

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/13**

Date: **22 March 2017**

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 with public annex

Decision on Sentence pursuant to Article 76 of the Statute

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Michael Karnavas

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

Victims Participation and Reparations Section

Other

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Trial Chamber VII of the International Criminal Court ('Chamber' and 'Court' or 'ICC' respectively), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, renders the following 'Decision on Sentence pursuant to Article 76 of the Statute'.

I. PROCEDURAL HISTORY

1. On 19 October 2016, the Chamber issued the 'Judgment pursuant to Article 74 of the Statute' ('Judgment')¹ convicting 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') of offences against the administration of justice to varying degrees.
2. On 20 October 2016, the Chamber issued the 'Sentencing Calendar'² instructing the parties to (i) indicate whether they intended to call witnesses for the purpose of sentencing by 4 November 2016; (ii) disclose and formally submit any evidence by 23 November 2016 ('23 November 2016 Deadline'); and (iii) make written submissions by 7 December 2016 ('7 December 2016 Deadline'). The Chamber also ordered the Registry to file a report informing the Chamber of the solvency of each of the convicted persons by 7 December 2016 ('Solvency Report').
3. On 2 November 2016, the Chamber rejected a request by the defence for Mr Arido ('Arido Defence'), Mr Babala ('Babala Defence')³ and Mr Kilolo ('Kilolo Defence')⁴

¹ Judgment pursuant to Article 74 of the Statute, 19 October 2016, ICC-01/05-01/13-1989-Conf. A public redacted version was registered simultaneously, [ICC-01/05-01/13-1989-Red](#).

² [ICC-01/05-01/13-1990](#).

³ ICC-01/05-01/13-1992.

⁴ ICC-01/05-01/13-1994.

to suspend or vary the deadlines of the sentencing calendar pending delivery of the French translation of the entire Judgment.⁵

4. On 4 November 2016, the parties duly informed the Chamber whether they intended to call witnesses for the purpose of sentencing.⁶
5. On 11 November 2016, the Chamber rendered the 'Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing' ('Sentencing Witness Decision') and decided that the Kilolo Defence, the defence for Mr Bemba ('Bemba Defence') and the Babala Defence could present their proposed witnesses through witness statements.⁷ In turn, it held that the mere submission of the statement of witness P-256, as proposed by the Office of the Prosecutor ('Prosecution'), did not satisfy the requirement of procedural fairness and ordered that P-256 testify *viva voce*.⁸ The Chamber also set the sentencing hearing for 12-14 December 2016.⁹
6. On 21 November 2016, the Chamber rejected the Arido Defence request, *inter alia*, to exclude the testimony of P-256 and related evidentiary material.¹⁰
7. On 22 November 2016, the Chamber authorised the Babala Defence to submit a piece of evidence past the 23 November 2016 Deadline.¹¹
8. On 23 November 2016, the parties duly informed the Chamber of the lists of evidence to be considered for sentencing purposes.¹²

⁵ Decision on Requests for Variation of Deadlines in the Sentencing Calendar, 2 November 2016, [ICC-01/05-01/13-2001](#). Leave to appeal this decision was denied by the Chamber, *see* Decision on Arido Defence Request for Leave to Appeal the Decision on Requests for Variation of Deadlines in the Sentencing Calendar, 15 November 2016, [ICC-01/05-01/13-2030](#).

⁶ ICC-01/05-01/13-2002; ICC-01/05-01/13-2003; ICC-01/05-01/13-2005; ICC-01/05-01/13-2008; ICC-01/05-01/13-2009; ICC-01/05-01/13-2010.

⁷ Sentencing Witness Decision, [ICC-01/05-01/13-2025](#), paras 8-13.

⁸ Sentencing Witness Decision, [ICC-01/05-01/13-2025](#), paras 14-18.

⁹ Sentencing Witness Decision, [ICC-01/05-01/13-2025](#), para. 19.

¹⁰ Decision on Arido Defence Request for Exclusion of Prosecution Witness or, in the Alternative, Clarification of Sentencing Witnesses Decision, 21 November 2016, [ICC-01/05-01/13-2038](#).

¹¹ Decision on Babala Defence Request for Delayed Disclosure of Document for Sentencing, 22 November 2016, [ICC-01/05-01/13-2042](#).

9. On 25 November 2016, the Chamber granted the Prosecution request for witness P-256 to appear *via* video-link.¹³
10. On 2, 5 and 7 December 2016, the Single Judge, acting on behalf of the Chamber, granted various requests by the parties for submission of additional evidentiary material for the purpose of sentencing.¹⁴
11. On 6 December 2016, the Single Judge varied the 7 December 2016 Deadline and authorised the final written submissions to be lodged on 8 December 2016.¹⁵ He further ordered the Registry to file the Solvency Report on 6 December 2016.¹⁶ The Registry duly complied.¹⁷
12. On 8 December 2016, the parties duly filed their written submission on sentencing.¹⁸
13. Between 12 and 14 December 2016, the Chamber held the sentencing hearing during which it heard the oral submissions and evidence presented by the parties.¹⁹

¹² Babala Defence, ICC-01/05-01/13-2040 (with two annexes); Mangenda Defence, ICC-01/05-01/13-2045 (with one annex); Prosecution, ICC-01/05-01/13-2047 (with one annex); Bemba Defence, ICC-01/05-01/13-2048 (with one annex); Kilolo Defence, ICC-01/05-01/13-2049-Conf (with one annex); Arido Defence, ICC-01/05-01/13-2054 (with three annexes).

¹³ Decision on Prosecution's Request to hear P-256's Testimony via Video-Link, 25 November 2016, [ICC-01/05-01/13-2062](#).

¹⁴ Decision on Various Requests for Submission of Additional Documents for Purposes of Sentencing, 2 December 2016, [ICC-01/05-01/13-2072](#); Decision on Prosecution Request for Submission of an Additional Document for Purposes of Sentencing, 5 December 2016, [ICC-01/05-01/13-2076](#); Decision on Kilolo Defence Submission of Two Further Items for Sentencing, 7 December 2016, [ICC-01/05-01/13-2084](#).

¹⁵ Decision on Defence Request for Variation of the Sentencing Calendar ('Variation Decision'), 6 December 2016, [ICC-01/05-01/13-2078](#).

¹⁶ [ICC-01/05-01/13-2078](#), para. 7.

¹⁷ ICC-01/05-01/13-2081 (with 15 annexes). A corrigendum of Annex II-B was filed on 17 March 2017.

¹⁸ **Prosecution**, Prosecution's Submission on Sentencing ICC-01/05-01/13-2085-Conf; ICC-01/05-01/13-2085-Red (with one annex) ('Prosecution Sentencing Submission'); **Arido Defence**, Narcisse Arido's Submissions on the Additional Evidence Presented and Appropriate Sentence to be Imposed, ICC-01/05-01/13-2086-Conf-Corr; ICC-01/05-01/13-2086-Corr-Red (with one annex) ('Arido Sentencing Submission'); **Kilolo Defence**, Kilolo Defence's Sentencing Submissions, ICC-01/05-01/13-2087-Conf; ICC-01/05-01/13-2087-Red (with one annex) ('Kilolo Sentencing Submission'); **Mangenda Defence**, Submissions on Sentence, ICC-01/05-01/13-2088-Conf-Exp; ICC-01/05-01/13-2088-Conf-Red; ICC-01/05-01/13-2088-Red2 (with one annex) ('Mangenda Sentencing Submission'); **Bemba Defence**, Defence Submission on Sentencing, ICC-01/05-01/13-2089-Conf; ICC-01/05-01/13-2089-Red (with five annexes) ('Bemba Sentencing Submission'); **Babala Defence**, Conclusions de Monsieur Fidèle Babala Wandu sur la peine, ICC-01/05-01/13-2090 (with two annexes) ('Babala Sentencing Submission').

14. On 16 December 2016, the Chamber accepted six final documents and declared the submission of any further materials for sentencing to be closed.²⁰
15. On 8 March 2017, the defence for Mr Mangenda ('Mangenda Defence') requested that Mr Mangenda continue to benefit from provisional release pending appeal.²¹ On 10 March 2017, the Arido Defence and Babala Defence requested the same remedy.²² On the same day, the Prosecution responded to the Mangenda Defence and Arido Defence requests submitting that the requests are premature.²³
16. On 15 March 2017, the Kilolo Defence filed a notice of intent to request continued provisional release pending appeal.²⁴
17. On 17 March 2017, the Registry submitted the 'Updated Registry's report on the convicted persons' solvency' ('Updated Solvency Report').²⁵ On 21 March 2017, the Chamber was notified of the Bemba Defence's 'Urgent Request to File Observations in Response to the Registry' ('Bemba Defence Urgent Request').²⁶

II. APPLICABLE LAW

18. The Chamber notes Articles 21(1)(a) and (c), 23, 70(3), 76, 77(2)(b) and 78 of the Rome Statute ('Statute') and Rules 145, 163(1) and 166 of the Rules of Procedure and Evidence ('Rules').

¹⁹ Transcript of Hearing, 12 December 2016, ICC-01/05-01/13-T-53-Conf-ENG ('T-53-Conf'); [ICC-01/05-01/13-T-53-Red-ENG](#) ('T-53-Red'); Transcript of Hearing, 13 December 2016, ICC-01/05-01/13-T-54-Conf-ENG; [ICC-01/05-01/13-T-54-Red-ENG](#) ('T-54-Red'); Transcript of Hearing, 14 December 2016, ICC-01/05-01/13-T-55-Conf-ENG; [ICC-01/05-01/13-T-55-Red-ENG](#) ('T-55-Red').

²⁰ Decision on Final Submission of Further Items for Sentencing, [ICC-01/05-01/13-2099](#).

²¹ ICC-01/05-01/13-2112.

²² ICC-01/05-01/13-2113; ICC-01/05-01/13-2115.

²³ ICC-01/05-01/13-2114.

²⁴ ICC-01/05-01/13-2117.

²⁵ ICC-01/05-01/13-2119 (with four annexes).

²⁶ ICC-01/05-01/13-2120-Conf-Exp.

A. PURPOSE OF SENTENCING

19. The Court investigates and prosecutes individuals for having committed crimes falling under the jurisdiction of the Court, such as genocide, crimes against humanity and war crimes. The Preamble to the Statute states that these crimes must not go unpunished²⁷ and that perpetrators do not enjoy impunity.²⁸ Article 70 of the Statute seeks to protect the integrity of the proceedings before the Court by penalising the behaviour of persons that impedes the discovery of the truth, the victims' right to justice and, generally, the Court's ability to fulfil its mandate.²⁹ Accordingly, the Chamber considers that the primary purpose of sentencing individuals under Article 70 of the Statute is rooted – as for Article 5 crimes – in retribution and deterrence.³⁰ With regard, in particular, to deterrence, the Chamber is of the view that a sentence should be adequate to discourage a convicted person from recidivism (specific deterrence) as well as to ensure that those who would consider committing similar offences will be dissuaded from doing so (general deterrence).³¹

B. SPECIAL REGIME OF ARTICLE 70 OF THE STATUTE

20. Rule 163 of the Rules dictates that 'unless otherwise provided', the Statute and the Rules 'shall apply *mutatis mutandis* to the Court's (...) punishment of offences defined in article 70' of the Statute. Indeed, Article 70(3) of the Statute and

²⁷ The relevant part of paragraph 4 of the Preamble stipulates: 'Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished'.

²⁸ Paragraph 5 of the Preamble reads: 'Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes'.

²⁹ Transcript of Hearing, 19 October 2016, [ICC-01/05-01/13-T-50-ENG](#) ('T-50-ENG'), p. 4, lines 1-5; Judgment, [ICC-01/05-01/13-1989-Red](#), para. 14.

³⁰ Trial Chamber II, *Prosecutor v. Germain Katanga*, Decision on Sentence pursuant to article 76 of the Statute ('Katanga Sentencing Decision'), 23 May 2014, [ICC-01/04-01/07-3484-tENG-Corr](#), paras 37-38; Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Sentence pursuant to Article 76 of the Statute ('Bemba Sentencing Decision'), 21 June 2016, [ICC-01/05-01/08-3399](#), para. 10; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence ('Al Mahdi Sentencing Decision'), 27 September 2016, [ICC-01/12-01/15-171](#), paras 66-67.

³¹ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 11; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 67.

Rule 166 of the Rules modify the relevant statutory framework and must be taken into account as *lex specialis* for the purpose of the Article 70 proceedings. Importantly, Rule 166(2) of the Rules clarifies that Article 77 of the Statute – with the exception of Article 77(2)(b) of the Statute – is not applicable in the context of Article 70 offences. Article 70(3) of the Statute specifies that the Court ‘may impose a term of imprisonment not exceeding five years’. Rule 166 of the Rules provides further special provisions for sanctions to be imposed under Article 70 of the Statute.

C. IDENTIFYING AND BALANCING RELEVANT FACTORS

21. In determining the appropriate sentence, the Chamber must first identify the relevant factors in Article 78(1) of the Statute and Rule 145(1)(c) and (2) of the Rules, with the necessary amendments in the context of Article 70 of the Statute.³² Pursuant to Article 78(1) of the Statute, the Chamber must take into account the ‘gravity of the crime and the individual circumstances of the convicted person’.
22. The factors set out in Article 78(1) of the Statute are further specified or complemented by other factors set out in Rule 145(1)(b) and (c) of the Rules.³³ In addition to the factors mentioned in Rule 145(1)(c) of the Rules, the Chamber is duty-bound to take into account, as appropriate, other factors,³⁴ namely mitigating circumstances, such as those exemplified in Rule 145(2)(a) of the Rules, and aggravating circumstances, set out in Rule 145(2)(b) of the Rules.

³² Rule 163(1) of the Rules; Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on Sentence pursuant to Article 76 of the Statute (‘Lubanga Sentencing Decision’), 10 July 2012, [ICC-01/04-01/06-2901](#), para. 23; Appeals Chamber, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the ‘Decision on Sentence pursuant to Article 76 of the Statute’ (Lubanga Appeals Judgment on Sentencing’), 1 December 2014, [ICC-01/04-01/06-3122](#) (A4&A6); Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 12; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 68.

³³ Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), paras 62-66.

³⁴ Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), footnote 67: ‘[T]he Appeals Chamber notes that rule 145(1)(b) of the Rules of Procedure and Evidence states that, in determining the sentence, a Trial Chamber must “[b]alance all the relevant factors, including any mitigating and aggravating *factors*” (emphasis added). The Appeals Chamber is of the view that this clarifies that mitigating and aggravating circumstances pursuant to rule 145(2) of the Rules of Procedure and Evidence are considered as “factors”’.

Certain Rule 145(1)(c) factors may be considered relevant in the evaluation of mitigating and aggravating circumstances identified in Rule 145(2) of the Rules.³⁵

23. With regard to the 'gravity of the crime' factor, the Chamber recalls that this factor must be assessed *in concreto*, namely in the light of the particular circumstances of the case.³⁶ Not all offences forming the grounds for conviction are necessarily of equivalent gravity and the Chamber must weigh each of them.³⁷ Any factors that are taken into account when assessing the gravity of the offences will not be taken into account additionally as aggravating circumstances, and *vice versa*.³⁸

24. As evinced by Rule 145(2)(a)(ii) of the Rules, mitigating circumstances need not directly relate to the offence(s) and are, thus, not limited by the scope of the confirmed charges or the Judgment.³⁹ They must, however, relate directly to the convicted person.⁴⁰ Their existence must be established on a balance of probabilities.⁴¹ The existence of mitigating circumstances does not lessen the gravity of the offence but becomes relevant for diminishing the sentence.⁴²

25. Aggravating circumstances relate to the commission of the offence(s) of which the accused was convicted, or to the convicted person him- or herself.⁴³ The

³⁵ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 13; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 69.

³⁶ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 16; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 71.

³⁷ Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 43.

³⁸ Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 35; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 35; Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 14; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 70.

³⁹ Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 34; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 32; Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 19; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 74.

⁴⁰ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 19; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 74.

⁴¹ Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 34; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 34; Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 19; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 74.

⁴² Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 77.

⁴³ Rule 145(2)(b) of the Rules; Bemba Sentencing Decision, para. 18; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 73.

absence of mitigating circumstances does not constitute an aggravating circumstance.⁴⁴ A legal element of the offence(s) or the mode of criminal responsibility cannot be considered as an aggravating circumstance.⁴⁵ Lastly, aggravating circumstances must be established to the evidentiary threshold of ‘beyond reasonable doubt’.⁴⁶

26. Upon identification of all relevant factors, the Chamber must then weigh and balance them in accordance with Rule 145(1)(b) of the Rules by explaining the weight given to mandatory factors and explaining on which specific evidence it relied.⁴⁷

D. DETERMINATION OF APPROPRIATE SENTENCE

27. Articles 70(3) and 78(3) of the Statute provide the legal framework when determining the sentence. Article 70(3) of the Statute states:

In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.

28. Article 78(3) of the Statute stipulates:

When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1(b).

1. Maximum Sentence for Article 70 Offences

29. The Prosecution contends that the Chamber should impose a sentence for each witness incident, *i.e.* for each offence, in accordance with Article 70(3) of the

⁴⁴ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 18; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 73.

⁴⁵ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 14; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 70.

⁴⁶ Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 33; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 34; Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 18; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 73.

⁴⁷ Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), para. 69.

Statute.⁴⁸ It is proposed that the five-year limit be reserved for a singular conviction, not multiple convictions. In the Prosecution's view, having compared the wording of Articles 70(3) and 78(3) of the Statute, Article 78(3) of the Statute is the only provision relating to the method for calculating sentences when there are multiple convictions.⁴⁹ In particular, it is argued that Article 70(3) of the Statute does not alter the application of Article 78(3) of the Statute, *i.e.* it does not affect the 30-year cap established in Article 78(3) of the Statute for multiple offences.⁵⁰

30. The Chamber is of the view that, in the context of Article 70 offences, the Statute does not allow a sentence for one or more offences against the administration of justice to exceed five years, as prescribed in Article 70(3) of the Statute. The Chamber's understanding is rooted in a combined reading of Articles 70(3) and 78(3) of the Statute and the following considerations.

31. First, Rule 166(2) of the Rules explicitly excludes the applicability of Article 77(1) of the Statute, which is replaced by the *lex specialis* Article 70(3) of the Statute. As a consequence, the maximum penalties contained in Article 77(1) of the Statute, namely 30 years of imprisonment or life imprisonment, are not applicable in the context of Article 70 of the Statute.

32. Second, States Parties purposely differentiated between 'crimes' within the meaning of Article 5 of the Statute and 'offences against the administration of justice' within the meaning of Article 70 of the Statute. As the Appeals Chamber emphasised, 'offences under article 70 of the Statute, while certainly serious in nature, are by no means considered to be as grave as the core crimes under article 5 of the Statute, being genocide, crimes against humanity, war crimes and

⁴⁸ Prosecution Sentencing Submission, paras 136-140.

⁴⁹ Prosecution Sentencing Submission, para. 141.

⁵⁰ Prosecution Sentencing Submission, paras 141-150.

the crime of aggression'.⁵¹ This important conceptual difference, which is based on the principled difference regarding the gravity of Article 5 crimes and Article 70 offences, must be upheld when determining the sentence. In other words, an interpretation must be avoided that would conceptually equate Article 70 with Article 5 of the Statute contrary to the intention of the drafters of the Statute. This means that persons convicted of Article 5 crimes may be sentenced for a specified number of years which may not exceed 30 years, while persons convicted of Article 70 offences may be sentenced to a term of imprisonment not exceeding five years.

33. Third, while Article 78(3) of the Statute, in particular its second sentence, remains applicable (as per Rule 163(1) of the Rules) in the context of Article 70 of the Statute, the Chamber emphasises that it must be applied *mutatis mutandis*, as amended by and read together with Article 70(3) of the Statute which imposes a sentence limit of five years. Even if a person is convicted of one or multiple offences, Article 78(3), in conjunction with Article 70(3), of the Statute prohibits the accumulation of convictions amounting to an accumulation of sentences exceeding five years' imprisonment.

34. Fourth, the argument that Article 70(3)'s use of the term 'conviction' applies only to a singular offence is not persuasive. Said provision is broadly formulated to encompass the conviction of a person of one or more offences. The argument that the addition in Article 78(3) of the Statute of the following – '[w]hen a person has been convicted of more than one crime' – is lacking in Article 70(3) of the Statute is without merit since the two provisions, Article 70(3) and 78(3) of the Statute, must be read in conjunction. In fact, the Prosecution proposes a reading of the provisions in isolation which does not emerge from the Statute.

⁵¹ For example, Appeals Chamber, Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled 'Decision on the "Demande de mise en liberté de Maître Aimé Kilolo Musamba"', 11 July 2014, [ICC-01/05-01/13-558](#) (OA2), paras 1 and 64.

35. Lastly, Rule 166(3) of the Rules allows for fines to be imposed separately for each offence and that those fines be cumulative. The fact that Rule 166(3) of the Rules establishes that *only* fines be cumulative suggests *a contrario* that sentences of imprisonment are not cumulative beyond the five-year maximum.

2. Appropriate Sentence

36. The Chamber enjoys considerable discretion in determining an appropriate sentence.⁵² However, in so doing, it is guided by two considerations: (i) the sentence must reflect the culpability of the convicted person, as stipulated in Rule 145(1)(a) of the Rules;⁵³ and (ii) the sentence must be proportionate to the ‘crime’, as enshrined in Articles 81(2)(a) and 83(3) of the Statute.⁵⁴ With regard to the latter consideration, the Appeals Chamber explained that ‘[p]roportionality is generally measured by the degree of harm caused by the crime and the culpability of the perpetrator’.⁵⁵ Both these considerations make clear that the sentence must be individualised for each convicted person.

