424 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0080-0299 (French translation).

Mr Kilolo preferred to go with Mr Mangenda.[1766] In the second telephone call, Mr Mangenda insisted that Mr Haynes should not witness the operation of '*les couleurs*'.

> **Mangenda**: *Bon Ok… mais lui… il n'avait pas non plus la possibilité de comprendre l'utilité de ces voyages-là parce que* ***l'objectif de ces voyages c'est faire LES COULEURS.*** *(…)*
> **Kilolo**: *Bon et puis… euh… et puis après il m'a dit : « Bon je regrette quand même, je vais te le dire aussi… pour le moment je suis écarté… euh… dans les missions…. et t'en va chaque foi avec Jean-Jacques. Et ce qui m'a beaucoup dérangé, c'était celui de Brazza, parce que j'y tenais » (…)*
> **Mangenda**: *S'il en avait parlé très sincèrement, bon de toutes les façons c'est de ce côté-là qu'il y avait des ennuis…* ***parce qu'il s'agissait d'aller faire les histoires des COULEURS, dans ces conditions-là peut-être il ne pouvait pas venir*** *(…) C'est ça aussi… le problème en question,* ***s'il apprend les démarches sur les COULEURS*** *après, lorsque ces gens viendront, s'il prend son verre et dans l'ivresse il va commencer à vous diffamer. Sans savoir qu'il est en train de livrer les secrets de l'équipe.*[1767]

764. The Chamber concludes that the co-perpetrators purposefully excluded other members of the defence team from their mission plans so that they could engage in illicit coaching.

Agreement to Destruct Physical Evidence

765. The evidence also shows that the co-perpetrators agreed to ensure that no physical evidence related to the illicit coaching was kept so as to minimise the traceability of their illicit activities. To this end, the Chamber relies on an intercepted telephone conversation of 26 October 2013 between Mr Kilolo and Mr Mangenda. The relevant call log,[1768] initially provided by the Dutch

[1766] Audio recording, CAR-OTP-0074-1025; Translated transcript of audio recording, CAR-OTP-0082-0116 at 0125, lines 267-281.

[1767] Audio recording, CAR-OTP-0074-1026; Translated transcript of audio recording, CAR-OTP-0080-0299 at 0301, lines 4-5 and 22-24; at 0303, lines 80-86 (emphasis added) ('Mangenda: *Good. OK … but he … he wasn't able either to comprehend the usefulness of those trips because the aim of those trips was to MAKE THE COLOURS. (...)* Kilolo: *Well and then … erm … and then afterwards he said to me "Well I regret anyway, I'm going to tell you too … for the time being I have been left out … erm … of missions … you'll be going with Jean-Jacques every time. And what really bothered me was the Brazza one, because I like it there" (...)* Mangenda: *If he had spoken very sincerely, well in any case, the problems were on that side … because it was all about going to make a fuss about the COLOURS, in those circumstances maybe he couldn't come (...). It's that also … the problem in question, if he finds out about the stuff with the COLOURS afterwards, when those people come, if he has a drink and in his drunkenness he starts to speak badly of you. Without knowing that he's giving away the team secrets'*).

[1768] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.

authorities and thereafter submitted by the Prosecution,[1769] indicates in the 46th row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1770] and [Redacted], attributable to Mr Mangenda,[1771] for 8 minutes between 15:48 and 15:56.[1772] The corresponding audio recording, submitted by the Prosecution,[1773] lasts 08:00 minutes and thus duly corresponds to the call log entry concerned.

766. In that conversation, Mr Kilolo, who was absent from the Court at the time, reported that he had informed Mr Bemba about the need to pay another USD 2000 to '*ces gens-là*'. Since he did not have sufficient cash at hand, he asked Mr Mangenda to send through Western Union an additional sum of USD 1,500 the same day. The co-perpetrators refer to the sum of USD 1,000 as '*livre*'.

> **Kilolo**: *…je lui ai expliqué que ces gens-là réclament encore Deux Livres en plus*.
> **Mangenda**: *Ok*.
> **Kilolo**: *Bon, il m'a demandé que moi-même je paye et puis il va me rembourser*.
> **Mangenda**: *Ok*.
> **Kilolo**: *Alors, je lui ai expliqué qu'ici je ne pourrais donner que 600 dollars…*
> **Mangenda**: *Ok*.
> **Kilolo**: *…mais il manquera 1,400 dollars. (…) donc, en tout cas il faut qu'il rembourse 2000 Dollars quoi…*[1774]

767. To respond to Mr Bemba in case he requested proof of the Western Union payment, Mr Mangenda suggested that he explain to Mr Bemba that he did not keep evidence of the transfers in connection with '*la couleur*'.

[1769] Call log, CAR-OTP-0080-1312; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1770] *See* para. 718.
[1771] *See* para. 565.
[1772] Call log, CAR-OTP-0080-1312 at 1315, row 46; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA002, as provided by the Dutch authorities (CAR-OTP-0080-1280).
[1773] Audio recording, CAR-OTP-0080-1362 (ICC-01/05-01/13-438-Conf-AnxB046); Transcript of audio recording, CAR-OTP-0082-0513 (in Lingala and French); Translated transcript of audio recording, CAR-OTP-0082-0649 (French translation).
[1774] Audio recording, CAR-OTP-0080-1362; Translated transcript of audio recording, CAR-OTP-0082-0649 at 0651, lines 7-13 and 36 ('Kilolo: *... I've explained to him that those people are asking for another Two Books.* Mangenda: *OK*. Kilolo: *Well, he asked me to pay it myself and then he would reimburse me.* Mangenda: *OK*. Kilolo: *So, I explained to him that I could only give 600 dollars here ...* Mangenda: *OK*. Kilolo: *... but that would leave him 1,400 dollars short (...) so, in any case he needs to reimburse 2,000 dollars, you know ...*').

> **Kilolo**: *(…) Mais j'espère qu'il ne va pas demander après où est la preuve que tu m'as envoyée ?*
> **Mangenda**: *Non, non, non là il ne va pas… même s'il me demandait, je lui dirai que non, si j'ai fait ces transactions-là, ce genre de papiers, je les détruis parce que…c'est une preuve qu'il y a eu un mouvement… de l'endroit… du lieu où je me trouve vers le lieu où tu te trouves. C'est un papier que je ne peux garder, si l'on tombait dessus par mégarde, ça établit ta présence dans un certain endroit avec des mouvements de transactions financières… (…) Non. Euh là je vais lui expliquer que c'est un case que nous connaissons déjà dans le cadre de combat,* ***dans le cadre de La Couleur… on ne garde pas les éléments de preuve quoi***.[1775]

768. The Chamber is satisfied that the co-perpetrators agreed to destroy any physical evidence of their money transactions connected with illicit coaching/bribing of witnesses in order to minimise the traceability of the illicit transactions. As set out further below, this particular conversation also takes place after Mr Kilolo and Mr Mangenda have learnt that they are the subject of an investigation by the Prosecution.

Overall Conclusions

769. Considering the above evidence, also in the light of other evidence discussed in this section, the Chamber is satisfied that the co-perpetrators employed measures to ensure that the illicit coaching took place undisturbed and undetected. By abusing the Registry's privileged line, thus circumventing the Registry's monitoring system at the ICC Detention Centre, the co-perpetrators could talk freely to defence witnesses or others who assisted them. Money transfers intended to ensure testimony favourable to the Main Case Defence were made through third persons and there was agreement to destroy related records so as to obfuscate any relationship between the payments and members of the Main Case Defence. Likewise, the distribution of new cell phones at the time of the VWU cut-off date enabled contact with witnesses after the contact

[1775] Audio recording, CAR-OTP-0080-1362; Translated transcript of audio recording, CAR-OTP-0082-0649 at 0652, lines 46-57 (emphasis added) ('Kilolo: *(...) But I hope he won't ask later for the proof you sent me.* Mangenda: *No, no, no he won't … even if he asked me, I'd tell him no, if I made those transactions, that kind of paper, I'd destroy it because … it's evidence that there was movement … from the place … from where I was to where you are. It's paper I can't keep, if they came across it by chance, that would establish your presence in a particular place with movements, financial transactions … (...) No. Erm, I'm going to explain to him that it's a case of which we were already aware in terms of fighting, in terms of The Colour … we don't keep evidence, you know'*).

prohibition took effect. Mr Kilolo used these cell phones to ensure that the witnesses stayed on script and followed his instructions. The co-perpetrators sought to conceal their activities from others, including their colleagues on the Main Case Defence. Finally, the co-perpetrators used coded language. In particular, the expression '*faire la couleur*' or variants thereof were used extensively by the co-perpetrators in their conversations and signified illicit coaching or bribing of witnesses.

v. Remedial Measures After Knowledge of Initiation of Investigation

770. On 11 October 2013, one month before D-13 was called to testify as the last defence witness in the Main Case, Mr Mangenda and Mr Kilolo became aware that they were the subject of an investigation.

771. The relevant call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II, [1776] and thereafter formally submitted by the Prosecution,[1777] indicates in the 6th row from the bottom a connection between telephone numbers [Redacted], attributable to Mr Mangenda,[1778] and [Redacted], attributable to Mr Kilolo,[1779] for approximately 3 minutes between 22:00 and 22:03.[1780] The relevant audio recording, submitted by the Prosecution,[1781] lasts 03:01 minutes and thus duly corresponds to the call log entry concerned.

[1776] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 and Annex B042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II, and later to the defence teams.
[1777] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'lCC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.
[1778] *See* para. 487.
[1779] *See* para. 292.
[1780] Call log, CAR-OTP-0079-1509 at 1509, row 6 from the bottom; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, row 6 from the bottom.
[1781] Audio recording, CAR-OTP-0074-1029 (ICC-01/05-01/13-6-Conf-AnxB038); Transcript of audio recording, CAR-OTP-0079-0053 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-0198 (French translation).

772. In that conversation, Mr Mangenda informed Mr Kilolo, on a '*top secret*' basis,[1782] that he had been informed by a source whose wife worked at the Court[1783] that they were being investigated in connection with allegations of witness bribery.[1784]

773. In the aftermath of this call, Mr Kilolo informed Mr Bemba of the Article 70 investigation and the potential consequences. In this regard, the Chamber relies on two intercepted communications dated 16 October 2013 between Mr Kilolo and Mr Mangenda. The relevant call log, initially provided by the Dutch judicial authorities to Pre-Trial Chamber II,[1785] and thereafter formally submitted by the Prosecution,[1786] indicates in the penultimate and last rows two connections between the telephone numbers [Redacted], attributable to Mr Kilolo,[1787] and [Redacted], attributable to Mr Mangenda,[1788] for approximately 10 minutes and 35½ minutes between 19:46 and 19:56, and 22:19 and 22:55, respectively.[1789] The

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[1782] Audio recording, CAR-OTP-0074-1029; Translated transcript of audio recording, CAR-OTP-0079-0198 at 0200, line 6.

[1783] Audio recording, CAR-OTP-0074-1029; Translated transcript of audio recording, CAR-OTP-0079-0198 at 0200, lines 8-32 (*'[L]e monsieur dont l'épouse travaille avec nous là, n'est-ce pas ? Tu comprends ? (...) Il m'a dit ceci, que je prenne l'histoire en question comme je souhaite la comprendre, mais il est obligé de m'informer parce que nous sommes des amis. (...) Il a dit, il semblerait qu'il y a des rumeurs qui circulent… (...) nous sommes en train de donner des livres à nos gens qui viennent. (...) Mais je te donne seulement l'info… à toi de la comprendre comme tu veux, mais je ne sais pas, mais je te demande toi et ton frère de faire attention, parce que selon l'info qu'il a eue, il y a une enquête qui est en train de se faire, c'est en cours, ça vise spécialement toi et moi'*/*'[T]he man whose wife is working with us there, isn't it? Do you understand? (...) He said to me that I should take the story in question as if I want to understand it, but he is obliged to inform me because we are friends. (...) He said, it would appear that there are rumours … (...) we are giving books to our people who come. (...) But I'm only giving you the info … it's up to you to interpret it as you will, but I don't know, but I'm asking you and your brother to pay attention, because according to the info that he had, there is an investigation which, which is under way, it's in progress, it is focused in particular on you and me'*).

[1784] When assessing this excerpt of the audio recording together with the excerpt of the intercepted audio recording dated 26 October 2013, the Chamber understands that the term '*livres*' in this context was used to refer to money paid to witnesses, *see* para. 766.

[1785] Order of 21 November 2013, p. 3. The call log at issue was contained in Annex B000 and Annex B042 to the mentioned order. All associated audio recordings and text messages as listed in the call log were appended to the mentioned order in annexes B001 to B041 and were made available to the Prosecution by the Single Judge of Pre-Trial Chamber II, and later to the defence teams.

[1786] Call log, CAR-OTP-0079-1509; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'lCC-01/05-01/13-6-Conf-AnxB000 13-12-2013 1/1 SL PT'.

[1787] *See* para. 292.

[1788] *See* para. 565.

[1789] Call log, CAR-OTP-0079-1509 at 1509, bottom two rows; *see also* ICC-01/05-01/13-6-Conf-AnxB000, p. 1, bottom two rows.

relevant audio recordings, submitted by the Prosecution,[1790] last 10:13 minutes and 35:49 minutes, respectively, and thus duly correspond to the call log entries concerned.

774. In the first conversation, Mr Kilolo reported to Mr Mangenda that he had just informed Mr Bemba of the commencement of the Article 70 investigation and that Mr Bemba had panicked.[1791] Of further significance, Mr Kilolo suggested paying witnesses and obtaining declarations in which witnesses, who had previously spoken to the Prosecution, would attest that they had lied to the Prosecution.[1792] This evidence shows that the co-perpetrators did not waste time concocting countermeasures to prevent or frustrate an Article 70 investigation. At this point, however, it did not appear that the co-perpetrators yet suspected any particular witness of having leaked information to the Prosecution.

775. In the second telephone call later that evening, Mr Kilolo described to Mr Mangenda in more detail Mr Bemba's reactions to the news of an investigation. Mr Kilolo reported that he had calmed Mr Bemba down and explained the possible consequences, namely, that they would 'lose' all the work that had been done so far and that Mr Bemba could face another five-year prison sentence distinct from any sentence pronounced in the Main Case.

[1790] Audio recording, CAR-OTP-0074-1031 (ICC-01/05-01/13-6-Conf-AnxB040); Transcript of audio recording, CAR-OTP-0080-0444 (in Lingala); Translated transcript of audio recording, CAR-OTP-0080-0322 (French translation); Audio recording, CAR-OTP-0074-1032 (ICC-01/05-01/13-6-Conf-AnxB041); Transcript of audio recording, CAR-OTP-0079-1668 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0079-1762 (French translation).

[1791] Audio recording, CAR-OTP-0074-1031; Translated transcript of audio recording, CAR-OTP-0080-0322 at 0325, lines 63-65; at 0327, lines 123-126.

[1792] Audio recording, CAR-OTP-0074-1031; Translated transcript of audio recording, CAR-OTP-0080-0322 at 0326 line 104 to 0327, line 116 ('*Et puis après, bon…donc je vais peut-être demander…bon je vais prendre même trois personnes comme ça, 10,000, 10,000, 10,000, bon je vais négocier avec eux 5, 5, 5, ça fait 15… (…) Avec … des déclarations signées par eux comme quoi que tout ce qu'ils avaient déclaré, c'est du mensonge. (…) Nous nous reconnaissons, nous avions dit ceci au procureur, c'est du mensonge, dans ce sens-ci, dans ce sens-là*'/'*And then later, well … so I may ask … well I'm going to take three people like that, 10,000, 10,000, 10,000, well I'm going to negotiate with them, 5, 5, 5, that makes 15 … (…) With … statements signed by them saying that everything they've said was a lie. (…) We acknowledge, we told the prosecution that, that's a lie, in this sense, in that sense*').

Je ne le reconnais pas, il était vraiment paniqué, donc c'est moi qui ai dû même lui dire : « non, sois calme ne crains pas. Moi-même je sais. Tu me laisses gérer ça à mon niveau, avec notre frère. Je sais…euh… les pistes des solutions à ma disposition. » (…) Alors… euh… c'est alors qu'il m'a demandé : « Mais de quoi a-t-il peur? » J'ai répondu mais il a peur de la Prison… pour lui-même. Tu vois donc du coup… euh… et puis… et puis il y aura des conséquences fâcheuses aussi pour… pour vous-même, parce que si tel est le cas ça veut dire que ***tous les éfforts qu'on a fournis sont tombés dans l'eau.*** *(…) Ce qui va compter c'est seulement…euh… et puis d'abord ils vont vous poursuive, vous aussi le détenu qui êtes déjà là dedans. (…) Ils vont vous poursuivre et vous pouvez, peut-être écoper 'd'une condamnation de 5 ans, donc ce qui n'a même rien à avoir avec l'autre. (…) Là, ça commence à compter à 0 à partir de ce jour-là. (…) Ça n'a rien à avoir avec les 5 ans déjà purgés. (…) Parce que c'est pour d'autres faits. (…) Mais c'est des… c'est ce que je lui ai dit, mais il était devenu fou.*[1793]

776. Clearly, at this juncture, the co-perpetrators were conscious of the serious nature of the allegations against them. Moreover, they were aware of the potential consequences of these allegations for the case they had illicitly built, and Mr Bemba's verdict in the Main Case. They were also aware that they could be prosecuted for offences against the administration of justice. In an effort to contain the situation, Mr Bemba directed Mr Kilolo to call each of the defence witnesses the same night in order to ascertain whether any of them had leaked information to the Prosecution. Mr Kilolo reacted critically, but only as regards the feasibility of carrying out that instruction. As Mr Kilolo explained to Mr Mangenda,

Maintenant il me dit non, que je fasse le tour d'horizon. Que j'appelle toutes ces personnes l'une après l'autre, cette même nuit. *Tout ça. (…) Comment vais-je les appeler ? Ce n'est pas non plus des gens… euh… que tu appelles comme ça en 5… et dit mais tu peux passer en revue comme ça … 15… 10, 15 personnes. Moi je dis non, ça ce n'est pas ce que tu penses. Tu ne vas pas non plus appeler juste les gens en 5 minutes : « Non, non, je voudrais juste savoir si… euh… on ne t'a pas*

[1793] Audio recording, CAR-OTP-0074-1032; Translated transcript of audio recording, CAR-OTP-0079-1762 at 1766, lines 75-101 (emphasis added) (*'I didn't recognise him, he was really panicked, so it was me who had to tell him "no, calm down, don't be afraid. I know. Let me handle that at my level, with our brother. I know … erm … the solutions available to me". (...) Then … erm … then he asked me "But what is he afraid of?" I answered that he was afraid of Prison … for himself. You see then suddenly … erm … and then … and then there will be regrettable consequences as well for … for you yourself, because if that is the case, it means that all our efforts have been wasted. (...) What will count is only … erm … and then they are going to come after you first, you, the detainee who is already inside. (...) They will come after you and you could be sentenced to 5 years, so this has nothing to do with the other. (...). There, it starts to count from 0 from that day. (...) That has nothing to do with the 5 years already served. (...) Because it's for other offences. (...) But it's … it's what I told him, but he'd already gone mad'*).

influencé… euh… que sais-je ». Non. (…) Ce n'est pas comme ça que ça marche. (…) Ce n'est pas comme ça qu'on vérifie les choses.[1794]

777. Mr Kilolo's subsequent exchange with Mr Mangenda reveals the practical consequences of this assignment.

> **Kilolo**: *Ils l'ont ouvert sur base des indiscrétions qui ont eues lieu, d'autres personnes ont parlé.* ***Maintenant, ces personnes qui ont parlé, on ne les connait pas****. (…) Est-ce qu'il s'agit des enfants qui sont venus… (…) ou bien c'est aussi parmi les autres enfants qui ne sont pas venus, mais qui étaient quand même dans le programme ? (…) Bon. Est-ce que c'est… euh… notre blanc... ou pas, tout ça… on ne sait pas.*[1795] *(…)*
> *Et…euh…euh… et puis, ça peut…* ***et puis après là je vais identifier trois personnes*** *(…) … dès que je les identifie. Euh… (…) Il sera question de dire que… les gens en question se sont passé le mot… (…) et puis chacun d'entre eux est en train de demander. (…) Chacun d'entre eux est en train de demander. C'est tout. (…)* ***Maintenant là j'hésite. Est-ce que je mets, le groupe de YANKEE ou bien que je mette ceux qui sont de notre côté****.*
> **Mangenda**: *Non. Les… les… non, non, non, non. Pas les gens de notre côté. Il a aussi la possibilité de vérifier discrètement, tu vois…*
> **Kilolo**: *Ok.*
> **Mangenda**: *C'est facile qu'il appelle pour dire aux gens de traverser d'une autre façon,* ***vaut mieux YANKEE****.*
> **Kilolo**: *Ok, Ok, Ok, Ok.*
> **Mangenda**: *Parce que YANKEE tu vois il n'a pas de moyens de bien vérifier, il n'a pas de…de…de…de numéros de téléphone de ces gens là [sic] ou de connexions avec les gens de l'autre côté, pour qu'il dise, essayez d'abord de vérifier ça.*[1796]

778. Mr Kilolo and Mr Mangenda admitted to not knowing the source of the '*indiscrétions*' and were therefore considering all witnesses, those that had

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[1794] Audio recording, CAR-OTP-0074-1032; Translated transcript of audio recording, CAR-OTP-0079-1762 at 1764, lines 19-28 (emphasis added) ('*Now he's telling me no, that I should get an overview. That I should call all those people one by one, that very night. All that. (...). How am I going to call them? They are not even the kind of people ... erm ... that you call just like that at 5 ... and say but you could go through them like that ... 15 ... 10, 15 people. I said no, it's not what you think. It's not just going to take 5 minutes to call them either: "No, no, I just wanted to know if ... erm ... you hadn't been influenced ...erm ... what do I know? "No. (...). It doesn't work like that. (...) That's not how you check things'*).

[1795] Audio recording, CAR-OTP-0074-1032; Translated transcript of audio recording, CAR-OTP-0079-1762 at 1765, lines 54-67 (emphasis added) ('Kilolo: *They opened it on the basis of indiscretions which occurred, other people spoke. Now, those people who spoke, we don't know them. (...) Are they children who have come ... (...) or is it also among the other children who have not come, but who were nevertheless in the programme? (...). Good. Is it ... erm ... our white man ... or not, all that ... we don't know'*).

