



Original: **English**

No.: ICC-01/05-01/13  
Date: **17 September 2018**

**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**

**Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba  
and Mr Jean-Jacques Mangenda Kabongo**

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**Trial Chamber VII** ('Chamber') of the International Criminal Court ('Court' or 'ICC'), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Articles 70(3), 76, 77(2)(a) and 78 of the Rome Statute ('Statute') and Rules 145, 163(1) and 166 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision Re-Sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo'.

## **I. Procedural history**

1. On 19 October 2016, this Chamber found 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') guilty of offences against the administration of justice related to intentionally corruptly influencing witnesses and soliciting, inducing or assisting the false testimonies of 14 defence witnesses ('Corrupted Witnesses') in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case') at the ICC (this decision: 'Trial Judgment').<sup>1</sup> These convictions were entered under Article 70(1)(a), (b) and (c) of the Statute.
2. On 22 March 2017, the Chamber delivered the sentences in the present case ('Sentencing Decision'),<sup>2</sup> pronouncing the following sentences against Mr Bemba, Mr Kilolo and Mr Mangenda (jointly, 'Three Convicted Persons'):
  - Mr Bemba: one additional year of imprisonment (to be served consecutively to the then existing sentence pronounced against him in the Main Case), without deduction of time, and a 300,000 Euro fine, to be paid to the Court within three months of its decision and thereafter transferred to the Trust Fund for Victims ('TFV').

<sup>1</sup> Public Redacted Version of Judgment pursuant to Article 74 of the Statute, [ICC-01/05-01/13-1989-Red.](#)

<sup>2</sup> Decision on Sentence pursuant to Article 76 of the Statute, [ICC-01/05-01/13-2123-Corr](#) (with annex containing separate opinion of Judge Raul C. Pangalangan).

- Mr Kilolo: two years and six months of imprisonment and a 30,000 Euro fine, to be paid to the Court within three months of its decision and thereafter transferred to the TFV. The 11-month period Mr Kilolo previously spent in detention was deducted from this sentence.

The Chamber ordered the suspension of the operation of the remaining term of imprisonment for a period of three years so that the sentence would not take effect (i) if Mr Kilolo paid the fine, as imposed by the Chamber, and (ii) unless during that period Mr Kilolo committed another offence anywhere that is punishable with imprisonment, including offences against the administration of justice.

- Mr Mangenda: two years of imprisonment. The approximately 11-month period Mr Mangenda previously spent in detention was deducted from this sentence.

The Chamber ordered the suspension of the operation of the remaining term of imprisonment for a period of three years so that the sentence would not take effect unless during that period Mr Mangenda committed another offence anywhere that is punishable with imprisonment, including offences against the administration of justice.

3. On 8 March 2018, the Appeals Chamber issued its judgments on the convictions and sentences ('Appeals Judgment' and 'Sentencing Judgment', respectively).<sup>3</sup> The Appeals Chamber upheld all convictions entered under Articles 70(1)(a) and (c) of the Statute and reversed all convictions entered under Article 70(1)(b) of the Statute. For the Three Convicted Persons, the Appeals Chamber reversed and remanded their sentences to this Chamber for a new determination.<sup>4</sup> For Mr Babala and Mr Arido, the Appeals Chamber confirmed their sentences.<sup>5</sup>

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<sup>3</sup> Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", [ICC-01/05-01/13-2275-Red](#), A-A5 (with three annexes); Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute", [ICC-01/05-01/13-2276-Red](#), A6-A9 (with annex).

<sup>4</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 362.

<sup>5</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 357.

4. On 14 March 2018, the Single Judge of the Chamber rendered a decision setting out a briefing schedule for re-sentencing submissions.<sup>6</sup> It was emphasised in this decision that ‘the Appeals Chamber upheld the verdicts and sentences in relation to Mr Babala and Mr Arido – they accordingly have no interest in the matters now before this Chamber’.<sup>7</sup>
5. Pursuant to this briefing schedule, the Chamber received a solvency report from the Registry<sup>8</sup> and re-sentencing submissions from the Office of the Prosecutor (‘Prosecution’),<sup>9</sup> defence for Mr Bemba (‘Bemba Defence’),<sup>10</sup> defence for Mr Kilolo (‘Kilolo Defence’)<sup>11</sup> and defence for Mr Mangenda (‘Mangenda Defence’) (jointly, ‘Defence’).<sup>12</sup>
6. On 12 June 2018, following the acquittal of Mr Bemba in the Main Case (‘Main Case AJ’),<sup>13</sup> the Chamber provisionally released Mr Bemba in the present case.<sup>14</sup> Mr Kilolo and Mr Mangenda have been on interim release since before the trial commenced.<sup>15</sup>

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<sup>6</sup> Order on Sentencing Submissions Following Appeals Chamber Judgments, [ICC-01/05-01/13-2277](#) (‘Briefing Schedule’).

<sup>7</sup> Briefing Schedule, [ICC-01/05-01/13-2277](#), para. 3.

<sup>8</sup> Registry’s Updated Report on Solvency of the Convicted Persons, 13 April 2018, [ICC-01/05-01/13-2278](#) (with three annexes).

<sup>9</sup> Prosecution Sentencing Submissions, 30 April 2018, [ICC-01/05-01/13-2279](#) (with annex) (‘First Prosecution Submission’).

<sup>10</sup> Public Redacted Version of “Defence Submissions on Sentencing”, 30 May 2018, ICC-01/05-01/13-2281-Conf-Exp, 1 June 2018, [ICC-01/05-01/13-2281-Red](#) (with four annexes; corrigendum of Annex A notified 5 June 2018) (‘First Bemba Defence Submission’). *See also* Defence Request for Leave to File a Corrected Version of its Annex (ICC-01/05-01/13-2281-Conf-AnxA), 4 June 2018, [ICC-01/05-01/13-2284](#), *dismissed in* Email from the Chamber, 5 June 2018 at 12:29 (‘In respect of [this request], the Chamber hereby informs the Bemba Defence that no leave by the Chamber is required to file corrected versions of its filings’).

<sup>11</sup> Public redacted version of “Corrected version of Aimé Kilolo Musamba’s Sentencing Submission on Remand (ICC-01/05-01/13-2282-Conf-Exp)” (ICC-01/05-01/13-2282-Conf-Exp-Corr), 30 May 2018, [ICC-01/05-01/13-2282-Corr-Red](#) (with seven annexes, corrigendum notified 11 June 2018) (‘First Kilolo Defence Submission’).

<sup>12</sup> Corrigendum to Submissions on Re-Sentencing, 30 May 2018, [ICC-01/05-01/13-2280-Red-Corr](#) (with three annexes, corrigendum notified 5 June 2018) (‘First Mangenda Defence Submission’).

<sup>13</sup> Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”, 8 June 2018, [ICC-01/05-01/08-3636-Red](#), A (with four annexes).