37. The Chamber is cognisant of the case-law rendered in international⁵⁶ and national⁵⁷ jurisdictions involving similar offences in similar circumstances. For

⁵² Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), paras 1, 34 and 40; Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 12; Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 68.

⁵³ Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 25; Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), para. 34.

⁵⁴ Lubanga Sentencing Decision, [ICC-01/04-01/06-2901](#), para. 26; Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), para. 34.

⁵⁵ Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), para. 40.

⁵⁶ See, for example, ICTY, *Prosecutor v Duško Tadić*, Case No. IT-94-1-A-R77, [Judgment on allegations of Contempt Against Prior Counsel, Milan Vujin](#), 31 January 2000; *Prosecutor v Beqa Beqaj*, [Judgement on Contempt Allegations](#), 27 May 2005; *Prosecutor v Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, [Judgement on Allegations of Contempt](#), 17 December 2008; *Prosecutor v Zuhdija Tabaković*, Case No. IT-98-32/1-R77.1, [Sentencing Judgement](#), 18 March 2010; *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, [Written Reasons for Oral Sentencing Judgement](#), 6 March 2012; *ibid.*, [Judgement](#), 16 November 2012; ICTR, *Prosecutor v GAA*, Case No. ICTR-07-90-R77-I, [Judgement and Sentence](#), 4 December 2007; SCSL, *Prosecutor v Eric Senesie*, Case No. SCSL-2011-01-T, [Sentencing Judgement](#), 12 July 2012; *Independent Counsel v Hassan Papa Bangura et al.*, Case No SCSL-2011-02-T, [Sentencing Judgement in Contempt Proceedings](#), 11 October 2012; *Independent Counsel v Prince Taylor*, Case No. SCSL-12-02-T, [Sentencing Judgement](#), 8 February 2013 (reversed upon appeal).

⁵⁷ See, for example, **Australia**: R v Aleksander Wacyk (1996) 66 SASR 530 (CCA); R v CURRY (2016) SASFC 16; **Canada**: R. c. Rodney J. Gillis, 2013 NBPC 3 (CanLII); Éric Doiron v. R., 2007 NBCA 41 (CanLII); R. v. Sweezy, 1987 CanLII 3977 (NL CA); **England and Wales**: R v Jeffrey Howard Archer, [2002]

example, in the *Vujin* case, the International Criminal Tribunal for the former Yugoslavia ('ICTY') imposed a fine of 15,000 Dutch guilders (approximately EUR 6,800) on former counsel *Milan Vujin* for having (i) presented a case which was known to him to be false, and (ii) manipulated two witnesses. In the *Rašić* case, the ICTY sentenced *Jelena Rašić*, former member of a defence team, to 12 months' imprisonment (of which eight months were suspended) for having (i) bribed a witness in exchange for his false statement, and (ii) encouraged a witness to procure false witness statements from two other persons in exchange of money. In the *Senessie* case, the Special Court for Sierra Leone ('SCSL') sentenced *Eric Senessie* to two years' imprisonment for having (i) bribed four witnesses and (ii) otherwise interfered with four witnesses. Lastly, in the *Bangura et al* case, the SCSL sentenced, *inter alia*, *Hassan Papa Bangura* to 18 months' imprisonment for having bribed and otherwise interfered with a witness; *Samuel Kargbo* to 18 months' imprisonment (which was suspended in its entirety) for having bribed and interfered with a witness; *Santigie Borbor Kanu* to two years' imprisonment for having bribed and interfered with a witness.

38. However, while guidance may be found in other cases before national or international criminal tribunals, the Chamber stresses that each case must be assessed individually and on the basis of the legal framework applicable, tailoring the penalty to fit the gravity of the crime and the individual circumstances of the convicted person. As other Chambers of this Court have

EWCA Crim 1996; **France**: Cass. Crim., 25 January 1984, Bull. Crim. No. 33; Cass. Crim., 8 July 2015, No de pourvoi: 14-81020; **Germany**: Amtsgericht Marburg, Judgment of 26 November 2002 - 50 Ls 2 Js 11415/01; BGH, Decision of 11 December 2013 - 2 StR 478/13; **Japan**: 偽装教唆被告事件, 平 2 5 (わ) 1 3 7 号, 2013WLJPCA10259006; 偽証被告事件, 平 16 (わ) 1234 号, 2005WLJPCA03089001; **New Zealand**: R v Douglas James Taffs, C.A. 128/90 [1990] NZCA 318; Pravin Fia Havi Prasad Kumar v R, CA575/2012, [2014] NZCA 116; **Republic of Korea**: Guidelines for the offence of perjury available at: http://sc.scourt.go.kr/sc/engsc/guideline/criterion_06/perjury_01.jsp (last accessed on 22 March 2017); **Spain**: Audiencia Provincial, Sección Primera, Ciudad Real, 17 de junio de 1999, Sentencia No 49/99.

clarified, this ‘makes it difficult, at the least, to infer from the sentence that was imposed in one case the appropriate sentence in another case’.⁵⁸

E. DEDUCTION OF TIME

39. Once a sentence has been imposed, Article 78(2) of the Statute dictates that the Chamber shall deduct the time, if any, previously spent in detention in accordance with an order of the Court.

F. SUSPENSION OF SENTENCE

40. The Statute and the Rules remain silent as to whether prison sentences may be suspended. In the view of the Chamber, provisions on interim release⁵⁹ or post-conviction remedies⁶⁰ cannot be drawn upon for the purposes of suspending sentences as they are designed for different stages of the proceedings and are therefore, necessarily, of a different nature. Hence, there is a *lacuna* in the statutory scheme⁶¹ that cannot be filled by the application of provisions by analogy and the criteria of interpretation, in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties and Article 21(3) of the Statute.

41. The Chamber notes that, on one end of the spectrum, the Statute allows a Chamber to impose a sentence of imprisonment and, at the other end of the spectrum, it allows a Chamber to decline to impose any sentence. If these measures are possible, then surely the intermediate step of a suspended sentence is likewise possible. To conclude otherwise would lead to an unfair result whereby a convicted person could not serve a term of years other than by way of unconditional imprisonment, even when the Chamber considered less restrictive

⁵⁸ Lubanga Appeals Judgment on Sentencing, [ICC-01/04-01/06-3122](#), para. 77; *similarly*, Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 107.

⁵⁹ Article 60 of the Statute.

⁶⁰ Article 110 of the Statute.

⁶¹ Appeals Chamber, 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](#) (OA3), paras 33-34 and 38-39.

means to be more appropriate. It has been argued that the Chamber's power to suspend a sentence of imprisonment is inherent to its authority to impose a sentence.⁶² As a result, the Chamber finds that its power to suspend a sentence of imprisonment is inherent to its power to impose and determine the sentence. Furthermore, this finding accords with the law and the practice of other national⁶³ and international jurisdictions.⁶⁴

III. ANALYSIS

42. At the outset, the Chamber stresses that the present decision must be read in conjunction with the Judgment. The Chamber need not set out in detail every factor considered, especially if it accords no or minor significance thereto.⁶⁵ Equally, the Chamber is not required to expressly reference all evidence recognised as submitted at trial, including at the sentencing stage, and comment upon it.⁶⁶

43. The Chamber will set out below its analysis for each convicted person individually so as to determine the appropriate sentence. In the light of the applicable law, the Chamber considered (i) the gravity of the offences that were the basis for conviction of the person concerned; (ii) the culpable conduct of the

⁶² ICTY, *Prosecutor v. Jelena Rašić*, No. IT-98-32/1-R77.2-A, [Judgement](#), 16 November 2012, para. 17.

⁶³ See, for example, Article 161(1) of the Criminal Code (**Afghanistan**); Article 26 of the Criminal Code (**Argentina**); Article 8(1) of the Act of 29 June 1964 entitled 'Loi concernant la suspension, le sursis et la probation' (**Belgium**); Article 77 of the Criminal Code (**Brazil**); Section 731(1) of the Criminal Code (**Canada**); Article 43 of the Criminal Code (**CAR**); Article 63 of the Criminal Code (**Columbia**); Article 42 of the Criminal Code (**DRC**); Section 189(1)(b) of the Criminal Justice Act 2003 (**England and Wales**); Articles 132-30 and 132-31 of the Criminal Code (**France**); Section 56(1) of the Criminal Code (**Germany**); Article 72 of the Criminal Code (**Guatemala**); Article 163(1) of the Criminal Code (**Italy**); Article 133 of the Criminal Code (**Ivory Coast**); Article 277(i)(b) of the Code of Criminal Procedure (**Namibia**); Article 59(1) of the Criminal Code (**Republic of Korea**); Article 65(1) of the Criminal Code (**Serbia**); Article 80 of the Criminal Code (**Spain**); Article 42(1) of the Criminal Code (**Switzerland**); Article 72 of the Criminal Code (**Uzbekistan**); Article 60(1) of the Criminal Code (**Vietnam**).

⁶⁴ A suspension of the sentence has been recognised in, for example, ICTY, *Prosecutor v. Slobodan Milošević, Contempt Proceedings Against Kosta Bulatović*, Case No. IT-02-54-R77.4, [Decision on Contempt of the Tribunal](#), 13 May 2005, paras 18-19; *Prosecutor v. Jelena Rašić*, No. IT-98-32/1-R77.2-A, [Judgement](#), 16 November 2012, para. 17; SCSL, *Independent Counsel v. Hassan Papa Bangura et al*, Case No. SCSL-2011-02-T, [Sentencing Judgement in Contempt Proceedings](#), 11 October 2012, para. 92 and p. 33.

⁶⁵ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 9, with further case-law references in footnote 22.

⁶⁶ See also Judgment, [ICC-01/05-01/13-1989-Red](#), para. 193.

convicted person concerned; and (iii) the individual circumstances of the convicted person concerned.

A. FIDÈLE BABALA WANDU

44. The Chamber found Mr Babala:

GUILTY, under Article 70(1)(c) in conjunction with Article 25(3)(a) 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.

1. Gravity of the Offences

45. In addressing the gravity of the offences committed, the Chamber considered, in particular, the extent of the damage caused.

46. The offence of corruptly influencing a witness by bribing him or her is undoubtedly grave. When such an offence is committed before the Court, it has far-reaching consequences: it undermines the Court's discovery of the truth and impedes justice for victims.⁶⁷

47. With regard to the damage caused, the Chamber recalls that Mr Babala was convicted of having aided the corrupt influencing of two defence witnesses by having facilitated money transfers to them in the context of the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case').⁶⁸

48. Even though the Chamber does not require a causal link between the illegitimate money transfers and the actual testimonies of witnesses,⁶⁹ it is nevertheless attentive to the fact that (i) witness D-57 falsely testified in the Main Case regarding payments received and the number of prior contacts with the Main Case Defence;⁷⁰ (ii) witness D-64 falsely testified regarding payments received

⁶⁷ [T-50-ENG](#), p. 4, lines 1-5; p. 13, lines 19-21.

⁶⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 115, 117-118, 243, 254, 269, 281, 700, 878, 879, 890 and 893.

⁶⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 48 and 936.

⁷⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 116 and 252.

and the number of prior contacts with the Main Case Defence.⁷¹ The Chamber considers this to be relevant in its assessment of the gravity of the offences.

2. Mr Babala's Culpable Conduct

49. In addressing Mr Babala's culpable conduct, the Chamber has considered the following factors pursuant to Rule 145(1) and (2) of the Rules: (i) his degree of participation and intent; and (ii) the manner in which the offences were executed, together with any (iii) mitigating and (iv) aggravating circumstances.

a) Degree of Participation and Intent

50. The Chamber recalls that Mr Babala was convicted, as an accessory, of having aided Mr Bemba, Mr Kilolo and Mr Mangenda in the commission of the offences of corruptly influencing two witnesses. D-57 received USD 665 (through his wife) from Mr Babala personally one day before his expected testimony in the Main Case. Likewise, Mr Babala facilitated the payment of USD 700 by his employee to D-64 before his expected testimony in the Main Case through D-64's daughter.

51. Regarding Mr Babala's intent, the Chamber recalls its finding that Mr Babala acted as the financier of the Main Case Defence⁷² and effected or facilitated the payments knowing that the money was used as an incentive to have the witnesses testify in favour of Mr Bemba. As explained in the Judgment, the Chamber found that Mr Babala discussed with Mr Bemba the importance of paying certain witnesses, in particular D-57 and D-64, in connection with their testimonies in the Main Case.⁷³ He was aware – to some extent – of internal details of the Main Case, including the identity of witnesses D-57 and D-64, and knew that the payments were made shortly before their testimonies in the Main

⁷¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 119 and 279.

⁷² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 112, 693, 703, 779, 798, 877, 879, 887, 889 and 892-893.

⁷³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 267, 882 and 884.

Case.⁷⁴ He understood that the payments were illegitimate in nature and aimed at contaminating the witnesses' testimonies.⁷⁵

b) Manner of Commission

52. The Chamber also takes into account the deceptive and sophisticated manner in which the offences were executed by Mr Babala.⁷⁶ Mr Babala arranged the money transfers in a manner intended to conceal any link between the witnesses and the Main Case Defence.⁷⁷ He did not make the payments directly to the witnesses but transferred USD 665 to D-57's wife and arranged the payment to D-64's daughter through his employee.⁷⁸ His intention to conceal the payment activities is further demonstrated, *inter alia*, by Mr Babala's use of coded language in communications with Mr Bemba and Mr Kilolo on matters relating to the Main Case, in particular for payments ('kilos', 'grands' or 'sucre').⁷⁹

c) Mitigating Circumstances

53. The Babala Defence advances a series of arguments claiming that they constitute mitigating circumstances within the meaning of Rule 145(2)(a) of the Rules. It claims, for example, that Mr Babala (i) was not part of the Main Case Defence team;⁸⁰ (ii) was not privy to the Main Case Defence strategy;⁸¹ (iii) was never part of a plan to corruptly influence witnesses;⁸² and (iv) did not contribute to the false testimony of D-57 and D-64 before Trial Chamber III, as identified by the Chamber.⁸³ The Chamber finds that the arguments relate, in part, to Mr Babala's degree of participation. The Chamber has already taken into account Mr Babala's

⁷⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 267, 885, 890, and 892-893.

⁷⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 254, 281 and 893.

⁷⁶ See Prosecution Sentencing Submissions, para. 44.

⁷⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 272.

⁷⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 243, 269, 879 and 936.

⁷⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 267, 697-700, 703, 748, 882 and 884.

⁸⁰ Babala Sentencing Submission, paras 29-31; [T-54-Red](#), p. 86, lines 15-16.

⁸¹ Babala Sentencing Submission, paras 32-33; [T-54-Red](#), p. 86, lines 16-18.

⁸² Babala Sentencing Submission, paras 34-35.

⁸³ Babala Sentencing Submission, paras 36-37; [T-54-Red](#), p. 86, lines 5-14.

culpable conduct as an accessory.⁸⁴ Other arguments made relate to the merits of the Judgment. At this stage of the proceedings, such arguments are properly raised before the Appeals Chamber and cannot be taken into account for the purposes of this decision.

d) Aggravating Circumstances

54. The Prosecution submits that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Babala's assistance in the attempt to obstruct the present Article 70 investigation.⁸⁵ The Babala Defence argues that this factor has not been proven beyond reasonable doubt.⁸⁶

55. The Chamber recalls its finding that, when Mr Bemba, Mr Kilolo and Mr Mangenda became aware that they were the subject of an investigation, Mr Babala assisted and supported them in their attempt to take remedial measures. He encouraged Mr Kilolo to maintain contact with the Main Case Defence Witnesses and to ensure that they were paid after their testimonies as an '*après-vente*' service.⁸⁷ Mr Babala was fully aware of the legal implications of his suggestion to render *après-vente* services to Main Case Defence Witnesses. The Chamber agrees with the Prosecution that the present consideration does not amount to 'double-counting' as the underlying conduct has not been considered for gravity purposes.⁸⁸ The Chamber considers this factor to be relevant and attributes some weight to it.

56. The Prosecution also argues that the Chamber should take into account Mr Babala's 'abuse of authority and/or official capacity' as an aggravating

⁸⁴ See paragraph 50; see also Judgment, [ICC-01/05-01/13-1989-Red](#), paras 874-876.

⁸⁵ See Prosecution Sentencing Submission, paras 72-73 and 81-84.

⁸⁶ [T-54-Red](#), p. 82, lines 3-17.

⁸⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 112, 410, 781, 799, 887-888 and 891.

⁸⁸ See also Prosecution Sentencing Submission, para. 90.

circumstance within the meaning of Rule 145(2)(b)(ii) of the Rules.⁸⁹ It argues that Mr Babala abused his position within the '*Mouvement de Libération du Congo*' ('MLC') and as a member of the National Assembly of the Democratic Republic of the Congo ('DRC') to make payments to witnesses. More specifically, he used his authority over his employee to execute payments to witnesses on his behalf and discussed with Mr Bemba how another person 'should be in charge of MLC finances, including those used to make illicit payments to witnesses'.⁹⁰

57. The Chamber concurs with Trial Chamber II that it must be demonstrated that the convicted person 'not only exercised some authority, but also that he abused it'.⁹¹ In the present instance, the Chamber finds that Mr Babala did not abuse his power as an employer or official authority to commit the offences concerned. Nothing in the evidence suggests that Mr Babala used his authority or position *vis-à-vis* his employee, beyond what is expected within the boundaries of an employer-employee relationship,⁹² to effect the payment to D-64's daughter.⁹³ Further, the Chamber finds no evidentiary support to assume that Mr Babala used his position as a member of the DRC National Assembly when assisting in the commission of the offences involving D-57 and D-64. As a result, the Chamber does not consider the convicted person's status as a member of the DRC National Assembly or his position as employer *vis-à-vis* P-272 to be an aggravating factor.

⁸⁹ Prosecution Sentencing Submission, paras 51, 54 and 120.

⁹⁰ Prosecution Sentencing Submission, para. 54.

⁹¹ Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 75.

⁹² [T-54-Red](#), p. 81, lines 5-12.

⁹³ Transcript of Hearing, 21 October 2015, [ICC-01/05-01/13-T-25-Red-ENG](#), p. 37, lines 1-12; Judgment, [ICC-01/05-01/13-1989-Red](#), para. 268.

3. Mr Babala's Individual Circumstances

58. In addressing Mr Babala's individual circumstances, the Chamber has considered all those factors that are not directly related to the offences committed or to Mr Babala's culpable conduct.

59. Mr Babala is 61 years old, and married with children.⁹⁴ He is a jurist⁹⁵ and a parliamentarian of the National Assembly in the DRC.⁹⁶

60. The Babala Defence argues that the Chamber should take into account, in mitigation, Mr Babala's cooperation with the Court, in particular his conduct while in detention and his respectful compliance with all conditions imposed while on provisional release.⁹⁷ The Chamber clarifies that cooperation with the Court and good behaviour during the proceedings does not *per se* represent mitigating circumstances within the meaning of Rule 145(2)(a) of the Rules.⁹⁸ Nevertheless, it accepts that these elements pertain to the overall circumstances of the convicted person, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence. That said, the Chamber is appreciative of Mr Babala's good and respectful behaviour and attendance record in these proceedings.

61. Further, the Chamber does not consider Mr Babala's professional background⁹⁹ and contribution to politics in the DRC¹⁰⁰ to be of relevance. Equally, the Chamber does not intend to give any weight to attestations as to Mr Babala's positive role and manifold services to the local communities.¹⁰¹ Furthermore, the

⁹⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 11; Babala Sentencing Submission, para. 66.

⁹⁵ [T-54-Red](#), p. 78, line 14.

⁹⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 11; Babala Sentencing Submission, para. 49.

⁹⁷ Babala Sentencing Submission, paras 42-45; [T-54-Red](#), p. 88, lines 5-8.

⁹⁸ *Similarly*, for example, Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 81; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), paras 127-128.

⁹⁹ Babala Sentencing Submission, paras 49-51; [T-54-Red](#), p. 87, line 13 to p. 88, line 2.

¹⁰⁰ Babala Sentencing Submission, paras 57-64; [T-54-Red](#), p. 88, lines 3-5.

¹⁰¹ Babala Sentencing Submission, paras 53-55.

absence of prior convictions¹⁰² is a fairly common feature among individuals convicted by international tribunals and will not be counted as a relevant mitigating circumstance.¹⁰³ Nevertheless, the Chamber accepts that this element pertains to the overall circumstances of Mr Babala, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence.

62. Finally, the Babala Defence submits that the Chamber should take Mr Babala's family circumstances into account, highlighting, *inter alia*, that he is the father of two minor children.¹⁰⁴ The Chamber is of the view that such family circumstances are common to many convicted persons before international tribunals and cannot be taken into account in mitigation in the present case. Nevertheless, the Chamber accepts that family circumstances pertain to the overall circumstances of Mr Babala, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence.

4. Determination of Sentence

63. The Prosecution recommends that Mr Babala be sentenced to a joint sentence of three years imprisonment, or alternatively, to a singular sentence of three years imprisonment, and fined.¹⁰⁵

64. The Babala Defence requests that the Chamber impose 'the lightest possible conceivable suspended sentence for Mr Babala'.¹⁰⁶ In case of a fine, it requests that the Chamber take into account Mr Babala's 'high monthly costs in order to meet the needs of his family and community'.¹⁰⁷

¹⁰² Babala Sentencing Submission, para. 52; [T-54-Red](#), p. 88, lines 12-20.