[1796] Audio recording, CAR-OTP-0074-1032; Translated transcript of audio recording, CAR-OTP-0079-1762 at 1767 line 122 to 1768, line 145 (emphasis added) ('*And ... erm ... erm ... and then, that could ... and then after that I am going to identify three people (...) ... as soon as I identify them. Erm (...) It'll be a matter of saying that ... the people in question spread the word ... (...) and then they're all asking. (...) They're all asking. That's all. (...) Now, I'm hesitating here. Do I put Yankee's group or do I put those who were on our side.* Mangenda: *No, The ... the ... no, no, no, no. Not the people on our side. It's also possible to make discreet checks, you see ...* Kilolo: *OK.* Mangenda: *It's easy if he calls to tell the people to cross another way, Yankee would be better.* Kilolo: *OK, OK, OK, OK.* Mangenda: *Because Yankee, you see, he really has no way of checking, he has no ... no ... no telephone numbers for those people or connection with people on the other side, for him to say, try checking that first*').

testified and those that had not. Mr Kilolo also suspected Mr Haynes. As expressed in earlier conversations, on 28 and 29 August 2013, Mr Kilolo already feared that Mr Haynes suspected witness corruption activities.[1797] Considering Mr Kilolo's reluctance to follow Mr Bemba's directions to approach *all* witnesses, he thereafter agreed to falsely represent to Mr Bemba that the leak originated from three Cameroonian witnesses. Mindful of the fact that, when using coded language, the co-perpetrators referred to names or terms by their initial letters according to the NATO alphabet or other terms, the Chamber understands that the term 'YANKEE', as used in the above intercept excerpt, stands for 'Yaoundé', where Mr Kilolo met witnesses D-2, D-3, D-4 and D-6.

779. The next day, on 17 October 2013, Mr Kilolo communicated with several co-accused in relation to measures to counter the Article 70 investigation. First, he held a conversation with Mr Babala – the financier, who provided the co-perpetrators support and facilitated money transfers. The relevant call log of the intercepted conversation between Mr Kilolo and Mr Babala on 17 October 2013,[1798] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1799] indicates in the 3rd row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1800] and [Redacted] between 12:38 and 12:42 for approximately 4½ minutes.[1801] The corresponding audio recording, submitted by the Prosecution,[1802] lasts 04:49 and thus duly

[1797] *See* paras 722-726.
[1798] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1799] Call log, CAR-OTP-0080-1312; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1800] *See* para. 585.
[1801] Call log, CAR-OTP-0080-1312 at 1312, row 3 from the top; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003, as provided by the Dutch authorities (CAR-OTP-0080-1286).
[1802] Audio recording, CAR-OTP-0080-1319 (ICC-01/05-01/13-438-Conf-AnxB003); Transcript of audio recording, CAR-OTP-0082-0542 (in French); Translated transcript of audio recording, CAR-OTP-0091-0023 (English translation).

corresponds to the call log entry concerned. The Chamber is satisfied that number [Redacted] belongs to Mr Babala for the following reasons: (i) this number was registered by the ICC Detention Centre as the (non-privileged) number belonging to Mr Babala;[1803] (ii) in other intercepted calls involving this telephone number, Mr Babala is referred to by his first name '*Fidèle*';[1804] and (iii) the content of the conversation is particular and specific to developments relating to the Main Case and the present case.

780. Having followed Mr Bemba's earlier instruction to contact witnesses, Mr Kilolo told Mr Babala that he had identified the witness who had talked to the Prosecution. Mr Babala agreed that the Prosecution's investigatory focus was the identification of the '*faiblesse*', i.e. witnesses who could provide information.[1805] Mr Kilolo also mentioned the Article 70 proceedings instituted against Walter Osapiri Barasa,[1806] for whom a warrant of arrest had been issued for corruptly influencing witnesses in the context of the Kenya situation ('*Barasa* Case').[1807] This shows that Mr Kilolo made the link between the *Barasa* Case and his own actions in relation to the Main Case and that he knew the legal implications of his actions. Noteworthy is also Mr Kilolo's reaction to Mr Babala's question whether the situation was manageable.[1808] Mr Kilolo assured Mr Babala that it was, although he had trouble contacting one of the

[1803] ICC Document, CAR-OTP-0074-0059 at 0062, line 1; CAR-OTP-0074-0075 at 0075, line 34.
[1804] *See*, for example, Call log, CAR-OTP-0080-1312 at 1315, row 44; Audio recording, CAR-OTP-0080-1360; Transcript of audio recording, CAR-OTP-0082-0596 at 0597 (as amended in CAR-OTP-0082-0597_01), line 4; Call log, CAR-OTP-0080-1312 at 1312, row 14, Audio recording, CAR-OTP-0080-1330; Transcript of audio recording, CAR-OTP-0082-0547 at 0548, line 5.
[1805] Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0543, lines 19-29.
[1806] Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0543, line 31 to 0544, line 36.
[1807] Pre-Trial Chamber II, *Prosecutor v. Walter Osapiri Barasa*, Warrant of arrest for Walter Osapiri Barasa, 2 October 2013, ICC-01/09-01/13-1-Red2 (the warrant of arrest had been issued first 'under seal' on 2 August 2013 and was later reclassified as public).
[1808] Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0544, line 41.

witnesses whom he suspected to have leaked information to the Prosecution.[1809] This evinces that Mr Kilolo was determined to interfere with and frustrate the Article 70 investigation.

781. Furthermore, Mr Kilolo pondered the reasons for the leak and suggested that the witnesses had been neglected. Mr Babala agreed, declaring that it was necessary to ensure '*le service après-vente*':

> **Kilolo**: *Non, je disais: tout ça, c'est simplement… (…) parce qu'on a… on a négligé de… d'être en contact…*
> **Babala**: *D'assurer le…*
> **Kilolo**: *… en permanence avec les gens, quoi.*
> **Babala**: *… le service après-vente, hein.*
> **Kilolo**: *Tu dis?*
> **Babala**: ***Il fallait assurer le service après-vente.***
> **Kilolo**: *Voilà. Voilà, exactement. Juste un instant.*[1810]

782. The same day, after speaking to Mr Babala, Mr Kilolo discussed the matter further with Mr Bemba and Mr Mangenda by telephone, as evidenced by four intercepted communications. The relevant call log,[1811] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1812] indicates (i) in the 4th, 5th, and 9th rows from the top a connection between telephone numbers [Redacted], attributable to Mr Bemba,[1813] and [Redacted], attributable to Mr Kilolo,[1814] between 13:01 and 13:43 for approximately 42 minutes, between

[1809] Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0544, lines 42-44.
[1810] Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0545, lines 79-87 (emphasis added) ('Kilolo: *No, I was saying: all that's simply ... (...) because we ... we failed to ... to be in contact* ... Babala: *To ensure the* ... Kilolo: ... *in constant contact with those people, you know?* Babala: ... *after-sales service, right?* Kilolo: *What did you say?* Babala: *We needed to provide after-sales service.* Kilolo: *Indeed. Indeed. exactly. Just a moment*'). The Chamber notes that in the phone conversation of 17 October 2013 at 13:01, Mr Bemba will also complain about Mr Kilolo's availability and reproach him for not having been available to the witnesses, *see* Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1316, lines 213-219 (*see* para. 782).
[1811] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1812] Call log, CAR-OTP-0080-1312; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1813] *See* para. 297.
[1814] *See* para. 585.

14:45 and 14:48 for approximately 3 minutes , and between 18:26 and 19:17 for approximately 50 minutes;[1815] and (ii) in the 8th row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo, [1816] and [Redacted], attributable to Mr Mangenda, [1817] between 16:37 and 17:25 for approximately 47½ minutes.[1818] The corresponding audio recordings, submitted by the Prosecution, [1819] last 42:26 minutes, 03:14 minutes, 50:26 minutes and 47:51 minutes, respectively, and thus duly correspond to the call log entries concerned.

783. In the first conversation, Mr Kilolo informed Mr Bemba of his suspicion that D-2, to whom he referred as the man who is very skilled in the French language, [1820] may have been the Prosecution insider in the context of the Article 70 investigation. D-3 was described as someone who sided with D-2.[1821] Mr Kilolo assured Mr Bemba, who was perceptibly disturbed, that he would

[1815] Call log, CAR-OTP-0080-1312 at 1312, rows 4, 5 and 9 from the top; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003, as provided by the Dutch authorities (CAR-OTP-0080-1286).
[1816] *See* para. 585.
[1817] *See* para. 565.
[1818] Call log, CAR-OTP-0080-1312 at 1312, row 8 from the top; *see also* the raw data on the history of telephone number [Redaacted] in ICC-01/05-01/13-438-Conf-AnxA002, as provided by the Dutch authorities (CAR-OTP-0080-1280).
[1819] Audio recording, CAR-OTP-0080-1320 (ICC-01/05-01/13-438-Conf-AnxB004); Transcript of audio recording, CAR-OTP-0082-1207 (in French, Lingala and English); Translated transcript of audio recording, CAR-OTP-0082-1309 (French translation); Audio recording, CAR-OTP-0080-1321 (ICC-01/05-01/13-438-Conf-AnxB005); Transcript of audio recording, CAR-OTP-0082-0486 (in French, Lingala and English); Translated transcript of audio recording, CAR-OTP-0082-0614 (French translation); Audio recording, CAR-OTP-0080-1324 (ICC-01/05-01/13-438-Conf-AnxB008); Transcript of audio recording, CAR-OTP-0082-1223 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-1326 (French translation); Audio recording, CAR-OTP-0080-1325 (ICC-01/05-01/13-438-Conf-AnxB009); Transcript of audio recording, CAR-OTP-0082-0983 (in French, Lingala and English); Translated transcript of audio recording, CAR-OTP-0082-1065 (French translation).
[1820] Mr Kilolo told Mr Bemba that D-2 had studied and writes long emails using very good French, *see* Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1314 (as amended in CAR-OTP-0082-1314_01), lines 122-126. P-260 (D-2) confirmed during his testimony before this Chamber that he had attended school [Redacted] and acquired diplomas, T-18-CONF, p. 35, lines 5-12.
[1821] Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1312 line 40 to 1314, line 129.

take care of the matter. Mr Bemba responded that, in the worst case scenario, Mr Kilolo would have to deny everything.[1822]

784. The co-perpetrators' determination to distort the truth by brushing off everything as a lie is reinforced by Mr Kilolo's subsequent remark on the *Barasa* Case. Strikingly, Mr Kilolo presents the *Barasa* Case as '*une histoire similiare*', likening that situation to their own.

> **Bemba**: *…je voudrais quand même… j'aime toujours savoir un peu… qui… que…*
> **Kilolo**: *Tu as écouté* ***une histoire similaire*** *qui s'est passé à … à KILO ECHO … NOVEMBRE hein… un truc similaire… KILO ECHO NOVEMBRE YANKEE… Voilà.*
> **Bemba**: *Ah oui d'accord, d'accord… je vois, je vois, je vois oui.*
> **Kilolo**: *Euh… Je ne voudrais même pas que… qu'on arrive à ce genre des choses.*
> **Bemba**: *Ah oui, oui, je vois, je vois, je vois.*[1823]

785. Approximately an hour later, Mr Bemba called Mr Kilolo again. In that second follow-up conversation, Mr Bemba checked on the status of Mr Kilolo's '*tour d'horzion*'.

> **Bemba**: *Il y a des nouvelles?*
> **Kilolo**: *Euh…non, pas encore.*
> **Bemba**: *Il n'y a rien du tout ?*
> **Kilolo**: *Je continue à attendre … pas encore.*
> **Bemba**: *Ok. Tu n'as eu personne du côté de CHARLY, alors ?*
> **Kilolo**: *Non, pas encore (…).*[1824]

786. According to the co-perpetrators' pattern of using the NATO alphabet or other terms to indicate initial letters of names or terms, the Chamber understands that the reference to '*personne du côté de CHARLY*' refers to witnesses residing in Cameroon. Accordingly, the Chamber concludes that this intercepted

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[1822] Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 537-539.

[1823] Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 544-549 (emphasis added) ('Bemba: *... I would like, nevertheless ... I still want to know a little ... who ... what ...* Kilolo: *You've heard a similar thing happened to ... to Kilo Echo ... November ... um ... something similar ... Kilo Echo November Yankee ... There you are.* Bemba: *Ah yes, OK, OK ... I see, I see, I see, yes.* Kilolo: *Erm ... Even so, I wouldn't want that ... us to get into that kind of thing.* Bemba: *Ah yes, yes, I see, I see, I see'*).

[1824] Audio recording, CAR-OTP-0080-1321; Translated transcript of audio recording, CAR-OTP-0082-0614 at 0616, lines 9-14 ('Bemba: *Is there any news?* Kilolo: *Erm ... no, not yet.* Bemba: *Nothing at all?* Kilolo: *I'm still waiting ... not yet.* Bemba: *OK. You've not had anyone from Charly's side then?* Kilolo: *No, not yet (...)'*).

communication demonstrates that Mr Kilolo was implementing Mr Bemba's instruction to contact the Main Case defence witnesses and keeping him updated. It shows Mr Bemba's ability to direct Mr Kilolo and their close and coordinated cooperation.

787. Before Mr Kilolo talked with Mr Bemba for a third time that day, Mr Mangenda informed Mr Kilolo of his visit to Mr Bemba in detention that afternoon. Mr Mangenda reported that he discussed the situation with Mr Bemba at length and advised him on the steps to be taken. He conveyed Mr Bemba's concrete instructions, including (i) to contact a third person called 'Bravo', and ask him to approach the Cameroonian witnesses in question and persuade them to collaborate with the Main Case Defence; and (ii) to make the witnesses sign a document stating that whatever they had said to the Prosecution was untrue.[1825] In the Chamber's view, it is clear from this evidence that Mr Bemba gave concrete instructions and coordinated the actions of his co-perpetrators from within the ICC Detention Centre. It also shows that Mr Mangenda was part of the planning and assisted in the implementation of Mr Bemba's instructions. The Chamber also concludes that the aim of the contemplated measures by the three co-perpetrators was to frustrate the Prosecution's investigation into Article 70 allegations.

788. Mr Mangenda also reported that he explained to Mr Bemba the implications of the Article 70 investigation for the Main Case.

> *Ça lui est entré, donc je lui avais d'ailleurs dit que… Heureusement d'ailleurs que moi, euh, on m'avait informé sur ce point parce que si on ne m'avait pas informé, mais ça aurait été terrible. « Mais maintenant comment cela va-t-il faire par rapport à mon dossier ? » Moi je lui ai dit mais toi tu ne comprends pas que c'est une autre affaire sur base de l'article 70, il y aura maintenant des répercussions sur notre dossier initial…* ***Ça va maintenant détruire tous les témoins que nous avons****. Et quand ça… ça les anéantit, on ne peut plus contrer les éléments de preuves du procureur*

[1825] Audio recording, CAR-OTP-0080-1324; Translated transcript of audio recording, CAR-OTP-0082-1326 at 1332, lines 181-190; *see also* Audio recording, CAR-OTP-0080-1325; Translated transcript of audio recording, CAR-OTP-0082-1065 at 1072, lines 186-189.

pour dire que ce… ce n'est pas établi au-delà du doute raisonnable quoi. Ces faits sont sensés prouvés.[1826]

789. Mr Mangenda's reference to *'[ç]a va maintenant détruire tous les témoins'* underscores that the results of the Prosecution's Article 70 investigation would negatively impact the reliability of all Main Case Defence witnesses. In fact, Mr Mangenda admits that this would be the case. It also demonstrates that the co-perpetrators were aware that credibility factors are 'material' to the case.

790. Mr Mangenda also reported that he advised Mr Bemba to act swiftly and to incentivise the witnesses to change their minds.

Alors je disais déjà qu'on propose aux gens de venir en Europe, bon maintenant pour faire contrepoids ***on doit aussi proposer quelque chose du même genre****. (…) Et on doit faire quelque chose* ***le plus vite possible*** *pour contrer cela.*[1827] *(…) On doit le faire par* ***tous les voies et moyens se battre contre eux****, ces gens en question. Non c'est-à-dire il comprenait aussi le message codé que je lui disais, parce que s'il connait déjà que. (…) Il comprenait aussi le message codé que j'étais en train de lui dire de manière claire suivant ce dont nous avions parlé. (…)* ***Quand je dis faire tous les voies et moyens donc c'est-à-dire débourser les moyens comme exigé d'habitude, exiger que quelqu'un change d'idées****.*[1828]

791. This evidence shows that Mr Mangenda not only liaised between Mr Bemba and Mr Kilolo but also discussed, on an equal footing, the measures to be taken to address the situation.

[1826] Audio recording, CAR-OTP-0080-1324; Translated transcript of audio recording, CAR-OTP-0082-1326 at 1336, lines 330-337 (emphasis added) (*'He got that, so I told him besides that … Fortunately, besides, I, erm, I was informed on this point because if I hadn't been told, but that would have been terrible. "But now how is he going to do that in relation to my case?" I told him but you don't understand that it's another case based on article 70, there will now be repercussions on our initial case … That will now destroy all the witnesses we have. And when that … that blows them out of the water, we can't challenge the prosecution evidence to say that … it is not established beyond reasonable doubt, you know. These facts are supposedly established'*).

[1827] Audio recording, CAR-OTP-0080-1324; Translated transcript of audio recording, CAR-OTP-0082-1326 at 1336, lines 349-357 (emphasis added) (*'So I was just saying that it has been suggested the people come to Europe, good now to counterbalance that we must also suggest something similar. (...) And we must do something as quickly as possible to counter that'*).

[1828] Audio recording, CAR-OTP-0080-1324; Translated transcript of audio recording, CAR-OTP-0082-1326 at 1342, lines 573-581 (emphasis added) (*'(...) We must do it by all ways and means to fight them, those people in question. No, that's to say he also understood the coded message that I told him, because if he knew already that (...). He also clearly understood the coded message that I was telling him after what we had spoken about. (...) When I say use all ways and means then that means pay the funds as normally required, ask someone to change their mind'*).

792. Subsequently, Mr Kilolo talked for a third time with Mr Bemba at 18:26 that day. He informed him that he had established contact with D-3 in the meantime, who had told him about the Prosecution's visit and interview in the context of the Article 70 investigation.[1829] Mr Kilolo further recounted that he had asked for D-3's assistance in establishing contact with D-2.[1830] In that connection, Mr Kilolo also warned D-3 that the witnesses could themselves be arrested.

> *Alors, moi je lui ai dit ceci, j'ai dit: « Écoute, j'ai besoin d'urgence …euh… comme tu es en contact avec l'autre…euh… le… le… franco de français-là… euh… je souhaite lui parler… euh… dis-lui de ne pas avoir peur… qu'il n'ait pas peur de rien. Mon intention est de parler avec lui afin d'arranger ça,* ***parce que ces gens-là sont en train de l'induire en erreur****. Mais il faudra qu'il m'écoute pour que je lui explique comment ils veulent l'attraper. Puisqu'il peut même quitter là-bas, et aller là où ils l'amèneront, qu'il ne pense pas que c'est pour être libre,* ***mais lui-même peut se retrouver en prison****. Parce que déjà, si lui-même déclare des choses pareilles, ça veut dire qu'il s'accuse… (…)* ***la première personne qui sera arrêté mais c'est bien lui. Donc, qu'il fasse attention*** *».*[1831]

793. The evidence clearly demonstrates that Mr Kilolo intervened and attempted to discourage the witnesses from collaborating with the Prosecution with the prospect of potential arrest. He also insisted on speaking with D-2 since '*ces-gens-là*', i.e. members of the Office of the Prosecutor, were about to 'mislead' D-2.

[1829] Audio recording, CAR-OTP-0080-1325; Translated transcript of audio recording, CAR-OTP-0082-1065 at 1067, lines 11-16; at 1068, lines 49-63. In the conversation, Mr Kilolo used the code '*l'équipe de l'HOMONYME'* to refer to the Office of the Prosecutor, *see* CAR-OTP-0082-1065 at 1068, line 49, and at 1070, lines 122-126. The same code was used in his earlier conversation with Mr Bemba on 17 October 2013 at 13:01 (*see* paras 782-784) when Mr Kilolo informed Mr Bemba about his suspicion that the investigation had been triggered due to D-2's complaints, *see* Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309, at 1312, line 56. P-245 (D-3) confirmed during his testimony before this Chamber having met with representatives of the Office of the Prosecutor on '27 February' (T-22-CONF, p. 36, lines 1-16.).

[1830] *See also* Audio recording, CAR-OTP-0080-1325; Translated transcript of audio recording, CAR-OTP-0082-1065 at 1071, lines 162-175.

[1831] Audio recording, CAR-OTP-0080-1325; Translated transcript of audio recording, CAR-OTP-0082-1065 at 1069, lines 101-111 (emphasis added) (*'So, I, I told him this, I said: "Listen, I urgently need … erm … as you are in contact with the other one … erm … the … the … franco, the French … erm … I want to talk to him … erm … tell him not to be afraid … not to be afraid of anything. I intend to speak to him to arrange that, because those people there are going to mislead him. But he needs to listen to me so that I can explain to him how they want to catch him out. Because he could even leave there, and go wherever they take him, he shouldn't think that's to be free, but he himself could find himself in prison. Because already if he himself is saying such things, that means he's incriminating himself … (…) the first person to be arrested will certainly be him. So he needs to pay attention'*).

794. Mr Bemba, worried about the developments, reacted by asking again whether Mr Kilolo would be successful in his attempts to change matters in the defence's favour. The following excerpt shows how Mr Kilolo, upon direction of Mr Bemba, intentionally targeted the witnesses and sought to convince them to side with the Main Case Defence.

> **Bemba**: *Donc, pour toi, tu penses, que… tu as la capacité de… changer tout ça ?*
> **Kilolo**: *Oui. Ça, c'est sûr. Parce que déjà comme j'ai commencé à m'entretenir à cet enfant-ci, déjà, lui je sais que je vais le sortir de ces histoires-là.*
> **Bemba**: *Mm.*
> **Kilolo**: *Le plus jeune, mais le morceau dur c'est l'autre du français.*[1832]

795. The Chamber also notes Mr Kilolo's assurances to Mr Bemba that he would comply with his earlier instruction to contact all witnesses.