<sup>14</sup> Decision on Mr Bemba’s Application for Release, [ICC-01/05-01/13-2291](#) (‘Bemba Release Decision’).

<sup>15</sup> *See* Decision Regarding Interim Release, 17 August 2015, [ICC-01/05-01/13-1151](#).

7. On 29 June 2018, the Registry provided an updated solvency report for Mr Bemba and Mr Kilolo.<sup>16</sup>
8. On 2 July 2018, the Prosecution filed submissions on the impact of the Main Case AJ on the Three Convicted Persons' sentences.<sup>17</sup> The defence teams responded to this submission in writing later in the month.<sup>18</sup>
9. On 4 July 2018, the Chamber held an oral hearing to receive further submissions on re-sentencing.<sup>19</sup>
10. On 14 September 2018, the Chamber informed that parties it would consider further materials presented by the Bemba Defence as to how Mr Bemba's convictions in this case affect his professional life.<sup>20</sup>

## II. Relief sought

11. The Prosecution requests the Chamber to sentence the Three Convicted Persons to the statutory maximum sentence of five years of imprisonment each. The Prosecution also requests the Chamber to order: (i) Mr Kilolo and Mr Mangenda (and by extension the since-released Mr Bemba) back into custody to serve the new sentences imposed; (ii) the Registry to notify the professional bodies to which Mr Kilolo and Mr Mangenda belong (including the ICC Bar Association, if they are members) of their convictions confirmed on appeal and to remove them from

<sup>16</sup> Updated Registry's Report on the Solvency of Messrs. Aimé Kilolo Musamba and Jean-Pierre Bemba Gombo, [ICC-01/05-01/13-2295](#) (with two annexes). No party sought leave to file further observations following this update.

<sup>17</sup> Prosecution Detailed Notice of Additional Sentencing Submissions, [ICC-01/05-01/13-2296](#) (with annex) ('Second Prosecution Submission').

<sup>18</sup> Defence Response to the Prosecution Detailed Notice of Additional Sentencing Submission, 19 July 2018, [ICC-01/05-01/13-2304](#) (with three annexes) ('Second Bemba Defence Submission'); Aimé Kilolo Musamba's Response to "Prosecution Detailed Notice of Additional Sentencing Submissions" ICC-01/05-01/13-2296, 19 July 2018, [ICC-01/05-01/13-2303](#) ('Second Kilolo Defence Submission'); Response to Prosecution's Detailed Notice of Additional Sentencing Submissions, 19 July 2018, [ICC-01/05-01/13-2302](#) ('Second Mangenda Defence Submission').

<sup>19</sup> Transcript of Hearing, [ICC-01/05-01/13-T-59-ENG](#) ('Re-Sentencing Hearing'). This hearing resolved a number of requests from the parties to make further submissions on re-sentencing. See Transcript of Hearing, 12 June 2018, [ICC-01/05-01/13-T-58-ENG](#), page 5, lines 14-23, resolving Prosecution's Request for Leave to Reply to Bemba's, Kilolo's and Mangenda's Sentencing Submissions, 4 June 2018, [ICC-01/05-01/13-2283](#); First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), para. 50.

<sup>20</sup> Decision on Bemba Defence Request Following DRC Election Decision, ICC-01/05-01/13-2311.

the Court's lists of counsel and assistants to counsel. The Prosecution does not squarely request a fine, but indicates it would 'welcome' a substantial fine in addition to the five-year imprisonment terms.<sup>21</sup>

12. In its initial submission, the Bemba Defence requested the Chamber to effectively reimpose his original sentence of 12 months imprisonment and a substantial fine.<sup>22</sup> Following Mr Bemba's Main Case acquittal, the Bemba Defence now requests 'a complete discharge following payment of a reasonable fine to the Trust Fund for victims'.<sup>23</sup>
13. The Kilolo Defence requests the Chamber to refashion Mr Kilolo's sentence so as to keep his original sentence intact. This would entail a time-served imprisonment term (11 months) and a 30,000 Euro fine.<sup>24</sup>
14. The Mangenda Defence requests that Mr Mangenda's new sentence 'should be reduced to time served', noting that Mr Mangenda had been previously detained in the present case for just over 11 months.<sup>25</sup> In the alternative, the Mangenda Defence requests the Chamber to defer re-sentencing until it has further indications that Mr Mangenda has not re-offended.<sup>26</sup>

### III. Scope of the present decision

15. It is recalled that re-sentencing 'is not an opportunity to relitigate matters which have been definitively resolved by the Appeals Chamber Judgments'.<sup>27</sup> In the Sentencing Decision, the Chamber already gave full and individualised consideration to the appropriate sentences for the Three Convicted Persons. The

<sup>21</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 5, 57, 82, 84. *But see* Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 16, lines 14-18 (seemingly requesting the imposition of a 'meaningful' fine).

<sup>22</sup> First Bemba Defence Submission, [ICC-01/05-01/13-2281-Red](#), paras 50, 80.

<sup>23</sup> Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 75, lines 20-24.

<sup>24</sup> First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), pages 23-24; Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 41, lines 4-7.

<sup>25</sup> First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 71-73.

<sup>26</sup> First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 4, 65-69, 72.

<sup>27</sup> Briefing Schedule, [ICC-01/05-01/13-2277](#), para. 3.



Appeals Chamber Judgments found errors only on limited points, namely in relation to: (i) the assessment of the nature of the false testimony going to non-merits issues; (ii) the justification for distinguishing principal from accessorial liability in this case; (iii) the Chamber's power to suspend sentences; (iv) entering convictions under Article 70(1)(b) of the Statute and (v) the length of the time frame at issue in this case.<sup>28</sup>

16. In this decision, the Chamber will focus its inquiry on these errors and any new considerations which may affect the sentences to be imposed.
17. After setting out the applicable law (Section IV), the Chamber will provide its new considerations following the Appeals Chamber judgments (Section V). As most of the new considerations affect more than one of the Three Convicted Persons equally, the Chamber addresses them jointly in this section. The Chamber will then conduct an individual re-sentencing (considering the gravity of the offences that were the basis for the convictions, culpable conduct and individual circumstances) for each of the Three Convicted Persons while identifying its final conclusions (Section VI).

#### **IV. Applicable law**

18. In the Sentencing Judgment, the Appeals Chamber concluded that this Chamber erred in finding that it could pronounce suspended sentences.<sup>29</sup> The Appeals Chamber found no other error of law in the Sentencing Decision. The Chamber therefore incorporates by reference the remaining applicable law from the Sentencing Decision,<sup>30</sup> repeating or updating it as follows:

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<sup>28</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), paras 45, 62, 80, 168; Appeals Judgment, [ICC-01/05-01/13-2275-Red](#), para. 710.

<sup>29</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), paras 73-80.

<sup>30</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 18-39.