¹⁰³ Similarly, Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 96.

¹⁰⁴ Babala Sentencing Submission, paras 65-77; [T-54-Red](#), p. 86, line 20 to p. 87, line 7.

¹⁰⁵ Prosecution Sentencing Submission, para. 173; [T-53-Red](#), p. 61, lines 19-20.

¹⁰⁶ [T-54-Red](#), p. 96, lines 1-3.

¹⁰⁷ [T-54-Red](#), p. 95, lines 15-18.

65. The Chamber recalls that Mr Babala has been convicted of the charge of corruptly influencing witnesses in two instances, *viz.* witnesses D-57 and D-64.
66. The Chamber has weighed and balanced all the factors as set out above. The Chamber found one aggravating circumstance, namely Mr Babala's assistance in the attempt to obstruct the present Article 70 investigation. However, this must be balanced against Mr Babala's relatively limited participation in the relevant offences and the fact that his criminal conduct amounted to nothing more than illegal money transfers to two witnesses. The Chamber also took into account Mr Babala's good behaviour throughout the trial, absence of prior convictions and family situation.
67. The Chamber is called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Babala's culpability. Taking into account all of the above factors, the Chamber sentences Mr Babala to six (6) months' imprisonment. The Chamber finds that imprisonment is a sufficient penalty and does not impose a fine.
68. Pursuant to Article 78(2) of the Statute, Mr Babala is entitled to have deducted from his sentence the time previously spent in detention in accordance with an order of the Court, namely since his arrest on 24 November 2013, pursuant to the warrant of arrest issued by Pre-Trial Chamber II on 20 November 2013.¹⁰⁸ Mr Babala was released on 23 October 2014.¹⁰⁹ Since the imposed sentence is less

¹⁰⁸ 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 ('Article 58 Warrant'), [ICC-01/05-01/13-1-Red2-tENG](#) (registered on 5 December 2013).

¹⁰⁹ 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](#); Registry's Report on the Implementation of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" (ICC-01/05-01/13-703), 27 October 2014, ICC-01/05-01/13-722-Conf (with 15 annexes). The Chamber considers the day of Mr Babala's release to be part of the time previously spent in detention. Thus, Mr Babala spent in total 11 months and one day in detention, in accordance with an order of the Court.

than the credit to be applied for the period of time Mr Babala has been in custody, the Chamber considers the sentence of imprisonment as served. In light of this determination, the Chamber dismisses the Babala Defence request for continued provisional release pending appeal as moot.

B. NARCISSE ARIDO

69. The Chamber found Mr 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.

1. Gravity of the Offences

70. In addressing the gravity of the offences committed, the Chamber considered, in particular, the extent of the damage caused.

71. The offence of corruptly influencing a witness by briefing and scripting his or her testimony and promising, as encouragement, financial reward or relocation is undoubtedly grave. As the Chamber explained in its Judgment, scripting the testimony of witnesses bears the risk that the testimony is *de facto* that of the instructor and not that of the witness, making it impossible for the Court to assess what the witness personally experienced.¹¹⁰ As a result, the Court is prevented from executing its mandate.

72. With regard to the damage caused, the Chamber is attentive to the fact that the offences involved four out of 14 witnesses who were subject to interference in the main Case ('14 Main Case Defence Witnesses'). In the view of the Chamber, instructing four witnesses with the aim of influencing their testimony is relevant in assessing the gravity of the offence committed.

¹¹⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 46.

73. Even though the Chamber does not require a causal link between the illicit coaching of witnesses and their actual testimony,¹¹¹ it is nevertheless attentive to the fact that the witnesses coached by Mr Arido subsequently testified falsely in the Main Case. Specifically, (i) D-2 testified falsely regarding payments, his acquaintance with other individuals and the nature and number of prior contacts with the Main Case Defence;¹¹² (ii) D-3 testified falsely regarding payments and his acquaintance with other individuals;¹¹³ (iii) D-4 testified falsely regarding his acquaintance with other individuals;¹¹⁴ and (iv) D-6 testified falsely regarding payments, the nature and number of prior contacts with the Main Case Defence and his acquaintance with other individuals.¹¹⁵ The Chamber considers this to be relevant in its assessment of the gravity of the offences.

2. Mr Arido's Culpable Conduct

74. In addressing Mr Arido's culpable conduct, the Chamber has considered the following factors pursuant to Rule 145(1) and (2) of the Rules: (i) his degree of participation and intent, together with any (ii) aggravating circumstances.

a) Degree of Participation and Intent

75. The Chamber recalls that Mr Arido was convicted of having personally corruptly influenced witnesses D-2, D-3, D-4 and D-6. His involvement in the commission of the offences was comprehensive and direct in relation to four out of the 14 Main Case Defence Witnesses. He identified at least two of the four witnesses and facilitated contact with Mr Kilolo in January 2012.¹¹⁶ He instructed and briefed the four witnesses (or facilitated their briefing by others) to present themselves to Mr Kilolo and to the Court as military men, even while believing

¹¹¹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 48.

¹¹² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 142, 389 and 412.

¹¹³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 143, 392 and 413.

¹¹⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 144, 394 and 414.

¹¹⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 145, 395 -404 and 415.

¹¹⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 320-330.

that they had no such background. He assigned various military ranks and handed out military insignia to each of the witnesses. He also promised money and relocation to Europe as an inducement to procure the testimony of the witnesses in favour of Mr Bemba in the Main Case. Intending to manipulate the testimonial evidence of the four witnesses, he constructed and adjusted the witnesses' testimonies according to a specific narrative favourable to Mr Bemba during the instruction and briefing session.¹¹⁷ Mr Arido executed the offences on his own initiative and with particular insistence over two days in Douala. He had a hands-on approach and did not miss any opportunity to coach the four witnesses concerned.

76. The Prosecution argues that the Chamber should take into account the fact that Mr Arido executed the offences within the objectives of the common plan that was pursued by Mr Bemba, Mr Kilolo and Mr Mangenda.¹¹⁸ The Chamber recalls that the common plan was concluded between Mr Bemba, Mr Kilolo and Mr Mangenda.¹¹⁹ Together, they relied on other individuals, such as Mr Arido, to further their goal.¹²⁰ This does not, however, affect Mr Arido's culpable conduct.

77. Regarding Mr Arido's intent, the Chamber recalls its finding that Mr Arido meant to engage in the conduct of influencing the witnesses by (i) purposefully and deliberately instructing them to provide certain information about their professional background without concern for its truth;¹²¹ (ii) promising each witness a significant financial reward and relocation to Europe as encouragement to give certain evidence in the Main Case;¹²² making the witnesses believe that this arrangement would lead to a better life for them;¹²³ (iii) taking a 'go-between'

¹¹⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 944.

¹¹⁸ Prosecution Sentencing Submission, paras 46-48.

¹¹⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 802-803.

¹²⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 112.

¹²¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 321-323, 328, 334, 338 and 671.

¹²² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 320, 328, 342 and 672.

¹²³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 672.

role by conveying the witnesses' conditions (regarding payment and relocation) to Mr Kilolo;¹²⁴ and (iv) dispelling any concerns expressed by the witnesses and reassuring them that he had a military background or would put them in contact with others who would brief the witnesses.¹²⁵

b) Aggravating Circumstances

78. The Prosecution contends that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Arido's attempt to obstruct justice in this case, namely by producing and presenting a forged handwritten document in the present case. More specifically, it alleges that the Arido Defence in the present case submitted and relied upon document CAR-D24-0002-0003 ('Forged Document') that was, however, fabricated previously by P-256 upon the instruction of the Arido Defence team. With this document, the Prosecution avers, the Arido Defence sought to 'undermine' D-2's and D-3's testimony that they had lied in the Main Case about being soldiers upon Mr Arido's instruction.¹²⁶

79. For the sake of completeness, it is recalled that, in the Judgment, the Chamber did not rely on the Forged Document due to insufficient information on its authenticity and background.¹²⁷

80. Witness P-256 testified *via* video-link¹²⁸ during the sentencing hearing on 12 December 2016.¹²⁹

81. The witness testified, *inter alia*, about the production of the Forged Document, a series of other forged handwritten documents and his interactions with Mr Arido

¹²⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 341,344 and 349.

¹²⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 127 and 328.

¹²⁶ Prosecution Sentencing Submission, para. 86; [T-53-Red](#), p. 68, line 10 to p. 69, line 16.

¹²⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 322.

¹²⁸ Decision on Prosecution's Request to hear P-256's Testimony via Video-Link, 25 November 2016, [ICC-01/05-01/13-2062](#).

¹²⁹ T-53-Conf, p. 6, line 17 to p. 7, line 3.

and the Arido Defence. In general terms, P-256 was forthcoming in replying to the questions asked by the parties. He admitted outright that he had doctored a series of documents, including the Forged Document. His account was clear and consistent. When challenged by the Prosecution with perceived inaccuracies between his in-court testimony and his prior statement, P-256 replied in a calm manner. Yet, the Chamber also discerns a degree of vagueness in some of the responses of the witness that were not, however, further clarified during his testimony. In sum, the Chamber finds the witness reliable and therefore relies on his statement, in particular regarding the production of the Forged Document and his interactions with Mr Arido and the Arido Defence.

82. The Chamber is convinced, beyond reasonable doubt, that P-256 produced the Forged Document and other precursor documents.¹³⁰ Yet, it is not proven, to the requisite evidentiary standard, that the Forged Document was fabricated upon the instruction of Mr Arido, that he condoned or even knew about its production. The witness, in his testimony, did not implicate Mr Arido personally in any way. As a result, the Chamber does not take this allegation into account as an aggravating circumstance.

83. The Prosecution also argues that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Arido's attempt to obstruct justice in this case, namely by using regular payments to P-256 through an intermediary with a view to influencing the expected testimony of the witness.¹³¹ The Chamber is satisfied that P-256 received at least four payments through a third person, the last of which occurred in February 2016.¹³² As the witness admitted, the money was given to him in order

¹³⁰ T-53-Conf, p. 23, line 16 to p. 24, line 25; p. 25, line 17 to p. 27, lines 12.

¹³¹ Prosecution Sentencing Submission, para. 85; ICC-01/05-01/13-1983-Conf, para. 5; ICC-01/05-01/13-1983-Conf-AnxA.

¹³² T-53-Conf, p. 32, line 7 to p. 33, line 4.

‘to support’ Mr Arido.¹³³ However, it is not proven, to the requisite evidentiary standard, that Mr Arido was involved in any capacity in the payments.¹³⁴ As a result, the Chamber does not take this allegation, as an aggravating circumstance, into account.

84. The Prosecution further submits that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Arido’s attempt to obstruct justice in this case, namely by providing false information to the French authorities during the course of the interview with them, such as on the number of payments received from Mr Kilolo, Mr Arido’s acquaintance with specific Main Case Defence Witnesses, or the purpose of payments to those specific Main Case Defence Witnesses.¹³⁵

85. The Chamber notes that Mr Arido provided Article 55(2) statements to the French authorities before he was surrendered to the Court.¹³⁶ The Chamber understands that Mr Arido, as a suspect, and without having been presented with the charging document, voluntarily responded to a set of questions asked by the investigators. As a suspect, Mr Arido is not duty-bound to incriminate himself. This cannot be considered as an aggravating circumstance within the meaning of Rule 145(2)(b) of the Rules.¹³⁷ Moreover, there are doubts as to the Prosecution’s selective interpretation of Mr Arido’s statements. For example, contrary to the Prosecution’s allegations, Mr Arido actually confirmed that he knew some of the Main Case Defence Witnesses.¹³⁸ As regards the payments

¹³³ T-53-Conf, p. 32, line 8.

¹³⁴ T-53-Conf, p. 32, line 24 (‘She never told me where the money came from’); p. 33, lines 24-25; p. 34, lines 12-15 (‘She never told me that the money came from Arido. She simply asked me to support her. She never told me that the money came from Arido. All she said was that the money was to enable me support Arido’).

¹³⁵ Prosecution Sentencing Submission, para. 87.

¹³⁶ Article 55(2) Statements of Mr Arido, CAR-OTP-0074-1065-R02; CAR-OTP-0078-0117.

¹³⁷ This is in contrast to the allegations related to P-256 which, if they had been established, would have fallen under Rule 145(2)(b)(i) and (vi) of the Rules, Decision on Arido Defence Request for Exclusion of Prosecution Witness or, in the Alternative, Clarification of Sentencing Witnesses Decision, 21 November 2016, [ICC-01/05-01/13-2038](#), paras 11-12.

¹³⁸ Article 55(2) Statements of Mr Arido, CAR-OTP-0074-1065-R02 at 1068-R02, paragraph 4.

received by Mr Kilolo, the Chamber recalls that it did not accept the Prosecution's claim in the Judgment.¹³⁹ As a result, the Chamber does not take this allegation into account, as an aggravating circumstance.

3. Mr Arido's Individual Circumstances

86. In addressing Mr Arido's individual circumstances, the Chamber has considered all those factors that are not directly related to the offence committed, or to Mr Arido's culpable conduct.

87. Mr Arido is 39 years old and holds a diploma in Law and 'Defence, Security and Conflicts and Disaster Management' from the University of Yaoundé.¹⁴⁰ He was a member of the CAR armed forces until 2001. He is married and has five children.¹⁴¹ He lives in France, where he has claimed asylum.¹⁴²

88. The Arido Defence maintains that the Chamber should take into account, in mitigation, Mr Arido's good behaviour while in detention and full compliance with the temporary release conditions.¹⁴³ The Chamber clarifies that cooperation with the Court and good behaviour during the proceedings does not *per se* represent mitigating circumstances within the meaning of Rule 145(2)(a) of the Rules.¹⁴⁴ Nevertheless, it accepts that these elements pertain to the overall circumstances of the convicted person, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence. That said, the Chamber is appreciative of Mr Arido's good and respectful behaviour and attendance record in these proceedings.

¹³⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 677.

¹⁴⁰ Arido Sentencing Submission, para 39; Email correspondence, CAR-OTP-0075-0246 at 0246.

¹⁴¹ Transcript of Hearing, 14 December 2016, ICC-01/05-01/13-T-55-Red-ENG, p. 8, lines 21-22.

¹⁴² Arido Sentencing Submission, para. 39; [T-55-Red](#), p. 8, lines 16-18.

¹⁴³ Arido Sentencing Submission, paras 23-38; [T-55-Red](#), p. 8, lines 13-14; Internal Memorandum, CAR-D24-0006-0092.

¹⁴⁴ *Similarly*, for example, Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 81; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), paras 127-128.

89. Furthermore, the Chamber does not consider the absence of any criminal record¹⁴⁵ to be a factor in mitigation for Mr Arido. As stated earlier, the absence of prior convictions is a fairly common feature among individuals convicted by international tribunals and will not be counted as a relevant mitigating circumstance.¹⁴⁶ Nevertheless, the Chamber accepts that this element pertains to the overall circumstances of Mr Arido, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence.

90. Likewise, the Chamber does not find that Mr Arido's continued support for his family to be of relevance.¹⁴⁷ The Chamber is of the view that family circumstances, in particular the impact on Mr Arido's family of his incarceration in a foreign country,¹⁴⁸ are common to many convicted persons and cannot be taken into account in mitigation in the present case. Nevertheless, the Chamber accepts that family circumstances pertain to the overall circumstances of Mr Arido, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence. Furthermore, the allegations of an assault on a family member,¹⁴⁹ even if accepted on a balance of probabilities, can only have a very limited weight.

91. In the same vein, the Chamber does not consider Mr Arido's current unemployment and asylum application in France to be relevant.¹⁵⁰ Mr Arido's employment situation and asylum situation are extraneous considerations to the present proceedings and are likely to change in the future. As a result, the arguments presented cannot be taken into account in mitigation. Nevertheless, the Chamber will take these elements into account as part of Mr Arido's overall

¹⁴⁵ Arido Sentencing Submission, para. 22; [T-55-Red](#), p. 8, lines 11.

¹⁴⁶ *Similarly*, Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 96.

¹⁴⁷ Arido Sentencing Submission, paras 39-49; [T-55-Red](#), p. 8, lines 14-15.

¹⁴⁸ Arido Sentencing Submission, paras 52-56; [T-55-Red](#), p. 9, lines 6-7.

¹⁴⁹ Arido Sentencing Submission, para. 47; [T-55-Red](#), p. 7, lines 1-8.

¹⁵⁰ Arido Sentencing Submission, paras 2, 39 and 41.

circumstances, pursuant to Rule 145(1)(b) of the Rules, when ultimately determining the appropriate sentence.

92. Lastly, the Chamber will consider claims as to Mr Arido's peace, justice and reconciliation advocacy for the Central African Republic as well as his generosity towards compatriots and persons in need¹⁵¹ as part of his overall circumstances, pursuant to Rule 145(1)(b) of the Rules, when determining the sentence.

4. Determination of Sentence

93. The Prosecution recommends that Mr Arido be sentenced to a joint sentence of five years' imprisonment, or alternatively, to a singular sentence of five years imprisonment, and fined.¹⁵²

94. The Arido Defence requests that Mr Arido be sentenced to 'time served' without any fine.¹⁵³

95. The Chamber recalls that Mr Arido has been convicted of the charge of corruptly influencing witnesses in four instances, *viz.* witnesses D-2, D-3, D-4 and D-6.

96. The Chamber has weighed and balanced all the factors as set out above. It has found no aggravating or mitigating circumstances and took into account Mr Arido's good behaviour throughout the trial, his personal situation, his peace, justice and reconciliation advocacy for the Central African Republic, his generosity towards compatriots and persons in need, the absence of prior convictions and family situation.

97. The Chamber is called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Arido's culpability. Taking into account all of the above factors, the Chamber sentences Mr Arido to 11 months of

¹⁵¹ Arido Sentencing Submission, paras 57-68; [T-55-Red](#), p. 10, lines 2-5.

¹⁵² Prosecution Sentencing Submission, para. 174 ; [T-53-Red](#), p. 61, lines 21-23.

¹⁵³ Arido Sentencing Submission, para. 116(a); [T-55-Red](#), p. 30, lines 1-2.

imprisonment. The Chamber finds that imprisonment is a sufficient penalty and does not impose a fine.

98. Pursuant to Article 78(2) of the Statute, Mr Arido is entitled to have deducted from his sentence the time previously spent in detention in accordance with an order of the Court, namely from his arrest on 23 November 2013, pursuant to the warrant of arrest issued by Pre-Trial Chamber II on 20 November 2013,¹⁵⁴ until his release on 22 October 2014.¹⁵⁵ Since the imposed sentence is equivalent to the credit to be applied for the period of time Mr Arido has been in custody, the Chamber considers the sentence of imprisonment as served. In light of this determination, the Chamber dismisses the Arido Defence request for continued provisional release pending appeal as moot.

C. JEAN-JACQUES MANGENDA KABONGO

99. The Chamber found Mr Mangenda:

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.

1. Gravity of the Offences

100. In addressing the gravity of the offences committed, the Chamber considered, in particular, the extent of the damage caused and, to a certain extent, the nature of the unlawful behaviour and the circumstance of time.

¹⁵⁴ Article 58 Warrant, [ICC-01/05-01/13-1-Red2-tENG](#).

¹⁵⁵ 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](#); Registry's Report on the Implementation of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" (ICC-01/05-01/13-703), 28 October 2014, ICC-01/05-01/13-722-Conf (with 15 annexes). The Chamber considers the day of Mr Arido's release to be part of the time previously spent in detention. Thus, Mr Arido spent in total 11 months in detention, in accordance with an order of the Court.

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

101. Mr Mangenda was convicted of having committed, together with Mr Bemba and Mr Kilolo, 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, D-55, D-57 and D-64. The offence of corruptly influencing a witness is undoubtedly grave. When such offence is committed before the Court, it has far-reaching consequences: it undermines the Court's discovery of the truth and impedes justice for victims.
102. As regards the extent of the damage caused, the Chamber highlights that Mr Mangenda's contribution involved 14 Main Case Defence Witnesses. Considering that the Main Case Defence called 34 witnesses in total,¹⁵⁶ the number of 14 contaminated Main Case Defence Witnesses is particularly high and, in the view of the Chamber, characterises the systematic approach of the offences and therefore the seriousness and gravity of this case.
103. Even though the Chamber does not require a causal link between the illicit coaching of witnesses and their actual testimony,¹⁵⁷ it is nevertheless attentive to the fact that (i) D-2 falsely testified regarding payments or benefits received, his acquaintance with other individuals and the nature and number of contacts with the Main Case Defence;¹⁵⁸ (ii) D-3 falsely testified regarding payments and his acquaintance with other individuals;¹⁵⁹ (iii) D-4 falsely testified regarding his acquaintance with other individuals;¹⁶⁰ (iv) D-6 falsely testified regarding payments received, the nature of and contact with the Main Case Defence and his acquaintance with other individuals;¹⁶¹ (v) D-13 falsely testified regarding the

¹⁵⁶ Trial Chamber III, Judgment pursuant to Article 74 of the Statute, 21 March 2016, [ICC-01/05-01/08-3343](#), para. 17.

¹⁵⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 48.

¹⁵⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 142, 389 and 412.

¹⁵⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 143, 392 and 413.

¹⁶⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 144, 394 and 414.