> **Kilolo**: *Bon, entre-temps, je suis occupé de* ***faire la ronde****, hein. (…) C'est-à-dire, je vais vraiment faire la ronde…*
> **Bemba**: *Et ça va pour le moment ?*
> **Kilolo**: *…* ***de mes 60 personnes****. Ça va. (…) Je crois que… mais* ***je vais continuer à faire la ronde****: je vais d'abord terminer avec les... les étrangers-là du VILLAGE, et puis après je vais continuer aussi la ronde, juste de routine comme ça, avec nos gens aussi.*[1833]

796. As an intercepted telephone call dated 18 October 2013 between Mr Kilolo and Mr Mangenda demonstrates, Mr Bemba explicitly endorsed the tactic of discouraging defence witnesses from talking to the Prosecution in the context of the Article 70 investigation. The relevant call log,[1834] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1835] indicates in

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[1832] Audio recording, CAR-OTP-0080-1325; Translated transcript of audio recording, CAR-OTP-0082-1065 at 1070, lines 127-131 ('Bemba: *So as far as you're concerned, you think that … you can … change all that?* Kilolo: *Yes. Of course. Because when I started to talk to that child, I already knew I'd be able to get him out of that mess.* Bemba: *Mm.* Kilolo: *The youngest, but the hard nut, is the Frenchman's other one'*).

[1833] Audio recording, CAR-OTP-0080-1325; Translated transcript of audio recording, CAR-OTP-0082-1065 at 1076 line 357 to 1077, line 363 and lines 387-389 (emphasis added) ('Kilolo: *Good, in the meantime I am busy doing the rounds, you know (…). I mean, I'm really going to do the rounds …* Bemba: *And is that enough for the moment?* Kilolo: *… of my 60 people. That's OK. (…) I think that … But I am going to continue to do the rounds; first I'll finish with the … the foreigners from the Village, and then later I'll continue doing the rounds, just routine like that, with our people too'*).

[1834] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.

[1835] Call log, CAR-OTP-0080-1312; *see* also the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.

the 10th row from the top a connection between telephone numbers [Redacted], attributable to Mr Kilolo,[1836] and [Redacted], attributable to Mr Mangenda,[1837] for almost 2 minutes between 11:17 and 11:19.[1838] The corresponding audio recording, submitted by the Prosecution,[1839] lasts 01:59 minutes and thus duly corresponds to the call log entry concerned. During that conversation, Mr Kilolo again reports on Mr Bemba's concerns about the Prosecution's investigation:

> *Tout est calme, c'est seulement notre frère qui est en train de s'agiter. (…) Donc je lui ai dit que la personne en question va m'appeler aujourd'hui. (…)* ***Il a dit que non, dis lui que… lui aussi court le risque d'être comme ça, comme ça. Je lui ai répondu OK, ça va.***[1840]

797. In the following days, on 21 and 22 October 2013, Mr Kilolo spoke again with Mr Babala on the telephone. The relevant call log,[1841] initially provided by the Dutch authorities and thereafter submitted by the Prosecution,[1842] indicates in the 14th and 44th rows from the top a connection between telephone numbers [Redacted], attributable to Mr Babala,[1843] and [Redacted] and [Redacted], attributable to Mr Kilolo,[1844] between 10:07 and 10:24 for approximately 17 minutes, and between 20:26 and 20:32 for approximately 6½ minutes, respectively.[1845] The corresponding audio recordings, submitted by the

[1836] *See* para. 292.
[1837] *See* para. 487.
[1838] Call log, CAR-OTP-0080-1312 at 1312, row 10 from the top; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA001, as provided by the Dutch authorities (CAR-OTP-0080-1273).
[1839] Audio recording, CAR-OTP-0080-1326 (ICC-01/05-01/13-438-Conf-AnxB010); Transcript of audio recording, CAR-OTP-0082-0495 (in French and Lingala); Translated transcript of audio recording, CAR-OTP-0082-0626 (French translation).
[1840] Audio recording, CAR-OTP-0080-1326; Translated transcript of audio recording, CAR-OTP-0082-0626 at 0628, lines 23-29 (emphasis added) (*'It's all quiet, it's only our brother who is getting jumpy. (...) So I told him that the person in question will call me today. (...) He said no, tell him that … he also risks being like that, like that. I replied OK, that's OK'*).
[1841] The call log, as provided by the Dutch authorities, was submitted by the Registry to Pre-Trial Chamber II and the parties in Annex B of its filing ICC-01/05-01/13-438-Conf, together with corresponding audio recordings and text messages as listed in the call log, in Annexes B001 to B063.
[1842] Call log, CAR-OTP-0080-1312; *see also* the entry into the relevant metadata field 'Title' labelling the document as 'Annex B Third Registry submissions related to the implementation of Decision ICC-01/05-01/13-403 / ICC-01/05-01/13-438-Conf-AnxB'.
[1843] *See* para.779.
[1844] *See* paras 292 and 585.
[1845] Call log, CAR-OTP-0080-1312 at 1312, row 14; at 1315, row 44; *see also* the raw data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA005 (CAR-OTP-0080-1299), and the data on the history of telephone number [Redacted] in ICC-01/05-01/13-438-Conf-AnxA003 (CAR-OTP-0080-1286).

Prosecution,[1846] last 17:13 minutes and 06:34 minutes, respectively, and thus duly correspond to the call log entries concerned.

798. The 21 October 2013 conversation includes an exchange between Mr Babala and Mr Kilolo that exemplifies Mr Babala's assistance as financier and demonstrates that the accused would only make payments with Mr Bemba's approval.

> **Kilolo**: *Je voulais juste m'assurer si tu as reçu mon SMS d'hier*.
> **Babala**: *Euh… non. Non, non. (…)*
> **Kilolo**: *Donc, je vais renvoyer. C'était un SMS avec un budget. (…)*
> **Babala**: *Tu as parlé avec le client?*
> **Kilolo**: *J'ai parlé avec le client, oui. On a convenu ça hier soir*.[1847]

799. On 22 October 2013, Mr Babala and Mr Kilolo again discussed the need to continue to provide services, in particular payments ('*après-vente*'), to witnesses who had testified for the Main Case Defence. Mr Babala encouraged Mr Kilolo to make the necessary payments, which were seemingly small, even without Mr Bemba's authorisation.[1848]

800. The Mangenda Defence alleged that the discussions about a cover-up, which never happened, were fictitious.[1849] The Chamber considers this irrelevant, since the above-mentioned intercepts prove that the three co-perpetrators clearly intended to take measures to conceal their prior activities. The discussions are therefore revealing with regard to the co-perpetrators' earlier activities. The conduct of the co-perpetrators, upon their learning of the initiation of the Article 70 investigation, demonstrates the existence of the common plan and the involvement of Mr Bemba, Mr Kilolo, Mr Mangenda therein.

[1846] Audio recording, CAR-OTP-0080-1330 (ICC-01/05-01/13-438-Conf-AnxB014); Transcript of audio recording, CAR-OTP-0082-0547 (in French); Audio recording, CAR-OTP-0080-1360 (ICC-01/05-01/13-438-Conf-AnxB044); Transcript of audio recording, CAR-OTP-0082-0596 (in French).
[1847] Audio recording, CAR-OTP-0080-1330; Transcript of audio recording, CAR-OTP-0082-0547 at 0548, lines 7-25 ('Kilolo: *I just wanted to make sure that you had received the SMS I sent yesterday.* Babala: *Erm … no. No, no (…).* Kilolo: *OK, I'll send it again. It was an SMS with a budget. (…)* Babala: *Have you spoken to the client?* Kilolo: *Yes, I've spoken to the client. We agreed that last night*').
[1848] *See* paras 888-889.
[1849] Mangenda Closing Brief, ICC-01/05-01/13-1900-Red, paras 103-107.

Overall Conclusions

801. The Chamber is satisfied that the co-perpetrators discussed and were persuaded to take a series of measures to prevent and frustrate the Prosecution's Article 70 investigation. They agreed to contact witnesses, in particular, the Cameroonian witnesses they suspected of having spoken to the Prosecution, and convince them to terminate their cooperation with the Prosecution. They also agreed to pay witnesses or to offer them non-monetary assistance. Mr Kilolo and Mr Mangenda updated Mr Bemba, who coordinated, gave instructions and authorised the measures implemented by his co-perpetrators. Mr Kilolo implemented Mr Bemba's instructions with Mr Mangenda's assistance. Mr Mangenda advised and liaised between Mr Bemba and Mr Kilolo.

vi. Conclusion and Findings on the Common Plan

802. On all the relevant evidence analysed above, the Chamber is persuaded that there was a common plan between Mr Bemba, Mr Kilolo and Mr Mangenda, in the context of defending Mr Bemba from the charges in the Main Case, to illicitly interfere with defence witnesses in order to ensure that these witnesses would testify in favour of Mr Bemba. In the course of the Main Case and by, at least, the time that D-57's testimony was arranged, Mr Bemba, Mr Kilolo and Mr Mangenda agreed to the plan. As laid out above, the agreed plan involved, at least, the corrupt influencing of 14 Main Case defence witnesses, together with the presentation of their evidence. Accordingly, the common plan involved a critical element of criminality of which all co-perpetrators were aware.

803. The Chamber infers the common plan from the concerted action of the three co-perpetrators, in connection with that of other co-accused, and relies on a series of factors that, taken together, prove the existence of the common plan. The evidence demonstrates that the co-perpetrators, according to a division of tasks, carefully and consciously planned their activities in advance. The co-

perpetrators paid witnesses, gave them non-monetary promises, and illicitly coached them by instructing them as to the content of their testimony and how to give evidence, as well as rehearsing, scripting, and harmonising their evidence. They adopted a series of measures with a view to ensuring that their illicit activities took place undisturbed and undetected, such as the abuse of the Registry's privileged line, money transfers through third persons, distribution of new telephones to witnesses after the VWU cut-off date and the use of coded language. As soon as the co-perpetrators became aware that they were the subject of an investigation, a number of remedial countermeasures were conceived and implemented. They agreed to contact defence witnesses with a view to frustrating the Prosecution's Article 70 investigation and to offer them incentives and money to terminate their collaboration with the Prosecution.

b) Essential Contributions and Mental Elements

804. Given the requirements that the co-perpetrators must provide an essential contribution, the Chamber will analyse their roles and contributions in relation to the common plan. The Chamber considers that the same roles and contributions are also relevant to prove their intent and knowledge, as required under Article 30 of the Statute. For this latter purpose, the Chamber must be satisfied of the co-perpetrator's mutual awareness that implementing the common plan will result in the fulfilment of the material elements of the offences; and they nevertheless carry out their actions with the purposeful will (intent) to bring about the material elements of the offences, or are aware that 'in the ordinary course of events' the fulfilment of the material elements will be a virtually certain consequence of their actions.

i. Mr Bemba

805. With a view to properly assessing Mr Bemba's contribution and *mens rea*, it is necessary to refer to his situation as an accused in the Main case.[1850] He is the ultimate and main beneficiary of the implementation of the common plan, as the offences were committed in the context of his defence against the charges of crimes against humanity and war crimes in the Main Case.

806. On the evidence, Mr Bemba's role was that of planning, authorising and instructing the activities relating to the corrupt influencing of witnesses and their resulting false testimonies. The other two co-perpetrators, Mr Kilolo and Mr Mangenda, sought to ensure Mr Bemba's satisfaction with their activities.[1851]

807. Mr Bemba's contribution to the commission of the offences materialised in various ways. The Chamber relied on a number of actions that persuaded it to conclude that Mr Bemba's contributions were essential. Furthermore, the Chamber finds that Mr Bemba fulfilled the subjective elements as (i) he knew that it was virtually certain that the implementation of the common plan through the co-perpetrators' concerted actions would bring about the material elements of the offences, and (ii) he carried out his own contributions nonetheless.

Directing and Approving Illicit Coaching and Illicit Payments of Witnesses and their Presentation to the Court

808. Mr Bemba directed and approved Mr Kilolo's illicit coaching activities, gave feedback, where necessary, and provided specific instructions to Mr Kilolo and Mr Mangenda on what and how witnesses were expected to testify. The illicit coaching encompassed instructions on (i) information regarding the merits of

[1850] *See* para. 8.
[1851] *See* paras 495, 724 and 737.

the Main Case, irrespective of its truth or falsity, as well as instructions to testify falsely with regard to (ii) the nature and number of prior contacts with the Main Case Defence, (iii) payments or non-monetary benefits given or promised by the Main Case Defence, and (iv) acquaintances with other individuals. The evidence demonstrates that Mr Bemba was regularly informed by the other co-perpetrators of the illicit coaching activities involving defence witnesses. In addition to examples already discussed by the Chamber above,[1852] the following two examples illustrate best Mr Bemba's deep involvement.

809. As discussed in the context of D-15,[1853] who was coached illicitly and extensively by Mr Kilolo, the Chamber is persuaded that Mr Bemba knew precisely about Mr Kilolo's instructions to D-15 over the telephone. The following excerpt best demonstrates Mr Bemba's interaction with Mr Kilolo.

> **Kilolo**: *[D]onc… trois points seulement.*
> **Bemba**: *Oui.*
> **Kilolo**: *C'est-à-dire, les noms de gens à mentionner dans le document.*
> **Bemba**: *Ok. D'accord.*
> **Kilolo**: *Euh… le problème de la DSP comment ils avaient pris la fuite.*
> **Bemba**: *Très bien, oui, exact.*
> **Kilolo**: *Et puis… euh… le troisième point… mais finalement…(…) euh… je reviens à la question d'hier. Mais si je vous dis que c'est mon frère qui était à … c'est bien lui qui donnait tous les ordres, à tous les postes de contrôle du pays.*
> **Bemba**: *Oui.*
> **Kilolo**: ***Est-ce que tu peux être d'accord avec ce point de vue-là ou pas ?***
> **Bemba**: ***Oui, oui.***[1854]

810. In that conversation, Mr Bemba also provided feedback on how specific issues should be handled by Mr Kilolo. The below exchange also demonstrates

[1852] *See* paras 727-732.
[1853] *See* paras 567-568.
[1854] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1746, lines 21-33 (emphasis added) ('Kilolo: *[S]o ... just three things.* Bemba: *Yes.* Kilolo: *And those are the names of people to be mentioned in the document.* Bemba: *OK. Alright.* Kilolo: *Erm ... the question of the DSP [Division spéciale présidentielle - Special Presidential Division] —how they fled.* Bemba: *Very good, yes, exactly.* Kilolo: *And then ... erm ... the third thing... but lastly ... (...) erm ... going back to yesterday's issue ... But what if I told you that my brother was the one who was in ... he was the one who actually issued all the orders to all the control posts in the country.* Bemba: *Yes.* Kilolo: *Can you agree with that viewpoint or not?* Bemba: *Yes, yes*').

Mr Bemba's control over the presentation of the evidence and the fact that he was in a position to, and did indeed, instruct Mr Kilolo.

> **Bemba**: *Bon ça va, c'accord. Ok. Je pense que… euh… je pense que ça va… Et concernant les communications ce n'est pas nécessaire de mentionner les numéros des Thurayas là tout ça, ce n'est pas nécessaire hein ?*
> **Kilolo**: *Bon la personne qui…*
> **Bemba**: ***Non, ce n'est pas nécessaire, on mettra ça dans les conclusions**. Pour dire que…*
> **Kilolo**: *Mm… mm… voilà.*
> **Bemba**:*… de toutes les façons ce qu'ils disent là ce n'est pas possible quoi. (…) Mm… on mettra ça dans les conclusions.* ***Ok, non, ces trois trucs là, c'est bon, c'est bon, c'est bon***.[1855]

811. Moreover, as discussed in the context of D-54,[1856] who was coached illicitly and extensively by Mr Kilolo, the Chamber is convinced that Mr Bemba conveyed to Mr Kilolo, through Mr Mangenda, concrete instructions as to possible topics to be addressed and the manner in which the witness was expected to testify. The information was not merely a proposal on the part of Mr Bemba but constituted specific instructions which the two co-perpetrators were expected to follow, as Mr Mangenda's language underscores. The following is merely a small excerpt of a 17-minutes call between Mr Kilolo and Mr Mangenda during which Mr Bemba's instructions were conveyed by Mr Mangenda.

> *Il a dit, bon pour que lui-même soit fin prêt, il lui faut au moins déjà 2 heures à l'avance, avant que notre blanc n'arrive, il faut déjà l'informer et puis il a dit en ce qui concerne la connaissance de [Redacted] lui-même, qu'il n'oublie surtout pas… (…) les évènements qu'ils filmaient, lorsqu'ils travaillaient avec les gens… (…)* ***il insiste vraiment, qu'il ne faut pas qu'il oublie cela****. (…)* ***Et puis qu'il n'oublie pas de mentionner les deux grands véhicules qu'ils avaient vus****, comme ils étaient cités dans les cas de ces gens-là que tu connais. (…) Il a aussi dit qu'il faudrait que tu lui poses la question de savoir si… (…) il était à PK 12.* ***Donc la réponse qu'il va donner, il faut que tu me la communiques pour que je la lui transmette.*** *Ou bien carrément quand tu l'auras au téléphone, tu la lui donnes directement (…) …* ***et puis il a dit lorsqu'il va commencer à répondre aux***

[1855] Audio recording, CAR-OTP-0074-1006; Translated transcript of audio recording, CAR-OTP-0079-1744 at 1747-1748, lines 63-74 (emphasis added) ('Bemba: *Right. That's fine. Alright. OK. I think ... erm ... I think that's fine ... And as for communications, it's not necessary to mention the numbers of the Thurayas and all that, is it? It's not necessary, is it?* Kilolo: *OK. The person who ...* Bemba: *No, it isn't necessary: we'll put that in the submissions. To the effect that...* Kilolo: *Mm... mm ... there we are.* Bemba: *... any way you look at it, what they're saying there isn't possible, is it? (...) Mm ... we'll put that in the submissions. OK. No. Those three things — that's fine; that's fine, that's fine'*).
[1856] *See* paras 600-606.

***questions, que ce ne soit pas un système… du tic au tac**. Parce que ce n'est tout à fait agréable. Donc c'est-à-dire à un certain moment, il pose même une petite question.*[1857]

812. Moreover, as discussed earlier in relation to the calling of 'Bravo' as a potential witness,[1858] the co-perpetrators also ensured that Mr Bemba was fully informed about the willingness and ability of witnesses to testify falsely as instructed. The exchange between Mr Kilolo and Mr Mangenda clearly shows Mr Bemba's knowledge and approval of the illicit coaching strategy and his control over the presentation of evidence in the Main Case. The Chamber further draws upon Mr Bemba's reaction upon learning of the Article 70 investigation, when Mr Bemba suggested that, in the worst case scenario, Mr Kilolo deny everything with regard to the allegations.[1859] Moreover, intercepts of conversations between Mr Bemba, Mr Kilolo and/or Mr Mangenda,[1860] as well as further evidence,[1861] prove that Mr Bemba knew and approved of the illicit coaching activities. In this regard, Mr Bemba was part of the decision-making process with regard to the calling of witnesses.

[1857] Audio recording, CAR-OTP-0074-0995; Transcript of audio recording, CAR-OTP-0079-0131 at 0134-0135, lines 46-72 (emphasis added) (*'He said well, for him, for him to be fully prepared, he needs at least two hours' notice before our white guy arrives: he needs to be already informed; and then he said that as for knowledge of [Redaction] himself, he particularly shouldn't forget … (...) the events they used to film when they were working with the people … (...) he really emphasises that he mustn't forget that.(…) And he also shouldn't forget to mention the two large vehicles they saw, because they were referred to in the cases of those people you know.(…) He also said you should ask him whether (...) he was at PK12. So, you'll have to let me know the reply he'll give so that I can pass it on to him. Or frankly, when you've got him on the phone, just give it to him directly. (…) and then, he said that when he starts answering questions, it shouldn't be a system ... a quick-fire system. Because that isn't exactly pleasant. In other words, at a certain point, he'll even ask a quick question'*).

[1858] *See* paras 714-715.

[1859] *See* para. 783; Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 537-539.

[1860] *See*, for example, Audio recording, CAR-OTP-0074-0997; Translated transcript of audio recording, CAR-OTP-0080-0245 at 0248, lines 50-52 ('*le problème […] que j'ai toujours dit au Client, de faire encore LA COULEUR [u]n ou deux jours avant que la personne passe, […] [p]arce que les gens […] ne se souviennent pas de tout avec précision*'/'*the problem […] that I've always told the Client to redo the colour. A day or two before the person appears. […] Because people […] don't remember at all accurately'*); Audio recording, CAR-OTP-0074-0992; Translated transcript of audio recording, CAR-OTP-0079-0114 at 0118 (as amended in CAR-OTP-0079-0118_01), lines 104-107, *('le client] a vu vraiment que […] un véritable travail de couleurs a été effectivement fait […] lui-même il a vraiment senti cela.'*/'*[the client] really saw that (…) thorough colour work was effectively carried out (…) he himself truly felt that'*).

[1861] *See* paras 681, 727-732.

813. In addition, the Chamber is convinced that Mr Bemba was at all times aware of the payments, including illicit payments, effected to witnesses or other persons and the purposes of those payments. A significant body of evidence proves that Mr Kilolo, Mr Mangenda, and Mr Babala would seek authorisation from or inform Mr Bemba before making any payment.[1862] Also, upon learning of the Article 70 investigation, Mr Bemba discussed and approved with the co-perpetrators the paying of money to discourage the defence witnesses from cooperating with the Prosecution.[1863]

Authorising, Ensuring and/or Implementing Measures to Conceal the Common Plan

814. As discussed above, on several occasions Mr Bemba abused the Registry's privileged line from the Detention Centre to talk freely not only with Mr Kilolo, his counsel, but also with Mr Mangenda, Mr Babala and witnesses.[1864] He thereby intentionally circumvented the Registry's monitoring system, thus allowing him (and his co-perpetrators) to communicate improperly for the purpose of implementing the common plan to corruptly influence witnesses. Mr Bemba also communicated directly with at least two witnesses without the Registry's knowledge.[1865] During those communications, a sophisticated vocabulary was used and Mr Bemba reminded his co-perpetrators to speak only in code.[1866]

815. When Mr Bemba was informed that the Prosecution had initiated an Article 70 investigation, Mr Bemba ordered that all Main Case Defence witnesses be contacted with a view to interfering with the witnesses and thereby frustrating the Prosecution's investigation.[1867] He also approved Mr Kilolo's suggestion to

[1862] *See* paras 693-700.
[1863] *See* paras 790-791.
[1864] *See* paras 736-745.
[1865] *See* para. 293.
[1866] *See* paras 748-761.
[1867] *See* paras 775-776.

take remedial measures, such as having witnesses sign declarations stating that their information to the Prosecution in the context of the Article 70 investigation was untruthful, or dissuading witnesses by warning them that they too could be arrested if they cooperated with the Prosecution.