- (i) The primary purpose of sentencing individuals under Article 70 of the Statute is retribution and deterrence.<sup>31</sup>
- (ii) For Article 70 offences, the Chamber may impose a term of imprisonment not exceeding five years, or a fine, or both.<sup>32</sup> When a person has been convicted of more than one offence, the Chamber must pronounce a sentence for each offence and a joint sentence specifying the total period of imprisonment.<sup>33</sup> The highest individual sentence constitutes the minimum possible joint sentence.<sup>34</sup>
- (iii) All relevant factors must be balanced when the sentence is determined, including any mitigating and aggravating factors.<sup>35</sup> The statutory scheme provides an array of factors to be considered,<sup>36</sup> including mitigating<sup>37</sup> and aggravating<sup>38</sup> circumstances. The absence of mitigating circumstances does not constitute an aggravating circumstance.<sup>39</sup> The Chamber must carefully avoid relying upon the same factor more than once, but certain facts may reasonably be considered under more than one category.<sup>40</sup>
- (iv) There must be a sufficiently proximate link between a factor being considered and the offences that formed the basis for the conviction.<sup>41</sup>
- (v) Once a sentence has been imposed, the Chamber must deduct the time, if any, previously spent in detention in accordance with an order of the Court.<sup>42</sup>

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<sup>31</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 19.

<sup>32</sup> Article 70(3) of the Statute; Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 20, 29-35.

<sup>33</sup> Article 78(3) of the Statute.

<sup>34</sup> Article 78(3) of the Statute; Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 57.

<sup>35</sup> Rule 145(1)(b) of the Rules; Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 21-26.

<sup>36</sup> Article 78(1) of the Statute ('gravity of the crime', 'individual circumstances of the convicted person'); Rule 145(1)(a) of the Rules ('culpability of the convicted person'); Rules 145(1)(b) of the Rules ('the circumstances both of the convicted person and of the crime'); Rule 145(1)(c) of the Rules ('the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.').

<sup>37</sup> Rule 145(2)(a) of the Rules.

<sup>38</sup> Rule 145(2)(b) of the Rules.

<sup>39</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 25.

<sup>40</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 112 (giving the example that 'the "extent of the damage caused", the "degree of participation of the convicted person" mentioned in rule 145 (1) (c) of the Rules and the aggravating circumstances listed in rule 145 (2) (b) of the Rules are not neatly distinguishable and mutually exclusive categories.').

<sup>41</sup> See Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), paras 115, 151.

<sup>42</sup> Article 78(2) of the Statute.

## V. New joint considerations

19. Before turning to the new considerations arising from the Appeals Chamber judgments, the Chamber will preliminarily address the Prosecution's arguments in relation to the Main Case acquittal.
20. The Prosecution submits that the corrupted and tainted evidence introduced by the convicted persons affected the Main Case appeal proceedings.<sup>43</sup> The Prosecution argues that the Appeals Chamber Majority's conclusions are based on a 'limited evaluation of an evidentiary record deliberately and criminally tainted and scripted by the convicted persons'.<sup>44</sup> The acquittal evidences the damage caused by the conduct of the convicted persons and constitutes an aggravating circumstance.<sup>45</sup>
21. The Defence responds that: (i) these arguments are an *ultra vires* attempt to revise the scope of this case;<sup>46</sup> and (ii) the Prosecution fails to demonstrate that the Main Case acquittal has an evidentially established causal nexus to the offences at issue in the present case.<sup>47</sup>
22. The Chamber considers that the Main Case acquittal has no impact on the sentences to be imposed.
23. The Chamber recalls that this case has been clearly understood as independent from the Main Case.<sup>48</sup> This means that none of the Chamber's evidentiary findings

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<sup>43</sup> Second Prosecution Submission, [ICC-01/05-01/13-2296](#), paras 6-43 (with reference to Main Case witnesses D-54, D-15, D-13, D-25, D-19 and D-48); Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 17, line 17, to page 25, line 21.

<sup>44</sup> Second Prosecution Submission, [ICC-01/05-01/13-2296](#), para. 7.

<sup>45</sup> Second Prosecution Submission, [ICC-01/05-01/13-2296](#), paras 1, 47.

<sup>46</sup> Second Bemba Defence Submission, [ICC-01/05-01/13-2304](#), paras 4-8; Second Kilolo Defence Submission, [ICC-01/05-01/13-2303](#), paras 24-26; Second Mangenda Defence Submission, [ICC-01/05-01/13-2302](#), paras 9-16, 31-34.

<sup>47</sup> Second Bemba Defence Submission, [ICC-01/05-01/13-2304](#), paras 9-42; Second Kilolo Defence Submission, [ICC-01/05-01/13-2303](#), paras 14-19, 23, 27-36; Second Mangenda Defence Submission, [ICC-01/05-01/13-2302](#), 17-30.

<sup>48</sup> Trial Judgment, [ICC-01/05-01/13-1989-Red](#), para. 194; Transcript of hearing, 29 September 2015, [ICC-01/05-01/13-T-10-Red-ENG](#), page 4, line 6, to page 6, line 6 (said at the trial commencement).

in this case were affected by the Main Case AJ in any way. This also means that, in order to evaluate to what extent the Corrupted Witnesses affected the merits of the Main Case, the Chamber would inevitably need to assess the Main Case record. Doing so would be tantamount to disregarding the Chamber's consistent directions in this case. Ultimately, the Chamber considers that expanding its inquiry to such an extent in a re-sentencing inquiry would be unduly prejudicial to the Three Convicted Persons and be otherwise incompatible with the fair and expeditious conduct of proceedings. Noting that the convictions in the Trial Judgment related only to offences concerning the Corrupted Witnesses, the Chamber also considers it unfair to use any uncharged witness for the first time in re-sentencing to increase the sentences.<sup>49</sup>

24. Further, there is absolutely no indication that the Appeals Chamber Majority in the Main Case relied upon the Corrupted Witnesses. None of them are mentioned by the Majority in the Main Case AJ, and the dissenting judges likewise give no indication that the Majority used the Corrupted Witnesses in any way. The Appeals Chamber Majority explained that it found errors arising from other problems in the Main Case trial judgment and evidence record.<sup>50</sup> The Prosecution has no proof to suggest otherwise.
25. The Prosecution manifestly fails to establish any causation between what the Three Convicted Persons were convicted of and the outcome of the Main Case AJ. The Prosecution essentially concedes that it does not have the relevant information to establish a sufficiently proximate link.<sup>51</sup> This means that the

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<sup>49</sup> Of all the witnesses mentioned by the Prosecution, the only one explicitly referenced in the reasoning of the Main Case AJ is D-48. Second Prosecution Submission, [ICC-01/05-01/13-2296](#), paras 38-43; Main Case AJ, [ICC-01/05-01/08-3636-Red](#), para. 174. Despite the Prosecution citing evidence from this case that D-48 may have been tainted in similar fashion to the Corrupted Witnesses, D-48 is not one of the Corrupted Witnesses. D-48 was not mentioned once in the Trial Judgment, and the Prosecution did not explicitly rely on him for sentencing until after the Main Case AJ. It also must be noted that, in the full array of Appeals Chamber considerations, there appears only one isolated reference to D-48. There is no indication that his testimony had any dispositive effect on the Main Case AJ.