¹⁶¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 145, 395-404 and 415.

number of prior contacts with the Main Case Defence;¹⁶² (vi) D-15 falsely testified regarding the number of prior contacts with the Main Case Defence;¹⁶³ (vii) D-23 falsely testified regarding payments received and his acquaintance with other individuals;¹⁶⁴ (viii) D-25 falsely testified regarding payments received;¹⁶⁵ (ix) D-26 falsely testified regarding the number of contacts with the Main Case Defence;¹⁶⁶ (x) D-29 falsely testified regarding the number of prior contacts with the Main Case Defence;¹⁶⁷ (xi) D-54 falsely testified regarding the number of prior contacts with the Main Case Defence;¹⁶⁸ (xii) D-55 falsely testified regarding the number of prior contacts with the Main Case Defence and payments or benefits received;¹⁶⁹ (xiii) D-57 falsely testified regarding payments received and the number of prior contacts with the Main Case Defence;¹⁷⁰ and (xiv) D-64 falsely testified regarding payments received and the number of prior contacts with the Main Case Defence.¹⁷¹ This means that 14 witnesses falsely testified in the Main Case. The Chamber considers this to be relevant in its assessment of the gravity of the offences.

104. As to the nature of the unlawful behaviour, the Chamber notes that the offences involving the 14 Main Case Defence Witnesses were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.¹⁷² The offences were devised, planned and committed by three individuals together – Mr Bemba, Mr Kilolo and Mr Mangenda.¹⁷³ In the view of the Chamber, the number of perpetrators

¹⁶² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 183-184 and 665.

¹⁶³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 581-582 and 589.

¹⁶⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 153 and 451-452.

¹⁶⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 160, 503.

¹⁶⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 158, 470 and 475.

¹⁶⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 164, 528 and 540.

¹⁶⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 180, 646-647 and 650.

¹⁶⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 124, 301 and 303.

¹⁷⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 116, 246, 249 and 252.

¹⁷¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 119, 276 and 279.

¹⁷² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

¹⁷³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 802.

involved in the commission of the offences at stake – because of necessary need of organisation and the potential of a coercive group dynamic – is relevant in its assessment of the gravity of the offences.

105. Additionally, the offences were extensive in scope, planning, preparation and execution. A series of sophisticated and elaborate measures were adopted to conceal the illicit activities, such as the use of codes,¹⁷⁴ the use of third parties to effect payments,¹⁷⁵ and the distribution of cell phones some of the 14 Main Case Defence Witnesses without the knowledge of the Registry.¹⁷⁶ The Chamber considers that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.

106. Notably, the Chamber does not, for gravity purposes, take into account any conduct *after* the act since this cannot *per se* characterise the gravity of the offence as committed at the relevant time. However, the Chamber has considered this factor, if applicable, in the context of the convicted person's culpable conduct.¹⁷⁷

107. The Chamber is also attentive to the timeframe in which the offences occurred. The offences of corruptly influencing the 14 Main Case Defence Witnesses were organised and executed over a prolonged time period – almost two years.¹⁷⁸ The Chamber considers that the lengthy period over which the offences were committed is also relevant in the assessment of the gravity of the offences.

¹⁷⁴ Judgment [ICC-01/05-01/13-1989-Red](#), paras 746-761.

¹⁷⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 242-248, 268-271, 396, 407-408, 520 and 746.

¹⁷⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 364-371, 445 and 747.

¹⁷⁷ This relates, in particular, to the conduct of the co-perpetrators, Mr Bemba, Mr Kilolo and Mr Mangenda, with regard to their agreement to take remedial measures in the context of the Article 70 investigation. *See* Prosecution Sentencing Submission, para. 19, last bullet point.

¹⁷⁸ The Chamber notes the earliest meeting of one of the co-perpetrators with witnesses D-2, D-3, D-4 and D-6 in Douala in February 2012 and the last contact with D-13 who testified last in the Main Case in November 2013, *see* Judgment, [ICC-01/05-01/13-1989-Red](#), paras 331 and 656.

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

108. Mr Mangenda was convicted of having committed, together with Mr Bemba and Mr Kilolo, the offences of presenting false evidence given by the Main Case Defence 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 knowing that their evidence was false. When such an offence is committed before the Court, it has far-reaching consequences: false evidence is unreliable and its presentation in the proceedings affects the integrity of the proceedings. Ultimately, it undermines the Court's discovery of the truth and impedes justice for victims.
109. As regards the extent of the damage, the Chamber recalls that Mr Mangenda's contribution in presenting false evidence involved 14 out of 34 Main Case Defence Witnesses. Those witnesses represented almost half of the witnesses presented by the Main Case Defence. This underscores the seriousness and gravity of this case.
110. As to the nature of the unlawful behaviour, the Chamber notes that the offences involving presentation of the evidence of the 14 Main Case Defence Witnesses were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.¹⁷⁹ The Chamber draws upon its previous considerations in relation to Article 70(1)(c) of the Statute. The Chamber concludes that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.¹⁸⁰
111. The Chamber is also attentive to the timeframe in which the offences occurred. The offences of presenting the false evidence given by 14 Main Case Defence Witnesses were organised over a prolonged time period – approximately one

¹⁷⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

¹⁸⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 769.

year, beginning when D-57 testified and ending when D-13 testified last before Trial Chamber III. The Chamber considers that the lengthy period over which the offences were committed is relevant in the assessment of the gravity of the offences.

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

112. Mr Mangenda was convicted of having aided in the giving of false testimony by the Main Case Defence Witnesses D-15 and D-54, and of having abetted in the giving of false testimony by Main Case Defence Witnesses D-2, D-3, D-4, D-6, D-13, D-25 and D-29. When such an offence is committed before the Court, it has far-reaching consequences: a witness falsely testifying renders his or her evidence unreliable, which affects the integrity of the proceedings. Ultimately, giving false evidence undermines the Court's discovery of the truth and impedes justice for victims.

113. As regards the extent of the damage, the Chamber recalls that Mr Mangenda's assistance to the witnesses in providing false testimony, while under the obligation to tell the truth, involved nine out of 14 Main Case Defence Witnesses. The Chamber considers this relevant in assessing the gravity of the offences.

114. As to the nature of the unlawful behaviour, the Chamber notes that the offences concerned were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.¹⁸¹ The Chamber concludes that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.¹⁸²

¹⁸¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

¹⁸² Judgment, [ICC-01/05-01/13-1989-Red](#), para. 769.

115. In this context, the Chamber also pays heed to the nature of the false testimony that the witnesses gave before Trial Chamber III and in relation to which Mr Mangenda has been found to be responsible. False testimony was found to relate to three issues: (i) payments or non-monetary benefits received; (ii) acquaintance with other individuals; and (iii) the nature and number of prior contacts with the Main Case Defence.¹⁸³ As the Chamber stressed in the Judgment, those questions are of crucial importance when assessing, in particular, the credibility of witnesses. They provide indispensable information and are deliberately put to witnesses with a view to testing their credibility.¹⁸⁴ Yet, the Chamber notes that the false testimony of the witnesses concerned did not pertain to the merits of the Main Case. While this circumstance does not, by any means, diminish the culpability of the convicted person, it does inform the assessment of the gravity of the offences in this particular instance.¹⁸⁵ Accordingly, the Chamber accords some weight to the fact that the false testimonies underlying the conviction related to issues other than the merits of the Main Case.

2. Mr Mangenda's Culpable Conduct

116. In addressing Mr Mangenda's culpable conduct, the Chamber has considered the following factors pursuant to Rule 145(1) and (2) of the Rules: (i) his degree of participation; and (ii) his degree of intent, together with any (iii) mitigating and (iv) aggravating circumstances.

a) Degree of Participation

117. The Chamber recalls that Mr Mangenda was convicted, as a co-perpetrator, of having corruptly influenced, together with Mr Bemba and Mr Kilolo, 14 Main

¹⁸³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 865.

¹⁸⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 22.

¹⁸⁵ See also Mangenda Sentencing Submission, paras 39-43.

Case Defence Witnesses and having presented their false evidence. Mr Mangenda's contributions were manifold and comprehensive, going beyond the support of a mere 'case manager'.

118. It is recalled that, with regard to the planning and execution of the illicit coaching activities, Mr Mangenda, for example, (i) discussed the selection of witnesses with Mr Kilolo and the content of their testimony; (ii) made proposals on how best and in relation to which topics to carry out the illicit coaching preparation; (iii) reported to Mr Kilolo on the testimony of witnesses in court, whenever Mr Kilolo was not in the courtroom; (iv) advised Mr Kilolo on which evidence to elicit from the witness; (v) accompanied Mr Kilolo on field missions in the knowledge that Mr Kilolo would illicitly coach the witnesses; (vi) provided logistical support in the distribution of cell phones, without the knowledge of the Registry, knowing that Mr Kilolo would use them to stay in contact with the witnesses during their testimony; and (vii) transmitted the confidential questions of the legal representatives of victims, knowing that Mr Kilolo would send the questions to the witnesses in order to prepare them beforehand. Mr Mangenda was also the link between Mr Kilolo and Mr Bemba, conveying messages, including directives and instructions, in particular as regards witness testimonies, thus ensuring continuous communication among the three co-perpetrators.¹⁸⁶

119. Having participated in the illicit coaching activities together with Mr Bemba and Mr Kilolo, the Chamber found that Mr Mangenda, together with Mr Bemba and Mr Mangenda, also presented the witnesses' false evidence in court. Introducing this evidence, together with Mr Bemba and Mr Kilolo, into the Main Case, Mr Mangenda tainted the enquiry of the Trial Chamber III Judges in relation to the credibility of the witnesses.

¹⁸⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 846-850.

120. Moreover, it is recalled that the Chamber convicted Mr Mangenda, as an accessory, of having assisted nine Main Case Defence Witnesses in falsely testifying before Trial Chamber III while under the obligation to tell the truth. In relation to D-15 and D-54, Mr Mangenda provided material assistance by advising Mr Kilolo on the content of the illicit coaching, providing the questions of the victims' legal representatives, and conveying Mr Bemba's instructions concerning the illicit coaching activities. In relation to D-2, D-3, D-4, D-6, D-13, D-25 and D-29, Mr Mangenda provided moral support and encouragement to Mr Kilolo, either where illicit coaching activities were executed or by telephone listening to Mr Kilolo's updates and complaints about illicit coaching activities.¹⁸⁷

121. In this context, the Mangenda Defence submits that the Chamber should take into account, for the purposes of sentencing, the varying degree of Mr Mangenda's contributions in respect of different witnesses.¹⁸⁸ It contends that even though the requisite *mens rea* was considered to be met, the degree of the person's contribution to the common plan is relevant to sentencing.¹⁸⁹ The Mangenda Defence also submits that the Chamber should consider that Mr Mangenda did not directly illicitly coach any of the 14 Main Case Defence Witnesses.¹⁹⁰

122. At the outset, the Chamber recalls that it has noted above the accessorial participation of Mr Mangenda in the offences of having assisted nine Main Case Defence Witnesses in falsely testifying before Trial Chamber III while under the obligation to tell the truth. As a result, the Chamber confirms that it will take into account Mr Mangenda's degree of participation as regards the offences under Article 70(1)(a) of the Statute.

¹⁸⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 864-872.

¹⁸⁸ Mangenda Sentencing Submission, paras 25-32; [T-54-Red](#), p. 73, lines 12-20.

¹⁸⁹ Mangenda Sentencing Submission, para. 31.

¹⁹⁰ Mangenda Sentencing Submission, paras 33-34.

123. As regards Mr Mangenda's contributions to the offences under Article 70(1)(b) and (c) of the Statute, the Chamber must take a more nuanced approach. The Chamber recalls that it convicted Mr Mangenda, as co-perpetrator, of the offences of corruptly influencing witnesses (Article 70(1)(c) of the Statute) and presenting their false evidence (Article 70(1)(b) of the Statute). Admittedly, his contributions within the common plan, albeit essential,¹⁹¹ varied in respect of the 14 Main Case Defence Witnesses. For example, while Mr Kilolo illicitly coached witnesses D-57, D-64 and D-55, Mr Mangenda, on evidence, was not present at the time of the illicit coaching.¹⁹² With respect to witnesses D-2, D-3, D-4 and D-6, Mr Kilolo met the four witnesses and illicitly coached them and distributed cell phones in Mr Mangenda's presence.¹⁹³ With respect to witnesses D-25, D-15 and D-54, Mr Kilolo illicitly coached the witnesses and Mr Mangenda took an active part in the coaching exercise by providing the questions of the victims' legal representatives, providing feedback on the in-court testimonies, and relaying Mr Bemba's directives regarding prospective witnesses.¹⁹⁴

124. Although it has been established that Mr Mangenda bears responsibility as a co-perpetrator, the Chamber notes that in assessing Mr Mangenda's degree of participation, it may draw upon the nature of the actual contributions, since they inform his culpability. As a result, mindful of Mr Mangenda's overall role in the common plan, the Chamber will give some weight to Mr Mangenda's varying degree of participation in the execution of the offences.

b) Degree of Intent

125. Regarding Mr Mangenda's intent, the Chamber recalls its finding that, on account of Mr Mangenda's particular role within the Main Case Defence team

¹⁹¹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 838.

¹⁹² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 114-116, 117-119 and 120-124.

¹⁹³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 133-140, 367-371.

¹⁹⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 159-161, 169 and 171-173.

and the nature of his manifold contributions, Mr Mangenda knew and intended to corruptly influence 14 Main Case Defence Witnesses and present their false evidence in Court. Mr Mangenda had continuous and substantive knowledge of the illicit activities and intended to engage in the relevant conduct.¹⁹⁵

126. In this context, the Mangenda Defence advances that the Chamber should take into account the degree of knowledge in respect of each witness in relation to whom Mr Mangenda was convicted. In support of its submission, it referred to two examples: (i) Mr Mangenda did not know of the many coaching conversations between Mr Kilolo and D-54 seven weeks prior to the witness's testimony; and (ii) Mr Mangenda did not know of the payments made to D-2, D-3, D-4 D-6, and D-29.¹⁹⁶

127. The Chamber refers to its findings in the Judgment according to which Mr Mangenda acted intentionally, *i.e.* with intent and knowledge within the meaning of Article 30 of the Statute.¹⁹⁷ The argument of the Mangenda Defence reflects a disagreement with the Chamber's assessment of the evidence overall and should, at this stage of the proceedings, be properly raised with the Appeals Chamber. In addition, the two examples singled out by the Mangenda Defence are not apt to draw conclusions for the 14 Main Case Defence Witnesses. As a result, the Chamber cannot take into account the degree of Mr Mangenda's knowledge with respect to each witness.

c) Mitigating Circumstances

128. The Mangenda Defence also avers that the Chamber should take into account, in mitigation, that Mr Mangenda has never been 'in a commanding or

¹⁹⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 846-850.

¹⁹⁶ Mangenda Sentencing Submission, paras 35-38.

¹⁹⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 848-850 and 870.

authoritative' role and that he has not been an instigator of the offences.¹⁹⁸ Likewise, the Mangenda Defence submits that the Chamber should take into account the fact that Mr Mangenda followed the instructions of Mr Kilolo and was passive rather than enthusiastic during the commission of the offences.¹⁹⁹ It also highlights the negative consequences for Mr Mangenda – *i.e.* the loss of his job – had he refused to carry out the instructions given by Mr Kilolo.²⁰⁰

129. The Chamber clarifies that the factors presented by the Mangenda Defence do not represent mitigating circumstances within the meaning of Rule 145(2)(a) of the Rules.²⁰¹ At the same time, the Chamber notes that these elements reflect Mr Mangenda's culpability. Accordingly, the Chamber will take them into account as 'circumstances (...) of the [offence]', pursuant to Rule 145(1)(b) of the Rules, when, ultimately, determining the appropriate sentence.

d) Aggravating Circumstances

130. The Prosecution submits that the Chamber consider, as an aggravating circumstance analogous to Rule 145(2)(b)(ii) of the Rules, Mr Mangenda's abuse of trust *vis-à-vis* the Court.²⁰² It contends that the trust and duty of professional responsibility owed by members of the defence team to abide by the Court's statutory documents is similar in nature to the duty of responsibility owed by individuals in positions of power and authority to refrain from abusing the special rights and privileges they hold by virtue of their status.²⁰³ The Prosecution argues that Mr Mangenda, a lawyer by profession, was a member of the Main Case Defence team and cognisant of his professional duties arising under the Court's statutory documents and from his membership of the Kinshasa/Matete

¹⁹⁸ Mangenda Sentencing Submission, para. 24.

¹⁹⁹ Mangenda Sentencing Submission, paras 44-45.

²⁰⁰ Mangenda Sentencing Submission, para. 44.

²⁰¹ *Similarly*, for example, Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 81; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), paras 127-128.

²⁰² Prosecution Sentencing Submission, paras 55-63.

²⁰³ Prosecution Sentencing Submission, para. 56.

bar.²⁰⁴ According to the Prosecution, Mr Mangenda abused his position of trust by taking various steps to unlawfully influence the testimony of Defence witnesses by, for example, transmitting information contained in confidential documents of the victims' legal representatives, and taking steps to obstruct the Article 70 investigation.²⁰⁵

131. At the outset, the Chamber clarifies that it considers the abovementioned factor as a circumstance under Rule 145(2)(b)(vi) of the Rules since, by virtue of its nature, it is similar to the circumstance mentioned in Rule 145(2)(b)(ii) of the Rules. Turning to the merits of the Prosecution's argument, the Chamber recalls that indeed, Mr Mangenda is a lawyer by profession, admitted to the bar in Kinshasa/Matete, a former member of the Court's Office of Public Counsel for the defence, and was a member of the Main Case Defence team.²⁰⁶ As an officer of justice, he was fully aware of his duties and obligations arising under the Court's statutory documents. He profited from the status as case manager in the Main Case Defence team, had access to confidential documents and evidence, and enjoyed authoritative standing *vis-à-vis* the Main Case Defence Witnesses. He was duty-bound to act with full respect for the law. Yet, he chose to partake in the commission of the offences as described in the Judgment. Mr Mangenda's status is not comparable to that of someone who is not a lawyer by profession, or who does not work in the Court's jurisdiction. Mr Mangenda abused the special rights and privileges he held as a member of the Main Case Defence team and breached his responsibilities towards the Court. As a result, the Chamber is of the view that this factor enhances Mr Mangenda's culpable conduct and, therefore, will consider this factor as an aggravating circumstance.

²⁰⁴ Prosecution Sentencing Submission, paras 61-62.

²⁰⁵ Prosecution Sentencing Submission, para. 63.

²⁰⁶ Mangenda Sentencing Submission, para. 23.

132. The Prosecution further submits that the Chamber should consider, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Mangenda's attempt to obstruct justice in this case by concocting remedial measures, together with Mr Bemba and Mr Kilolo, after he became aware that an Article 70 investigation had been initiated.²⁰⁷ It contends that Mr Mangenda, who had learnt about the investigation first, explained the implications to Mr Bemba and advised him to act swiftly, discussed and agreed to approach Main Case Defence Witnesses with a view to offering them bribes or having them sign a statement in which they claim to having been paid by the Prosecution. The Prosecution also underscores that Mr Mangenda remained an important facilitator between Mr Bemba and Mr Kilolo.

133. In the Judgment, the Chamber found that Mr Mangenda played a critical role in the context of the adoption of remedial measures as soon as the co-perpetrators became aware that an Article 70 investigation had been initiated. The Chamber considers this factor to be relevant and attributes some weight to it. The Chamber agrees that the present consideration does not amount to 'double-counting' considerations as the underlying conduct has not been considered for gravity purposes.

3. Mr Mangenda's Individual Circumstances

134. In addressing Mr Mangenda's individual circumstances, the Chamber has considered all those factors that are not directly related to the offence committed, or to Mr Mangenda's culpable conduct.

²⁰⁷ Prosecution Sentencing Submission, paras 74-80.

135. Mr Mangenda is 38 years old, married and the father of three children.²⁰⁸ He holds a law degree and has been a member of the Kinshasa/Matete bar since 2004.²⁰⁹
136. The Mangenda Defence maintains that the Chamber should take into account, in mitigation, the fact that Mr Mangenda complied with the orders of the Court with respect to his attendance at trial, his detention, and the conditions of his provisional release.²¹⁰ The Chamber clarifies that cooperation with the Court and good behaviour during the proceedings does not *per se* represent mitigating circumstances within the meaning of Rule 145(2)(a) of the Rules.²¹¹ Nevertheless, it accepts that these elements pertain to the overall circumstances of the convicted person, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence, including whether or not to suspend the sentence. That said, the Chamber is appreciative of Mr Mangenda's good and respectful behaviour and attendance record in these proceedings.
137. Furthermore, the Chamber does not consider the absence of any criminal proceedings against Mr Mangenda²¹² to be a factor in mitigation. As stated earlier, the absence of prior convictions is a fairly common feature among individuals convicted by international tribunals and will not be counted as a relevant mitigating circumstance.²¹³ Nevertheless, the Chamber accepts that this element pertains to the overall circumstances of Mr Mangenda, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately,

²⁰⁸ Mangenda Sentencing Submission, para. 12.

²⁰⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 10. Mangenda Sentencing Submission, para. 23.

²¹⁰ Mangenda Sentencing Submission, para. 54.

²¹¹ *Similarly*, for example, Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 81; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), paras 127-128.

²¹² Mangenda Sentencing Submission, paras 53 and 55.

²¹³ *Similarly*, Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 96.

determining the appropriate sentence, including whether or not to suspend a sentence.