Overall Conclusions

816. Mr Bemba exercised an overall coordinating role over the illicit activities of the co-perpetrators. He was informed, on a substantive and continuous basis, of the activities of Mr Kilolo and Mr Mangenda. He was involved in the planning of the illicit coaching of witnesses and he played a critical role in providing instructions, feedback and approval on the topics in relation to which witnesses were illicitly coached. He was also closely involved in making decisions on whom to call as a witness depending on their prior illicit coaching. Mr Bemba spoke on the telephone to witnesses D-55 and D-19, or other persons, such as the co-accused Mr Babala, abusing the Registry's privileged line. He also approved the payment of money, including illicit payments, to witnesses and was aware that the purpose of such payments was to ensure that witnesses testified in his favour. He ensured, through Mr Babala, that financial means were available to the co-perpetrators with which they executed their illicit activities. Leaving aside small amounts of money, Mr Babala would not effect any payment without Mr Bemba's authorisation. Mr Bemba also planned and directed the taking of remedial measures upon learning of the Article 70 investigation. From his detailed knowledge of and role in the above activities, the Chamber finds that Mr Bemba was in a position to frustrate the illicit coaching and paying of witnesses, as well as the presentation of the witnesses in the Main Case, by issuing other directions or otherwise refusing his approval. In the light of the foregoing, the Chamber concludes that these contributions of Mr Bemba, taken together, were essential to the implementation of the common plan to illicitly

interfere with defence witnesses in order to ensure that these witnesses would testify in favour of Mr Bemba.

817. The Chamber is further satisfied that Mr Bemba's essential contributions to the common plan taken as a whole, as set out above, indicate his *mens rea*. Mr Bemba's intent to bring about the material elements of the offences is evidenced by his planning and organising activities relating to the common plan, the various measures he ordered when the co-perpetrators became aware that an Article 70 investigation was underway, and his deliberate and knowing abuse of his privileged line at the ICC Detention Centre. The same activities and the continuous and substantive knowledge derived therefrom also demonstrate that Mr Bemba intended to engage in the relevant conduct and acted with full awareness that implementing the common plan will result in the fulfilment of the material elements of the crimes, in particular, the illicit interference with defence witnesses in order to ensure that these witnesses would provide evidence in favour of Mr Bemba, and the presentation of false evidence.

818. The Chamber takes from Mr Bemba's specific directions and instructions concerning testimony relating to the merits of the Main Case that Mr Bemba's intent was to motivate the witnesses to testify to certain information regardless of the truth or falsity of this information or whether or not it accorded with the witness's personal knowledge. The Chamber notes that no direct evidence exists that Mr Bemba also directed or instructed false testimony regarding (i) the nature and number of prior contacts of the witnesses with the Main Case Defence, (ii) payments and material or non-monetary benefits received from or promised by the Main Case Defence, and/or (iii) acquaintances with other individuals. However, on the basis of an overall assessment of the evidence, the Chamber makes the inference that Mr Bemba at least implicitly knew about these instructions to the witnesses and expected Mr Kilolo to give them. It bases this inference on the following considerations.

819. Mr Bemba, Mr Kilolo and Mr Mangenda agreed to illicitly interfere with witnesses in the context of defending Mr Bemba against the charges in the Main Case in order to ensure that these witnesses would provide evidence in favour of Mr Bemba. It was critical for the success of such a plan that this influence on the witnesses be concealed, as their testimony would otherwise lose all credibility. The Chamber found that Mr Bemba was kept abreast of the coaching activity and the contacts, as well as payments to the witnesses. Yet, he also saw in the proceedings before this Chamber that the witnesses consistently gave testimony on these issues that was incorrect. Thereafter, there is evidence that he nevertheless expressed his satisfaction with the witnesses' testimony overall, including those who testified falsely on the above topics. Furthermore, as elaborated, [1868] the evidence on his reaction to the ongoing Article 70 investigation shows that his intention was to cover and conceal the coaching activity. In particular, he suggested that, in the worst case scenario, Mr Kilolo simply deny everything with regard to the allegations.[1869] The Chamber thus concludes that Mr Bemba, along with his instructions on testimony regarding the merits of the Main Case, also authorised and thereby approved, at least tacitly, instructions regarding false testimony on the three above-mentioned points. He therefore also knew and intended that the Main Case Defence would present false evidence to the Court.

820. Lastly, the Chamber also finds that the measures taken throughout the Main Case proceedings, as well as the remedial measures taken to counter the Article 70 investigations into the co-perpetrators – measures that Mr Bemba ordered and approved – demonstrate that Mr Bemba knew that the coaching activity and the payments to witnesses were illicit. He also discussed with the co-perpetrators the existence of similar proceedings in the *Barasa* Case and the

[1868] *See* paras 773-776 and 784-785.
[1869] *See* para. 783; Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 537-539.

penalisation of their conduct under Article 70 of the Statute,[1870] which indicates that Mr Bemba was aware of the illegality of their actions. In particular, his interest in knowing whether the actions of Walter Osarpiri Barasa could have any legal consequences for one of the high-profile accused in the Kenya cases pending before the Court at the time demonstrates that Mr Bemba understood that similar actions by his co-perpetrators could have consequences for him personally.[1871]

ii. ***Mr Kilolo***

821. Mr Kilolo, as counsel, was responsible for defending Mr Bemba against the charges in the Main Case. Being responsible for the investigation of the Main Case Defence, he regularly contacted, met with and interviewed witnesses. He suggested those witnesses who would be called for the Main Case Defence. Without Mr Kilolo's direct intervention, the offences would not have been committed.

822. Mr Kilolo's contribution to the commission of the offences materialised in various ways, which taken as a whole indicate his *mens rea*. The Chamber relied on a number of actions, as elaborated above, that persuaded it to conclude that Mr Kilolo's contributions were essential and that the requisite mental elements are satisfied. Contrary to the Prosecution's allegation, the Chamber did not take into consideration Mr Kilolo's omission to inform the Court of the existence of the common plan and the offences that were carried out as a contribution to the implementation of the common plan. Otherwise, within the context of Article 70

[1870] Audio recording CAR-OTP-0074-1027; Translated transcript of audio recording, CAR-OTP-0079-0191 at 0195, line 77 to 0197, line 162; Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 544-549.
[1871] Audio recording CAR-OTP-0074-1027; Translated transcript of audio recording, CAR-OTP-0079-0191 at 0197, lines 145-162.

proceedings, the accused will thus be punished for failing to incriminate themselves.[1872]

Payment of Money

823. As previously discussed, Mr Kilolo personally paid a number of defence witnesses shortly before or on the first day of their testimony with a view to securing the witnesses' testimony in favour of Mr Bemba.[1873]

Planning and Execution of Illicit Witness Coaching

824. There is abundant evidence showing that Mr Kilolo planned and executed the illicit coaching of witnesses. His illicit coaching activities were carefully planned, also with the assistance of Mr Mangenda. When Mr Kilolo was not in the courtroom, he would request Mr Mangenda to keep him informed of how the witnesses had testified in Court so that he could effectively and illicitly coach prospective witnesses and streamline their evidence in favour of the Main Case Defence.[1874] If witnesses did not testify to Mr Kilolo's satisfaction, he contacted and instructed them to rectify their statement.[1875] The planning also included logistical arrangements, such as the provision of new cell phones to defence witnesses in order to stay in contact with them after the VWU cut-off date and during their testimony and to ensure that they complied with the instructions given;[1876] or obtaining the victims' legal representatives filings containing the questions that they would put to the witnesses.[1877]

825. Mr Kilolo gave the defence witnesses precise instructions on what to say when questioned in court, scripted their replies, rehearsed the questioning (even in the

[1872] Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 9-10.
[1873] *See* paras 689-691.
[1874] *See* paras 538, 705 and 717.
[1875] *See* para. 535.
[1876] *See* paras 367-371, 445 and 711.
[1877] *See* paras 574-577.

order in which the questions would be put), and provided instructions to them to dissemble when giving evidence, such as to act with indecision or show equivocation with a view to cover the illicit coaching that they had received. The most illustrative examples of illicit coaching concern witnesses D-15, D-54 and D-26. Without Mr Kilolo's instructions, they would not have testified on a number of issues in the same way. Critically, Mr Kilolo made his decision to call a witness dependent on whether the witnesses were prepared to be briefed by him and to follow his instructions. Two prominent examples mirroring Mr Kilolo's standpoint concern the calling of D-30 and Ferdinand Bombayake, named '*Bravo*'.[1878]

826. Equally, Mr Kilolo sought to manipulate and harmonise the defence evidence by, for example, instructing prospective witnesses to repeat information that had already been given by other witnesses in court. He kept close contact with the witnesses shortly before and during their testimonies, sometimes late at night or early in the morning, so as to ensure that they complied with his instructions. The Chamber discussed Mr Kilolo's illicit coaching of witnesses when assessing the evidence in relation to each witness relevant to the charges and the common plan and incorporates its findings by reference.

827. Mr Kilolo admitted on 10 November 2013, at 19:04[1879] in a conversation with Mr Mangenda, having carried out illicit coaching activities in relation to D-13. He maintained that the witness no longer remembered, and complained about his coaching efforts that tired him profoundly.[1880] Mr Kilolo was aware that his coaching activities were illicit in nature. He made sure that defence witnesses did not reveal in court any coaching meeting or communication close to the commencement of the witnesses' testimony. For this reason, he confirmed to

[1878] *See* paras 538-539, 714-715 and 812.
[1879] *See* paras 658-660.
[1880] *See* para. 661.

Mr Mangenda on 27 August 2013 that he was satisfied that D-25 had not revealed a previous illicit coaching meeting with Mr Kilolo and a military expert.[1881]

Collaborating with Mr Mangenda

828. Mr Kilolo asked Mr Mangenda to keep him abreast of the witnesses' responses whenever he was not in the courtroom so that he could best instruct other prospective witnesses and align their testimonies, as he did with D-29[1882] and D-26.[1883] He also requested Mr Mangenda to send him the questions of the victims' legal representatives in order to be able to rehearse those questions with the defence witnesses, such as D-15 and D-54.[1884] Indeed, intercepted conversations evidence that Mr Kilolo went through the questions in the order they had been set out in the filings and rehearsed and instructed the witnesses accordingly.

Reporting to Mr Bemba

829. In his capacity as counsel, Mr Kilolo kept Mr Bemba regularly updated about the actions taken to implement the common plan, including the payment of money and the illicit coaching and preparation of witnesses. For example, he informed Mr Bemba in detail about the illicit coaching of D-15 prior to his testimony before the Court and sought Mr Bemba's approval.[1885] This way, Mr Bemba was able to intervene, where he deemed it appropriate, in the planning of illicit coaching and provide instructions and feedback to Mr Kilolo, as required. Mr Bemba was also informed of the content of rehearsed testimony to be given by the witnesses.

[1881] *See* paras 493-494.
[1882] *See* paras 538-539.
[1883] *See* paras 460-467.
[1884] *See* paras 574-577 and 631-632.
[1885] *See* paras 567-568 and 729.

Presenting Evidence Known to be False

830. As lead counsel for the defence of Mr Bemba in the Main Case, Mr Kilolo called the defence witnesses, whom he had coached extensively and illicitly in advance of their testimony, and presented their evidence knowing that they would testify falsely regarding (i) the nature and number of their prior contacts with the Main Case Defence, (ii) payments and material or non-material benefits received from or promised by the Main Case Defence, and/or (iii) their acquaintance with other individuals. This is true, at least with regard to one item of the above-mentioned information, with regard to all 14 Main Case Defence witnesses.

Implementing Measures to Conceal the Common Plan

831. As agreed with the other co-perpetrators, Mr Kilolo also used coded language to conceal the illicit activities from others.[1886] By exploiting the Registry's privileged line, Mr Kilolo facilitated contact with third parties, including defence witnesses and other persons, such as Mr Babala,[1887] allowing Mr Bemba to communicate directly with them without the Registry's knowledge. As the call records show, Mr Kilolo effected communication between Mr Bemba and witness D-19. It is also proved that Mr Kilolo facilitated a conversation between Mr Bemba and D-55 and told the witness not to reveal this communication since it was something '*rather unusual*'.[1888] Mr Kilolo also took measures to frustrate the Article 70 investigation.

Overall Conclusion

832. Mr Kilolo, Mr Bemba's counsel in the Main Case, primarily planned and implemented the common plan, together with Mr Mangenda. As the central

[1886] *See* paras 748-761.
[1887] *See* paras 740-743.
[1888] *See* paras 300-301.

figure in the execution stage of the offences, he illicitly coached witnesses, instructing them on what to say and how to behave in the courtroom. He also sought to manipulate and harmonise the Main Case Defence evidence by instructing prospective witnesses to repeat information that had already been given by other witnesses in court.

833. Despite the contact prohibition imposed by Trial Chamber III, Mr Kilolo called defence witnesses after the VWU cut-off date and during the period of their testimony, often during overnight adjournments or early in the morning. He paid witnesses money, provided them with goods, such as laptops, and made non-monetary promises so as to ensure that the witnesses testified in Mr Bemba's favour. He coordinated his actions with Mr Mangenda, who informed him on a substantive and continuous basis whether witnesses had complied with his instructions and for the purpose of planning the next steps. Together with Mr Bemba, Mr Kilolo also decided which witnesses to call, depending on whether the witness would agree to be briefed. He distributed new telephones to witnesses, together with Mr Mangenda, unbeknownst to the Registry, in order to stay in contact with them after the VWU cut-off date and during their testimony and to ensure that they complied with his instructions. He facilitated multi-party calls between Mr Bemba and defence witnesses, such as D-55 and D-19, or third persons, such as the co-accused Mr Babala, thereby abusing the Registry's privileged line. Without Mr Kilolo's various contributions the offences would not have been committed. From his central role in the above activities, the Chamber finds that Mr Kilolo was in a position to frustrate the illicit coaching and paying of witnesses, as well as the presentation of the witnesses in the Main Case, by refusing the execution of his actions. In the light of the foregoing, the Chamber concludes that these contributions of Mr Kilolo, taken together, were essential to the common plan to illicitly interfere with

defence witnesses in order to ensure that these witnesses would provide evidence in favour of Mr Bemba.

834. On the basis of its overall assessment of the evidence, the Chamber is further satisfied that Mr Kilolo's *mens rea* is indicated by his essential contributions to the common plan viewed as a whole.

835. In particular, Mr Kilolo's intent to commit the offences is proven by his discussions concerning, and the planning of, the illicit coaching activities, under Mr Bemba's authority and in consultation with Mr Mangenda, and his involvement in the measures taken to counter the Article 70 investigation. Those activities, and the continuous and substantive knowledge derived therefrom, further demonstrate that Mr Kilolo intended to engage in the relevant conduct and was aware that implementing the common plan in concert with Mr Bemba and Mr Mangenda will lead to fulfilment of the material elements of the offences, in particular, the illicit interference with defence witnesses in order to ensure that they would testify in favour of Mr Bemba, and the presentation of false evidence. In regard to the latter offence, Mr Kilolo's instructions that witnesses should lie concerning Main Case Defence payments and contacts, as well as association with other persons, self-evidently demonstrate his knowledge and intention that the witnesses would testify falsely concerning these topics. He either heard this false testimony in court or received updates about it from Mr Mangenda. Yet, he expressed his approval of such false testimony and continued to instruct witnesses to lie, knowing the obvious result.

836. Lastly, Mr Kilolo – a lawyer on notice of the Court's statutory and disciplinary regime and bound by, *inter alia*, the Court's Code of Professional Conduct for counsel – knew that the coaching activity and the payments to the witnesses were illegal and constituted offences against the administration of justice pursuant to Article 70 of the Statute. Indeed, he admitted that, if his activities

including '*faire la couleur*' were discovered, he would be the first person targeted.[1889] Knowledge of the unlawfulness of his and his co-perpetrators' actions is the only reasonable conclusion to be drawn from his response to being informed of the Article 70 investigation. Additionally, Mr Kilolo discussed with his co-perpetrators the existence of similar proceedings in the *Barasa* Case and the penalisation of their conduct under Article 70 of the Statute,[1890] which further indicates that Mr Kilolo was aware of the illegality of their actions.

iii. ***Mr Mangenda***

837. Mr Mangenda, officially working under the title of 'case manager', was responsible for supporting Mr Kilolo in defending Mr Bemba from the charges in the Main Case. However, his involvement went far beyond that of a mere case manager. Mr Mangenda is a lawyer by profession[1891] and was *de facto* on equal footing with Mr Kilolo. As Mr Kilolo's assisting hand and confidant within the Main Case Defence team, Mr Mangenda liaised between Mr Bemba and Mr Kilolo in the implementation of the common plan.

838. Mr Mangenda's contribution to the commission of the offences materialised in various ways. The Chamber relied on a number of actions that persuaded it to conclude that Mr Mangenda's contributions were essential. On the basis of an overall assessment of the evidence, the Chamber concludes that these contributions, taken as a whole, also demonstrate his *mens rea*.

[1889] *See* para. 760.

[1890] Audio recording CAR-OTP-0074-1027; Translated transcript of audio recording, CAR-OTP-0079-0191 at 0195-0197, lines 77-162; Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 544-549.

[1891] Mangenda Defence Submission, ICC-01/05-01/13-288-tENG, para. 8; Article 55(2) Statement of Mr Mangenda, CAR-OTP-0074-0717 at 0757, lines 1371-1372.

Participation in Planning and Execution of Illicit Coaching

839. Mr Mangenda was fully integrated into the planning of Mr Kilolo's illicit coaching activities. He exchanged views with Mr Kilolo and advised him on which evidence to elicit from the witnesses, such as in relation to D-29 and D-30.[1892] In relation to D-54, Mr Mangenda advised Mr Kilolo on the witness's lack of knowledge about the 'CCOP' and how to ensure that D-54's testimony remained consistent with the rest of the defence evidence.[1893] In the conversation of 11 September 2013, Mr Mangenda was briefed by Mr Kilolo about his illicit coaching of D-15.[1894] When Mr Kilolo was absent from the Court, he reported to him on the witnesses' ability to follow instructions to testify falsely in order to facilitate Mr Kilolo's illicit coaching activities. For instance, Mr Mangenda advised Mr Kilolo on the performance of D-25 and D-29.[1895] When reporting on D-29's in-court testimony, Mr Mangenda actually confirmed the need to illicitly coach witnesses since, in his view, D-29 had performed badly in court because he had not received such coaching the night before.[1896] Also, in relation to potential witness 'Bravo', Mr Mangenda cautioned Mr Kilolo to call the witness and illicitly coach him.[1897]

840. He also accompanied Mr Kilolo on field missions knowing that Mr Kilolo met with defence witnesses and illicitly coached them. In a conversation on 2 October 2013 Mr Mangenda admitted that Mr Haynes could not join them as the purpose of the field missions was to illicitly coach witnesses.[1898] With suspicions about illicit conduct growing within the Main Case Defence team,

[1892] *See* para. 539.
[1893] *See* paras 609 and 611.
[1894] *See* paras 565-566.
[1895] *See* paras 487-494 and 533-535.
[1896] *See* paras 535-536.
[1897] *See* paras 719-720.
[1898] *See* paras 762-764.

Mr Mangenda actively sought to disperse any concerns and in his exchanges with Mr Kilolo, often provided arguments for Mr Kilolo.[1899]

841. Mr Mangenda was also present when cell phones were distributed and logistically assisted Mr Kilolo by providing the filings of victims' legal representatives containing the questions that they would put to the witnesses in court, knowing that Mr Kilolo would rehearse those questions the evening before.[1900]

Liaising Between Mr Bemba and Mr Kilolo

842. Mr Mangenda was in continuous communication with Mr Bemba and ensured that Mr Bemba's instructions and directives were transmitted to Mr Kilolo. As part of the communication triangle, Mr Mangenda communicated in coded language with the other two co-perpetrators and reminded Mr Kilolo to use codes when briefing Mr Bemba.[1901]

843. Mr Mangenda conveyed Mr Bemba's instructions to Mr Kilolo on the content of the illicit coaching of witnesses, for instance in relation to D-54.[1902] He continued to convey messages between the two co-perpetrators after the news that an Article 70 investigation had been initiated, and transmitted Mr Bemba's instructions on the adoption of remedial measures.[1903] Mr Mangenda also reported Mr Bemba's satisfaction or otherwise with the performance of the witnesses who had been illicitly coached by Mr Kilolo, such as in connection

[1899] *See* paras 722-726.
[1900] *See* paras 574-576.
[1901] *See* paras 748-761.
[1902] *See* paras 601-606.
[1903] *See* paras 776-778.

with D-25 (*'[le client] a vu vraiment que* (…) *un véritable travail de couleurs a été effectivement fait (…) lui-même il a vraiment senti cela'*).[1904]

Involvement in the Presentation of False Evidence

844. As Mr Kilolo's assisting hand and confidant within the Main Case Defence team, Mr Mangenda was aware of and actively involved in both the illicit coaching of the witnesses, and the strategic selection of witnesses.[1905] Mr Mangenda suggested to Mr Kilolo details of the subject matters on which the witnesses should be illicitly coached, and discussed with Mr Kilolo whether or not to call witnesses, who had been illicitly prepared. He also updated Mr Kilolo on and discussed with him the witnesses' in-court testimonies, including their compliance with Mr Kilolo's illicit instructions and their false testimonies relating to, among other things, contacts with the Main Case Defence.