<sup>50</sup> Main Case AJ, [ICC-01/05-01/08-3636-Red](#), paras 166-94.

<sup>51</sup> Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 23 line 8 to page 25 line 21 (in an exchange with the Presiding Judge, the Prosecution variously indicates: (i) '[...] at the end of the day, we're not privy to what the Appeals Chamber relied on'; and (ii) '*it is entirely possible* that if the Appeals Chamber relied on the finality of the

Chamber cannot consider the Main Case acquittal as aggravating the sentences to be imposed in the present case.

#### A. Nature of the unlawful testimony

##### 1. *Why this requires new consideration*

26. In the Sentencing Decision, the Chamber considered the nature of the false testimony that the Corrupted Witnesses gave in the Main Case. The Chamber explained that the fact that ‘the false testimony of the witnesses concerned did not pertain to the merits of the Main Case [...] inform[ed] the assessment of the gravity of the offences in this particular instance’. The Chamber accorded ‘some weight’ to this fact.<sup>52</sup>
27. The Appeals Chamber found that this was an extraneous consideration and that the Chamber erred in giving ‘some weight’ to it.<sup>53</sup> The Appeals Chamber agreed, ‘in principle, that the importance of the issues on which false testimony is given’ may be a relevant consideration in the assessment of the gravity of these offences.<sup>54</sup> However, the fact that false testimony pertains to ‘merit’ or ‘non-merit’ issues of a case is not in and of itself reflective of the actual gravity of the offences.
28. The Appeals Chamber considered that ‘[a]ssuming a hierarchy of gravity in this regard is indeed artificial and ultimately incompatible with the required fact-specific assessment, *in concreto*, of the gravity of the particular offences for which the person was convicted’.<sup>55</sup> In the present case, the Appeals Chamber found that

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convictions and the basis of the convictions in your judgment and in the Appeals Chamber’s affirmation of that judgment, that they would have been wrong in the Bemba Main Case to discard or disregard 14 witnesses’ (emphasis added)).

<sup>52</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 115, 167, 217.

<sup>53</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 45.

<sup>54</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), paras 38, 40 (‘[T]he Appeals Chamber considers that the Trial Chamber did not abuse its discretion by taking account, in its assessment of the gravity of the offences, the content of the false testimony as established in the present case [...].’).

<sup>55</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 44.

the Chamber had failed to explain on what basis it considered this distinction to be of relevance to the determination of the gravity of the concerned offences.<sup>56</sup>

29. Owing to the Appeals Chamber's finding, the Chamber must consider the nature of the unlawful testimony for sentencing anew.

*2. Submissions, analysis and conclusions*

30. The Prosecution submits that recognition of the Chamber's error should justify an increase in the individual and joint sentences of the Three Convicted Persons.<sup>57</sup>

31. The Defence submits that the Prosecution fails to justify why a revised assessment as to the nature of the unlawful testimony justifies such an increase.<sup>58</sup> The Bemba Defence argues in particular that: (i) real harm did not materialise as a result of the unlawful testimony because the Prosecution was aware that the Corrupted Witnesses were testifying falsely when the Prosecution examined them in the Main Case;<sup>59</sup> and, (ii) if the intended aims of the unlawful testimony are considered, the Chamber should take into account the fact that the false testimony was aimed at securing the acquittal of an innocent person.<sup>60</sup> The Kilolo Defence argues that the Appeals Chamber did not find that consideration of the content of the witness's testimony was an abuse of discretion and that it merely accorded this Chamber the opportunity to elaborate its reasoning.<sup>61</sup>

32. The Chamber recalls that the false testimony used for the Article 70(1)(a) convictions related to payments or non-monetary benefits received, acquaintances

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<sup>56</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 41.

<sup>57</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 10-22; Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 25, line 22, to page 28, line 16.

<sup>58</sup> First Bemba Defence Submission, [ICC-01/05-01/13-2281-Red](#), paras 7-21; First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 20-28; First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 44-48.

<sup>59</sup> First Bemba Defence Submission, [ICC-01/05-01/13-2281-Red](#), para. 18; ICC-01/05-01/13-2281-Conf-AnxA-Corr.

<sup>60</sup> Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 56, lines 12-25.

<sup>61</sup> First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 26-28.

with other individuals, and the nature and number of prior contacts with Mr Bemba's defence team in the Main Case.<sup>62</sup>

33. The Chamber again recalls that it has been a cardinal principle in this trial that the present case has always been independent of the Main Case. From the outset, the Chamber decided to keep any assessment of the merits of the Main Case to a minimum.<sup>63</sup> This was done in the interest of procedural fairness to the accused, as otherwise this Article 70 case would have devolved into a much longer, expansive, and duplicative inquiry. Following the Sentencing Judgment, the Chamber now considers that the independence of the cases warrants not giving weight to the fact that the false testimony went only to 'non-merits' issues.
34. The Chamber is not persuaded by the Bemba Defence arguments that, in assessing the degree of harm, it should take into account that the Prosecution knew witnesses were lying when it examined them or that Mr Bemba's witnesses secured false testimony in a case in which he was ultimately acquitted. These facts do not minimise the gravity of the offences or the culpable conduct. In no way is the Chamber going to take into account the fact that the witness's false testimony was promptly exposed as a factor reducing the Three Convicted Persons' sentences. In a similar fashion, the Chamber does not consider that the outcome of the Main Case makes Mr Bemba's solicitation of false testimony in an attempt to manipulate his trial any less serious.
35. However, it is important not to overstate these new considerations when pronouncing new sentences. Despite specifying that the false testimony went only to 'non-merits' issues, the Sentencing Decision did otherwise give appropriate weight to the importance of the issues on which false testimony was given. These issues were determined to be 'of crucial importance when assessing [...] in

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<sup>62</sup> Trial Judgment, [ICC-01/05-01/13-1989-Red](#), paras 905, 919, 931.

<sup>63</sup> See paragraph 23 above.



particular, the credibility of witnesses'.<sup>64</sup> The Chamber also emphasised that these issues 'provide indispensable information and are deliberately put to witnesses with a view to testing their credibility'.<sup>65</sup> Both in the Sentencing Decision and now, the Chamber stresses the centrality of witness credibility when assessing evidence and the importance of the issues on which false testimony was proven in the present case.