138. The Mangenda Defence also submits that the Chamber should consider, in mitigation, Mr Mangenda's cooperation with the Prosecution when providing an interview with factually correct information.²¹⁴ In the Chamber's view, the interview reflects Mr Mangenda's positive attitude. Albeit welcome, it does not on its own, however, amount to a circumstance that could mitigate the sentence to be imposed. That said, the Chamber accepts that this factor pertains to Mr Mangenda's overall circumstances pursuant to Rule 145(1)(b) of the Rules and will be taken into account when, ultimately, determining the appropriate sentence, including whether or not to suspend the sentence.

139. In addition, the Mangenda Defence argues that the Chamber should take into account, in mitigation, the fact that Mr Mangenda's privacy rights had been violated.²¹⁵ In support of its claim, the Mangenda Defence relies on the Chamber's 'Decision on Request in Response to Two Austrian Decisions'²¹⁶ in which the Chamber made this finding. It did acknowledge, however, at the same time, that the Chamber found that the violation had not reached the exclusion threshold of Article 69(7) of the Statute.²¹⁷

140. The violation of fundamental rights is, technically, not a mitigating circumstance but it may, in exceptional circumstances, be considered as one.²¹⁸ In this instance, the Chamber is not convinced that the infringement of Mr Mangenda's right to privacy by two decisions from national jurisdictions merits a reduction in Mr Mangenda's sentence. While the Chamber

²¹⁴ Mangenda Sentencing Submission, para. 53; [T-54-Red](#), p. 69, line 20 to p. 70, line 10.

²¹⁵ Mangenda Sentencing Submission, para. 58.

²¹⁶ Decision on Request in Response to Two Austrian Decisions ('Western Union Decision'), 14 July 2016, [ICC-01/05-01/13-1948](#).

²¹⁷ Mangenda Sentencing Submission, para. 57.

²¹⁸ *Similarly*, Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 88; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), para. 136.

acknowledges that Mr Mangenda's right to privacy had been violated by domestic authorities,²¹⁹ it also takes into account the specific circumstances of the violation.²²⁰ Having taken into account all the facts regarding the violation of Mr Mangenda's right to privacy the Chamber does not consider this to be a mitigating factor.

141. Lastly, the Chamber will consider claims of the prohibition for Mr Mangenda from working in his country of residence²²¹ as part of his overall circumstances, pursuant to Rule 145(1)(b) of the Rules, when determining the sentence, including whether or not to suspend the sentence.²²²

4. Determination of Sentence

142. The Prosecution recommends that Mr Mangenda be sentenced to a joint sentence of seven years imprisonment, or alternatively, to a singular sentence of five years imprisonment, and fined. Moreover, it recommends that the Registry be directed to notify the Kinshasa/Matete bar of the Judgment and the sentence imposed.²²³

143. The Mangenda Defence requests the Chamber to impose a custodial sentence not exceeding the time that Mr Mangenda has already served in detention. Should the Chamber impose any additional sentence of imprisonment, it requests that the sentence be suspended.²²⁴

144. The Chamber recalls that Mr Mangenda has been convicted of the charges of

²¹⁹ Western Union Decision, [ICC-01/05-01/13-1948](#), para. 28.

²²⁰ See Western Union Decision, [ICC-01/05-01/13-1948](#), paras 34, 36 and 37.

²²¹ [T-54-Red](#), p. 74, lines 14-25.

²²² Mangenda Sentencing Submission, para. 55.

²²³ Prosecution Sentencing Submission, para. 172; [T-53-Red](#), p. 61, lines 16-18.

²²⁴ Mangenda Sentencing Submission, para. 61.

- (i) Corruptly influencing witnesses, as co-perpetrator, in 14 instances, *viz.* 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;
- (ii) Presenting the false evidence, as co-perpetrator, in 14 instances, *viz.* 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
- (iii) Assisting in the giving of false testimony of witnesses in nine instances, *viz.* D-2, D-3, D-4, D-6, D-13, D-15, D-25, D-29 and D-54.

145. The Chamber has weighed and balanced all the factors set out above. The Chamber found two aggravating circumstances, namely Mr Mangenda's abuse of trust *vis-à-vis* the Court, and his role in the attempt to obstruct the present Article 70 investigation. The Chamber emphasises that it has distinguished between the offences in which Mr Mangenda participated as co-perpetrator and those in relation to which he was an accessory. The number of witnesses involved and Mr Mangenda's varying degree of participation, albeit to a lesser degree, have also been taken into account. The Chamber also paid heed to the fact that the false testimony related to matters informing the credibility of witnesses. Lastly, the Chamber took into account Mr Mangenda's role *vis-à-vis* the other co-perpetrators, his good behaviour throughout the trial and cooperation with the Court, the absence of criminal record and the prohibition from working in his country of residence.

146. The Chamber is called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Mangenda's culpability. In so doing, the Chamber takes into account the fact that largely the same conduct

underlies the multiple convictions.²²⁵ In the light of the factors analysed, the Chamber sentences Mr Mangenda:

- (i) As a co-perpetrator, under Article 25(3)(a) of the Statute, of the 14 offences of corruptly influencing witnesses, to twenty (20) months' imprisonment;
- (ii) As a co-perpetrator, under Article 25(3)(a) of the Statute, of the 14 offences of presenting the false evidence of witnesses, to eighteen (18) months' imprisonment; and
- (iii) As an accessory, under Article 25(3)(c) of the Statute, to the nine offences of assisting in the giving of false testimony while under the obligation to tell the truth, to twelve (12) months' imprisonment.

147. Article 78(3) of the Statute establishes that the joint sentence may not be less than the highest individual sentence pronounced. In accordance with Article 78(3) of the Statute, the Chamber imposes a joint sentence of twenty-four (24) months (two (2) years) of imprisonment.

148. Pursuant to Article 78(2) of the Statute, Mr Mangenda is entitled to have deducted from his sentence the time previously spent in detention in accordance with an order of the Court, namely since his arrest on 23 November 2013, pursuant to the warrant of arrest issued by Pre-Trial Chamber II on 20 November 2013²²⁶ until his release on 31 October 2014.²²⁷

²²⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 956.

²²⁶ Article 58 Warrant, [ICC-01/05-01/13-1-Red2-tENG](#).

²²⁷ 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](#); Registry's Fourth Report on the Implementation of the 'Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido' (ICC-01/05-01/13-703), 12 November 2014, ICC-01/05-01/13-751-Conf (with one annex). The Chamber considers the day of Mr Mangenda's release to be part of the time previously spent in detention. Thus, Mr Mangenda spent in total 11 months and nine days in detention, in accordance with an order of the Court.

149. Mindful of Mr Mangenda's personal circumstances, his good behaviour throughout the present proceedings and the consequences of incarceration for his family, the Chamber agrees to suspend the operation of the remaining term of imprisonment for a period of three years so that the sentence shall not take effect unless during that period Mr Mangenda commits another offence anywhere that is punishable with imprisonment, including offences against the administration of justice.²²⁸ In light of this determination, the Chamber dismisses the Mangenda Defence request for continued provisional release pending appeal as moot.

150. The Chamber finds that imprisonment is a sufficient penalty and does not impose a fine.

151. As regards the Prosecution's recommendation that the Kinshasa/Matete bar be notified of the Judgment and the present decision, the Chamber holds that this action falls squarely within the responsibilities of the Registrar.

D. AIMÉ KILOLO MUSAMBA

152. The Chamber found Mr Kilolo:

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.

1. Gravity of the Offences

153. In addressing the gravity of the offences committed, the Chamber considered, in particular, the extent of the damage caused and, to a certain extent, the nature of the unlawful behaviour and the circumstances of time.

²²⁸ For a similar formulation, see ICTY, *Prosecutor v. Slobodan Milošević, Contempt Proceedings Against Kosta Bulatović*, Case No. IT-02-54-R77.4, [Decision on Contempt of the Tribunal](#), 13 May 2005, para. 19.

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

154. Mr Kilolo was convicted of having committed, together with Mr Bemba and Mr Mangenda, 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, D-55, D-57 and D-64. The offence of corruptly influencing a witness is undoubtedly grave. When such offences are committed before the Court, they have far-reaching consequences: they undermine the Court's discovery of the truth and impede justice for victims.

155. As regards the extent of the damage caused, the Chamber highlights that Mr Kilolo's contribution involved 14 Main Case Defence Witnesses. Considering that the Main Case Defence called 34 witnesses in total,²²⁹ the number of 14 contaminated Main Case Defence Witnesses is particularly high and, in the view of the Chamber, characterises the systematic approach of the offence and therefore the seriousness and gravity of this case.

156. Even though the Chamber does not require a causal link between the illicit coaching of witnesses and their actual testimony,²³⁰ it is nevertheless attentive to the fact that (i) D-2 falsely testified regarding payments or benefits received, his acquaintance with other individuals and the nature and number of contacts with the Main Case Defence;²³¹ (ii) D-3 falsely testified regarding payments and his acquaintance with other individuals;²³² (iii) D-4 falsely testified regarding his acquaintance with other individuals;²³³ (iv) D-6 falsely testified regarding payments received, the nature of and contact with the Main Case Defence and his acquaintance with other individuals;²³⁴ (v) D-13 falsely testified regarding the

²²⁹ Trial Chamber III, Judgment pursuant to Article 74 of the Statute, 21 March 2016, [ICC-01/05-01/08-3343](#), para. 17.

²³⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 48.

²³¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 142, 389 and 412.

²³² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 143, 392 and 413.

²³³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 144, 394 and 414.

²³⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 145, 395-404 and 415.

number of prior contacts with the Main Case Defence;²³⁵ (vi) D-15 falsely testified regarding the number of prior contacts with the Main Case Defence;²³⁶ (vii) D-23 falsely testified regarding payments received and his acquaintance with other individuals;²³⁷ (viii) D-25 falsely testified regarding payments received;²³⁸ (ix) D-26 falsely testified regarding the number of contacts with the Main Case Defence;²³⁹ (x) D-29 falsely testified regarding the number of prior contacts with the Main Case Defence;²⁴⁰ (xi) D-54 falsely testified regarding the number of prior contacts with the Main Case Defence;²⁴¹ (xii) D-55 falsely testified regarding the number of prior contacts with the Main Case Defence and payments or benefits received;²⁴² (xiii) D-57 falsely testified regarding payments received and the number of prior contacts with the Main Case Defence;²⁴³ and (xiv) D-64 falsely testified regarding payments received and the number of prior contacts with the Main Case Defence.²⁴⁴ This means that 14 witnesses falsely testified in the Main Case. The Chamber considers this to be relevant in its assessment of the gravity of the offences.

157. As to the nature of the unlawful behaviour, the Chamber notes that the offences involving the 14 Main Case Defence Witnesses were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.²⁴⁵ The offences were devised, planned and committed by three individuals together – Mr Bemba, Mr Kilolo and Mr Mangenda.²⁴⁶ In the view of the Chamber, the number of perpetrators

²³⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 183-184 and 665.

²³⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 581-582 and 589.

²³⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 153 and 451-452.

²³⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 160, 503.

²³⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 158, 470 and 475.

²⁴⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 164, 528 and 540.

²⁴¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 180, 646-647 and 650.

²⁴² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 124, 301 and 303.

²⁴³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 116, 246, 249 and 252.

²⁴⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 119, 276 and 279.

²⁴⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

²⁴⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 802.

involved in the commission of the offences at stake – because of necessary need of organisation and the potential of a coercive group dynamic – is relevant in its assessment of the gravity of the offences.

158. Additionally, the offences were extensive in scope, planning, preparation and execution. A series of sophisticated and elaborate measures were adopted to conceal the illicit activities, such as the use of codes,²⁴⁷ the use of third parties to effect payments,²⁴⁸ and the distribution of cell phones to some of the 14 Main Case Defence Witnesses without the knowledge of the Registry.²⁴⁹ The Chamber considers that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences. As explained earlier, the Chamber does not, for gravity purposes, take into account any conduct *after* the act since this cannot *per se* characterise the gravity of the offence as committed at the relevant time. However, the Chamber has considered this factor, if applicable, in the context of the convicted person's culpable conduct.²⁵⁰

159. The Chamber is also attentive to the timeframe in which the offences occurred. The offences of corruptly influencing the 14 Main Case Defence Witnesses were organised and executed over a prolonged time period – almost two years.²⁵¹ The Chamber considers that the lengthy period over which the offences were committed is also relevant in the assessment of the gravity of the offences.

²⁴⁷ Judgment [ICC-01/05-01/13-1989-Red](#), paras 746-761.

²⁴⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 242-248, 268-271, 396, 407-408, 520 and 746.

²⁴⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 364-371, 445 and 747.

²⁵⁰ This relates, in particular, to the conduct of the co-perpetrators, Mr Bemba, Mr Kilolo and Mr Mangenda, with regard to their agreement to take remedial measures in the context of the Article 70 investigation. *See* Prosecution Sentencing Submission, para. 19, last bullet point.

²⁵¹ The Chamber notes the earliest meeting of one of the co-perpetrators with witnesses D-2, D-3, D-4 and D-6 in Douala in February 2012 and the last contact with D-13 who testified last in the Main Case in November 2013, *see* Judgment, [ICC-01/05-01/13-1989-Red](#), paras 331 and 656.

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

160. Mr Kilolo was convicted of having committed, together with Mr Bemba and Mr Mangenda, the offences of presenting false evidence given by the Main Case Defence 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 knowing that their evidence was false. When such offences are committed before the Court, they have far-reaching consequences: false evidence is unreliable and its presentation in the proceedings affects the integrity of the proceedings. Ultimately, they undermine the Court's discovery of the truth and impede justice for victims.

161. As regards the damage, the Chamber recalls that Mr Kilolo's conduct led to the presentation of false evidence given by 14 out of 34 Main Case Defence Witnesses, almost half of the witnesses presented by the Main Case Defence. This underscores the seriousness and gravity of this case.

162. As to the nature of the unlawful behaviour, the Chamber notes that the offences involving presentation of the evidence of the 14 Main Case Defence Witnesses were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.²⁵² The Chamber draws upon its previous considerations in relation to Article 70(1)(c) of the Statute. The Chamber concludes that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.²⁵³

163. The Chamber is also attentive to the timeframe in which the offences occurred. The offences of presenting the false evidence given by 14 Main Case Defence Witnesses were organised over a prolonged time period – approximately one year, beginning when D-57 testified and ending when D-13 testified last before

²⁵² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

²⁵³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 769.

Trial Chamber III. The Chamber considers that the lengthy period over which the offences were committed is relevant in the assessment of the gravity of the offences.

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

164. Mr Kilolo was convicted 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. When such offences are committed before the Court, they have far-reaching consequences: witnesses falsely testifying render their evidence unreliable and affect the integrity of the proceedings. Ultimately, they undermine the Court's discovery of the truth and impede justice for victims.

165. As regards the extent of the damage, the Chamber recalls that Mr Kilolo's interference involved 14 Main Case Defence Witnesses. The Chamber considers this relevant in assessing the gravity of the offences.

166. As to the nature of the unlawful behaviour, the Chamber notes that the offences concerned were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.²⁵⁴ The Chamber concludes that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.

167. In this context, the Chamber also pays heed to the nature of the false testimony that the witnesses gave before Trial Chamber III and in relation to which Mr Kilolo has been found to be responsible. False testimony was found to relate to three issues: (i) payments or non-monetary benefits received; (ii) acquaintance with other individuals; and (iii) the nature and number of prior

²⁵⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

contacts with the Main Case Defence.²⁵⁵ As the Chamber stressed in the Judgment, those questions are of crucial importance when assessing, in particular, the credibility of witnesses. They provide indispensable information and are deliberately put to witnesses with a view to testing their credibility.²⁵⁶ Yet, the Chamber notes that the false testimony of the witnesses concerned did not pertain to the merits of the Main Case. While this circumstance does not, by any means, diminish the culpability of the convicted person, it does inform the assessment of the gravity of the offences in this particular instance. Accordingly, the Chamber accords some weight to the fact that the false testimonies underlying the conviction related to issues other than the merits of the Main Case.

2. Mr Kilolo's Culpable Conduct

168. In addressing Mr Kilolo's culpable conduct, the Chamber has considered the following factors pursuant to Rule 145(1) and (2) of the Rules: (i) his degree of participation; and (ii) his degree of intent, together with any (iii) aggravating circumstances.

a) Degree of Participation

169. The Chamber recalls that Mr Kilolo was convicted, as a co-perpetrator, of having corruptly influenced, together with Mr Bemba and Mr Mangenda, 14 Main Case Defence Witnesses, and having presented their false evidence. As Mr Bemba's counsel responsible for the Main Case Defence investigation, Mr Kilolo's contributions were the most comprehensive and direct. He was the central figure in executing the commission of the offences and was involved in

²⁵⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 865.

²⁵⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 22.

every facet of implementation of the common plan. He primarily planned and implemented the common plan.²⁵⁷

170. It is also recalled that, with regard to the planning and execution of the illicit coaching activities, Mr Kilolo regularly contacted and met with the witnesses, and scripted, corrected, instructed and dictated the content of their evidence having a bearing on the subject-matter of the charges in the Main Case or the witnesses' credibility.²⁵⁸ He thus illicitly coached the witnesses with a view to providing (i) particular information during their testimony in relation to the merits of the Main Case; (ii) false information and/or withholding true information about the nature and number of their prior contacts with the Main Case Defence; (iii) false information and/or withholding true information about reimbursements or payments received or material benefits or non-monetary promises; and (iv) false information and/or withholding true information about their acquaintances with other individuals.²⁵⁹ He did so irrespective of the witnesses' knowledge or personal experience and regardless of whether the testimonies were true or false.²⁶⁰

171. He made logistical arrangements, such as providing new cell phones to some of the 14 Main Case Defence Witnesses without the knowledge of the Registry, in order to stay in contact with them during the period of their testimony and to ensure that they complied with the instructions given.²⁶¹ If the witnesses did not testify to his satisfaction, Mr Kilolo contacted them and instructed them to rectify their statement in court.²⁶² He effected and facilitated the payment of money, material benefits and non-monetary promises in temporal proximity to the witnesses' testimonies with a view to securing their testimonies in favour of

²⁵⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 824-827.

²⁵⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 705-712 and 897.

²⁵⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 896.

²⁶⁰ Judgment [ICC-01/05-01/13-1989-Red](#), para. 897.

²⁶¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 367-371, 445 and 747.

²⁶² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 535, 824 and 860.

Mr Bemba.²⁶³ Mr Kilolo asked Mr Mangenda to keep him abreast of the witnesses' in-court responses and to send him the confidential documents of the victims' legal representatives.²⁶⁴ Thus, he made sure that he could effectively and illicitly coach prospective witnesses and streamline their evidence in favour of the Main Case Defence.

172. Mr Kilolo reported to and advised Mr Bemba on the illicit coaching and preparation of witnesses and sought Mr Bemba's approval thereupon.²⁶⁵ Mr Kilolo used coded language to conceal the illicit activities from others, and facilitated the communication between Mr Bemba and third persons.²⁶⁶ Without Mr Kilolo's direct and substantial intervention, the offences would not have been committed or at least not in the same way.²⁶⁷

173. As lead counsel for Mr Bemba in the Main Case, Mr Kilolo called the defence witnesses, whom he had bribed and/or coached extensively and illicitly in advance of their testimony, and presented their evidence knowing that they would testify falsely regarding the (i) receipt of payments, material benefits and non-monetary promises; (ii) nature and number of prior contacts with the Main Case Defence; and (iii) witnesses' acquaintances with other individuals.²⁶⁸ He also made the decision to call the witnesses dependent on whether they were prepared to follow the specific narrative given.²⁶⁹ He introduced this evidence into the Main Case, thus tainting the enquiry of the Trial Chamber III Judges in relation to the credibility of the witnesses.

174. The Chamber recalls that it convicted Mr Kilolo, as an accessory, of having induced the giving of false testimony by the 14 Main Case Defence Witnesses

²⁶³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 689-691 and 823.

²⁶⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 828.

²⁶⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 829.

²⁶⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 748-761 and 831.

²⁶⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 898.

²⁶⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 830.

²⁶⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 713.

while under the obligation to tell the truth. Mr Kilolo personally and by telephone exerted influence over the witnesses, relaying Mr Bemba's and his own concrete instructions on what to say when questioned in court and how to behave, and rehearsing the questioning.²⁷⁰ He gave the witnesses to understand that they were expected to adhere to the agreed narrative. If they did not, Mr Kilolo contacted them and instructed them to rectify their testimonies.²⁷¹ He maintained influence over the 14 Main Case Defence Witnesses, for example through cell phones that he had distributed previously, together with Mr Mangenda, and without the knowledge of the Registry.²⁷² He personally and extensively instructed the 14 Main Case Defence Witnesses not to 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 Main Case Defence; (ii) the receipt of money, material benefits and non-monetary promises; and (iii) the witnesses' acquaintance with third persons.²⁷³

b) Degree of Intent

175. Regarding Mr Kilolo's intent, the Chamber recalls its findings on his role as counsel for Mr Bemba in the Main Case and the sheer extent of his activities. Mr Kilolo's actions were calculated and persistent, and he acted in deliberate violation of the orders of Trial Chamber III.²⁷⁴ Mr Kilolo knew that his actions were unlawful and expressed fears that, if detected, he would be the first to be targeted.²⁷⁵

²⁷⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 860.

²⁷¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 578, 644 and 860.

²⁷² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 535, 824 and 861.

²⁷³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 905.

²⁷⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 711 and 835-836. *See also* Trial Chamber III, 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](#).