Concealing the Common Plan

845. Mr Mangenda was informed first by a source within the Court that he and Mr Kilolo were under investigation and he informed Mr Kilolo. As soon as the co-perpetrators learnt that the investigation had been initiated, Mr Mangenda took part in planning and implementing remedial measures and assisted and advised both co-perpetrators accordingly with a view to frustrating the Prosecution's investigation. For example, he advised Mr Bemba on the consequences of a possible Article 70 investigation for his Main Case and that he

[1904] Audio recording, CAR-OTP-0074-0992; Translated transcript of audio recording, CAR-OTP-0079-0114 at 0118 (as amended in CAR-OTP-0079-0118_01), lines 104-107, (*'[the client] really saw that (...) thorough colour work was effectively carried out (...) he himself truly felt that'*).
[1905] *See* paras 538-539, 598-599 and 719. Also, according to the Kilolo Defence, the decisions to call witnesses were taken collectively with the members of the Main Case Defence team; *see* Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 32, 96, 112, 127, 151, 164, 191, 213 and 252.

should act swiftly and offer defence witnesses incentives that would make them change their mind and terminate their cooperation with the Prosecution.[1906]

Overall Conclusions

846. Mr Mangenda, working under the title of 'case manager' for the Main Case Defence team, participated in the planning and execution of illicit coaching. He served as a messenger between the two co-perpetrators and conveyed Mr Bemba's instructions to Mr Kilolo. The evidence shows that Mr Mangenda's function was more than merely administrative and in that sense, he was more than just a case manager.[1907] Being a lawyer by profession and privy to the case record, he advised both Mr Kilolo and Mr Bemba on legal and factual issues arising in the context of the Main Case, defence staffing issues, evidentiary matters, and defence strategies, including the calling and questioning of witnesses.[1908]

847. As a result of this distinguished position within the defence team, Mr Mangenda participated fully in the planning and execution of Mr Kilolo's illicit coaching activities and the presentation of false evidence. While he did not physically perform the illicit coaching, he nevertheless played a critical role in keeping Mr Kilolo updated whenever Mr Kilolo was not in court, and advising him on points to be rehearsed with witnesses. The intercepted communications show that he did not merely assist Mr Kilolo, but that he acted as an equal in the implementation of the plan. He provided essential logistical support to

[1906] *See* paras 787-791.

[1907] The Chamber notes that, in the Court's practice, a case manager is typically responsible for the administrative management of the case and supporting litigation counsel by, for example, effectuating disclosure of evidence to the Chambers and assisting in the preparation of exhibits for display in Court. It follows that the case manager facilitates in technical terms the presentation of evidence and, as a result, takes part directly in the presentation of evidence within the meaning of Article 70(1)(b) of the Statute.

[1908] *See*, for example, Translated transcripts of audio recordings, CAR-OTP-0079-0122; CAR-OTP-0082-1368; CAR-OTP-0082-0644; CAR-OTP-0080-0238; CAR-OTP-0080-0245; CAR-OTP-0082-0116. Also, according to the Kilolo Defence, the decisions to call witnesses were taken collectively with the members of the Defence team, *see* Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 32, 96, 112, 127, 151, 164, 191, 213 and 252.

Mr Kilolo for the purpose of the illicit coaching, such as providing the questions that the victims' legal representatives were to put to the witnesses. Without Mr Mangenda's assistance, Mr Kilolo would not have been able to perform the illicit coaching activities in the same manner. Mr Mangenda was informed on a substantive and continuous basis of Mr Kilolo's activities and accompanied him to the field knowing that Mr Kilolo illicitly coached witnesses. In the light of the foregoing, the Chamber concludes that these contributions of Mr Mangenda, taken together, were essential to the common plan to illicitly interfere with defence witnesses in order to ensure that these witnesses would provide evidence in favour of Mr Bemba.

848. The Chamber is further satisfied that Mr Mangenda's essential contributions to the common plan indicate his *mens rea.* In particular, Mr Mangenda's intent to bring about the material elements of the offences is confirmed by his discussions and planning of the illicit coaching activities, under Mr Bemba's authority and in consultation with Mr Kilolo, and his involvement in measures taken to counter the Article 70 investigation. The same activities and the continuous and substantive knowledge derived therefrom also demonstrate that Mr Mangenda intended to engage in the relevant conduct and was aware that implementing the common plan in concert with Mr Bemba and Mr Kilolo will, in the ordinary course of events, result in the fulfilment of the material elements of the offences, in particular, the illicit interference with defence witnesses in order to ensure that these witnesses would provide evidence in favour of Mr Bemba, and the presentation of false evidence.

849. The Chamber is also satisfied that Mr Mangenda knew and intended that the 14 witnesses presented by the Main Case Defence would provide false testimony on contacts, payments and association related to the Main Case Defence. Mr Mangenda was regularly informed or even present when Mr Kilolo illicitly instructed witnesses. A regular feature of such illicit coaching activities included

the instruction to lie about Main Case Defence payments and contacts, as well as association with other persons. Mr Mangenda and Mr Kilolo also discussed this aspect of the witnesses' testimonies. His involvement in the illicit coaching activities thus self-evidently demonstrates his knowledge and intention that the witnesses would testify falsely concerning these topics. He either heard this false testimony in court or received updates about it. Yet, he expressed his approval and relayed Mr Bemba's approval of such false testimony. He also continued to collaborate in the illicit coaching activities, during which witnesses were instructed to lie, despite knowing the obvious result.

850. Lastly, Mr Mangenda's actions and initiatives to conceal the illicit witness coaching and bribery and then to counter the Article 70 investigation also convince the Chamber that Mr Mangenda – a lawyer on notice of, *inter alia*, the Court's statutory and disciplinary regime – knew about the illicit nature of both the coaching activity and the payments to witnesses. This is further demonstrated by his discussions with the co-perpetrators about the existence of similar proceedings in the *Barasa* Case and the penalisation of their conduct under Article 70 of the Statute. In this context, the Chamber also notes Mr Mangenda's professional background and the fact that he had knowledge of the Court's statutory and disciplinary regime.

3. Soliciting or Inducing

a) Mr Bemba

851. Pre-Trial Chamber II confirmed the charges against Mr Bemba of having solicited the giving of false testimony by the 14 defence witnesses pursuant to Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute. In the alternative to charges that Mr Bemba was criminally responsible as a co-perpetrator under Article 25(3)(a) of the Statute for the presentation of false evidence pursuant to Article 70(1)(b) of the Statute and the corrupt influencing

of witnesses pursuant to Article 70(1)(c) of the Statute, Pre-Trial Chamber II confirmed the charges against Mr Bemba of having solicited the commission of these same offences. The Chamber has found that Mr Bemba was criminally responsible as a co-perpetrator under Article 25(3)(a) for the presentation of false evidence and corruptly influencing witnesses, which was the primary charge confirmed in relation to these offences. As a result, it will discuss here only Mr Bemba's criminal responsibility for soliciting the offence of giving false testimony by the 14 defence witnesses pursuant to Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute.

852. The Chamber is satisfied that Mr Bemba solicited, personally or through Mr Kilolo and Mr Mangenda, the 14 witnesses' false and intentional testimonies regarding the (i) nature and number of prior contacts with the Main Case Defence, (ii) payments and material or non-monetary benefits received from or promised by the Main Case Defence, and/or (iii) acquaintances with other individuals. The Chamber draws this inference from Mr Bemba's various actions, which, taken together, warrant such a conclusion.

853. On the evidence, the Chamber concludes that Mr Bemba asked, either personally or through Mr Kilolo, the 14 Main Case Defence witnesses to give false testimony on the above-mentioned three issues. It arrives at that conclusion based on the following considerations. Mr Bemba, Mr Kilolo and Mr Mangenda agreed to illicitly interfere with witnesses in defending Mr Bemba against the charges in the Main Case and in order to ensure that these witnesses would provide evidence in favour of Mr Bemba. The success of this plan depended on the influence on these witnesses remaining hidden, as their testimony would otherwise lose all credibility. Against this backdrop, the Chamber is convinced of the agreement between Mr Bemba, Mr Kilolo and Mr Mangenda to take the appropriate measures to hide their illicit activity and that Mr Bemba – at least

implicitly – urged Mr Kilolo to take the concrete actions, including instructing the witnesses to lie on the three issues.

854. Furthermore, Mr Bemba had direct knowledge of the false testimony as he saw the witnesses testify untruthfully during the proceedings before Trial Chamber III. The Chamber reiterates that Mr Bemba was updated on, and that he expressly authorised and directed, the illicit coaching of witnesses, and gave directions on how and what the witnesses were expected to testify. He also authorised illicit payments. He thus knew that Mr Kilolo or others had been in contact with these witnesses regularly and shortly before their testimony, and that some had been paid illicit sums of money. He saw them lie consistently with regard to these two issues in the proceedings.

855. Mr Bemba's influence on concealing the ongoing activity is further demonstrated by his reaction upon learning of the Article 70 investigation, and in particular, his suggestion that, in the worst case scenario, Mr Kilolo deny everything with regard to the allegations.[1909] The Chamber infers from this that Mr Bemba also urged or knew and tacitly approved of Mr Kilolo's instructions to the witnesses to lie about information relating the contacts, payments and associations linked to the Main Case Defence's illicit activities.

856. In addition to Mr Bemba's indirect influence on the witnesses through Mr Kilolo, who he entrusted to pass on his influence to the witnesses, Mr Bemba also exerted direct influence on D-19 and D-55. As has been elaborated above,[1910] Mr Bemba had direct telephone conversations with these witnesses from the ICC Detention Centre. Although no direct evidence proves that in these telephone conversations Mr Bemba urged or asked these witnesses about the specifics of their testimony, the Chamber is convinced, assessing the evidence as

[1909] *See* para. 783; Audio recording, CAR-OTP-0080-1320; Translated transcript of audio recording, CAR-OTP-0082-1309 at 1325, lines 537-539.
[1910] *See* paras 293-298 and 741.

a whole, that the fact that he illicitly spoke to them on his privileged line in the ICC Detention Centre indicates that he urged them to cooperate and follow the instructions given by Mr Kilolo.

857. Mr Bemba's conduct had an effect on the commission of the offence of false testimony by the 14 Main Case Defence witnesses. The Chamber is satisfied that without Mr Bemba's authoritative influence, personally or through Mr Kilolo and/or Mr Mangenda, the untruthful testimony would not have occurred in the same manner before Trial Chamber III. As further elaborated above,[1911] having directed and approved the illicit coaching of witnesses, and having organised the payments and other assistance to witnesses prior to their testimonies, Mr Bemba knew with certainty that Mr Kilolo would instruct the witnesses accordingly, and that the witnesses would, in turn, untruthfully testify in court as a consequence of his conduct.

b) Mr Kilolo

858. Pre-Trial Chamber II confirmed the charge against Mr Kilolo for having solicited or induced the giving of false testimony by the 14 Main Case Defence witnesses in accordance with Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute.

859. The Chamber is satisfied that Mr Kilolo, as Mr Bemba's counsel, induced, personally and by telephone, the 14 witnesses' false and intentional testimonies on (i) the nature and number of their prior contacts with the Main Case Defence, (ii) payments or other monetary and non-monetary benefits received from or promised by the Main Case Defence, and/or (iii) their acquaintance with other individuals. The Chamber draws this inference from Mr Kilolo's various actions, which, taken altogether, warrant such a conclusion.

[1911] *See* paras 807-813.

860. Mr Kilolo, in his capacity as Mr Bemba's counsel, contacted, personally interviewed and instructed the witnesses. He thereby exerted direct influence over the 14 Main Case Defence witnesses, relaying Mr Bemba's and his own instructions. As prominently shown with D-15, D-54 and D-26, he gave the 14 witnesses precise instructions on what to say when questioned in court with regard to the above-mentioned three issues, scripted or corrected their future replies, rehearsed the questioning, and concrete instructions to the witnesses to dissemble when giving evidence, such as to act with indecision or show equivocation. As set out in detail above, the Chamber is convinced that the manner of these conversations and the language used gave the witnesses to understand that they were expected to adhere to the agreed narrative. If they failed to testify to Mr Kilolo's satisfaction, he was prepared to contact them and instruct them to rectify their statements.[1912] Mr Kilolo also manipulated and harmonised the Main Case Defence evidence by instructing prospective witnesses to repeat information contained in other witnesses' testimonies.

861. In order to maintain contact with and influence over witnesses after the VWU cut-off date, Mr Kilolo provided them with new cell phones.[1913] Indeed, he regularly contacted the witnesses shortly before and during their testimonies, sometimes late at night or early in the morning, to ensure compliance with his instructions. Mr Kilolo facilitated contact with third parties, including Main Case Defence witnesses D-19 and D-55, enabling Mr Bemba to personally influence these witnesses. On Mr Bemba's account, Mr Kilolo personally paid witnesses, provided them with goods, such as a laptop, or made non-monetary promises shortly before or on the first day of their testimonies, with a view to ensuring that they followed his instructions, including the instructions on the above-mentioned three issues.

[1912] *See* para. 535.
[1913] *See* paras 367-368 and 445.

862. Mr Kilolo's conduct had a direct effect on the commission of the offence of giving false testimony committed by the 14 Main Case Defence witnesses. The 14 witnesses complied with and testified according to Mr Kilolo's directions, as he knew they would. The most instructive examples can be found in the illicit coaching of D-15 and D-54, with whom Mr Kilolo rehearsed extensively the scripted questions over the telephone and the witnesses, true to their preparation, reproduced the exact same answers in court, including false testimony concerning contacts with the Main Case Defence.[1914]

863. In the light of the above, the Chamber is satisfied that Mr Kilolo knew with certainty that the witnesses would untruthfully testify in court as a consequence of his conduct. Mr Kilolo purposefully planned and conducted the illicit coaching. He paid the witnesses, gave them material benefits and made non-monetary promises, while instructing them to lie about or conceal such payments and promises during their testimonies. Mr Kilolo's intent is best illustrated in his statement to Mr Mangenda on 29 August 2013: '*Tu vois maintenant, le problème que… que j'ai toujours dit au Client, de faire encore la couleur. Un ou deux jours avant que la personne passe, pourquoi? Parce que les gens oublient…tu vois? Les gens ne se souviennent pas de tout avec précision*'.[1915] Mr Kilolo's intent to induce the defence witnesses to falsely testify is also evidenced by his planning and performance, together with Mr Mangenda and Mr Bemba, of a series of measures to frustrate the Prosecution's Article 70 investigation.

[1914] *See* paras 581-583 and 646-647.
[1915] *See* para. 535.

4. Aiding, Abetting or Otherwise Assisting

a) Mr Mangenda

864. Pre-Trial Chamber II confirmed the charges against Mr Mangenda of having aided, abetted or otherwise assisted, for the purpose of facilitating the offence, in the giving of false testimony by the 14 Main Case Defence witnesses pursuant to Article 70(1)(a), in conjunction with Article 25(3)(c) of the Statute. In the alternative to charges that Mr Mangenda was criminally responsible as a co-perpetrator under Article 25(3)(a) of the Statute for the presentation of false evidence pursuant to Article 70(1)(b) of the Statute and the corrupt influencing of witnesses pursuant to Article 70(1)(c) of the Statute, Pre-Trial Chamber II confirmed the charges against Mr Mangenda of having aided, abetted or otherwise assisted in the commission of those same offences. The Chamber has found that Mr Mangenda is criminally responsible as a co-perpetrator under Article 25(3)(a) of the Statute for the presentation of false evidence and corruptly influencing witnesses, which was the primary charge confirmed in relation to these offences. As a result, it will discuss hereunder only Mr Mangenda's criminal responsibility relating to the offence of the giving of false testimony by the 14 Main Case Defence witnesses pursuant to Article 70(1)(a), in conjunction with Article 25(3)(c) of the Statute.

865. The Chamber reiterates that the 14 Main Case Defence witnesses concerned in this case each gave intentionally false testimony on at least one of three issues before Trial Chamber III when under obligation to tell the truth,[1916] namely (i) the nature and number of contacts with the Main Case Defence, (ii) payments or benefits received from or promised by the Main Case Defence, and (iii) acquaintances with other individuals. On the evidence, the Chamber cannot establish any direct link between Mr Mangenda's activities and the false

[1916] *See* para.859.

testimony given by D-23, D-26, D-55, D-57 or D-64. Therefore, lacking proof of any effect or causal link,[1917] it cannot conclude that Mr Mangenda aided, abetted or otherwise assisted in the giving of false testimony by these witnesses. The Chamber is, however, convinced that Mr Mangenda provided physical assistance and/or encouraged, directly and indirectly through Mr Kilolo, the giving of false testimony by D-2, D-3, D-4, D-6, D-13, D-15, D-25, D-29 and D-54. The Chamber draws this inference from Mr Mangenda's various contributions with regard to these specific witnesses, which, taken together, warrant such a conclusion.

866. Before all else, it is important to recall that, as Mr Kilolo's assisting hand and confidant, Mr Mangenda was responsible for supporting Mr Kilolo in his responsibilities as Mr Bemba's counsel in the Main Case. While he did not personally interview the defence witnesses, on the evidence, however, the Chamber is convinced that Mr Mangenda was deeply involved in the planning of Mr Kilolo's illicit coaching activities, such as those involving D-29 and D-54, and accompanied Mr Kilolo on field missions from which other members of the Main Case Defence team were excluded. He provided practical assistance to Mr Kilolo by relaying Mr Bemba's directives (as was the case with D-54), which Mr Kilolo, in turn, impressed upon the witnesses. When Mr Kilolo was not present in the courtroom, Mr Mangenda reported to Mr Kilolo on the testimony of witnesses, such as D-25 and D-29; advised on the points on which witnesses had performed badly or on which they required instruction; and otherwise proposed how best to carry out the illicit witness preparation. Moreover, Mr Kilolo consulted Mr Mangenda in detail and had exchanges with him about the on-going testimony of the witnesses, particularly D-13[1918] and D-15.[1919] This was indispensable assistance to Mr Kilolo, who, in turn, illicitly coached the

[1917] *See* paras 72-82.
[1918] *See* paras 659-661.
[1919] *See* paras 565-566 and 574-576.

witnesses in a focused manner. Mr Mangenda also reported back to Mr Bemba and kept him abreast of Mr Kilolo's coaching activities, which enabled him to issue instructions concerning the illicit coaching activities.

867. Further, Mr Mangenda aided logistically in the illicit coaching by being present for the distribution of the cell phones to witnesses D-2, D-3, D-4 and D-6[1920] and sending Mr Kilolo the filings of the victims' legal representatives containing the questions knowing that Mr Kilolo would rehearse those questions with the witnesses in advance of their testimony. Furthermore, based on an overall assessment of the evidence, the Chamber infers from Mr Mangenda's physical presence at these meetings, as well as from the consultation and exchanges between Mr Mangenda and Mr Kilolo on details of the illicit coaching, that Mr Mangenda gave moral support and encouragement to Mr Kilolo through his presence at these meetings. Indeed, Mr Mangenda (and not co-counsel Mr Haynes) accompanied Mr Kilolo on missions because he knew about the illicit coaching activities and was part of them. It bases this on the conclusion that it would be unreasonable to imagine that Mr Mangenda played a minor and merely logistical role in the background of these meetings, when the evidence of the telephone conversations proves that he advised Mr Kilolo on an equal footing on details of the coaching activity on these occasions. The only reasonable conclusion on the totality of the evidence is that Mr Mangenda's presence during meetings where corrupt influencing occurred facilitated the subsequent Article 70(1)(a) offences. The Chamber is therefore convinced that this moral support had an effect on the false testimony.

868. For the same reasons, the Chamber considers that Mr Mangenda had an effect on the false testimony given by D-13. He provided moral support to Mr Kilolo by telephone during the illicit coaching of D-13, listening to Mr Kilolo's updates

[1920] *See* paras 354 and 367.

and complaints about such activities and tacitly approving them.[1921] Mr Mangenda also advised Mr Kilolo on the content of the illicit coaching of D-15, and provided the confidential questions of the victims' legal representatives to Mr Kilolo for use during these illicit coaching activities.[1922] Lastly, Mr Mangenda conveyed Mr Bemba's instructions concerning the illicit coaching of D-54 and advised Mr Kilolo concerning these activities.[1923] All these actions on the part of Mr Mangenda ultimately assisted these witnesses in giving the evidence that Mr Kilolo had previously dictated to them.

869. Mr Mangenda also took an active part in planning and implementing remedial measures and morally supported and advised Mr Kilolo and Mr Bemba with a view to frustrating the Prosecution's Article 70 investigation. By way of example, he proposed and agreed with Mr Kilolo to destroy physical evidence relating to the bribery of witnesses and advised Mr Bemba to offer defence witnesses incentives to terminate their cooperation with the Prosecution.

870. Mr Mangenda assisted Mr Kilolo and Mr Bemba with the aim of facilitating the offence of false testimony. As elaborated above, the Chamber also finds that Mr Mangenda knew and intended that the witnesses would give false evidence on the three above-mentioned points. His elevated *mens rea* comes to the fore in various discussions with Mr Kilolo, in which he advises the latter on how best to illicitly coach the witnesses. His justification that Mr Haynes could not be taken into the field because he must not find out about the '*les couleurs*' operation is also indicative of Mr Mangenda's intent to facilitate the offence by trying to conceal it from others. Mr Mangenda was aware that false testimony would be given in the ordinary course of events as he knew of Mr Kilolo's intention to

[1921] *See* paras 659-661 and 667.
[1922] *See* paras 565-566 and 574-576.
[1923] *See* paras 598-599- and 600-612.

illicitly coach the witnesses and advised him on how best to perform such coaching.

b) Mr Arido

871. Pre-Trial Chamber II confirmed the charges against Mr Arido of having aided, abetted or otherwise assisted, for the purpose of facilitating the offence, in the giving of false testimony by the 4 Main Case Defence witnesses pursuant to Article 70(1)(a) and the presentation of false evidence, pursuant to Article 70(1)(b) of the Statute, in conjunction with Article 25(3)(c) of the Statute. In the alternative to charges that Mr Arido was criminally responsible, under Article 25(3)(a) of the Statute, for perpetrating the corrupt influencing of witnesses pursuant to Article 70(1)(c) of the Statute, Pre-Trial Chamber II confirmed the charge against Mr Arido of having aided, abetted or otherwise assisted in the commission of this offence. The Chamber has found that Mr Arido is criminally responsible as a perpetrator under Article 25(3)(a) of the Statute for corruptly influencing witnesses, which was the primary charge confirmed in relation to this offence. As a result, it will discuss hereunder only Mr Arido's criminal responsibility for the giving of false testimony by the 4 Main Case Defence witnesses pursuant to Article 70(1)(a) of the Statute, and presenting false testimony pursuant to Article 70(1)(b) of the Statute, in conjunction with Article 25(3)(c) of the Statute.