## **B. Modes of liability (degree of participation and intent)**

### *1. Why this requires new consideration*

36. When determining the appropriate sentences for the Three Convicted Persons, this Chamber stated that it had weighed and balanced all factors, including aggravating and mitigating circumstances, and in that context 'emphasise[d] that it ha[d] distinguished between the offences [that they] committed as co-perpetrator[s] and those in relation to which [they were accessories]'.<sup>66</sup> Upon having weighed and balanced all factors, the Chamber imposed lower individual sentences for their Article 70(1)(a) convictions (an offence of which they were convicted as accessories) than for their Article 70(1)(c) convictions (an offence which they jointly perpetrated).<sup>67</sup>
37. The Appeals Chamber acknowledged that 'generally speaking and all other things being equal, a person who is found to commit a crime him- or herself bears more blameworthiness than a person who contributes to the crime of another person or persons'.<sup>68</sup> Yet, it found that the principal perpetrator of an offence does not necessarily deserve a higher sentence than the accessory to that offence.<sup>69</sup> The Appeals Chamber considered that this Chamber had not explained why, on the

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<sup>64</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 115, 167, 217.

<sup>65</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 115, 167, 217.

<sup>66</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 145, 193, 248.

<sup>67</sup> See Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 146, 194, 249.

<sup>68</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 59.

<sup>69</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 60.



facts of the case, it considered Mr Kilolo's and Mr Bemba's respective culpability to be lesser for the offence they had instigated than for the offences they had committed as co-perpetrators.<sup>70</sup> The Appeals Chamber found that the Chamber erred when it pronounced lesser sentences for their Article 70(1)(a) convictions 'on the basis of an abstract distinction based on the different mode of liability'.<sup>71</sup> The Appeals Chamber did not mention Mr Mangenda's Article 70(1)(a) conviction in its reasoning, presumably because the Prosecution's appeal on this point did not extend to him.<sup>72</sup>

38. Owing to the Appeals Chamber's finding, the Chamber must consider the convicted persons' degree of participation and intent for re-sentencing anew.

*2. Submissions, analysis and conclusions*

39. The Prosecution submits that this error justifies an increase in the Article 70(1)(a) sentences and, accordingly, the joint sentences. The Prosecution argues that, since the Chamber's findings for Mr Bemba and Mr Kilolo are essentially the same for all offences, the sentences for Article 70(1)(a) of the Statute should be increased at least to match the sentences for their Article 70(1)(c) offences.<sup>73</sup>
40. The Defence submits that the Prosecution fails to explain why a revised assessment as to the error concerning accessorial liability justifies an increase in the sentences.<sup>74</sup> The Mangenda Defence argues in particular that this error cannot

<sup>70</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 61.

<sup>71</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 62.

<sup>72</sup> See Public Redacted Version of "Prosecution's Document in Support of Appeal against Trial Chamber VII's 'Decision on Sentence pursuant to Article 76 of the Statute', 21 June 2017, ICC-01/05-01/13-2168-Conf", 24 July 2017, [ICC-01/05-01/13-2168-Red](#), A9, paras 102-12 ('Prosecution Appeal Brief').

<sup>73</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 23-28.

<sup>74</sup> First Bemba Defence Submission, [ICC-01/05-01/13-2281-Red](#), paras 22-35; First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 29-37; First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 41-43.

be applied adversely to Mr Mangenda because the Prosecution did not appeal the Trial Chamber's evaluation of accessorial liability in respect of him.<sup>75</sup>

41. In light of the Sentencing Judgment, the Chamber appreciates that, while the degree of participation and intent must correspond to the degree of blameworthiness, the differences in principal and accessorial liability in this particular case do not lead to much of a distinction in the appropriate sentences for Mr Bemba and Mr Kilolo. There is some difference in their control over the Article 70(1)(a) and 70(1)(c) offences – for the latter no one outside the common plan was needed whereas for the former they still had to hope or anticipate that others would testify falsely.<sup>76</sup> But Mr Bemba and Mr Kilolo are responsible for both these offences on the basis of essentially the same acts and conduct. As argued by the Prosecution, the Chamber agrees that there is not much reason in this particular case for according specific weight to the modes of liability when determining the sentencing.
42. Mr Mangenda's situation is different. The Prosecution did not appeal this point in reference to Mr Mangenda. Though the Appeals Chamber's overall conclusion at the end of the Sentencing Judgment was that the Three Convicted Persons' sentences were materially affected by each of this Chamber's errors,<sup>77</sup> no reference was made to Mr Mangenda anywhere in the Appeals Chamber's reasoning on the specific sub-ground of appeal.<sup>78</sup> The Chamber considers that it would be unduly prejudicial to apply these same considerations to Mr Mangenda because doing so would: (i) contradict this Chamber's previous direction that re-sentencing should not delve into settled matters; (ii) effectively permit the Prosecution to circumvent the time limits for appeal; and (iii) negate Mr Mangenda's right to have had a fair

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<sup>75</sup> First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 32-40.

<sup>76</sup> See also Appeals Judgment, [ICC-01/05-01/13-2275-Red](#), para. 709 ('[w]hile the calling party may hope or anticipate that the witness will lie before the Chamber, it remains the independent decision of the witness to do so when he or she gives evidence in court.').

<sup>77</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 359.

<sup>78</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), paras 57-62.

opportunity to respond to this point before the Sentencing Judgment was rendered.<sup>79</sup>

43. Even if the Chamber did extend the same considerations above to Mr Mangenda, Mr Mangenda is the only one of the Three Convicted Persons who was not convicted under Article 70(1)(a) in respect of all 14 Corrupted Witnesses. Mr Mangenda was convicted in respect of only nine of these 14 witnesses, and the Chamber considers that this, together with all other factors, still needs to be duly reflected in his Article 70(1)(a) sentence.
44. Beyond these core considerations, the Chamber also notes that the Prosecution's arguments on accessorial liability address the facts showing the Three Convicted Persons' degree of participation and intent.<sup>80</sup> These facts are generally reflected in the same way in the Chamber's previous gravity and culpability assessments, meaning that the Prosecution merely points to matters already duly considered by the Chamber. The one exception is that the Prosecution disputes diminishing Mr Bemba's culpability because his contributions were of a 'somewhat restricted nature' owing to his being detained during the relevant period.<sup>81</sup>
45. The Chamber disagrees, and reiterates that the actual contributions made by the Three Convicted Persons are a valid, fact-specific consideration in assessing the appropriate sentence to be imposed. The Chamber also does not see this as contradictory to its conclusion that the Three Convicted Persons made 'essential contributions' – people can have varying degrees of participation in the execution of the offences even while all of them are making essential contributions to the

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<sup>79</sup> *In this regard, see generally* ICTY, Appeals Chamber, *Prosecutor v. Ramush Haradinaj et al.*, Decision on Haradinaj's Appeal on Scope of Partial Retrial, 31 May 2011, [IT-04-84bis-AR73.1](#), para. 26 (the particular circumstances of a remand can have an impact on procedural fairness: '[...] the context of each retrial is unique, and the impact of a previous conviction or acquittal can only be addressed by taking into account this individual context. Any potential for undue prejudice to a defendant in a retrial [...] should be addressed through both the Appeals Chamber's careful delineation of a retrial's parameters and the Trial Chamber's continuing duty to apply fair trial principles.').