²⁷⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 760 and 836.

c) *Aggravating Circumstances*

176. The Prosecution submits that the Chamber should consider, as an aggravating circumstance analogous to Rule 145(2)(b)(ii) of the Rules, Mr Kilolo's abuse of trust *vis-à-vis* the Court.²⁷⁶ As in relation to Mr Mangenda, the Prosecution contends that Mr Kilolo, a lawyer by profession, counsel for Mr Bemba in the Main Case and member of the Brussels and Lubumbashi bars since June 2001, was cognisant of his professional duties arising from the Court's statutory documents, most importantly the Code of Professional Conduct for counsel ('Code of Conduct'), and his membership of the Brussels and Lubumbashi bars.²⁷⁷ According to the Prosecution, Mr Kilolo abused his position of trust by taking various steps to unlawfully influence the testimony of defence witnesses through, for example, illicit coaching, soliciting bribes, eliciting false evidence and taking steps to obstruct the Article 70 investigation into his criminal conduct.²⁷⁸

177. At the outset, the Chamber clarifies that it considers the abovementioned factor as a circumstance under Rule 145(2)(b)(vi) of the Rules since, by virtue of its nature, it is similar to the circumstance mentioned in Rule 145(2)(b)(ii) of the Rules. Turning to the merits of the Prosecution's argument, the Chamber agrees that Mr Kilolo, in his capacity as counsel and long-time member of the Brussels and Lubumbashi bars, was fully aware of his duties and obligations arising under the Court's statutory documents, including the Code of Conduct, and Trial Chamber III's orders. He profited from his status as counsel and enjoyed authoritative standing *vis-à-vis* the Main Case Defence Witnesses.²⁷⁹ He was duty-bound to act with full respect for the law, yet he chose to partake in the commission of the offences as described in the Judgment. Mr Kilolo abused the special rights and privileges he held as counsel for Mr Bemba in the Main Case

²⁷⁶ Prosecution Sentencing Submission, paras 55-63.

²⁷⁷ Prosecution Sentencing Submission, paras 59-60, 62, and 91-95.

²⁷⁸ Prosecution Sentencing Submission, para. 63.

²⁷⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 645.

and breached his responsibilities towards the Court. As a result, the Chamber is of the view that this factor enhances Mr Kilolo's culpable conduct and will, therefore, consider this factor as an aggravating circumstance.

178. The Prosecution further argues that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(vi) of the Rules, that Mr Kilolo abused the lawyer-client privilege and other attendant privileges, in particular the use of privileged line at the ICC Detention Centre, accorded by the Court.²⁸⁰ The Prosecution emphasises that the lawyer-client privilege ensures lawful representation and is not to be used as a cloak to disguise unlawful acts.²⁸¹ In its view, the abuse of Mr Kilolo's privilege to communicate freely and in confidence with Mr Bemba constitutes a circumstance aggravating his sentence.²⁸²

179. The Chamber recalls that Mr Kilolo, as counsel for Mr Bemba, enjoyed the privilege of communicating freely and in confidence with his client, as provided by Rule 73 of the Rules, including by telephone at the ICC Detention Centre. This telephone communication was not subject to the detained persons monitoring scheme according to Regulation 174 of the Regulations of the Registry.²⁸³ Yet, Mr Kilolo, together with Mr Bemba, abused this privilege to corruptly influence witnesses. As explained in the Judgment, when Mr Kilolo was on the telephone with Mr Bemba, he facilitated contact with defence witnesses he sought to corruptly influence together with Mr Bemba, such as D-55 and D-19.²⁸⁴ He thus allowed Mr Bemba to communicate directly with the witnesses without being monitored by the Registry. In so doing, Mr Kilolo also knowingly violated the orders of Trial Chamber III prohibiting witness preparation.²⁸⁵ Lastly, Mr Kilolo

²⁸⁰ Prosecution Sentencing Submission, paras 64-71.

²⁸¹ Prosecution Sentencing Submission, para. 65.

²⁸² Prosecution Sentencing Submission, para. 71.

²⁸³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 736.

²⁸⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 740-741.

²⁸⁵ Trial Chamber III, 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](#), para. 34.

also abused the privileged line to discuss with Mr Bemba the furtherance of the common plan and to receive related instructions. As a result, the Chamber concludes that the abuse of the privileges afforded to Mr Kilolo as counsel for an accused before the Court constitutes an aggravating circumstance that enhances Mr Kilolo's culpable conduct.

180. The Prosecution also submits that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Kilolo's attempt to obstruct justice in this case by concocting remedial measures, together with Mr Bemba and Mr Mangenda, after he became aware that an Article 70 investigation had been initiated.²⁸⁶ The Prosecution underscores that Mr Kilolo contacted the Main Case Defence Witnesses, as instructed by Mr Bemba, to ascertain whether they had leaked information to the Prosecution and to discourage them from continuing their collaboration with the Prosecution.²⁸⁷ The Prosecution also claims that Mr Kilolo sought to approach Main Case Defence Witnesses and offer them bribes and coach them in order to substantiate an abuse of process claim against the members of the Prosecution.²⁸⁸ The Prosecution avers that Mr Kilolo was fully aware of the legal implications of his actions.²⁸⁹

181. The Chamber recalls that upon learning of the initiation of the Article 70 investigation, Mr Kilolo, Mr Bemba and Mr Mangenda adopted a series of remedial measures to frustrate the Article 70 investigation. Mr Kilolo contacted the Main Case Defence Witnesses, in particular the Cameroonian witnesses (*viz.* D-2, D-3, D-4 and D-6) he suspected of having spoken to the Prosecution, with a view to convincing them to terminate their cooperation with the Prosecution.²⁹⁰

²⁸⁶ Prosecution Sentencing Submission, paras 74-80.

²⁸⁷ Prosecution Sentencing Submission, para. 78.

²⁸⁸ Prosecution Sentencing Submission, para. 80.

²⁸⁹ Prosecution Sentencing Submission, para. 76.

²⁹⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 780, 785, 786, 792, 793, 794, 795 and 801.

He also agreed with Mr Bemba and Mr Mangenda to pay the witnesses and obtain declarations in which the witnesses would attest that they had lied to the Prosecution.²⁹¹ The payment of money was also discussed with Mr Babala who suggested rendering '*service après-vente*', i.e. payments to witnesses.²⁹² Mr Kilolo updated Mr Bemba regularly and implemented, together with Mr Mangenda, Mr Bemba's instructions. In the light of the foregoing, the Chamber is convinced that Mr Kilolo took steps to frustrate the Article 70 investigation. Accordingly, the Chamber considers this to be relevant and attributes some weight to it. The Chamber agrees that the present consideration does not amount to 'double-counting' as the underlying conduct has not been considered for gravity purposes.

3. Mr Kilolo's Individual Circumstances

182. In addressing Mr Kilolo's individual circumstances, the Chamber has considered all those factors that are not directly related to the offence committed, or to Mr Kilolo's culpable conduct.

183. Mr Kilolo is 44 years old, married and the father of several children.²⁹³ He resumed his activities as a lawyer at the Brussels bar after his provisional release.²⁹⁴

184. The Kilolo Defence submits that the Chamber should take into account, in mitigation, the fact that, before his arrest, Mr Kilolo had no disciplinary record with the Brussels bar, nor had he been the subject of any criminal proceedings.²⁹⁵ As the Chamber explained earlier, the absence of prior convictions is a fairly common feature among individuals convicted by international tribunals and will

²⁹¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 110, 774, 787 and 801.

²⁹² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 112, 410, 781 and 799.

²⁹³ Kilolo Sentencing Submission, paras 1 and 4.

²⁹⁴ Kilolo Sentencing Submission, para. 38.

²⁹⁵ Kilolo Sentencing Submission, para. 24; [T-54-Red](#), p. 54, lines 20-21.

not be counted as a relevant mitigating circumstance.²⁹⁶ Nevertheless, the Chamber accepts that this element pertains to the overall circumstances of Mr Kilolo, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence, including whether or not to suspend a sentence.

185. The Kilolo Defence also argues that the Chamber should take into account, in mitigation, Mr Kilolo's general good character and ethics before the commission of the offences.²⁹⁷ It further requests that the Chamber consider, in mitigation, the fact that Mr Kilolo worked to promote the legal profession in Belgium and the DRC by contributing to the signing of a twinning agreement between the Brussels and Lubumbashi bars.²⁹⁸ It is also argued that the Chamber should take into account Mr Kilolo's involvement in a non-governmental organisation that promotes water sanitation and hygiene in the DRC.²⁹⁹ Moreover, the Kilolo Defence submits that the Chamber should take into account, in mitigation, the fact that Mr Kilolo behaved well during trial, the period of provisional release and after his conviction.³⁰⁰ The Kilolo Defence emphasises that Mr Kilolo showed a positive attitude and was respectful towards the Judges, Court staff, the parties and witnesses.³⁰¹ It is argued that Mr Kilolo cooperated fully with the Court and complied with all conditions while on provisional release, such as informing the Registry of all trips outside Belgium.³⁰²

186. The Chamber is appreciative of Mr Kilolo's good and respectful behaviour and attendance record in these proceedings. However, as stated earlier, mere good behaviour in the courtroom, while in detention, and in the course of

²⁹⁶ *Similarly*, Al Mahdi Sentencing Decision, [ICC-01/12-01/15-171](#), para. 96.

²⁹⁷ Kilolo Sentencing Submission, para. 25.

²⁹⁸ Kilolo Sentencing Submission, para. 30; [T-54-Red](#), p. 55, lines 11-13.

²⁹⁹ Kilolo Sentencing Submission, para. 31; [T-54-Red](#), p. 55, lines 14-16.

³⁰⁰ Kilolo Sentencing Submission, para. 26; [T-54-Red](#), p. 54, lines 5-12.

³⁰¹ Kilolo Sentencing Submission, paras 27 and 29.

³⁰² Kilolo Sentencing Submission, para. 28; [T-54-Red](#), p. 54, lines 21-22.

complying with the Court-imposed conditions of provisional release is behaviour that is expected of any accused and cannot, on its own, amount to a circumstance that could mitigate the sentence to be imposed.³⁰³ Furthermore, Mr Kilolo's good behaviour and attendance at trial hearings is an attitude to be expected from persons on trial and cannot be taken into consideration to reduce the sentence. That said, the Chamber will consider claims as to Mr Kilolo's efforts to promote the legal profession in Belgium and the DRC, his involvement in a non-governmental organisation, his cooperation with the Court and constructive attitude during trial as part of his overall circumstances, pursuant to Rule 145(1)(b) of the Rules, when determining the sentence, including whether or not to suspend the sentence.

187. The Kilolo Defence further contends that the Chamber should consider, in mitigation, the fact that Mr Kilolo's physical health suffered while he was in detention.³⁰⁴ Even though the Kilolo Defence does not provide concrete evidentiary support for its assertion with respect to Mr Kilolo's ill health while in detention,³⁰⁵ the Chamber understands that the arrest and subsequent detention have been traumatic for Mr Kilolo. It is recalled that reasons of ill health can only be considered in exceptional cases.³⁰⁶ The Chamber is of the view that Mr Kilolo cannot invoke exceptional circumstances. As a result, the Chamber will not consider this factor to reduce his sentence.

188. In addition, the Kilolo Defence submits that the Chamber should consider, in mitigation, the fact that (i) Mr Kilolo's personal and professional reputation

³⁰³ Similarly, for example, Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 81; Katanga Sentencing Decision, [ICC-01/04-01/07-3484-tENG-Corr](#), paras 127-128.

³⁰⁴ Kilolo Sentencing Submission, para. 33; CAR-D21-0018-0004 at 0008, question 22; [T-54-Red](#), p. 44, lines 20-25; p. 52, line 19 to p. 53, line 1.

³⁰⁵ The Chamber is of the view that the general comment of Mr Kilolo's brother (CAR-D21-0018-0004 at 0008, question 22) does not suffice to evidence, on balance of probabilities, the purported medical condition of Mr Kilolo. It is noted that no medical reports have been submitted.

³⁰⁶ Similarly, ICTY, *Prosecutor v. Jelena Rašić*, IT-98-32/1-R77.2, [Written Reasons for Oral Sentencing Judgement](#), 6 March 2012, para. 30.

suffered, both at the national and at the international level;³⁰⁷ (ii) his career suffered since Mr Kilolo lost his clientele as a result of complete inactivity during the time he was detained;³⁰⁸ and (iii) Mr Kilolo's detention had a significant emotional and financial impact on his extended and immediate family.³⁰⁹

189. The Chamber is of the view that the above factors submitted by the Kilolo Defence are common to many convicted persons who have been arrested and detained by international tribunals. The fact that Mr Kilolo's detention had a negative impact on his personal and professional reputation, his professional life and his family is a natural consequence of the circumstances in which Mr Kilolo found himself as a result of his criminal behaviour that he has been convicted for. They therefore do not constitute mitigating factors in the present case.

4. Determination of Sentence

190. The Prosecution recommends that Mr Kilolo be sentenced to a joint sentence of eight (8) years' imprisonment, or alternatively, to a singular sentence of five (5) years' imprisonment, and fined. The Prosecution further recommends that the Registry be directed to remove Mr Kilolo from the Court's list of counsel and to notify the Brussels and Lubumbashi bars of the Judgment and the present decision.³¹⁰

191. The Kilolo Defence requests that Mr Kilolo be sentenced to a term of imprisonment not exceeding time served with no fine imposed or, in the alternative, a suspended sentence of imprisonment³¹¹ or a fine.³¹²

192. The Chamber recalls that Mr Kilolo has been convicted of the charges of

³⁰⁷ Kilolo Sentencing Submission, paras 35-36; [T-54-Red](#), p. 44, lines 15-16; p. 51, lines 3-10.

³⁰⁸ Kilolo Sentencing Submission, paras 37-39; [T-54-Red](#), p. 52, lines 8-14.

³⁰⁹ Kilolo Sentence Submission, paras 40-41.

³¹⁰ Prosecution Sentencing Submission, paras 164-169 and 171; [T-53-Red](#), p. 61, lines 13-15.

³¹¹ Kilolo Sentencing Submission, para. 65; [T-54-Red](#), p. 44, lines 11-14; p. 56, lines 21-22.

³¹² [T-54-Red](#), p. 56, lines 18-19; p. 57, lines 1-6.

- (i) Corruptly influencing witnesses, as co-perpetrator, in 14 instances, *viz.* 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;
- (ii) Presenting the false evidence, as co-perpetrator, in 14 instances, *viz.* 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
- (iii) Inducing the giving of false testimony of witnesses in 14 instances, *viz.* 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.

193. The Chamber has weighed and balanced all the factors set out above. The Chamber found three aggravating circumstances, namely Mr Kilolo's abuse of trust *vis-à-vis* the Court, his abuse of the lawyer-client privilege and attendant rights, and his role in the attempt to obstruct the present Article 70 investigation. The Chamber emphasises that it has distinguished between the offences that Mr Kilolo committed as co-perpetrator and those in relation to which he was an accessory. The number of witnesses involved has also been taken into account. The Chamber also paid heed to the fact that the false testimony related to matters informing the credibility of witnesses. Lastly, the Chamber took into account Mr Kilolo's efforts to promote the legal profession in Belgium and the DRC, his involvement in a non-governmental organisation, his cooperation with the Court and constructive attitude during trial, and, finally, the absence of a criminal record and disciplinary record with the Brussels bar.

194. The Chamber is called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Kilolo's culpability. In so doing, the Chamber takes into account the fact that largely the same conduct underlies

the multiple convictions.³¹³ In the light of the factors analysed, the Chamber sentences Mr Kilolo:

- (i) As a co-perpetrator, under Article 25(3)(a) of the Statute, of the 14 offences of corruptly influencing witnesses, to twenty-four (24) months' imprisonment;
- (ii) As a co-perpetrator, under Article 25(3)(a) of the Statute, of the 14 offences of presenting the false evidence of witnesses, to twenty-four (24) months' imprisonment; and
- (iii) As an accessory, under Article 25(3)(b) of the Statute, to the 14 offences of inducing the giving of false testimony of the witnesses while under the obligation to tell the truth, to twelve (12) months' imprisonment.

195. Article 78(3) of the Statute establishes that the joint sentence may not be less than the highest individual sentence pronounced. In accordance with Article 78(3) of the Statute, the Chamber imposes a joint sentence of two (2) years and six (6) months of imprisonment.

196. Pursuant to Article 78(2) of the Statute, Mr Kilolo is entitled to have deducted from his sentence the time previously spent in detention in accordance with an order of the Court, namely since his arrest on 23 November 2013, pursuant to the warrant of arrest issued by Pre-Trial Chamber II on 20 November 2013,³¹⁴ until his release on 22 October 2014.³¹⁵

³¹³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 956.

³¹⁴ Article 58 Warrant, [ICC-01/05-01/13-1-Red2-tENG](#).

³¹⁵ 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](#); Registry's Report on the Implementation of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" (ICC-01/05-01/13-703), 28 October 2014, ICC-01/05-01/13-722-Conf (with 15 annexes). The Chamber considers the day of Mr Kilolo's release to be part of the time previously spent in detention. Thus, Mr Kilolo spent in total 11 months in detention, in accordance with an order of the Court.

197. Mindful of Mr Kilolo's family situation, his good behaviour throughout the present proceedings, and the consequences of incarceration on his professional life, the Chamber agrees to suspend the operation of the remaining term of imprisonment for a period of three (3) years so that the sentence shall not take effect (i) if Mr Kilolo pays the fine, as imposed by the Chamber in the following; and (ii) unless during that period Mr Kilolo commits another offence anywhere that is punishable with imprisonment, including offences against the administration of justice.³¹⁶

198. In addition, the Chamber finds that a fine is a suitable part of the sentence. In particular, the Chamber is of the view that there is a need to discourage this type of behaviour by counsel appearing before a court of law. It is incumbent upon this Chamber to ensure that the repetition of such conduct on the part of Mr Kilolo or any other person is dissuaded. Recognising Mr Kilolo's enhanced culpability, in comparison to Mr Mangenda, and considering his solvency,³¹⁷ the Chamber is of the view that he must be fined EUR 30,000.

199. The Chamber notes that it may order money collected through fines to be transferred, by order of the Court, to the Trust Fund for Victims, pursuant to Article 79(2) of the Statute. Accordingly, the Chamber orders that the fine is to be transferred ultimately to the Trust Fund for Victims. Noting Rule 166(4), first sentence, of the Rules, the amount must be paid to the Court within three (3) months of this decision. If necessary, Mr Kilolo may pay the fine in instalments, as foreseen in Rule 166(4), second sentence, of the Rules. The Chamber draws Mr Kilolo's attention to the special provision set out in Rule 166(5) of the Rules.

³¹⁶ For a similar formulation, see ICTY, *Prosecutor v. Slobodan Milošević, Contempt Proceedings Against Kosta Bulatović*, Case No. IT-02-54-R77.4, [Decision on Contempt of the Tribunal](#), 13 May 2005, para. 19.

³¹⁷ Rule 166(3) of the Rules. The Chamber noted the Solvency Report in relation to Mr Kilolo, ICC-01/05-01/13-2081, and its confidential *ex parte* annex AnxII-B, as corrected in ICC-01/05-01/13-2081-Conf-Exp-AnxII-B-Corr.

200. Mr Kilolo may inform the Court that he elects to use the bank account frozen by the Pre-Trial Chamber³¹⁸ to pay his fine. If Mr Kilolo does not wish to use this bank account to pay the fine, then, unless otherwise ordered, the Chamber directs that this account is to remain frozen until receipt by the Court of the full amount of the fine.

201. As regards the Prosecution's recommendation to remove Mr Kilolo from the Court's list of counsel and to notify the Brussels and Lubumbashi bars of the Judgment and the present decision, the Chamber holds that these actions fall squarely within the responsibilities of the Registrar.

E. JEAN-PIERRE BEMBA GOMBO

202. The Chamber found Mr Bemba:

GUILTY, under Article 70(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.

1. Gravity of the Offences

203. In addressing the gravity of the offences committed, the Chamber considered, in particular, the extent of the damage caused and, to a certain extent, the nature of the unlawful behaviour and the circumstances of time.

³¹⁸ See Article 58 Warrant, [ICC-01/05-01/13-1-Red2-tENG](#), p. 16; Public redacted version of 'Decision on the "Requête de la Défense de M. Aimé Kilolo Musamba visant une décision urgente relative à la mainlevée sur le gel de ses avoirs"' dated 4 November 2014, ICC-01/05-01/13-743-Conf-Exp, 1 December 2014, [ICC-01/05-01/13-743-Red](#); Decision on Mr Kilolo's 'Notice of appeal against the decision of the Single Judge ICC-01/05-01/13-743-Conf-Exp' dated 10 November 2014 and on the urgent request for the partial lifting of the seizure on Mr Kilolo's assets dated 24 November 2014, 1 December 2014, [ICC-01/05-01/13-773](#), p. 6; see also the decision issued by this Chamber, Decision on the 'Requête de la défense aux fins de levée du gel des avoirs de Monsieur Aimé Kilolo Musamba', 17 November 2015, [ICC-01/05-01/13-1485-Red](#); the appeal against this decision was dismissed in limine, see Appeals Chamber, Decision on the 'Requête en appel de la défense de monsieur Aimé Kilolo Musamba contre la décision de la Chambre de première instance VII du 17 novembre 2015', 23 December 2015, [ICC-01/05-01/13-1553](#).