872. Mr Arido assisted Mr Kilolo in recruiting witnesses D-2, D-3, D-4 and D-6 for the Main Case Defence. He briefed and instructed the witnesses as to the contents of their upcoming testimony, promising payment and relocation. However, the Chamber has found that, in the specific circumstances of this case, it will not consider the falsity of matters relating to the merits of the Main Case. As Mr Arido's meetings with the witnesses concerned only their membership of the military and other matters closely related to the merits of the Main Case, it

cannot consider the falsity of the witnesses' testimony on these topics. On the evidence, there is no link between Mr Arido's conduct and the false testimony the witnesses provided on contacts, payments and association with third persons. The Chamber is therefore unable to conclude that Mr Arido aided or abetted or otherwise assisted the giving of false testimony. For the same reasons, the Chamber is unable to conclude that Mr Arido aided or abetted or otherwise assisted the commission by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false oral evidence.

c) Mr Babala

873. Pre-Trial Chamber II confirmed the charges against Mr Babala of having aided, abetted or otherwise assisted, for the purpose of facilitating the offence, in the giving of false testimony by the 14 Main Case Defence witnesses pursuant to Article 70(1)(a) of the Statute; in the commission, by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false evidence pursuant to Article 70(1)(b) of the Statute; and the corrupt influencing of witnesses pursuant to Article 70(1)(c) of the Statute. Further, the Chamber recalls that the Pre-Trial Chamber declined to confirm all charges against Mr Babala under Article 25(3)(a) (direct and indirect co-perpetration) and Article 25(3)(d) of the Statute (contributed in any other way).[1924]

874. The Prosecution alleges that Mr Babala's responsibility is demonstrated by his (i) serving as Mr Bemba's link to the co-accused and others in the implementation of the common plan, including by communicating to Mr Bemba requests for money made by the co-accused to implement the common plan and passing Mr Bemba's instructions to the other co-accused; (ii) arranging payments to other co-accused, including Mr Kilolo and Mr Arido, who both subsequently and corruptly paid witnesses; (iii) implementing the common plan

[1924] Confirmation Decision, operative part (b)(ii), p. 54.

by paying witnesses and their families through direct money transfers, or using others to do so, such as his driver; and (iv) concealing the common plan by using code during conversations with Mr Bemba.[1925] As an aside, the Chamber notes that the same arguments were presented by the Prosecution at the confirmation stage in support of Mr Babala's responsibility as co-perpetrator under Article 25(3)(a) of the Statute.[1926]

875. The Chamber is of the view that such a broad formulation of Mr Babala's assistance amounts to alleging his criminal responsibility as a co-perpetrator together with the co-accused Mr Bemba, Mr Kilolo and Mr Mangenda. In particular, various formulations by the Prosecution that Mr Babala allegedly contributed to the implementation of the 'common plan' or references to his 'role in the overall strategy'[1927] are strong indicators of the Prosecution's position to prosecute Mr Babala as co-perpetrator, together with other co-accused, under Article 25(3)(a) of the Statute, and that, despite the terms of the Confirmation Decision, it did not abandon its pre-confirmation position.

876. This would result *de facto* in an amendment of the charges. The Chamber recalls that it expressly declined previous Prosecution requests to re-characterise the facts relating to, *inter alia*, the Article 25(3)(a) liability for Mr Babala involving the offences under Articles 70(1)(b) and (c) of the Statute in accordance with Regulation 55 of the Regulations of the Court.[1928] Having assessed the evidence as a whole, the Chamber sees no reason to revisit these decisions and to trigger the application of Regulation 55 of the Regulations of the Court. Accordingly, the Chamber will assess the evidence in the light of

[1925] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 262 (footnotes omitted); Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 339.
[1926] Prosecution Submission on the Confirmation of Charges, ICC-01/05-01/13-597-AnxB-Red, paras 384-394.
[1927] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 262; Prosecution Closing Brief, ICC-01/05-01/13-1905-Red, para. 339.
[1928] Decision on Prosecution Application to Provide Notice pursuant to Regulation 55, 15 September 2015, ICC-01/05-01/13-1250; Decision on Prosecution's Re-application for Regulation 55(2) Notice, 15 January 2016, ICC-01/05-01/13-1553.

Mr Babala's responsibility as an aider or abettor of the offences committed by the witnesses and other co-accused, as delineated in the Confirmation Decision.

877. On the basis of the evidence before it, the Chamber cannot conclude that Mr Babala aided, abetted or otherwise assisted in (i) the giving of false testimony by the 14 Main Case Defence witnesses pursuant to Article 70(1)(a) and (ii) the presentation of the witnesses' false oral evidence to the Court by Mr Bemba, Mr Kilolo and Mr Mangenda pursuant to Article 70(1)(b) of the Statute. The Chamber reiterates that, as it does not make any findings with regard to the truth or falsity of matters relating to the merits of the Main Case, the false evidence given by the witnesses as relevant to this case relates only to (i) the nature and number of prior contacts with the Main Case Defence, (ii) payments or monetary or non-monetary benefits given or promised by the Main Case Defence, and/or (iii) acquaintance with other individuals. No evidence established a link between Mr Babala and the false evidence of the witnesses on any of these three points. Notably, even though Mr Babala held the role of financier, no evidence sufficiently establishes that Mr Babala assisted in the presentation of the untruthful accounts of witnesses with regard to payments.

878. However, on the evidence, the Chamber is convinced that Mr Babala provided material assistance to Mr Bemba, Mr Kilolo and Mr Mangenda in their corrupt influencing of witnesses D-57 and D-64 pursuant to Article 70(1)(c) of the Statute. Having analysed the evidence as a whole, the Chamber considers that Mr Babala's accessorial assistance can only be linked to D-57 and D-64, to whom Mr Babala transferred an illegitimate payment himself or through a third person. The evidence does not support any direct or indirect link between Mr Babala and witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-55 or D-54. Mr Babala's general assistance in effecting payments or facilitating payments by third persons cannot be considered to be indicative that Mr Babala

indeed assisted the co-accused in their commission of the offences involving the remaining witnesses. In other words, Mr Babala's role as financier does not automatically imply his criminal responsibility with regard to payments, but only where it can be established that he assisted in the knowledge that they were illegitimate. Mr Babala's '*après-vente*' remark equally cannot, without any further evidentiary link between Mr Babala and the remaining 12 Main Case Defence witnesses, serve to establish such a link with them. This is especially the case since the remark was made *after* most of the remaining 12 witnesses had been corruptly influenced by the co-perpetrators and the witnesses had already testified. Mutual attribution of the acts committed by Mr Bemba, Mr Kilolo and Mr Mangenda involving those 12 witnesses cannot be made in relation to Mr Babala, as he was not part of the common plan. This is without prejudice to the Chamber's earlier finding that, for the purpose of establishing the common plan between the co-perpetrators, it relied on their concerted actions, involving also the actions of non-members of the common plan, such as the two other co-accused, Mr Babala and Mr Arido, and other third persons.[1929]

879. As elaborated above, it is uncontested and indeed Mr Babala admits that he paid D-57 (through his wife) USD 665 [1930] and facilitated the payment of USD 700 to D-64 (through his daughter, with the payment effected by Mr Babala's driver). [1931] He thereby aided the co-perpetrators in corruptly influencing these two witnesses knowing that the money was used as an incentive to make the witnesses testify in favour of Mr Bemba.

880. What is contested is whether Mr Babala lent his assistance with the will to facilitate the offences and whether he was aware that the offences would occur in the ordinary course of events. The Chamber is convinced that Mr Babala acted

[1929] *See* para. 682.
[1930] *See* para. 243.
[1931] *See* para. 269.

with the requisite *mens rea* and draws this inference from Mr Babala's various contributions, which, taken together, warrant such a conclusion.

881. Before all else, the explanation provided by the Babala Defence, that the money transfers were provided out of solidarity with Mr Bemba,[1932] does not change this conclusion, since the motivation behind the assistance is irrelevant to its criminality. The assertion that such help, provided out of 'solidarity', cannot ever be criminal[1933] is purely pretextual.

882. The Chamber relies in the first place on Mr Babala's '*donner du sucre aux gens*' statement to Mr Bemba on 17 October 2012, the day D-64 travelled to The Hague.[1934] The Babala Defence challenged the translation of the expression '*donner du sucre aux gens*' and argued that it should have been presented as '*faire du bien aux gens*'. Even if the Chamber relied on the translated expression proposed by the Babala Defence, it does not change the Chamber's conclusion that Mr Babala advised Mr Bemba to make payments to witnesses and that Mr Bemba would see the benefit.[1935] Conducting an overall assessment of the evidence, the Chamber must view this statement against the backdrop of other evidence implicating Mr Babala.

883. Contrary to the Prosecution's position,[1936] the Chamber does not rely on the various telephone conversations in which Mr Babala merely asks for authorisation of payments to Mr Kilolo. The Chamber finds it cannot establish any link, without more, between those payments and subsequent illegitimate payments effected to the witnesses. Therefore, these telephone conversations do

[1932] Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, paras 43-45.
[1933] Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, paras 44-45.
[1934] *See* para. 267.
[1935] *See* para. 267. The Chamber also notes that the Babala Defence no longer presents an alternative interpretation of the expression (*see* Babala Defence Submission, ICC-01/05-01/13-596-Corr2-Red, para. 49) but simply submits that the phrase should not be construed out of context, Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, para. 141.
[1936] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 263(iii) and footnote 835.

not prove Mr Babala transferred these sums with the intent to facilitate the offences. Contrary to the Prosecution's position,[1937] the Chamber also does not rely on intercepts from the ICC Detention Centre which show that Mr Babala conveyed messages from Mr Bemba to Mr Kilolo. Again, the evidence does not establish any link between Mr Babala's actions to convey these messages and concrete illegitimate payments to other witnesses. It therefore cannot serve as evidence to prove Mr Babala's intent to assist in the commission of the offences.

884. However, it is proven, as elaborated above, that Mr Babala was in regular contact with Mr Bemba,[1938] including by abusing the privileged line at the ICC Detention Centre. The two accused spoke in code, including about matters relating to the Main Case.[1939] In this context, the Chamber recalls that Mr Babala communicated in codes when referring, for example, to Mr Kilolo ('*Collègue d'en Haut*'),[1940] D-57 (*C'est la même chose comme pour aujourd'hui*'),[1941] and the monies to be paid ('*kilos*' or '*grands*').[1942] The Chamber does not accept the Babala Defence explanation that these codes were legitimate as the two accused were talking about political issues.[1943] The content of the intercepts clearly shows that the code was used for matters related to the Main Case, not Mr Bemba's or Mr Babala's political work. In the Chamber's estimation, there was no need to speak in codes and to abuse the privileged line in order to discuss legitimate defence witnesses' payments. Rather, the evidence shows that Mr Babala actually underlined to Mr Bemba the importance of paying certain witnesses (in this case, D-57 and D-64) in connection with their testimonies in court.

[1937] Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Red, para. 263(vi) and footnote 838.
[1938] *See* Call logs, CAR-OTP-0079-0221; CAR-OTP-0079-0220. Mr Babala used the telephone numbers [Redacted] and [Redacted]. For the attribution of the first number, *see* para. 779. The Chamber is satisfied that the second number also belongs to Mr Babala, as evidenced in the ICC document containing non-privileged telephone contacts of Mr Bemba, CAR-OTP-0074-0075 at 0077, row 36.
[1939] *See* para. 748.
[1940] *See* paras 697-698.
[1941] *See* paras 267 and 882.
[1942] *See* paras 697-700.
[1943] Babala Defence Closing Brief, ICC-01/05-01/13-1901-Red, paras 36-42, 140-141.

885. The evidence must also be viewed in the light of the fact that Mr Babala was aware - to some extent – of internal details of the Main Case, including the identity of witnesses, and arranged or effected the money transfers to the co-accused and other persons.[1944] Mr Babala admitted that he transferred money to D-57 and D-64 shortly before the commencement of their testimony in the Main Case.[1945] On at least one occasion, Mr Babala was put in contact with Mr Bemba through Mr Kilolo that succeeded the communication between Mr Kilolo and D-51.[1946] While the evidence does not reveal that Mr Babala became privy to the content of the earlier conversation with D-51, the Chamber nevertheless takes into account that his contact with Mr Kilolo and Mr Bemba was facilitated without the Registry's knowledge by abusing the privileged line and in temporal proximity with a telephone call with D-51.

886. The Chamber also finds revealing Mr Babala's interactions with the co-perpetrators on 17 and 22 October 2013, when they became aware that they were the subject of an investigation. In this regard, the Chamber notes the following evidence in particular.

887. The telephone call of 17 October 2013 proves that Mr Babala understood his role to be that of the financier of Mr Bemba.[1947] Mr Babala does not deny this fact. The Chamber understands from Mr Babala's '*après-vente*' statement in that same telephone call that Mr Babala encouraged Mr Kilolo to maintain contact with the defence witnesses and, if necessary, to give them money ('*après-vente*'). While this statement was made after the transfer of money for D-57 and D-64 had been effected or facilitated by Mr Babala, the Chamber nevertheless sees in his remark

[1944] *See* paras 695-697.
[1945] *See* also para. 267.
[1946] *See* para. 742.
[1947] *See* paras 779-781; Audio recording, CAR-OTP-0080-1319; Transcript of audio recording, CAR-OTP-0082-0542 at 0544 (as amended in CAR-OTP-0082-0544_01), lines 61-64.

further support for its finding that Mr Babala agreed to ensure that any prior illicit payment to D-57 and D-64 is not detected.

888. In the 22 October 2013 conversation at 20:26,[1948] Mr Babala and Mr Kilolo discussed again the '*après-vente*' service in the light of Mr Bemba's suggestion that they could wait. Mr Babala encouraged Mr Kilolo to nevertheless continue the service:

> **Kilolo**: *Alors par contre, les trois-là, bon, le client m'a dit qu'on puisse attendre, comme eux ne posent pas de problèmes, 'qu'on puisse attendre calmement comment ça va évoluer, et puis…*
> **Babala**: *Non, non, non, je ne suis pas d'accord avec lui, là. Il faut y aller,* ***faire le service après-vente,*** *hein, mon gars. (…) Il faut le faire (…) On n'a pas besoin de lui pour ça. (…) On n'a pas besoin de lui par ça. On n'a pas besoin de lui pour ça. Je le… je connais mon gars-là.* ***On n'a pas besoin de lui pour ça. Ça, on peut gérer à nous deux. C'est pas des trucs importants, quoi.***
> **Kilolo**: *Mm-mm, Mm-mm, oui c'est ça. Parce que c'est juste une affaire de… de trois unités…*
> **Babala**: ***Oui, c'est un petit truc, quoi***.
> **Kilolo**: *… c'est-à-dire chacun 1,000, 1,000, 1,000, et puis…*
> **Babala**: *Ouai*.
> **Kilolo**: *… et leur dire clairement : «Écoutez maintenant, je ne veux plus rien savoir, quoi ».*
> **Babala**: *Non, il ne faut pas dire comme ça.* ***Continuez à faire le service après-vente****. De temps en temps un 50, de temps en temps un 100, ça fait du mal à personne.*
> **Kilolo**: *Mm-mm. Mm-mm. Voilà.*
> **Babala**: *Ça donne de l'impression que tu suis l'affaire, tu le suis même.*[1949]

889. Reading the above in context, the Chamber considers that Mr Babala's determination to act irrespective of Mr Bemba's instruction was grounded in the fact that the sums of money involved were seemingly small ('*c'est un petit truc*').

[1948] See paras 797 and 799.

[1949] Audio recording, CAR-OTP-0080-1360; Transcript of audio recording, CAR-OTP-0082-0596 at 0598 (as amended in CAR-OTP-0082-0598_01), lines 41-61 (emphasis added) ('Kilolo: *Now, conversely, the three there, well, the client told me that we can wait, since they are not causing problems, that we can wait quietly and see how things develop, and then …* Babala: *No, no, no, I don't agree with him on that point. We have to go, provide the after-sales service, you know, mate. (...) It has to be done (...) We don't need him for that. (...) We don't need him for that. We don't need him for that. I … I know my man there. We don't need him for that. The two of us can handle that. It's nothing important is it?* Kilolo: *Mm-mm, mm-mm, yes, that's it. Because it's just a question of … of three unit …* Babala: *Yes, it's nothing much is it?* Kilolo: *… that's to say, each one 1,000, 1,000, 1,000, and then …* Babala: *Yeah.* Kilolo: *… and tell them straight: "Listen now, I don't want to know any more, you know?"* Babala: *No, you mustn't say it like that. Keep providing the after-sales service. Every now and again a 50, from time to time 100, that doesn't hurt anyone.* Kilolo: *Mm-mm. mm-mm. There you are.* Babala: *That gives the impression that you are following the case, you are following it yourself*').

Mr Babala also felt entitled to act in this manner in the light of the fact that he was Mr Bemba's 'financier', who took risks.[1950]

890. The circumstances surrounding the above interactions clearly show that Mr Babala was aware of the purpose of the payments in October 2013 to Mr Kilolo and, in turn, the purpose of the payments to D-57 and D-64. Mr Babala was also aware of the status of D-57 and D-64 as Main Case Defence witnesses.[1951] Moreover, these conversations demonstrate that Mr Babala was well acquainted with the use of code for internal communications among the accused concerning Main Case matters.

891. Mr Babala's promotion of the '*après-vente*' service must also be viewed in the light of the 17 October 2013 conversation, when Mr Babala discussed with Mr Kilolo the Article 70 warrant of arrest issued against Walter Osapiri Barasa for alleged witness interference in the case in the Kenya situation.[1952] This demonstrates all the more that Mr Babala was fully aware of the legal implications of his suggestion to render '*après-vente*' services and facilitate illicit defence witness payments in relation to witnesses D-57 and D-64.

892. Lastly, Mr Babala's acknowledgment on 22 October 2013 that he took risks as '*financier*' through his involvement in witness payments further highlights his awareness.[1953] In the Chamber's view, there would be no risk for Mr Babala in assisting in legitimate financial matters. Rather, Mr Babala's statement further indicates that he was aware of his involvement in illicit witness payments of D-57 and D-64 and feared negative repercussions.

[1950] Audio recording, CAR-OTP-0080-1360; Transcript of audio recording, CAR-OTP-0082-0596 at 0599 (as amended in CAR-OTP-0082-0599_01), lines 76-80.
[1951] *See* para. 267.
[1952] *See* para. 780.
[1953] *See* paras 887-889.

893. As a result, the Chamber is convinced that Mr Babala lent his assistance with the aim of facilitating the offences of corruptly influencing witnesses D-57 and D-64. Considering his regular exchanges with Mr Bemba and Mr Kilolo, in particular his role as financier, viewed in the light of the evidence as a whole, the Chamber is satisfied that Mr Babala was aware that the payments were illegitimate and aimed at altering and contaminating the witnesses' testimony.

V. LEGAL CHARACTERISATION OF THE CONDUCT OF THE ACCUSED

894. The Pre-Trial Chamber confirmed the charges against the five accused of offences against the administration of justice, all committed between the end of 2011 and 14 November 2013 in various locations, including the Netherlands, Belgium, Sweden, Portugal, the Republic of the Congo, the DRC, and Cameroon. The Chamber sets out below the legal characterisation of the conduct of the five accused as laid down in Sections III and IV.B to IV.C of this judgment. The Chamber clarifies that the manner in which this section has been organised and the order in which the accused are discussed implies no hierarchy or gradation of responsibility or otherwise.

A. Mr Kilolo

895. With respect to **Article 70(1)(c)** of the Statute, the Pre-Trial Chamber confirmed the charge against Mr Kilolo of corruptly influencing witnesses as follows:

> **Mr Kilolo**, pursuant to article 70(1)(c) and article 25(3)(a) (co-perpetration) of the Statute committed, together with Mr Bemba and Mr Mangenda, the offence of corruptly influencing 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 D-64, by way of instructing them, in person or by phone, to either provide false information or withhold true information during their testimony in Court and by either promoting, encouraging or rewarding their testimony by way of transfers of money […];[1954]

[1954] Confirmation Decision, pp. 48-49.

896. Having analysed the evidence, as set out in Section IV.B to IV.C, the Chamber found that Mr Kilolo, jointly with Mr Bemba and Mr Mangenda,[1955]

(a) Intentionally[1956] and illicitly coached, either in person or over the telephone, witnesses

(i) D-2, D-3, D-4, D-6,[1957] D-15,[1958] D-23,[1959] D-26[1960] and D-54[1961] to provide particular information during their testimony in relation to the **merits** of the Main Case;

(ii) D-2, D-3, D-4, D-6,[1962] D-13,[1963] D-15,[1964] D-26,[1965] D-29,[1966] D-54,[1967] D-55,[1968] D-57[1969] and D-64[1970] to provide false information and/or withhold true information about the **nature and number of their prior contacts with the defence in the Main Case**;

(iii) D-2, D-3, D-4, D-6[1971] D-23,[1972] D-25,[1973] D-29,[1974] D-54,[1975] D-55,[1976] D-57[1977] and D-64 [1978] to provide false information and/or withhold true information about reimbursements or **payments** received or material benefits given or non-monetary promises made;

[1955] *See* paras 103-113 and 680- and 803.
[1956] *See* paras 822 and 834-836.
[1957] *See* with regard to D-2, D-3, D-4 and D-6 paras 135-137, 355-365 and 416.
[1958] *See* paras 167-169, 551-553, 556-583 and 590.
[1959] *See* paras 152-153, 446-450 and 453.
[1960] *See* paras 155-157, 461-463, 465-471 and 476.
[1961] *See* paras 172-173, 176-177, 625-636, 641-644 and 651.
[1962] *See* with regard to D-2, D-3, D-4 and D-6 paras 135, 360, 363, 366, 400-401 and 417.
[1963] *See* paras 183, , 664 and 666.
[1964] *See* paras 166, 554 and 590.
[1965] *See* paras 158, 456-460, 464 and 475.
[1966] *See* paras 164, 514-517, 528, 531 and 541.
[1967] *See* paras 178, 637-640 and 651.
[1968] *See* paras 124, 299, 301 and 304.
[1969] S*ee* paras 116, 251 and 253.
[1970] *See* paras 119, 264, 276-278 and 280.
[1971] *See* with regard to D-2, D-3, D-4 and D-6 paras 142-145, 360, 366, 412-413, 415 and 417.
[1972] *See* paras 150, 436-439 and 453.
[1973] *See* paras 160, 479-481, 484-485, 500-501 and 504.
[1974] *See* paras 164, 527 and 541.
[1975] *See* paras 180, 637-638 and 651.
[1976] *See* paras 124, 288 and 301-303.
[1977] *See* paras 115, 250 and 253.
[1978] *See* paras 119, 268-269, 273-274, 278 and 280.