<sup>80</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 29-36 (Bemba), 37-44 (Kilolo), and 45-49 (Mangenda).

<sup>81</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), para. 35.

common plan. Aggravating the sentence of Mr Bemba (or Mr Mangenda, who also had varying degrees of participation)<sup>82</sup> by focusing on legal ‘essentiality’ at the expense of individualised considerations would be to commit the same kind of discretionary error as focusing on abstract ‘modes of liability’ to decrease sentences.

### **C. Loss of the power to suspend sentences**

#### *1. Why this requires new consideration*

46. In the Sentencing Decision, the Chamber found that it had an inherent power to suspend a sentence of imprisonment.<sup>83</sup> The Chamber then suspended the remaining term of imprisonment imposed for Mr Kilolo and Mr Mangenda.<sup>84</sup>
47. The Appeals Chamber found that the Chamber erred in law in ordering a conditional suspension of the remaining terms of imprisonment imposed on Mr Kilolo and Mr Mangenda.<sup>85</sup>
48. The Chamber will now consider what consequence, if any, the loss of the power to suspend sentences has on the re-sentencing for Mr Kilolo and Mr Mangenda.

#### *2. Submissions, analysis and conclusions*

49. The Prosecution argues that, now that the suspended sentence is disallowed, any underlying analysis related to that determination must be revisited. Any consideration of Mr Kilolo or Mr Mangenda’s overall circumstances to suspend sentences ‘is no longer relevant, and should be disregarded’.<sup>86</sup>

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<sup>82</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 124.

<sup>83</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 40-41.

<sup>84</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 149, 197.

<sup>85</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), paras 73-80.

<sup>86</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 74, 76.

50. The Kilolo and Mangenda Defence argue that the Appeals Chamber's preclusion of suspended sentences should not affect this Chamber's original rationale that non-custodial sentences were appropriate for them.<sup>87</sup>
51. The Chamber is not persuaded by the Prosecution's arguments to the extent that, now that the suspended sentences are not possible, none of the considerations justifying them have any further merit. The Chamber based its decision to suspend sentences on Mr Kilolo and Mr Mangenda's individual circumstances – their personal circumstances, good behaviour throughout the proceedings, and the consequences of incarceration on their families/professional life.<sup>88</sup> There is no indication that any of these individual circumstances no longer apply. The Kilolo and Mangenda Defence instead offer further proof bolstering the Chamber's original findings.<sup>89</sup>
52. Although the suspension conditions imposed by the Chamber no longer carry any legal force with regard to Mr Kilolo and Mr Mangenda, they abided by all of them for about half the time period set out by the Chamber in the Sentencing Decision (1.5 years). The Chamber considers their conduct while released on suspended sentences must be taken into account for their new sentences, making a time served penalty (i.e. imprisonment of about 11 months) more appropriate.
53. This is consistent with the non-custodial penalty originally imposed by the Chamber. Mr Kilolo was given a 30-month joint sentence and Mr Mangenda a 24-month joint sentence. But the remaining terms of imprisonment beyond what had already been spent in detention were suspended. This meant that the additional time given in the Sentencing Decision served only as an incentive to prompt compliance with the conditions of the suspended sentences. Mr Kilolo

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<sup>87</sup> First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 38-45; First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 8-31.

<sup>88</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 149, 197.

<sup>89</sup> Annexes A and B of First Mangenda Defence Submission, ICC-01/05-01/13-2280-Conf-AnxA, ICC-01/05-01/13-2280-Conf-AnxB; Annex B of First Kilolo Defence Submission, [ICC-01/05-01/13-2282-AnxB](#).

and Mr Mangenda have met all the conditions of their suspended sentences to date, and there is no indication that they would not have continued to meet them.

54. In this regard, it is emphasised that the Appeals Chamber directed this Chamber to make a new sentencing determination, not to treat the old sentences as ‘unsuspended’ and adjust them only from that starting point. If the only outcome of the Appeals Chamber’s findings had been to require that Mr Kilolo and Mr Mangenda serve at least their original sentences without suspension, then it stands to reason that the Appeals Chamber would have returned them to custody following the Sentencing Judgment.<sup>90</sup> It did not do so, suggesting that the prospect of a non-custodial penalty for Mr Kilolo and/or Mr Mangenda was not foreclosed by its reasoning.

#### **D. Article 70(1)(b) convictions**

##### *1. Why this requires new consideration*

55. This Chamber’s previous joint sentences took into account the convictions entered against the Three Convicted Persons for committing, as co-perpetrators, 14 offences of presenting the false evidence of witnesses pursuant to Article 70(1)(b) of the Statute.<sup>91</sup>
56. In the Appeals Judgment, the Appeals Chamber reversed these convictions, holding that Article 70(1)(b) of the Statute cannot be reconciled with the nature of oral testimony and is therefore meant to encompass only the presentation of false or forged documentary evidence.<sup>92</sup>

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<sup>90</sup> As requested in Prosecution Appeal Brief, [ICC-01/05-01/13-2168-Red](#), para. 171(iv) (‘in relation to the Second Ground of Appeal, to find that the Trial Chamber legally erred and/or abused its discretion in suspending the sentences of Mangenda and Kilolo, and to reverse the suspension and order Kilolo and Mangenda back into custody to serve the remainder of their sentences of imprisonment or any increased sentences as decided by the Appeals Chamber’).

<sup>91</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 146-47, 194-95, 249-50.

<sup>92</sup> Appeals Judgment, [ICC-01/05-01/13-2275-Red](#), paras 701-10.

57. Owing to the Appeals Chamber's finding, the Chamber must consider the effect of the reversed Article 70(1)(b) convictions on re-sentencing.

*2. Submissions, analysis and conclusions*

58. The Prosecution argues that the reversal of the Article 70(1)(b) convictions does not affect the sentences because: (i) the Article 70(1)(a) and (c) convictions alone are enough to justify a maximum five-year imprisonment term; and (ii) the Chamber already appears to have considered the overlapping conduct so as to not increase the original joint sentence.<sup>93</sup>

59. The Kilolo and Mangenda Defence argue that the new acquittals for the Article 70(1)(b) offences should yield a reduction in their sentences.<sup>94</sup>

60. The Chamber is not persuaded by the Prosecution's arguments that the Article 70(1)(b) convictions should have no effect on the Three Convicted Persons' joint sentences.

61. In its original Sentencing Decision, the Chamber determined an individual sentence for each offence for which the persons were convicted, including the offence under Article 70(1)(b) of the Statute. Following Article 78(3), first sentence, of the Statute, these individual sentences were taken into account for the determination of the joint sentence. Following the Appeals Judgment acquitting the Three Convicted Persons under Article 70(1)(b) of the Statute, the Chamber will not re-determine a sentence for this offence. As a result, it cannot be part of the joint sentence. As to the argument that the Article 70(1)(a) and (c) convictions

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<sup>93</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 50-53. *See also* Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 30, line 10, to page 31, line 23.