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

204. Mr Bemba was convicted of having committed, together with Mr Kilolo and Mr Mangenda, 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, D-55, D-57 and D-64. The offence of corruptly influencing a witness is undoubtedly grave. When such offences are committed before the Court, they have far-reaching consequences: they undermine the Court's discovery of the truth and impede justice for victims.
205. As regards the extent of the damage caused, the Chamber highlights that Mr Bemba's contribution involved 14 Main Case Defence Witnesses. Considering that the Main Case Defence called 34 witnesses in total,³¹⁹ the number of 14 contaminated Main Case Defence Witnesses is particularly high and, in the view of the Chamber, characterises the systematic approach of the offence and therefore the seriousness and gravity of this case.
206. Even though the Chamber does not require a causal link between the illicit coaching of witnesses and their actual testimony,³²⁰ it is nevertheless attentive to the fact that (i) D-2 falsely testified regarding payments or benefits received, his acquaintance with other individuals and the nature and number of contacts with the Main Case Defence;³²¹ (ii) D-3 falsely testified regarding payments and his acquaintance with other individuals;³²² (iii) D-4 falsely testified regarding his acquaintance with other individuals;³²³ (iv) D-6 falsely testified regarding payments received, the nature of and contact with the Main Case Defence and his acquaintance with other individuals;³²⁴ (v) D-13 falsely testified regarding the

³¹⁹ Trial Chamber III, Judgment pursuant to Article 74 of the Statute, 21 March 2016, [ICC-01/05-01/08-3343](#), para. 17.

³²⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 48.

³²¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 142, 389 and 412.

³²² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 143, 392 and 413.

³²³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 144, 394 and 414.

³²⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 145, 395-404 and 415.

number of prior contacts with the Main Case Defence;³²⁵ (vi) D-15 falsely testified regarding the number of prior contacts with the Main Case Defence;³²⁶ (vii) D-23 falsely testified regarding payments received and his acquaintance with other individuals;³²⁷ (viii) D-25 falsely testified regarding payments received;³²⁸ (ix) D-26 falsely testified regarding the number of contacts with the Main Case Defence;³²⁹ (x) D-29 falsely testified regarding the number of prior contacts with the Main Case Defence;³³⁰ (xi) D-54 falsely testified regarding the number of prior contacts with the Main Case Defence;³³¹ (xii) D-55 falsely testified regarding the number of prior contacts with the Main Case Defence and payments or benefits received;³³² (xiii) D-57 falsely testified regarding payments received and the number of prior contacts with the Main Case Defence;³³³ and (xiv) D-64 falsely testified regarding payments received and the number of prior contacts with the Main Case Defence.³³⁴ This means that 14 witnesses falsely testified in the Main Case. The Chamber considers this to be relevant in its assessment of the gravity of the offences.

207. As to the nature of the unlawful behaviour, the Chamber notes that the offences involving the 14 Main Case Defence Witnesses were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.³³⁵ The offences were devised, planned and committed by three individuals together – Mr Bemba, Mr Kilolo and Mr Mangenda.³³⁶ In the view of the Chamber, the number of perpetrators

³²⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 183-184 and 665.

³²⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 581-582 and 589.

³²⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 153 and 451-452.

³²⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 160, 503.

³²⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 158, 470 and 475.

³³⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 164, 528 and 540.

³³¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 180, 646-647 and 650.

³³² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 124, 301 and 303.

³³³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 116, 246, 249 and 252.

³³⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 119, 276 and 279.

³³⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

³³⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 802.

involved in the commission of the offences at stake – because of necessary need of organisation and the potential of a coercive group dynamic – is relevant in its assessment of the gravity of the offences.

208. Additionally, the offences were extensive in scope, planning, preparation and execution. A series of sophisticated and elaborate measures were adopted to conceal the illicit activities, such as the use of codes,³³⁷ the use of third parties to effect payments,³³⁸ and the distribution of cell phones to some of the 14 Main Case Defence Witnesses without the knowledge of the Registry.³³⁹ The Chamber considers that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences. As explained earlier, the Chamber does not, for gravity purposes, take into account any conduct *after* the act since this cannot *per se* characterise the gravity of the offence as committed at the relevant time. However, the Chamber has considered this factor, if applicable, in the context of the convicted person's culpable conduct.³⁴⁰

209. The Chamber is also attentive to the timeframe in which the offences occurred. The offences of corruptly influencing the 14 Main Case Defence Witnesses were organised and executed over a prolonged time period – almost two years.³⁴¹ The Chamber considers that the lengthy period over which the offences were committed is also relevant in the assessment of the gravity of the offences.

³³⁷ Judgment [ICC-01/05-01/13-1989-Red](#), paras 746-761.

³³⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 242-248, 268-271, 396, 407-408, 520 and 746.

³³⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 364-371, 445 and 747.

³⁴⁰ This relates, in particular, to the conduct of the co-perpetrators, Mr Bemba, Mr Kilolo and Mr Mangenda, with regard to their agreement to take remedial measures in the context of the Article 70 investigation. *See* Prosecution Sentencing Submission, para. 19, last bullet point.

³⁴¹ The Chamber notes the earliest meeting of one of the co-perpetrators with witnesses D-2, D-3, D-4 and D-6 in Douala in February 2012 and the last contact with D-13 who testified last in the Main Case in November 2013, *see* Judgment, [ICC-01/05-01/13-1989-Red](#), paras 331 and 656.

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

210. Mr Bemba was convicted of having committed, together with Mr Kilolo and Mr Mangenda, the offences of presenting false evidence given by the Main Case Defence 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 knowing that their evidence was false. When such offences are committed before the Court, they have far-reaching consequences: false evidence is unreliable and its presentation in the proceedings affects the integrity of the proceedings. Ultimately, they undermine the Court's discovery of the truth and impede justice for victims.

211. As regards the extent of the damage, the Chamber recalls that Mr Bemba's conduct led to the presentation of false evidence given by 14 out of 34 Main Case Defence Witnesses, almost half of the witnesses presented by the Main Case Defence. This underscores the seriousness and gravity of this case.

212. As to the nature of the unlawful behaviour, the Chamber notes that the offences involving presentation of the evidence of the 14 Main Case Defence Witnesses were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.³⁴² The Chamber draws upon its previous considerations in relation to Article 70(1)(c) of the Statute. The Chamber concludes that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.³⁴³

213. The Chamber is also attentive to the timeframe in which the offences occurred. The offences of presenting the false evidence given by 14 Main Case Defence Witnesses were organised over a prolonged time period – approximately one year, beginning when D-57 testified and ending when D-13 testified last before

³⁴² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

³⁴³ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 769.

Trial Chamber III. The Chamber considers that the lengthy period over which the offences were committed is relevant in the assessment of the gravity of the offences.

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

214. Mr Bemba was convicted 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. When such offences are committed before the Court, they have far-reaching consequences: witnesses falsely testifying render their evidence unreliable and affect the integrity of the proceedings. Ultimately, they undermine the Court's discovery of the truth and impede justice for victims.

215. As regards the extent of the damage, the Chamber recalls that Mr Bemba's interference involved 14 Main Case Defence Witnesses. The Chamber considers this relevant in assessing the gravity of the offences.

216. As to the nature of the unlawful behaviour, the Chamber notes that the offences concerned were part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.³⁴⁴ The Chamber concludes that the degree of sophistication in the execution of the offences is relevant in the assessment of the gravity of the offences.

217. In this context, the Chamber also pays heed to the nature of the false testimony that the witnesses gave before Trial Chamber III and in relation to which Mr Bemba has been found to be responsible. False testimony was found to relate to three issues: (i) payments or non-monetary benefits received; (ii) acquaintance with other individuals; and (iii) the nature and number of prior

³⁴⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 104, 681, 691, 702, 733, 737 and 802.

contacts with the Main Case Defence.³⁴⁵ As the Chamber stressed in the Judgment, those questions are of crucial importance when assessing, in particular, the credibility of witnesses. They provide indispensable information and are deliberately put to witnesses with a view to testing their credibility.³⁴⁶ Yet, the Chamber notes that the false testimony of the witnesses concerned did not pertain to the merits of the Main Case. While this circumstance does not, by any means, diminish the culpability of the convicted person, it does inform the assessment of the gravity of the offences in this particular instance. Accordingly, the Chamber accords some weight to the fact that the false testimonies underlying the conviction related to issues other than the merits of the Main Case.

2. Mr Bemba's Culpable Conduct

218. In addressing Mr Bemba's culpable conduct, the Chamber has considered the following factors pursuant to Rule 145(1) and (2) of the Rules: (i) his degree of participation; and (ii) his degree of intent, together with any (iii) mitigating and (iv) aggravating circumstances.

a) Degree of Participation

219. The Chamber recalls that Mr Bemba was convicted, as a co-perpetrator, of having corruptly influenced, together with Mr Kilolo and Mr Mangenda, 14 Main Case Defence Witnesses, and having presented their false evidence. Mr Bemba was the accused in the Main Case and was in detention throughout the commission of the offences. He was the beneficiary 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.³⁴⁷ In general, his role consisted of planning, authorising and instructing the activities relating to the

³⁴⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 865.

³⁴⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 22.

³⁴⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 805.

corrupt influencing of witnesses and their resulting false testimonies.³⁴⁸ To this end, he issued directions and instructions to the other convicted persons, Mr Kilolo, Mr Mangenda and Mr Babala, while the latter sought authorisation and approval for their respective criminal conduct. Indeed, as the Chamber concluded, Mr Kilolo made clear that he was acting on behalf of Mr Bemba,³⁴⁹ and Mr Kilolo, Mr Mangenda and Mr Babala were constantly concerned with pleasing Mr Bemba and implementing his instructions to his satisfaction.³⁵⁰

220. Mr Bemba, while in detention, planned, authorised and approved the illicit coaching of the 14 Main Case Defence Witnesses and provided concrete instructions as to what and how witnesses should testify which were relayed by Mr Kilolo.³⁵¹ Mr Bemba was kept informed at all times about the illicit coaching activities.³⁵² He also spoke on the telephone with witnesses, such as D-19 and D-55.³⁵³ Mr Bemba was in control of the payment scheme and authorised the payment of money, including illicit payments to witnesses prior to their testimony, and ensured that financial means were available to Mr Kilolo and Mr Mangenda with which they executed the illicit activities.³⁵⁴ Mr Bemba took steps, as agreed with Mr Kilolo and Mr Mangenda, to conceal the common plan, such as the use of coded language.³⁵⁵

221. Having participated in the illicit coaching activities with Mr Kilolo and Mr Mangenda, Mr Bemba presented the evidence given by the 14 Main Case Defence Witnesses, through his counsel, knowing that the evidence was false. Mr Bemba exercised decision-making authority, including giving directions

³⁴⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 806 and 816.

³⁴⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 380(iii) and 586.

³⁵⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 495, 724, 726, 727 and 806.

³⁵¹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 495, 688, 704, 728-729, 731-732, 734, 737, 806, 808, 811-812, 816 and 924.

³⁵² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 808-811 and 816.

³⁵³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 740-741.

³⁵⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 693-701, 703, 813 and 816.

³⁵⁵ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 737-741, 751-757 and 819.

concerning the witnesses to be called in his defence.³⁵⁶ Notably, since Mr Bemba issued instructions to Mr Kilolo and Mr Mangenda concerning the coaching activities and the content thereof, Mr Bemba knew that the evidence presented was false when he heard the testimony from the witnesses that was consistent with his instructions. Introducing this evidence into the Main Case through his counsel, Mr Bemba tainted the enquiry of the Trial Chamber III Judges in relation to the credibility of the witnesses.

222. The Chamber recalls that it convicted Mr Bemba as an accessory of having solicited the giving of false testimony of the 14 Main Case Defence Witnesses while under the obligation to tell the truth. Through Mr Kilolo and Mr Mangenda or personally, 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 regarding (i) prior contacts with the Main Case Defence; (ii) the receipt of money, material benefits and non-monetary promises; and (iii) the witnesses' acquaintance with third persons.³⁵⁷ Mr Bemba was updated on, and expressly authorised and directed, the illicit coaching of witnesses and gave directions, through Mr Kilolo or personally (in the case of D-19 and D-55),³⁵⁸ on how and to what the witnesses were expected to testify.³⁵⁹ 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 that Mr Kilolo would instruct the witnesses accordingly and that the witnesses would, in turn, testify untruthfully in court as a consequence of his conduct.³⁶⁰ Mr Bemba's conduct had an effect on the commission of the offence by the 14 Main Case Defence Witnesses. Without Mr Bemba's authoritative influence,

³⁵⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 686, 688, 729, 734, 806, 808, 812 and 816.

³⁵⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 852-853.

³⁵⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 740-741 and 856.

³⁵⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 495, 728-29, 731-732, 806, 811-812, 853-856 and 924.

³⁶⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 693-701, 813 and 857.

personally or through Mr Kilolo and/or Mr Mangenda, the witnesses would not have testified untruthfully before Trial Chamber III.³⁶¹

223. Lastly, the Chamber notes that the actual contributions of Mr Bemba to the implementation and concealment of the common plan, as listed above, were of a somewhat restricted nature. This is certainly owed to the fact that Mr Bemba was detained during the relevant time and his capacities to interfere with the 14 Main Case Defence Witnesses – in contrast to Mr Kilolo and Mr Mangenda – were limited. While his actions, as explained in the Judgment, still amount to offences against the administration of justice, the Chamber will give some weight to Mr Bemba's varying degree of participation in the execution of the offences.

b) Degree of Intent

224. The Bemba Defence argues that the limited nature of the Chamber's findings concerning Mr Bemba's intent is relevant to sentencing.³⁶² In essence, the Bemba Defence challenges the Chamber's evidence assessment involving (i) D-55³⁶³ claiming that Mr Bemba 'was not aware or intended for D-55 to testify falsely, or sought to motivate D-55 to do so';³⁶⁴ and (ii) D-15 and D-54 alleging that the evidence did not establish that Mr Bemba had given instructions entailing false testimony.³⁶⁵

225. Before all else, the Chamber considers that the goal of the Bemba Defence argumentation is to re-litigate the merits of the Judgment. The Chamber considers that, at this stage of the proceedings, these arguments are properly raised before the Appeals Chamber. They cannot be taken into account for the purposes of this decision.

³⁶¹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 857.

³⁶² Bemba Sentencing Submission, paras 13-39.

³⁶³ Bemba Sentencing Submission, paras 16-25.

³⁶⁴ Bemba Sentencing Submission, para. 22; [T-54-Red](#), p. 19, line 21 to p. 21, line 3.

³⁶⁵ Bemba Sentencing Submission, paras 28-38; [T-54-Red](#), p. 15, lines 21-25; p. 18, line 2 to p. 19, line 11.

226. Regarding Mr Bemba's intent, the Chamber recalls its finding that Mr Bemba intended to engage in the relevant conduct and that he acted with full awareness of the commission of the offences. The Chamber recalls that it derived its conclusion from Mr Bemba's authoritative position within the common plan, his deliberate and conscious planning and organisation of activities relating to the commission of the offences, coupled with his continuous and substantive knowledge derived therefrom. Mr Bemba's numerous activities demonstrate that he knew and intended to corruptly influence the 14 Main Case Defence Witnesses and present their evidence, which he knew to be false, before Trial Chamber III. Mr Bemba knew that his actions and those of Mr Kilolo and Mr Mangenda were unlawful and suggested that, if detected, Mr Kilolo should deny everything.³⁶⁶

c) Mitigating Circumstances

227. The Bemba Defence submits that the Chamber should take into account, in mitigation, Mr Bemba's passive and limited role as an accused in the Main Case during the commission of the offences.³⁶⁷ It highlights that Mr Bemba was in detention at the relevant time and dependent on the advice of others. It also claims that the prolonged detention had negatively impacted Mr Bemba's cognitive awareness (such as concentration and memory), his ability to provide consent and verify information.³⁶⁸ The Bemba Defence contends that Mr Bemba's actions were neutral in nature³⁶⁹ and that, considering the contextual circumstances, he could not have been aware of the difference between legitimate and illegitimate payments, or between legitimate witness preparation and illicit coaching.³⁷⁰

³⁶⁶ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 701 and 783.

³⁶⁷ Bemba Sentencing Submission, paras 26-27 and 66-68; [T-54-Red](#), p. 25, lines 7-22.

³⁶⁸ Bemba Sentencing Submission, paras 43-52 and 72; CAR-D20-0007-0271.

³⁶⁹ Bemba Sentencing Submission, para. 54.

³⁷⁰ Bemba Sentencing Submission, paras 55-59.

228. The Chamber notes that the Bemba Defence, to a great extent, re-litigates the merits of the case by challenging the Chamber's interpretation and legal characterisation of the facts and inviting the Chamber to follow *its* understanding of Mr Bemba's beliefs. The Chamber adjudicated the Defence arguments in the Judgment. The appropriate forum in which to challenge the Judgment is the Appeals Chamber. As regards the general contention regarding Mr Bemba's passive and limited role, the Chamber reiterates that Mr Bemba, in spite of his status as a detainee, nevertheless had an authoritative role in the organisation and planning of the offences and was directly involved in their commission. His role was neither passive nor that of a by-stander lacking awareness, as explained in the Judgment. As a result, the Chamber does not consider these factors in mitigation. In any event, the Chamber clarifies that it has taken into account Mr Bemba's actual contributions to the common plan in the context of his degree of participation.

229. The Bemba Defence also argues that the Chamber should consider, in mitigation, the difficulties experienced by the Main Case Defence in the Main Case. It refers to the difficulties in securing the attendance of witnesses, responding to demands for payments by witnesses, and the alleged lack of training and institutional support as to the modalities and amounts of payments for potential defence witnesses.³⁷¹

230. The Chamber is of the view that the alleged difficulties of securing the attendance of witnesses and witnesses' demands for payments are common to many defence teams before international tribunals. Yet, facing such problems can neither be a reason nor an excuse to resort to the commission of offences against the administration of justice as they occurred in the present case. As a result, these factors cannot be taken into account in mitigation.

³⁷¹ Bemba Sentencing Submission, paras 77-80.

d) Aggravating Circumstances

231. The Prosecution submits that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(ii) of the Rules, Mr Bemba's 'abuse of authority and/or official capacity'.³⁷² It argues that Mr Bemba abused his position as long-time and current President of the MLC and his relationships in the organisation when he offered, through Mr Kilolo, to meet or show good graces towards certain witnesses, such as D-3, D-6 and D-55, with whose testimony he was pleased.³⁷³ It further maintains that Mr Bemba used his close associate and parliament member in charge of MLC finances to facilitate the bribe to D-29.³⁷⁴

232. The Bemba Defence claims that Mr Bemba never instructed his counsel to make promises to D-55 and that, conversely, Mr Bemba's culpability rests on D-55's subjective perception of benefits or influence rather than intent and positive conduct on the part of Mr Bemba.³⁷⁵

233. At the outset, the arguments of the Bemba Defence mainly relate to the merits of the case. At the present stage of the proceedings, these arguments are properly raised before the Appeals Chamber. As a result, they cannot be taken into account for the purposes of this decision.

234. The Chamber recalls that it must be established that Mr Bemba abused his authority when committing the offences.³⁷⁶ In this instance, however, the Chamber's findings in the Judgment fall short of determining an abuse of power by Mr Bemba *vis-à-vis* the witnesses. Rather, it found that Mr Bemba took advantage of his position as long-time and current MLC President when he talked

³⁷² Prosecution Sentencing Submission, paras 51-53.

³⁷³ Prosecution Sentencing Submission, para. 52.

³⁷⁴ Prosecution Sentencing Submission, para. 53.

³⁷⁵ Bemba Sentencing Submission, para. 21.

³⁷⁶ See paragraph 57.

to D-55. Indeed, the power held by Mr Bemba was also acknowledged by D-55 who considered Mr Bemba to be a powerful man.³⁷⁷ Mr Bemba's position also played a role when Mr Kilolo gave non-monetary promises to witnesses, such as D-3 and D-6.³⁷⁸ The Chamber is attentive to these details. On the other hand, the Chamber does not follow the Prosecution in its allegation that Mr Bemba 'abused' his authority over an MLC member of parliament to facilitate the payment to D-29. Nothing in the evidence suggests that Mr Bemba effectively abused his position in this respect. As a result, the Chamber will consider the fact that Mr Bemba took advantage of his position as long-time and current President of the MLC to the extent specified as part of Mr Bemba's overall circumstances, pursuant to Rule 145(1)(b) of the Rules, when, ultimately, determining the appropriate sentence.

235. The Prosecution argues that the Chamber should take into consideration, as an aggravating circumstance within the meaning of Rule 145(2)(vi) of the Rules, that Mr Bemba abused the lawyer-client privilege and other attendant privileges, in particular the use of privileged line at the ICC Detention Centre, accorded by the Court.³⁷⁹ As it argued in relation to Mr Kilolo, the abuse of Mr Bemba's privilege to communicate freely and in confidence with Mr Kilolo constitutes a circumstance aggravating his sentence.³⁸⁰

236. The Chamber recalls that Mr Bemba, as the accused in the Main Case, enjoyed the privilege of communicating freely and in confidence with his counsel, as provided by Rule 73 of the Rules, including by telephone from the ICC Detention Centre. As explained earlier, this telephone communication was not subject to the detained persons monitoring scheme.³⁸¹ Mr Bemba knew about the privileges

³⁷⁷ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 295.

³⁷⁸ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 692.

³⁷⁹ Prosecution Sentencing Submission, paras 64-71.

³⁸⁰ Prosecution Sentencing Submission, paras 67 and 71.