(iv) D-2, D-3, D-4, D-6[1979] and D-23[1980] to provide false information and/or withhold true information about their **acquaintance** with other individuals;

(b) Intentionally[1981] **gave, transferred or facilitated the giving of money**, material benefits or non-monetary promises with a view to securing their testimonies in favour of Mr Bemba in the Main Case to witnesses D-2, D-3, D-4, D-6,[1982] D-23,[1983] D-29,[1984] D-57[1985] and D-64.[1986]

897. On the evidence, Mr Kilolo's conduct went beyond mere rehearsal or recapitulation of the witnesses' statements previously given to the defence. Mr Kilolo scripted, corrected, instructed and dictated the content of their testimonies, either in person or over the telephone, irrespective of the witnesses' knowledge or personal experience and regardless of whether the testimonies were true or false. Money, material benefits and non-monetary promises were given as an inducement or reward to unduly procure the favourable testimony of the witnesses. As a result, the Chamber finds that the conduct displayed by Mr Kilolo amounts to illicit coaching and bribing of witnesses, typical forms of corrupt influencing. Lastly, the Chamber recalls the measures taken by Mr Kilolo, as agreed with Mr Bemba and Mr Mangenda, to conceal the common plan, including exploitation of Mr Bemba's privileged line at the ICC Detention Centre and remedial measures once informed of the Article 70 investigation.

898. The Chamber is convinced beyond reasonable doubt that Mr Kilolo's contributions to the illicit coaching activities were essential, without which the influencing of the witnesses would not have occurred at all or at least in the

[1979] *See* with regard to D-2, D-3, D-4 and D-6 paras 135-137, 394, 399, 401, 412-414 and 417.
[1980] *See* paras 149, 434-435 and 453.
[1981] *See* paras 822 and 834-836.
[1982] *See* with regard to D-2, D-3, D-4 and D-6 paras 138-139, 372-380, 396, 405-410 and 419.
[1983] *See* paras 150, 436-444 and 453.
[1984] *See* paras 163-164, 520-526 and 541.
[1985] *See* paras 114-115, 238-248 and 253.
[1986] *See* paras 117-118, 268-275 and 280.

same way. Mr Kilolo's aim was to manipulate the witnesses' testimonies. He expected the witnesses to follow his narrative and instructions, thus contaminating the evidence presented before Trial Chamber III. Indeed, his influence had an impact on the testimony of most of the Main Case defence witnesses even though, as previously held,[1987] such an impact is not necessary. It suffices that Mr Kilolo intended to unlawfully manipulate the testimonial evidence, which he did.

899. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Kilolo, jointly with Mr Bemba and Mr Mangenda, committed the offence of corruptly influencing 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 within the meaning of Article 70(1)(c) of the Statute.

900. With respect to **Article 70(1)(b)** of the Statute, the Pre-Trial Chamber confirmed the charge of presenting false evidence against Mr Kilolo as follows:

> **Mr Kilolo**, pursuant to article 70(1)(b) and article 25(3)(a) (co-perpetration) of the Statute, committed, together with Mr Bemba and Mr Mangenda, the offence of presenting false oral evidence in the knowledge that it was false, by way of introducing the 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, D-55, D-57 and D-64 in the proceedings before TCIII […];[1988]

901. Having analysed the evidence, as set out in Sections IV.B to IV.C, this Chamber found that Mr Kilolo, lead counsel in the Main Case, jointly with Mr Bemba and Mr Mangenda,[1989] called 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 as Main Case Defence witnesses after having illicitly coached and/or bribed them. By doing so, Mr Kilolo, together with Mr Bemba and Mr Mangenda, intentionally [1990] introduced testimonial evidence of the above-mentioned witnesses into the proceedings of the Main Case. As set out above in relation to the coaching activities and for the

[1987] *See* paras 47-48.
[1988] Confirmation Decision, p. 49.
[1989] *See* paras 103-113 and 680-803.
[1990] *See* paras 822 and 834-836.

same reasons, Mr Kilolo's contributions to the presentation of false evidence were essential.

902. Having illicitly coached them previously, Mr Kilolo presented evidence in the knowledge that the evidence of the witnesses concerned was false. For the purpose of determining the falsity of the testimonial evidence, the Chamber highlights that it relied only on the witnesses' testimony relating to (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons. The Chamber did not take into account the truth or falsity of the testimonial evidence relating to the merits of the Main Case.[1991] The evidence of the above-mentioned witnesses was intentionally introduced by Mr Kilolo into the Main Case, thus tainting the enquiry of the Trial Chamber III Judges in relation to the credibility of the witnesses. The fact that the evidence of the witnesses concerned was not relied upon by Trial Chamber III has no bearing on the question of whether Article 70(1)(b) of the Statute is fulfilled. [1992]

903. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Kilolo, jointly with Mr Bemba and Mr Mangenda, committed the offence of presenting false evidence through 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 within the meaning of Article 70(1)(b) of the Statute.

904. With respect to **Article 70(1)(a)** of the Statute, the Pre-Trial Chamber confirmed the charge against Mr Kilolo of giving false testimony as follows:

> **Mr Kilolo**, pursuant to article 70(1)(a) and article 25(3)(b) of the Statute, solicited or induced the 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, D-55, D-57 and D-64 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of instructing, persuading or

[1991] *See* para. 194.
[1992] *See* para. 40.

> otherwise influencing 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 D-64, including by way of transfers of money, to state false information or withhold true information before TCIII […].[1993]

905. Having analysed the evidence, as set out in Sections IV.B to IV.C, the Chamber found that witnesses D-2,[1994] D-3,[1995] D-4,[1996] D-6,[1997] D-13,[1998] D-15,[1999] D-23,[2000] D-25,[2001] D-26,[2002] D-29,[2003] D-54,[2004] D-55,[2005] D-57,[2006] and D-64,[2007] who were under oath when giving evidence in the Main Case, objectively did not tell the truth by either affirming a false fact, negating a true fact, or withholding a true fact relating to (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons. As in the context of Article 70(1)(b), the Chamber does not take into account the falsity of testimonial evidence relating to the merits of the Main Case.[2008] The information under these three categories was 'material' as it generally has a significant impact on the assessment of a witness's credibility.[2009]

906. Mr Kilolo persuaded 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 D-64 to give false testimony when under the obligation to tell the truth before Trial Chamber III. He achieved this by intentionally[2010] instructing, dictating, and rewarding the witnesses, for example,

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[1993] Confirmation Decision, p. 49.
[1994] *See* paras 142, 389 and 412.
[1995] *See* paras 143, 392 and 413.
[1996] *See* paras 144, 394 and 414.
[1997] *See* paras 145, 398-401 and 415.
[1998] *See* paras 183-184 and 662- 665.
[1999] *See* paras 170, 581-582 and 589.
[2000] *See* paras 152-153 and 451-452.
[2001] *See* paras 160, 500-501 and 503.
[2002] *See* paras 155-158, 473 and 475.
[2003] *See* paras 164, 528-531 and 540.
[2004] *See* paras 180, 640, 646 and 650.
[2005] *See* paras 124, 301 and 303.
[2006] *See* paras 116 and 246-252.
[2007] *See* paras 119 and 276-279.
[2008] *See* para. 194.
[2009] *See* para. 22.
[2010] *See* paras 822 and 834-836.

by giving or facilitating the transfer of money, material benefits and non-monetary promises. Because of his intervention, the witnesses gave untruthful evidence before Trial Chamber III. Without his intervention, the witnesses would not have given this evidence or at least not in this form.

907. Mr Kilolo personally and extensively instructed all 14 Main Case Defence witnesses to provide false information and/or withhold true information. His conduct goes beyond asking or urging these witnesses to testify falsely. In view of the influence Mr Kilolo exerted over the falsely testifying witnesses, Article 25(3)(b) inducement, and not solicitation, best reflects Mr Kilolo's criminal responsibility.

908. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Kilolo induced the giving of false testimony by 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 within the meaning of Article 70(1)(a) of the Statute.

B. Mr Mangenda

909. With respect to **Article 70(1)(c)** of the Statute, the Pre-Trial Chamber confirmed the charge against Mr Mangenda of corruptly influencing witnesses as follows:

> **Mr Mangenda**, pursuant to article 70(1)(c) and article 25(3)(a) (co-perpetration) of the Statute, committed, together with Mr Bemba and Mr Kilolo, the offence of corruptly influencing 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 D-64, by way of liaising between Mr Bemba and Mr Kilolo as well as discussing, coordinating with and advising Mr Kilolo both on money transfers to witnesses D-2, D-3, D-4, D-6, D-13, D-15, D23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64 and on the content of their testimony, by providing cell phones to witnesses and by actively participating in meetings where witnesses were illicitly coached […];
>
> in the alternative, pursuant to article 70(1)(c) and article 25(3)(c) of the Statute, **Mr Mangenda**, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the offence of corruptly influencing 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 D-64 by way of liaising between Mr Bemba and Mr Kilolo as well as discussing, coordinating with and advising Mr Kilolo both on money transfers 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, D-57 and D-64 and on the content of their

testimony, providing cell phones to witnesses and by actively participating in meetings where witnesses were illicitly coached […];[2011]

910. Having analysed the evidence, as set out in Section IV.B to IV.C, the Chamber found that Mr Mangenda, jointly with Mr Bemba and Mr Kilolo, [2012] intentionally[2013] contributed to the planning and execution of the illicit coaching activities of Mr Kilolo involving D-2, D-3, D-4, D-6,[2014] D-13,[2015] D-15,[2016] D-23,[2017] D-25,[2018] D-26,[2019] D-29,[2020] D-54,[2021] D-55,[2022] D-57[2023] and D-64[2024]. He liaised between Mr Bemba and Mr Kilolo and relayed Mr Bemba's instructions to Mr Kilolo, in particular as regards witness testimonies.[2025] He kept Mr Kilolo updated on the testimony of the defence witnesses whenever Mr Kilolo was not in the courtroom,[2026] and advised Mr Kilolo on specific points to rehearse with the defence witnesses.[2027] Mr Mangenda advised Mr Bemba and Mr Kilolo on legal and other matters, including the calling of witnesses and the content of their testimony.[2028] He accompanied Mr Kilolo on field missions in the knowledge that Mr Kilolo would illicitly coach the witnesses.[2029] He provided Mr Kilolo with the questions of the victims' legal representatives that had been shared earlier with the defence in the Main Case on a confidential basis, knowing that Mr Kilolo would use them to illicitly coach witnesses.[2030] He also

[2011] Confirmation Decision, pp. 49-50.
[2012] *See* paras 103-113 and 680- and 803.
[2013] *See* paras 838 and 848-850.
[2014] *See* with regard to D-2, D-3, D-4 and D-6 paras 135-139, 142-145, 355-366, 372-380, 394, 396, 399-401, 405-410 and 412-419.
[2015] *See* paras 183, 656-661, 664 and 666-667.
[2016] *See* paras 166-169, 551-583 and 590-591.
[2017] *See* paras 149-153, 434-450 and 453.
[2018] *See* paras 160, 479-481, 484-495, 500-501 and 504-505.
[2019] *See* paras 155-158, 456-471 and 475- 476.
[2020] *See* paras 163-164, 514-517, 520-528, 531, 538-539 and 541-542.
[2021] *See* paras 172-173, 176-178, 180, 598-612, 625-644 and 651-652.
[2022] *See* paras 124, 288, 299 and 301-304.
[2023] *See* paras 114-116, 238-248, 250-251 and 253.
[2024] *See* paras 117-119, 264, 268-278 and 280.
[2025] *See* paras 161, 172, 495, 505, 601, 605 and 652.
[2026] *See* paras 159, 165, 487-490,493, 505, 533-534 and 542.
[2027] *See* paras 171-173, 608-609, 611-612 and 652.
[2028] *See* paras 165, 538-539 and 542.
[2029] *See* paras 109, 763, 840 and 866.
[2030] *See* paras 169, 575-576 and 591.

participated in the distribution of cell phones to the defence witnesses, without the knowledge of the Registry, knowing that Mr Kilolo would use them to stay in contact with the witnesses during their testimony.[2031] Finally, the Chamber recalls the measures Mr Mangenda took, as agreed with the other co-perpetrators, to conceal the common plan, including remedial measures once informed of the Article 70 investigation.[2032]

911. The Chamber is convinced that Mr Mangenda's contributions to the illicit coaching activities were essential, without which the influencing of the 14 witnesses would not have occurred in the same way. Mr Mangenda shared the aim of manipulating the witnesses' testimonies and contaminating the evidence presented before Trial Chamber III.

912. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Mangenda, jointly with Mr Bemba and Mr Kilolo, committed the offence of corruptly influencing 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 within the meaning of Article 70(1)(c) of the Statute. The Chamber notes that Mr Mangenda is also charged – in the alternative – with having aided, abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the offence of corruptly influencing the witnesses. Since the Chamber found that Mr Mangenda committed the offence as a co-perpetrator, it is not necessary to enter a finding on the alternative mode of criminal responsibility.[2033]

913. With respect to **Article 70(1)(b)** of the Statute, the Pre-Trial Chamber confirmed the charges of presenting false evidence against Mr Mangenda as follows:

[2031] *See* paras 134, 140, 367 and 421.
[2032] *See* paras 109, 770-, 801, 803 and 845.
[2033] Confirmation Decision, p. 50.

> **Mr Mangenda**, pursuant to article 70(1)(b) and article 25(3)(a) (coperpetration) of the Statute, committed, together with Mr Bemba and Mr Kilolo, the offence of presenting false oral evidence in the knowledge that it was false, by way of introducing the 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, D-55, D-57 and D-64 in the proceedings before TCIII […]
>
> in the alternative, pursuant to article 70(1)(b) and article 25(3)(c) of the Statute, **Mr Mangenda**, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the offence of presenting false oral evidence by way of introducing the 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, D-55, D-57 and D-64 in the proceedings before TCIII, by way of assisting as case manager the lead counsel in the Main Case in introducing the false evidence, regularly discussing with Mr Kilolo and Mr Bemba, advising and reporting to them about the false testimonies rendered by 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 D-64 before TCIII […];[2034]

914. Having analysed the evidence, as set out in Sections IV.B to IV.C, the Chamber found that Mr Mangenda, jointly with Mr Bemba and Mr Kilolo,[2035] introduced the testimonial evidence of 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 D-64 into the evidentiary record of the Main Case. Having participated in the illicit coaching activities together with Mr Kilolo, Mr Mangenda intentionally[2036] presented evidence in the knowledge that the evidence of the witnesses concerned was false. As previously held,[2037] the Chamber has considered the falsity of the testimonial evidence relating only to the witnesses' evidence on (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons.

915. The fact that Mr Mangenda officially carried out the functions of a case manager does not preclude the Chamber from holding him responsible as co-perpetrator for the offence of presenting false evidence.[2038] Mr Mangenda was part of a common plan with others (i) who clearly had standing to present evidence and (ii) whose acts are mutually attributable to Mr Mangenda by

[2034] Confirmation Decision, pp. 50-51.
[2035] *See* paras 103-113 and 680-803.
[2036] *See* paras 838 and 848-850.
[2037] *See* para. 902.
[2038] *See* para. 34.

virtue of the latter's participation in the plan. Moreover, and rather than relying on the official position held by Mr Mangenda within the defence team in the Main Case, the Chamber assessed Mr Mangenda's actual role. Significance is attached to the fact that Mr Mangenda discussed and coordinated the presentation of false evidence with Mr Bemba and Mr Kilolo on an equal footing.[2039] In particular, he discussed with Mr Kilolo whether witnesses, who had been previously illicitly coached, should be called to testify, and advised Mr Kilolo on the questions and topics that Mr Kilolo should elicit during the examination of the witness in court.[2040] These actions convince the Chamber that Mr Mangenda took part in the presentation of false evidence within the meaning of Article 70(1)(b) of the Statute. Lastly, the evidence of the Main Case defence witnesses was intentionally introduced into the Main Case by Mr Mangenda, together with Mr Bemba and Mr Kilolo, thus tainting the inquiry of the Trial Chamber III Judges with respect to the credibility of the witnesses.

916. As set out above in relation to the coaching activities and for the same reasons, Mr Mangenda's contributions to the presentation of false evidence were essential.

917. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Mangenda, jointly with Mr Bemba and Mr Kilolo, committed the offence of presenting false evidence through 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 within the meaning of Article 70(1)(b) of the Statute. The Chamber notes that Mr Mangenda is also charged – in the alternative – with having aided, abetted or otherwise assisted in the commission, by Mr Bemba and Mr Kilolo, of the offence of presenting false evidence. Since the Chamber is convinced that Mr Mangenda committed the

[2039] *See* para. 844. Also, according to the Kilolo Defence, the decisions to call witnesses were taken collectively with the members of the Defence team; *see* Kilolo Defence Closing Brief, ICC-01/05-01/13-1903-Corr2-Red, paras 32, 96, 112, 127, 151, 164, 191, 213, 252.
[2040] *See* paras 718-720.

offence as a co-perpetrator, it is not necessary to enter a finding on the alternative mode of criminal responsibility.[2041]

918. With respect to **Article 70(1)(a)** of the Statute, the Pre-Trial Chamber confirmed the charge of giving false testimony against Mr Mangenda as follows:

> **Mr Mangenda**, pursuant to article 70(1)(a) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the 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, D-55, D-57 and D-64 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of actively participating in meetings where witnesses were illicitly coached, by providing cell phones to witnesses and by regularly discussing with Mr Kilolo and Mr Bemba, advising and reporting to them about the false testimonies rendered by 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 D-64 before TC III […][2042]

919. The Chamber recalls that 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 D-64 gave false testimony on three issues before Trial Chamber III when under an obligation to tell the truth, as discussed in the context of Mr Kilolo's criminal responsibility under Article 70(1)(a) of the Statute.[2043] More specifically, this concerns the witnesses' evidence given in relation to (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons.

920. The Chamber recalls that, on the evidence, there is no direct or indirect link between Mr Mangenda's activities and the false testimony given by D-23, D-26, D-55, D-57 or D-64. The Chamber is therefore unable to conclude beyond reasonable doubt that Mr Mangenda aided, abetted or otherwise assisted in the giving of false testimony by D-23, D-26, D-55, D-57 or D-64.

921. Mr Mangenda assisted in the giving of false testimony of witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-25, D-29 and D-54 by planning, coordinating,

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[2041] Confirmation Decision, p. 51.
[2042] Confirmation Decision, pp. 51-52.
[2043] *See* paras 904-906.

encouraging and supporting, both morally and practically, their illicit coaching. Mr Mangenda was present, thereby providing moral support and encouragement, when Mr Kilolo met with, provided new telephones, illicitly coached, and/or bribed D-2, D-3, D-4 and D-6.[2044] Mr Mangenda provided moral support to Mr Kilolo by telephone during the illicit coaching of D-13, D-25 and D-29, listening to Mr Kilolo's updates and complaints about such activities, providing updates on how the illicit coaching was reflected in the courtroom testimony and tacitly approving them.[2045] Mr Mangenda also advised Mr Kilolo on the content of the illicit coaching of D-15, and provided the confidential questions of the victims' legal representatives to Mr Kilolo for use during these illicit coaching activities.[2046] Lastly, Mr Mangenda conveyed Mr Bemba's instructions concerning the illicit coaching of D-54 and advised Mr Kilolo concerning these activities.[2047] All these actions on the part of Mr Mangenda ultimately assisted these witnesses in giving the evidence that Mr Kilolo had previously dictated to them. Mr Mangenda also acted intentionally with the purpose of facilitating the commission of the offence of giving false evidence by the witnesses, knowing that such false evidence would be and was presented.[2048]

922. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Mangenda committed the offence of aiding the giving of false testimony by D-15 and D-54 within the meaning of Article 70(1)(a) of the Statute. The Chamber is also satisfied beyond reasonable doubt that Mr Mangenda committed the offence of abetting the giving of false testimony by D-2, D-3, D-4, D-6, D-13, D-25 and D-29 within the meaning of Article 70(1)(a) of the Statute.

[2044] *See* paras 133-134, 138, 140, 354 and 367.
[2045] *See* paras 182, 165, 159, 487-494, 533-536 and 542.
[2046] *See* paras 169, 565-566, 574-576 and 591.
[2047] *See* paras 172-173, 601, 605 and 652.
[2048] *See* para. 870.

C. Mr Bemba

923. With respect to **Article 70(1)(c)** of the Statute, the Pre-Trial Chamber confirmed against Mr Bemba the charges of corruptly influencing witnesses as follows:

> **Mr Bemba,** pursuant to article 70(1)(c) and article 25(3)(a) (co-perpetration) of the Statute committed, together with Mr Kilolo and Mr Mangenda, the offence of corruptly influencing 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 D-64, by way of planning and coordinating with the other suspects the perpetration of this offence […];
>
> in the alternative, pursuant to article 70(1)(c) and article 25(3)(b) of the Statute, **Mr Bemba** solicited the commission of the offence of corruptly influencing 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 D-64, by way of directing and coordinating with the other suspects the perpetration of this offence […];[2049]

924. Having analysed the evidence, as set out in Sections IV.B and IV.C, the Chamber found that Mr Bemba, jointly with Mr Kilolo and Mr Mangenda,[2050] intentionally[2051] participated in the illicit coaching of witnesses. He planned, authorised, and approved the illicit coaching of witnesses and provided precise instructions which were relayed by Mr Kilolo.[2052] Mr Bemba also spoke with D-55 personally on the telephone at times and under circumstances that rendered this contact unlawful.[2053] In addition, Mr Bemba authorised the payment of money to witnesses prior to their testimony and ensured, through Mr Babala, that financial means were available to Mr Kilolo and Mr Mangenda with which they executed their illicit activities.[2054] Finally, the Chamber recalls the measures Mr Bemba took, as agreed with the other co-perpetrators, to conceal the common plan, including exploitation of his privileged line at the ICC Detention Centre[2055] and remedial measures once informed of the Article 70

[2049] Confirmation Decision, p. 47.
[2050] *See* paras 103-113 and 680-803.
[2051] *See* paras 805, 807 and 817.
[2052] *See* paras 106, 727-732, 734 and 808-813.
[2053] *See* paras 123, 292-298, 305 and 692.
[2054] *See* paras 106, 693-703 and 813.
[2055] *See* paras 109, 736-745 and 814.

investigation.[2056] His contribution to the illicit coaching activities was essential, without which the influencing of the witnesses would not have occurred in the same way.

925. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Bemba, jointly with Mr Kilolo and Mr Mangenda, committed the offence of corruptly influencing D-2, D-3, D-4, D-6,[2057] D-13,[2058] D-15,[2059] D-23,[2060] D-25,[2061] D-26,[2062] D-29,[2063] D-54,[2064] D-55,[2065] D-57[2066] and D-64[2067] within the meaning of Article 70(1)(c) of the Statute. The Chamber notes that Mr Bemba is also charged – in the alternative –with having solicited the corrupt influencing of the witnesses. Since the Chamber is convinced that Mr Bemba committed the offence as a co-perpetrator, it is not necessary to enter a finding on the alternative mode of criminal responsibility.[2068]

926. With respect to **Article 70(1)(b)** of the Statute, the Pre-Trial Chamber confirmed against Mr Bemba the charges of presenting false evidence as follows:

> **Mr Bemba,** pursuant to article 70(1)(b) and article 25(3)(a) (co-perpetration) of the Statute committed, together with Mr Kilolo and Mr Mangenda, the offence of presenting false evidence with 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, D-57 and D-64, by way of planning and coordinating with the other suspects the perpetration of this offence […];
>
> in the alternative, pursuant to article 70(1)(b) and article 25(3)(b) of the Statute, **Mr Bemba** solicited the commission of the offence of presenting false evidence with regard to witnesses

[2056] *See* paras 110-111, 773-776 and 815.
[2057] *See* with regard to D-2, D-3, D-4 and D-6 paras 135-139, 142-145, 355-366, 372-380, 394, 396, 399-401, 405-410 and 412-419.
[2058] *See* paras 183, 656, 664 and 666.
[2059] *See* paras 166-169, 551-583 and 590-592.
[2060] *See* paras 149-153, 434-450 and 453.
[2061] *See* paras 160, 479-481, 484-485, 495, 500-501 and 504-506.
[2062] *See* paras 155-158, 456-471 and 475- 476.
[2063] *See* paras 163-164, 514-517, 520-528, 531 and 541.
[2064] *See* paras 172-173, 176-178, 180, 615-616, 648-649, 625-644 and 651-653.
[2065] *See* paras 124, 288, 293-299 and 301-305.
[2066] *See* paras 114-116, 238-248, 250-251 and 253.
[2067] *See* paras 117-119, 264, 268-278 and 280-281.
[2068] Confirmation Decision, p. 47.

D-2, D-3, D-4, D6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of directing and coordinating with the other suspects the perpetration of this offence […];[2069]

927. Having analysed the evidence, as set out in Sections IV.B to IV.C, the Chamber found that Mr Bemba, jointly with Mr Kilolo and Mr Mangenda,[2070] introduced the testimonial evidence of 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 D-64 into the evidentiary record of the Main Case. Further, as previously held, the falsity of the testimonial evidence relates only to the witnesses' evidence on (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons. As set out above in relation to the coaching activities and for the same reasons, Mr Bemba's contributions to the presentation of false evidence were essential.

928. Having participated in the illicit coaching activities together with Mr Kilolo and Mr Mangenda, Mr Bemba intentionally[2071] presented the evidence in the knowledge that it was false. Indeed, he authorised the presentation of false evidence by instructing Mr Kilolo to call defence witnesses whom he knew had been or would be illicitly coached by Mr Kilolo.[2072] In this regard, the Chamber reiterates that Mr Bemba's reactions to the Article 70 investigation demonstrate his knowledge of the illicit nature of the co-perpetrators' activities, including the presentation of false evidence.[2073] The Chamber notes, in particular, Mr Bemba's directions, as relayed by Mr Mangenda, that witnesses should be (i) approached to sign a declaration that the information they provided to the Prosecution in the Article 70 investigation was untrue and (ii) offered incentives to cease cooperation with the Prosecution.[2074] Further, the Chamber emphasises that, having issued instructions to Mr Kilolo concerning the coaching activities and

[2069] Confirmation Decision, p. 47-48.
[2070] *See* paras 103-113 and 680-803.
[2071] *See* paras 805, 807 and 817.
[2072] *See* paras 808-811.
[2073] *See* paras 110-111, 773-776 and 815.
[2074] *See* paras 779-796.

the content thereof, Mr Bemba knew that the evidence presented was false when he heard testimony from the witnesses that was consistent with his instructions and/or sought to conceal the illicit coaching activities he himself had planned, authorised and approved. Knowing the results of his activities, namely false evidence, he nonetheless continued to plan, authorise and approve the witness coaching activities in relation to other witnesses. The Chamber is therefore satisfied that he intended that false evidence be presented.

929. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Bemba, jointly with Mr Kilolo and Mr Mangenda, committed the offence of presenting false evidence through 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 D-64 within the meaning of Article 70(1)(b) of the Statute. The Chamber notes that Mr Bemba is also charged – in the alternative – with having solicited the commission of the offence of presenting false evidence. Since the Chamber is convinced that Mr Bemba committed the offence as a co-perpetrator, it is not necessary to enter a finding on the alternative modes of criminal responsibility.[2075]

930. With respect to **Article 70(1)(a)** of the Statute, the Pre-Trial Chamber confirmed against Mr Bemba the charge of giving false testimony as follows:

> Mr Bemba, pursuant to article 70(1)(a) and article 25(3)(b) of the Statute, solicited the 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, D-55, D-57 and D-64, of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of directing and coordinating with the other suspects the perpetration of this offence […].[2076]

931. The Chamber recalls that 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 D-64 gave false testimony on three issues before Trial Chamber III when under an obligation to tell the truth, as discussed in the context of Mr Kilolo's criminal responsibility under Article 70(1)(a) of the

[2075] Confirmation Decision, p. 48.
[2076] Confirmation Decision, p. 48.

Statute.[2077] Further, as previously held, the falsity of the testimonial evidence relates only to the witnesses' evidence on (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons.

932. Mr Bemba's conduct had a direct effect on 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 D-64 giving false testimony when under an obligation to tell the truth before Trial Chamber III. Given Mr Bemba's established role in the common plan,[2078] the Chamber is satisfied that – through Mr Kilolo and Mr Mangenda – Mr Bemba, asked for or urged conduct with the explicit and/or implicit consequence of prompting each of the 14 Main Case defence witnesses to provide false testimony.[2079] Without Mr Bemba's directives, the witnesses would not have testified untruthfully before Trial Chamber III in that manner. For the same reasons given above, Mr Bemba also knew and intended that these witnesses would and did give false testimony, and intended that they do so.

933. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Bemba solicited the giving of false testimony by 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 within the meaning of Article 70(1)(a) of the Statute.

D. Mr Babala

934. With respect to **Article 70(1)(c)** of the Statute, the Pre-Trial Chamber confirmed against Mr Babala the charge of corruptly influencing witnesses as follows:

[2077] *See* paras 904-906.
[2078] *See* paras 106, 805-807.
[2079] *See* paras 851-857.

> Mr Babala, pursuant to article 70(1)(c) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence aided, abetted or otherwise assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offence of corruptly influencing witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D26, D-29, D-54, D-55, D-57 and D-64, by way of managing and dispensing as necessary and appropriate to this effect the finances at Mr Bemba's disposal […].[2080]

935. The Chamber recalls that, on the evidence, no direct or indirect link exists between Mr Babala's assistance to the co-perpetrators as financier and the corrupt influencing of D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54 and D-55.

936. On the other hand, having analysed the evidence, as set out in Sections IV.B to IV.C, the Chamber found that Mr Babala intentionally[2081] effected a money transfer to D-57's wife and facilitated the money transfer to D-64's daughter through his driver shortly before the witnesses gave evidence in the Main Case, knowing that the payments were made for illegitimate purposes.[2082] The Chamber recalls that the mere fact of paying a witness with the intent to contaminate the testimony, regardless of the result that such a payment actually had on the witness, constitutes corrupt influence within the meaning of Article 70(1)(c) of the Statute.[2083] It thus concludes that Mr Babala, by effecting money transfers to these witnesses, knew they were aimed at contaminating these witnesses' testimony and intentionally aided Mr Kilolo in corruptly influencing the two witnesses.

937. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Babala aided in the corrupt influencing of D-57 and D-64 within the meaning of Article 70(1)(c) of the Statute. The Chamber is unable to conclude beyond reasonable doubt, however, that Mr Babala aided, abetted or otherwise

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[2080] Confirmation Decision, p. 52.
[2081] *See* paras 880-893.
[2082] *See* paras 115, 117-118, 242-243, 254, 268, 281, 700 and 879.
[2083] *See* para. 48.

assisted in the corrupt influencing of D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54 or D-55.

938. With respect to **Article 70(1)(b)** of the Statute, the Pre-Trial Chamber confirmed against Mr Babala the charge of presenting false evidence as follows:

> Mr Babala, pursuant to article 70(1)(b) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence aided, abetted or otherwise assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false evidence through witnesses D-2, D-3, D-4, D-6, D-13, D-15, D23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64, by way of managing and dispensing as necessary and appropriate to this effect the finances at Mr Bemba's disposal […].[2084]

939. The Chamber recalls that, on the evidence, no direct or indirect link exists between Mr Babala's assistance to the co-perpetrators as financier and the presentation of false evidence through 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.

940. In the light of the foregoing, the Chamber is therefore unable to conclude beyond reasonable doubt that Mr Babala aided, abetted or otherwise assisted in the presentation of false evidence.

941. With respect to **Article 70(1)(a)** of the Statute, the Pre-Trial Chamber confirmed against Mr Babala the charge of giving false testimony as follows:

> Mr Babala, pursuant to article 70(1)(a) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence aided, abetted or otherwise assisted in the 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, D-55, D-57 and D-64, of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of managing and dispensing as necessary and appropriate to this effect the finances at Mr Bemba's disposal […].[2085]

942. The Chamber recalls that, on the evidence, no direct or indirect link exists between Mr Babala's assistance to the co-perpetrators as financier and the giving of false evidence by D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54,

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[2084] Confirmation Decision, p. 52.
[2085] Confirmation Decision, pp. 52-53.

D-55, D-57 and D-64. The Chamber is therefore unable to conclude beyond reasonable doubt that Mr Babala aided, abetted or otherwise assisted in the giving of false testimony.

E. Mr Arido

943. With respect to **Article 70(1)(c)** of the Statute, the Pre-Trial Chamber confirmed against Mr Arido the charges of corruptly influencing witnesses as follows:

> **Mr Arido**, pursuant to article 70(1)(c) and article 25(3)(a) (perpetration) of the Statute, committed the offence of corruptly influencing witnesses D-2, D-3, D-4 and D-6, by way of instructing them to either provide false information or withhold true information during their testimony in Court and encouraging their testimony with money transfers and the possibility of a relocation in Europe;
>
> in the alternative, pursuant to article 70(1)(c) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, **Mr Arido** aided, abetted or otherwise assisted the commission of the offence of corruptly influencing witnesses D-2, D-3, D-4 and D-6 by way of instructing them to falsely testify and encouraging their testimony with money transfers and the possibility of a relocation in Europe […];[2086]

944. Having analysed the evidence, as set out in Section IV.B to IV.C, the Chamber found that Mr Arido recruited D-2, D-3, D-4 and D-6 and intentionally[2087] promised them money and relocation in Europe in exchange for their testimony in the Main Case.[2088] Mr Arido also intentionally instructed and briefed the four witnesses (or facilitated their briefing by others) to present themselves as military men to Mr Kilolo and the Court even while believing that they did not have such a background.[2089] The promise of money and relocation was unduly given by Mr Arido as an inducement to procure the testimony of the witnesses in favour of Mr Bemba. He constructed and adjusted the witnesses' testimonies according to a specific narrative favourable to Mr Bemba during the instruction and briefing sessions, knowing that the witnesses had only agreed to testify

[2086] Confirmation Decision, p. 53.
[2087] *See* paras 670-672.
[2088] *See* paras 125-128, 328, 341-343 and 420.
[2089] *See* paras 129-132, 321, 334-338, 345-346, 351 and 420.

before the Court as a result of the promises he had made to them, thus contaminating the evidence presented before Trial Chamber III. Mr Arido intended to manipulate the testimonial evidence, which he did.

945. In the light of the foregoing, the Chamber is satisfied beyond reasonable doubt that Mr Arido corruptly influenced D-2, D-3, D-4 and D-6 within the meaning of Article 70(1)(c) of the Statute. The Chamber notes that Mr Arido is also charged – in the alternative – with having aided, abetted or otherwise assisted in the commission of the offence of corruptly influencing D-2, D-3, D-4 and D-6. Since the Chamber is convinced that Mr Arido committed the offence as a principal perpetrator it is not necessary to enter a finding on the alternative modes of criminal responsibility.[2090]

946. With respect to **Article 70(1)(b)** of the Statute, the Pre-Trial Chamber confirmed the charge against Mr Arido of presenting false evidence as follows:

> Mr Arido, pursuant to article 70(1)(b) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted the commission, by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false oral evidence by way of introducing the testimony of witnesses D-2, D-3, D-4 and D-6 in the proceedings before TCIII, by way of instructing witnesses D-2, D-3, D-4 and D-6 on the false information to provide in Court and introducing them to Mr Kilolo […];[2091]

947. Having analysed the evidence, as set out in Sections IV.B to IV.C, the Chamber found that the falsity of the evidence of witnesses D-2, D-3, D-4 and D-6 for the purpose of Article 70(1)(b) of the Statute, in the specific circumstances of this case, can relate only to (i) prior contacts with the defence in the Main Case, (ii) the receipt of money, material benefits and non-monetary promises, and (iii) the witnesses' acquaintance with third persons. The evidence did not show that Mr Arido instructed the four witnesses on any of these points.[2092] In addition, the Chamber recalls that Mr Arido had met D-2, D-3, D-4 and D-6 in

[2090] Confirmation Decision, p. 53.
[2091] Confirmation Decision, p. 53.
[2092] *See* para. 872.

Douala in February 2012. By the time the witnesses were called to testify in the Main Case, Mr Arido had cut ties with the defence in the Main Case and was no longer in contact with the witnesses. Therefore the Chamber is not convinced beyond reasonable doubt that Mr Arido 'aided, abetted or otherwise assisted the commission, by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offence of presenting false oral evidence by way of introducing the testimony of witnesses D-2, D-3, D-4 and D-6 in the proceedings before [Trial Chamber III], by way of instructing witnesses D-2, D-3, D-4 and D-6 on the false information to provide in Court and introducing them to Mr Kilolo'.

948. With respect to **Article 70(1)(a)** of the Statute, the Pre-Trial Chamber confirmed the charge against Mr Arido of giving false testimony as follows:

> Mr Arido, pursuant to article 70(1)(a) and article 25(3)(c) of the Statute, for the purpose of facilitating the commission of the offence, aided, abetted or otherwise assisted in the commission by witnesses D-2, D-3, D-4 and D-6 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of recruiting witnesses D-2, D-3, D4 and D-6, instructing, persuading or otherwise influencing them, including by way of transfers of money and the possibility of a relocation in Europe, to state false information or withhold true information before TCIII […].[2093]

949. For the same reasons developed in the context of Article 70(1)(b) of the Statute,[2094] the Chamber is not convinced beyond reasonable doubt that Mr Arido 'aided, abetted or otherwise assisted in the commission by witnesses D-2, D-3, D-4 and D-6 of the offence of giving false testimony when under an obligation pursuant to article 69, paragraph 1 of the Statute, to tell the truth, by way of recruiting witnesses D-2, D-3, D-4 and D-6, instructing, persuading or otherwise influencing them, including by way of transfers of money and the possibility of a relocation in Europe, to state false information or withhold true information before [Trial Chamber III]'.

[2093] Confirmation Decision, p. 54.
[2094] *See* paras 872 and 947.

VI. CUMULATIVE CONVICTIONS

950. The Chamber recalls that the Bemba Defence and the Mangenda Defence alleged an overlap between the charges put forth under Articles 70(1)(a), 70(1)(b), and 70(1)(c) of the Statute, as the case may be.[2095] The Bemba Defence claimed that the 'ICC Statute does not allow for cumulative convictions as concerns the same underlying conduct'.[2096]

951. The Chamber agrees with the previous holdings of Trial Chamber II and Trial Chamber III that cumulative convictions are permissible under the statutory regime. Convictions may be entered cumulatively if the conduct in question clearly violates two distinct provisions of the Statute, each demanding proof of a 'materially distinct' element not required by the other. An element will be considered distinct if it requires proof of a fact not required by the others.[2097] It is the legal elements of each statutory provision – and not the acts themselves – that must be considered when applying the test. Contrary to the allegation of the Bemba Defence, this determination involves comparing legal elements of the relevant statutory provisions; the specific facts of the case play no role.

952. In the view of the Chamber, Articles 70(1)(a) to (c) of the Statute clearly capture distinct forms of conduct by way of which the administration of justice

[2095] Bemba Defence Closing Brief, ICC-01/05-01/13-1902-Corr2-Red2, paras 38-50; Mangenda Defence Submission, ICC-01/05-01/13-974, para. 17.
[2096] Bemba Defence Closing Brief, ICC-01/05-01/13-1902-Corr2-Red2, para. 50.
[2097] Katanga Trial Judgment, para. 1695; Bemba Trial Judgment, paras 747-748, referring with approval to the jurisprudence of other tribunals, such as ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Appeals Chamber, Judgement, 20 February 2001, paras 412-413 and 421; *Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber, Judgement, 12 June 2002, paras 170 and 173; ICTR, *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Appeals Chamber, Judgement, 16 November 2001, para. 363; SCSL, *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-A, Appeals Chamber, Judgment, 26 October 2009, paras 1190-1191; *Prosecutor v. Taylor*, Case No. SCSL-03-01-A, Appeals Chamber, Judgment, 26 September 2013, para. 577; ECCC, *Prosecutor v. Kaing alias Duch*, Case File/Dossier No. 001/18-07-2007-ECCC/SC, Appeals Chamber, Appeal Judgement, 3 February 2012, paras 285-300.

is compromised. As the Chamber set out in Section II.A, each provision demands proof of a 'materially distinct' element not required by the other.[2098]

953. Article 70(1)(a) of the Statute addresses the conduct of a witness giving false evidence and centres on the legal requirement of 'false testimony', while Article 70(1)(b) of the Statute requires the presentation of 'false or forged evidence' by a 'party'. Both provisions criminalise entirely different forms of conduct and contain 'materially distinct elements' not required by either of them. These elements are also absent from Article 70(1)(c), first alternative, of the Statute. In fact, Article 70(1)(c), first alternative, of the Statute does not require that the conduct of the perpetrator actually influence the witness in question. Its applicability is entirely independent of that of Articles 70(1)(a) and 70(1)(b) of the Statute.

954. As a result, the Chamber holds that convictions for the same conduct may be entered under Articles 70(1)(a) to (c) of the Statute if all legal requirements are fulfilled.

955. By looking at the offense committed, the Chamber fairly labels the criminal conduct to reflect its true scope. Accordingly, the Chamber holds Mr Bemba, Mr Kilolo and Mr Mangenda responsible for three crimes (Article 70(1)(a)-(c)) largely based on the same conduct that gives rise to both accessorial liability under Article 70(1)(a) and co-perpetration liability under Article 70(1)(b)-(c).

956. These convictions may indeed be entered cumulatively. However, this does not mean that cumulative convictions can unduly inflate an accused's punishment. The Chamber will take into account the fact that largely the same conduct underlies multiple convictions when determining an appropriate sentence.

[2098] *See* under section II.A.

VII. VERDICT

For the foregoing reasons and on the basis of the evidence submitted and discussed before this Chamber at trial and the entire proceedings, pursuant to Article 74(2) of the Statute, the Chamber finds

Mr Jean-Pierre Bemba Gombo

GUILTY, under Article 70(1)(b) and (c), in conjunction with Article 25(3)(a) of the Statute, of having corruptly influenced 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 D-64 and having presented their false evidence as co-perpetrator;

GUILTY, under Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute, of having solicited the giving of false testimony by 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 D-64.

Mr Aimé Kilolo Musamba

GUILTY, under Article 70(1)(b) and (c), in conjunction with Article 25(3)(a) of the Statute, of having corruptly influenced 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 D-64 and having presented their false evidence as co-perpetrator;

GUILTY, under Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute, of having induced the giving of false testimony by 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 D-64.

Mr Jean-Jacques Mangenda Kabongo

GUILTY, under Article 70(1)(b) and (c), in conjunction with Article 25(3)(a) of the Statute, of having corruptly influenced 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 D-64 and having presented their false evidence as co-perpetrator;

GUILTY, under Article 70(1)(a), in conjunction with Article 25(3)(c) of the Statute, of having aided in the giving of false testimony by witnesses D-15 and D-54, and having abetted in the giving of false testimony by witnesses D-2, D-3, D-4, D-6, D-13, D-25 and D-29;

NOT GUILTY, under Article 70(1)(a), in conjunction with Article 25(3)(c) of the Statute, of having aided, abetted or otherwise assisted in the giving of false testimony by witnesses D-23, D-26, D-55, D-57 or D-64; and **ACQUITS** him of the charge in respect to those factual allegations.

Mr Fidèle Babala Wandu

GUILTY, under Article 70(1)(c), in conjunction with Article 25(3)(c) of the Statute, of having aided in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offence of corruptly influencing witnesses D-57 and D-64;

NOT GUILTY, under Article 70(1)(a) and (b), in conjunction with Article 25(3)(c) of the Statute, of having aided, abetted or otherwise assisted in the commission of the offences of giving false testimony by witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54 and D-55, D-57 and D-64; and in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offence of presenting false evidence by 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 D-64; and **ACQUITS** him of those charges;

NOT GUILTY, under Article 70(1)(c), in conjunction with Article 25(3)(c) of the Statute, of having aided, abetted or otherwise assisted in the commission by Mr Bemba, Mr Kilolo and Mr Mangenda, of the offences of corruptly influencing

witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54 and D-55; and **ACQUITS** him of the charge in respect to those factual allegations.

Mr Narcisse Arido

GUILTY, under Article 70(1)(c) in conjunction with Article 25(3)(a) of the Statute, of having corruptly influenced witnesses D-2, D-3, D-4 and D-6;

NOT GUILTY, under Article 70(1)(a) and (b), in conjunction with Article 25(3)(c) of the Statute, of having aided, abetted or otherwise assisted the commission by Mr Bemba, Mr Kilolo, and Mr Mangenda of the offence of presenting false evidence of D-2, D-3, D-4 and D-6; and of having aided, abetted or otherwise assisted in the commission of D-2, D-3, D-4 and D-6 of the offence of giving false testimony; and **ACQUITS** him of those charges.

Done in both English and French, the English version being authoritative.

Judge Bertram Schmitt
Presiding Judge

Judge Marc Perrin de Brichambaut

Judge Raul C. Pangalangan

Dated 19 October 2016

At The Hague, The Netherlands