<sup>94</sup> First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 7-14; First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 49-55.

alone are enough to warrant a five-year imprisonment term, this is addressed below in the discussion of proportionality.<sup>95</sup>

62. The Chamber considers the Prosecution's argument that the loss of the Article 70(1)(b) convictions does not matter because the conduct overlaps is unpersuasive.
63. In the original Sentencing Decision, the Chamber did indeed consider that the conduct largely overlapped when setting the Three Convicted Persons' joint sentences. But Mr Kilolo and Mr Mangenda's joint imprisonment terms exceeded their highest individual sentences, and both Mr Bemba and Mr Kilolo were fined. The Chamber did not mechanistically conclude that the overlapping conduct led to the Article 70(1)(b) convictions having no impact on the joint sentence. Every conviction mattered in the Chamber's individualised determinations.
64. Further, although the Prosecution advances this argument, it is clear that it believes that additional convictions for distinct offences, even for overlapping conduct, should affect the joint sentence calculus. The Prosecution submits that 'to the extent that this Chamber did not increase the original sentences—*albeit incorrectly*—due to an overlap between the conduct underlying the cumulative convictions, the vacation of one of those convictions cannot now be used to lower a non-existent increase'.<sup>96</sup> The Prosecution essentially concedes that, properly understood, the loss of these convictions should matter.
65. It is self-evident to the Chamber that the loss of the Article 70(1)(b) convictions should have some effect on the joint sentences. This is a direct consequence of the application of Article 78(3), first sentence, of the Statute. When previously determining the joint sentences, the Chamber noted that the offences in the present case were characterising largely the same acts and conduct of the Three

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<sup>95</sup> Section VI.D.2 below.

<sup>96</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), para. 52 (citations removed and emphasis added).



Convicted Persons in three different ways under Article 70(1)(a), (b), and (c) of the Statute. In view of this overlap, the Chamber does consider that the loss of one of the three convicted offences should not lead to anything approaching a proportional reduction in the sentences to be imposed. But the Chamber does consider that this loss must be taken into account.

## **E. Time frame**

### *1. Why this requires new consideration*

66. In its assessment of gravity, the Trial Chamber stated that the Article 70(1)(c) offences had been committed over a period of almost two years.<sup>97</sup>
67. The Appeals Chamber found this to be a factual error by this Chamber, but concluded that it was ‘immaterial to its finding that the offences [...] extended over a lengthy period of time’ since the offences lasted at least 13 months.<sup>98</sup>

### *2. Submissions, analysis and conclusions*

68. The Prosecution argues that this error has no impact on the Chamber’s assessment of the sentences.<sup>99</sup>
69. The Kilolo Defence argues that the finding that the Chamber had erred in concluding that the Article 70(1)(c) offences had been committed over a period of almost two years should yield a reduction of Mr Kilolo’s sentence.<sup>100</sup>
70. The Chamber agrees with the Prosecution on this point. Whether the time frame is described as ‘almost two years,’<sup>101</sup> or described as ‘at least, over a period of 13 months’<sup>102</sup> or ‘over a year,’<sup>103</sup> these differences are not so significant in the present

<sup>97</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 107, 159, 209.

<sup>98</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 168.

<sup>99</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), para. 54.

<sup>100</sup> First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 15-19.

<sup>101</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 107, 159, 209.

<sup>102</sup> See Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 166.

case as to meaningfully affect the Chamber's considerations. Read in proper context, what the Chamber gave weight to was that the offences were organised and executed over a prolonged period.<sup>104</sup> This remains the case, which is why the Appeals Chamber found this error on the length of time to be immaterial.

71. The Chamber concludes that the revised time frame has no impact on the sentences to be imposed.

## **VI. Individual re-sentencing**

72. Beyond addressing these three individual errors found by the Appeals Chamber, the Prosecution argues that the Chamber is obliged to re-assess the gravity of the offences and the conduct of the three convicted persons (in light of its existing and new findings) and to impose sentences that are proportionate to the crimes.<sup>105</sup> As regards the use of fines, the Prosecution argues that fines should, in no case, serve as a substitute for an appropriate imprisonment term.<sup>106</sup>

73. Noting that the errors found by the Appeals Chamber concern only the Article 70(1)(a) offences, the Bemba Defence argues that the Prosecution never appealed the notion that the joint sentence should not have exceeded the highest individual sentence due to largely overlapping conduct. The Bemba Defence submits that this legally precludes the Prosecution from being able to increase the overall joint sentence, even if the Article 70(1)(a) sentence was individually determined in error.<sup>107</sup> The Kilolo Defence argues that the Appeals Chamber did not find that the sentence was manifestly inadequate or disproportionate.<sup>108</sup> The Mangenda

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<sup>103</sup> Separate Opinion of Judge Pangalangan, [ICC-01/05-01/13-2123-Anx](#), para. 18.

<sup>104</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 107, 159, 209 (the length of the time frame is noted only parenthetically in the course of the finding: '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. 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.').

<sup>105</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 55-82.

<sup>106</sup> First Prosecution Submission, [ICC-01/05-01/13-2279](#), paras 5, 80.

<sup>107</sup> First Bemba Defence Submission, [ICC-01/05-01/13-2281-Red](#), paras 36-37.

<sup>108</sup> First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), para. 4.

Defence also argues that certain of the Prosecution's submissions about re-assessing gravity and culpability go towards re-litigating settled matters.<sup>109</sup>

74. Contrary to the arguments of the Defence, the Appeals Chamber did not resolve the question of whether the sentences imposed by the Chamber were otherwise proportionate. After finding that the sentences for the Three Convicted Persons needed to be remanded for a new determination, the Appeals Chamber considered it 'unnecessary to determine at this point whether the sentences pronounced against Mr Mangenda, Mr Kilolo and Mr Bemba are so manifestly low and inadequate *per se* as to constitute an abuse of discretion on the part of the Trial Chamber.'<sup>110</sup>
75. The Chamber will therefore re-assess all sentencing factors considered in the next section and determine a sentence that reflects the culpability of the convicted person and is proportionate to the offence within the meaning of Articles 81(2)(a) and 83(3) of the Statute. When the Chamber considers that its prior considerations remain accurate, cross-references will be used to reflect which paragraphs from the Sentencing Decision are incorporated by reference in this decision. On the basis of its complete re-assessment, the Chamber will impose new sentences for the Three Convicted Persons.

#### **A. Jean-Jacques Mangenda Kabongo**

##### *1. Gravity of the offences*

76. In the Sentencing Decision, when addressing the gravity of the Article 70(1)(c) offences for which Mr Mangenda was found responsible, the Chamber considered the following:

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<sup>109</sup> First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), paras 60-64.