³⁸¹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 736.

afforded to him and, together with Mr Kilolo, deliberately abused it in an attempt to corruptly influence witnesses. He spoke with Main Case Defence Witnesses, such as D-55 and D-19,³⁸² on the privileged line with a view to corruptly influencing them, thus circumventing the Registry's monitoring regime and in violation of the orders of Trial Chamber III prohibiting witness preparation.³⁸³ In addition, Mr Bemba abused the privileged line to freely communicate with persons not entitled to privilege, such as Mr Babala.³⁸⁴ Finally, Mr Bemba also abused the privileged line to discuss with Mr Kilolo and Mr Mangenda the furtherance of the common plan and to give related instructions. As a result, the Chamber concludes that the abuse of the privileges afforded to Mr Bemba as a detained accused in the Main Case constitutes an aggravating circumstance that enhances Mr Bemba's culpable conduct.

237. The Prosecution also submits that the Chamber should take into account, as an aggravating circumstance within the meaning of Rule 145(2)(b)(vi) of the Rules, Mr Bemba's attempt to obstruct justice in this case by concocting remedial measures, together with Mr Kilolo and Mr Mangenda, after he became aware that an Article 70 investigation had been initiated.³⁸⁵ The Prosecution underscores that Mr Bemba, knowing of the potential consequences of the Article 70 investigation,³⁸⁶ instructed Mr Kilolo to contact all witnesses and to convince them to side with the Main Case Defence.³⁸⁷ It lays particular emphasis on Mr Bemba's set of instructions in relation to the Cameroonian witnesses.³⁸⁸

238. The Chamber recalls that, upon learning of the initiation of the Article 70 investigation, Mr Bemba, together with Mr Kilolo and Mr Mangenda, adopted a

³⁸² Judgment, [ICC-01/05-01/13-1989-Red](#), paras 293-298 and 740-741.

³⁸³ Trial Chamber III, 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](#), para. 34.

³⁸⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 701, 737-738 and 884.

³⁸⁵ Prosecution Sentencing Submission, paras 74-80.

³⁸⁶ Prosecution Sentencing Submission, paras 75-76.

³⁸⁷ Prosecution Sentencing Submission, para. 77.

³⁸⁸ Prosecution Sentencing Submission, para. 79.

series of remedial measures to frustrate the Article 70 investigation. In this regard, Mr Bemba took a coordinating role from within the ICC Detention Centre.³⁸⁹ Mr Bemba instructed Mr Kilolo to immediately contact, in a *tour d'horizon*, all Main Case Defence Witnesses with a view to identifying the person who had possibly leaked information to the Prosecution.³⁹⁰ It was also Mr Bemba who instructed Mr Kilolo and Mr Mangenda, upon the latter's advice, (i) to contact a third person and ask him to approach the Cameroonian witnesses and persuade them to collaborate with the Main Case Defence; and (ii) to make them sign a document stating that whatever they had said to the Prosecution was untrue.³⁹¹ Lastly, it was Mr Bemba who suggested that, in the worst case, Mr Kilolo should deny all allegations as untrue.³⁹² Mr Kilolo updated Mr Bemba regularly and implemented Mr Bemba's instructions, together with Mr Mangenda.³⁹³ In the light of the foregoing, the Chamber is convinced that Mr Kilolo took steps, upon Mr Bemba's instruction, to frustrate the Article 70 investigation. The Chamber considers this to be an aggravating circumstance and attributes weight to it.

3. Mr Bemba's Individual Circumstances

239. In addressing Mr Bemba's individual circumstances, the Chamber has considered all those factors that are not directly related to the offence committed or to Mr Bemba's culpable conduct.

240. Mr Bemba is 55 years old, and married with five children.³⁹⁴ He was recently convicted of the charges in the Main Case and, on 21 June 2016, sentenced to a total of 18 years' imprisonment. Mr Bemba has been in detention since his arrest and surrender to the Court on 3 June 2008.

³⁸⁹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 787.

³⁹⁰ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 776.

³⁹¹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 787.

³⁹² Judgment, [ICC-01/05-01/13-1989-Red](#), para. 783.

³⁹³ Judgment, [ICC-01/05-01/13-1989-Red](#), paras 785-786 and 794-795.

³⁹⁴ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 8; Bemba Sentencing Submission, para. 91; Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 77.

241. The Bemba Defence submits that the Chamber should consider, in mitigation, Mr Bemba's cooperation with the Court insofar as he agreed that the contents of his bank account be transferred to the Court in order to meet the Main Case Defence costs.³⁹⁵ It also argues that the Chamber should consider Mr Bemba's conduct after the act in renouncing any reliance on the 14 Main Case Defence Witnesses in the Main Case submissions.³⁹⁶

242. The Chamber considers both arguments to be extraneous to the present case. The alleged actions on the part of Mr Bemba took place in the context of the Main Case and do not amount to a circumstance that could mitigate the sentence to be imposed in this case.

243. The Bemba Defence also submits that the Chamber should take into account, in mitigation, Mr Bemba's family situation and personal circumstances, including the loss of close family members over the past years.³⁹⁷

244. The Chamber finds that the personal circumstances and family situation described by Mr Bemba are common to many convicted persons before international tribunals and are not exceptional.³⁹⁸ They therefore do not constitute mitigating factors in the present case. Nevertheless, the Chamber accepts that family circumstances pertain to the overall circumstances of Mr Bemba, pursuant to Rule 145(1)(b) of the Rules, and will be taken into account when, ultimately, determining the appropriate sentence.

4. Determination of Sentence

245. The Prosecution recommends that Mr Bemba be sentenced to a joint sentence of eight (8) years' imprisonment, or alternatively, to a singular sentence of five

³⁹⁵ Bemba Sentencing Submission, para. 81.

³⁹⁶ Bemba Sentencing Submission, para. 84; [T-54-Red](#), p. 10, lines 11-19.

³⁹⁷ Bemba Sentencing Submission, paras 85-92.

³⁹⁸ See also Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 78.

(5) years' imprisonment, to be served consecutively to his sentence in the Main Case, and fined.³⁹⁹

246. The Bemba Defence submits that there is no need to sanction Mr Bemba.⁴⁰⁰

247. The Chamber recalls that Mr Bemba has been convicted of the charges of

- (i) Corruptly influencing witnesses, as co-perpetrator, in 14 instances, *viz.* 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;
- (ii) Presenting the false evidence, as co-perpetrator, in 14 instances, *viz.* 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
- (iii) Soliciting the giving of false testimony of witnesses in 14 instances, *viz.* 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.

248. The Chamber has weighed and balanced all the factors set out above. The Chamber found two aggravating circumstances, namely Mr Bemba's abuse of the lawyer-client privilege and attendant rights, and his role in the attempt to obstruct the present Article 70 investigation. It also took into account the fact that, when committing the offences, Mr Bemba took advantage of his long-standing and current position as MLC President. The Chamber emphasises that it has distinguished between the offences that Mr Bemba committed as a co-perpetrator and those in relation to which he was an accessory and considered Mr Bemba's varying degree of participation within the common plan. Furthermore, the number of witnesses involved has also been taken into account. The Chamber also paid heed to the fact that the false testimony related to issues

³⁹⁹ Prosecution Sentencing Submission, para. 170; [T-53-Red](#), p. 61, lines 10-12.

⁴⁰⁰ Bemba Sentencing Submission, paras 144-149; [T-54-Red](#), p. 21, lines 4-5; p. 36, lines 6-10.

other than the merits of the Main Case. Lastly, the Chamber took into account Mr Bemba's family situation.

249. The Chamber is called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Bemba's culpability. In so doing, the Chamber takes into account the fact that largely the same conduct underlies the multiple convictions.⁴⁰¹ In the light of the factors analysed, the Chamber sentences Mr Bemba:

- (i) As a co-perpetrator, under Article 25(3)(a) of the Statute, of the 14 offences of corruptly influencing witnesses, to twelve (12) months' imprisonment;
- (ii) As a co-perpetrator, under Article 25(3)(a) of the Statute, of the 14 offences of presenting the false evidence of witnesses, to twelve (12) months' imprisonment; and
- (iii) As an accessory, under Article 25(3)(b) of the Statute, to the 14 offences of soliciting the giving of false testimony of the witnesses while under the obligation to tell the truth, to ten (10) months' imprisonment.

250. Article 78(3) of the Statute establishes that the joint sentence may not be less than the highest individual sentence pronounced. In accordance with Article 78(3) of the Statute, the Chamber imposes a joint sentence of twelve (12) months of imprisonment.⁴⁰² The Chamber does not consider it appropriate that this term be served concurrently with his existing sentence as the offences are not related. Therefore, the Chamber orders that the sentence be served consecutively to Mr Bemba's existing sentence.

⁴⁰¹ Judgment, [ICC-01/05-01/13-1989-Red](#), para. 956.

⁴⁰² The reasoning in paragraphs 251-260 are by Majority only. Judge Pangalangan has written a separate opinion in relation to these paragraphs.

251. Article 78(2) of the Statute provides that '[i]n imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. ...' The Statute, in using the word 'shall', confirms that this step is mandatory. Accordingly, Mr Bemba is entitled to have deducted from his sentence the time previously spent in detention in accordance with an order of the Court. In the context of the present proceedings, this is to be calculated from the day Mr Bemba, while in detention in the context of the Main Case, received the warrant of arrest on 23 November 2013, pursuant to the warrant of arrest issued by Pre-Trial Chamber II on 20 November 2013.⁴⁰³ Following an Article 60(2) application, Mr Bemba was 'technically' released from detention in the context of the present case following the decision of Pre-Trial Chamber II dated 23 January 2015⁴⁰⁴ which was, however, reversed upon appeal.⁴⁰⁵ Since Mr Bemba was detained in the context of the Main Case, he was never actually provisionally released.⁴⁰⁶ Following the reversal of the Pre-Trial Chamber's decision, the matter was remanded to this Chamber, as it had been seized of the case in the meantime. On 19 June 2015, the Bemba Defence withdrew its (initial) Article 60(2) application for Mr Bemba's release.⁴⁰⁷

252. In the meantime, Trial Chamber III convicted Mr Bemba and, on 21 June 2016, sentenced him to 18 years' imprisonment. When deciding on the appropriate sentence, Trial Chamber III stated: 'Pursuant to Article 78(2), Mr Bemba is entitled to credit against his sentence for the time he has spent in detention in accordance

⁴⁰³ Article 58 Warrant, [ICC-01/05-01/13-1-Red2-tENG](#).

⁴⁰⁴ Pre-Trial Chamber II, Decision on 'Mr Bemba's Request for provisional release' ('Bemba Interim Release Decision'), 23 January 2015, [ICC-01/05-01/13-798](#).

⁴⁰⁵ Appeals Chamber, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II of 23 January 2015 entitled 'Decision on 'Mr Bemba's Request for provisional release'', 29 May 2015, [ICC-01/05-01/13-970](#) (OA 10).

⁴⁰⁶ At the time, the Single Judge, acting on behalf of Pre-Trial Chamber II, had noted that 'the granting of the Request in respect of these proceedings cannot result in Mr Bemba being actually released absent a decision to the same effect to be taken by Trial Chamber III', see Bemba Interim Release Decision, [ICC-01/05-01/13-798](#), p. 4.

⁴⁰⁷ ICC-01/05-01/13-1016.

with an order of this Court, namely, since his arrest, pursuant to a warrant issued by Pre-Trial Chamber II, on 24 May 2008'.⁴⁰⁸ The decisions on Mr Bemba's conviction and sentence in the Main Case are currently on appeal.

253. The Chamber notes that, while the Bemba Defence argued for sentencing credits at length in its written submission,⁴⁰⁹ the Prosecution never stated a position on Mr Bemba's sentencing credits. Nowhere in the Prosecution's written or oral submissions before this Chamber does it oppose giving sentencing credits to Mr Bemba in this case.

254. That said, the Chamber understands that Mr Bemba benefited, in the context of the Main Case, from the deduction of time previously spent in detention until the date the sentencing decision was issued, namely 21 June 2016. Evidently, there is a time overlap with the present case in which Mr Bemba is also entitled to a deduction of time previously spent in detention, namely since 23 November 2013 (when Mr Bemba was served the warrant of arrest in detention in this case) until at least 21 June 2016 (the day Trial Chamber III issued its sentencing decision). If Article 78(2) of the Statute were to be interpreted, in the present case, without regard to the fact that Mr Bemba was in detention for another cause (*viz.* the Main Case), this would lead to the following result: Mr Bemba would benefit twice from deduction of time, while being in detention.⁴¹⁰ Ultimately, Mr Bemba would not be sanctioned at all given the sentence herein imposed, or would be sanctioned to a significantly reduced extent, in the context of the present case. This result would render the entire Article 70 proceedings – and consequently also the existence of Article 70 – in the case of Mr Bemba inconsequential. This, in the view of the Chamber, ignores the need to protect the reliability of the

⁴⁰⁸ Bemba Sentencing Decision, [ICC-01/05-01/08-3399](#), para. 96.

⁴⁰⁹ Bemba Sentencing Submission, paras 93-137.

⁴¹⁰ See also the Prosecution sentencing submission during the hearing, [T-53-Red](#), p. 76, line 22 to p. 77, line 4.

evidence presented to the Court and the integrity of the judicial process⁴¹¹ and is therefore unsatisfactory.

255. There is also the consideration that accused persons in a similar situation like Mr Bemba should not accumulate credit for time spent previously in detention that – theoretically – may even *exceed* the maximum penalty available under Article 70(3) of the Statute. Leaving aside the issue of the length of proceedings, such a scenario would equally require that the Judges apply Article 78(2) of the Statute in a manner that will take into account the factual circumstances of the case(s).

256. Furthermore, an interpretation of Article 78(2) of the Statute that would not take into account the fact that a convicted person is detained for two different causes would give almost no disincentive to commit Article 70 offences: he or she could be certain that if a warrant of arrest were issued with regard to offences against the administration of justice, the time spent in detention would count twice. The deterrent effect of Article 70 of the Statute would thus be considerably hampered.

257. The Chamber recognises that Article 78(2) of the Statute is framed broadly allowing it to address a situation where a convicted person is detained on the basis of two warrants of arrest for two different causes at the same time. A solution must be found which accommodates the interests of the convicted person and, importantly, ensures that any punishment is meted out and actually effective in the end. In principle, and – crucially – from a logical point of view, time previously spent in detention can only be taken into account *once*, regardless of how many warrants of arrest exist. Time already deducted cannot be deducted for a second time. In other words, in a scenario such as this, an accused detained

⁴¹¹ See Judgement, [ICC-01/05-01/13-1989-Red](#), para. 14.

on the basis of multiple warrants of arrest cannot accumulate credits across cases for the purposes of sentencing.

258. This means that Article 78(2) of the Statute must be applied examining the specificities of the case. This rests on the understanding that the provision is not case-specific. The Chamber interprets the words 'an order' within the meaning of Article 78(2) of the Statute to apply across cases, since the language of the provision specifies that the accused be detained 'in accordance with *an* order of the *Court*' (emphasis added). Therefore, the Chamber will, when applying Article 78(2) of the Statute, consider the ruling rendered by Trial Chamber III in its sentencing decision on deduction of time since Mr Bemba's arrest on the basis of Pre-Trial Chamber III's warrant of arrest and, in addition, Trial Chamber III's ruling sentencing Mr Bemba to 18 years' imprisonment.

259. While in detention for the purposes of the present proceedings, Mr Bemba was also in detention for the purposes of the Main Case and on the basis of two different titles: the warrant of arrest of Pre-Trial Chamber III and the sentencing decision of Trial Chamber III. A deduction of time under Article 78(2) of the Statute for the time until 21 June 2016 appears illogical since Mr Bemba already benefited from the deduction of time in the context of the Main Case. A deduction of time under Article 78(2) of the Statute for the time after 21 June 2016 appears impossible since Mr Bemba remains in detention because of his conviction and sentence in the Main Case. The logical consequence would be that Mr Bemba would not benefit at all from any deduction of time previously spent in detention.

260. In light of the foregoing, Mr Bemba will not benefit from any deduction of time pursuant to Article 78(2) of the Statute in this case. Accordingly, the Chamber orders no deduction of time from Mr Bemba's sentence.

261. In addition, the Chamber finds that a substantial fine is necessary to achieve the purposes for which punishment is imposed. In particular, the Chamber is of

the view that there is a need to discourage this type of behaviour and to ensure that the repetition of such conduct on the part of Mr Bemba or any other person is dissuaded. Recognising Mr Bemba's culpability, and considering his solvency,⁴¹² the Chamber is of the view that he must be fined EUR 300,000.

262. The Chamber notes that it may order money collected through fines to be transferred, by order of the Court, to the Trust Fund for Victims, pursuant to Article 79(2) of the Statute. Accordingly, the Chamber orders that the fine is to be transferred ultimately to the Trust Fund for Victims. Noting Rule 166(4), first sentence, of the Rules, the amount must be paid to the Court within three (3) months of this Judgment. If necessary, Mr Bemba may pay the fine in instalments, as foreseen in Rule 166(4), second sentence, of the Rules. The Chamber draws Mr Bemba's attention to the special provision set out in Rule 166(5) of the Rules.

263. In conclusion, the Chamber determines that the combined sentence of one (1) additional year of imprisonment – to be served consecutively to Mr Bemba's existing sentence and without suspension – and the payment of EUR 300,000 constitutes an appropriate sentence for Mr Bemba.

⁴¹² Rule 166(3) of the Rules. The Chamber noted the Solvency Report in relation to Mr Bemba, ICC-01/05-01/13-2081, and its confidential *ex parte* annex AnxI-B; and the Updated Solvency Report and its confidential *ex parte* annex AnxI. The Chamber notes that the Bemba Defence requested leave, in the Bemba Defence Urgent Request, to submit observations in response to the Updated Solvency Report in advance of any decision being adopted by the Chamber in relation to the financial assets owned, or directly controlled by Mr Bemba. By email of 20 March 2017 at 08.31, the Chamber dismissed the Bemba Defence Urgent Request with reasons to follow. In reaching its decision, the Chamber considered the fact that the Bemba Defence had already been granted full opportunity to respond to the Solvency Report of 6 December 2016 by virtue of the Chamber's Variation Decision, [ICC-01/05-01/13-2078](#). That decision ensured that the Registrar filed the Solvency Report prior to the receipt of the parties' submissions on sentencing, even granting the Defence an extension of time to achieve this, in order to allow the Defence to incorporate any relevant aspects of the Solvency Report into their sentencing submissions. The Bemba Defence availed itself of this opportunity. Moreover, the content of the Updated Solvency Report does not affect the Chamber's views as to the solvency of Mr Bemba or the decision on sentencing being issued today. The application was thereby dismissed.

IV. OPERATIVE PROVISIONS

For the foregoing reasons, the Chamber hereby

Mr Fidèle Babala Wandu

SENTENCES Mr Fidèle Babala Wandu to a total of six (6) months of imprisonment;
ORDERS the deduction from Mr Fidèle Babala Wandu's sentence of the time he has spent in detention, pursuant to an order of the Court, from his sentence; accordingly,
CONSIDERS the sentence of imprisonment as served; and
DISMISSES as moot the request for continued provisional release pending appeal.

Mr Narcisse Arido

SENTENCES Mr Narcisse Arido to a total of 11 months of imprisonment;
ORDERS the deduction from Mr Narcisse Arido's sentence of the time he has spent in detention, pursuant to an order of the Court; accordingly,
CONSIDERS the sentence of imprisonment as served; and
DISMISSES as moot the request for continued provisional release pending appeal.

Mr Jean-Jacques Mangenda Kabongo

SENTENCES Mr Jean-Jacques Mangenda Kabongo to a total of two (2) years of imprisonment;
ORDERS the deduction from Mr Jean-Jacques Mangenda Kabongo's sentence of the time he has spent in detention, pursuant to an order of the Court;
ORDERS the suspension of the remaining term of imprisonment for a period of three (3) years so that the sentence shall not take effect unless during that period Mr Jean-Jacques Mangenda Kabongo commits another offence anywhere that is punishable with imprisonment, including offences against the administration of justice; and, as a result,
DISMISSES as moot the request for continued provisional release pending appeal.

Mr Aimé Kilolo Musamba

SENTENCES Mr Aimé Kilolo Musamba to a total of two (2) years and six (6) months of imprisonment;

ORDERS the deduction from Mr Aimé Kilolo Musamba's sentence of the time he has spent in detention, pursuant to an order of the Court;

IMPOSES a fine of thirty thousand Euros (EUR 30,000) on Mr Aimé Kilolo Musamba;

ORDERS Mr Aimé Kilolo Musamba to pay the full amount of EUR 30,000 to the Court within three (3) months of this decision; and

ORDERS the suspension of the remaining term of imprisonment for a period of three (3) years so that the sentence shall not take effect (i) if Mr Kilolo pays the fine within three (3) months; and (ii) unless during that period Mr Kilolo commits another offence anywhere that is punishable with imprisonment, including offences against the administration of justice.

Mr Jean-Pierre Bemba Gombo

SENTENCES Mr Jean-Pierre Bemba Gombo to a total of one (1) additional year of imprisonment to be served consecutively to his existing sentence and without suspension;

ORDERS no deduction from Mr Jean-Pierre Bemba Gombo's sentence of the time he has spent in detention;

IMPOSES a fine of three hundred thousand Euros (EUR 300,000) on Mr Jean-Pierre Bemba Gombo; and

ORDERS Mr Jean-Pierre Bemba Gombo to pay the full amount of EUR 300,000 to the Court within three (3) months of this decision.

Judge Raul C. Pangalangan appends a separate opinion to this decision.

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 this 22 March 2017

At The Hague, The Netherlands