<sup>110</sup> Sentencing Judgment, [ICC-01/05-01/13-2276-Red](#), para. 90.

- (i) Corruptly influencing witnesses has far-reaching consequences, as it undermines the Court's discovery of the truth and impedes justice for victims.<sup>111</sup>
  - (ii) The extent of the damage caused: Mr Mangenda's contribution involved a particularly high percentage of witnesses (14 of the 34 Main Case Defence witnesses), characterising the systematic approach of the offence.<sup>112</sup>
  - (iii) Following their illicit coaching, the Corrupted Witnesses subsequently testified falsely in the Main Case.<sup>113</sup>
  - (iv) The unlawful behaviour was part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.<sup>114</sup>
  - (v) The offences were devised, planned and committed by the Three Convicted Persons together. The number of perpetrators involved in the commission of the offences at stake – because of a necessary need of organisation and the potential of a coercive group dynamic – was found to be relevant.<sup>115</sup>
  - (vi) The offences were extensive in scope, planning, preparation and execution.<sup>116</sup>
  - (vii) The lengthy period over which the offences were committed.<sup>117</sup>
77. Regarding the Article 70(1)(c) offences, the Chamber considers that its previous balancing of all these factors remains accurate. The Chamber considers that accounting for the original calculation as to the lengthy time frame during which the offences were committed has no impact on the sentence to be imposed.<sup>118</sup>
78. When addressing the gravity of the Article 70(1)(a) offences for which Mr Mangenda was found responsible, the Chamber considered the following:
- (i) Giving false testimony before the Court has far-reaching consequences. A witness falsely testifying renders his or her evidence unreliable, which

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<sup>111</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 101.

<sup>112</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 102.

<sup>113</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 103.

<sup>114</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 104.

<sup>115</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 104.

<sup>116</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 105.

<sup>117</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 107.

<sup>118</sup> Section V.E above.

affects the integrity of the proceedings. Ultimately, giving false evidence undermines the Court's discovery of the truth and impedes justice for victims.<sup>119</sup>

- (ii) The extent of the damage caused, noting that Mr Mangenda's assistance involved nine of the 14 Main Case Defence witnesses.<sup>120</sup>
  - (iii) The nature of the unlawful behaviour.<sup>121</sup>
  - (iv) The nature of the false testimony.<sup>122</sup>
79. Regarding the Article 70(1)(a) offences, the Chamber considers that its previous balancing of factors (i)-(iii) remains accurate. As to the nature of the false testimony, the Chamber revises its assessment as indicated in its joint considerations above.<sup>123</sup> For Mr Mangenda, this means that, all other things being equal, his Article 70(1)(a) sentence would increase. But the effect is relatively small, as the Chamber's original assessment already gave proper weight on this point in most material respects.
80. As regards its considerations in relation to the gravity of the Article 70(1)(b) offences,<sup>124</sup> the Chamber disregards this portion of its assessment.

## 2. *Culpable conduct*

81. In the Sentencing Decision, when addressing culpable conduct, the Chamber considered Mr Mangenda's:
- (i) Degree of participation, including his varying degree of participation in the execution of the offences.<sup>125</sup>
  - (ii) Degree of intent.<sup>126</sup>
  - (iii) His role *vis-à-vis* the other co-perpetrators.<sup>127</sup>

<sup>119</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 112.

<sup>120</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 113.

<sup>121</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 114.

<sup>122</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 115.

<sup>123</sup> Section V.A above.

<sup>124</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 108-11.

<sup>125</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 117-24.

<sup>126</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 125-27.

- (iv) Abuse of trust *vis-à-vis* the Court.<sup>128</sup>
- (v) Role in the attempt to obstruct the Article 70 investigation.<sup>129</sup>

82. As for Mr Mangenda's degree of participation and intent, the Chamber confirms its previous assessment as explained in its new considerations on principal versus accessorial liability in the present case.<sup>130</sup> The additional considerations unique to Mr Mangenda lead to a conclusion that his Article 70(1)(a) sentence should still be proportionately lower than his Article 70(1)(c) sentence, even after accounting for the new considerations on the nature of the false testimony. The Chamber also revises its assessment to the extent it considered Mr Mangenda's participation and intent in relation to the reversed Article 70(1)(b) offences.<sup>131</sup>
83. For the remaining factors, the Chamber considers that its previous balancing of them remains accurate.

### 3. *Individual circumstances*

84. In the Sentencing Decision, when addressing Mr Mangenda's individual circumstances, the Chamber considered:
- (i) His good behaviour throughout the trial and cooperation with the Court.<sup>132</sup>
  - (ii) The absence of criminal record.<sup>133</sup>
  - (iii) Being prohibited from working in his country of residence.<sup>134</sup>
85. As to Mr Mangenda's good behaviour and cooperation with the Court, the Chamber revises its assessment to include how Mr Mangenda has abided by the conditions of his suspended sentence.<sup>135</sup>

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<sup>127</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 128-29.

<sup>128</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 131.

<sup>129</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 133.

<sup>130</sup> Section V.B above.

<sup>131</sup> Section V.D above.

<sup>132</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 136, 138.

<sup>133</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 137.

<sup>134</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 141.

86. For the remaining factors, the Chamber considers that its previous balancing of them remains accurate.

4. *Determination of sentence*

87. Mindful of the time already spent in detention, the Chamber has weighed and balanced all these factors for purposes of re-sentencing, revising its earlier assessments as necessary. In particular, it is recalled for Mr Mangenda that: (i) Mr Mangenda is responsible for Article 70(1)(c) offences with respect to all 14 of the Corrupted Witnesses, but for Article 70(1)(a) offences with respect to only nine of them; (ii) his abidance for such a long time with the conditions of his suspended sentence, despite its reversal, warrants refashioning his sentence commensurate with the non-custodial penalty originally imposed;<sup>136</sup> (iii) the reversed Article 70(1)(b) convictions should lead to some reduction in his joint sentence;<sup>137</sup> and (iv) he has no prior criminal record.

88. The Chamber is again called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Mangenda's culpability. In 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 11 months' imprisonment.
- (ii) 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 seven months' imprisonment.

89. 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 11 months' imprisonment.

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<sup>135</sup> Section V.C above.

<sup>136</sup> Section V.C above.

<sup>137</sup> Section V.D above.

90. 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 2013<sup>138</sup> - until his release on 31 October 2014.<sup>139</sup> Since the imposed sentence is less than the credit to be applied for the period of time Mr Mangenda has been in custody, the Chamber considers the sentence of imprisonment as served.
91. The Chamber finds that imprisonment is a sufficient penalty and does not impose a fine. As with the other convicted persons in this case who have no fine ordered against them, the asset freezing order in this case ceases to have effect with respect to him.<sup>140</sup>
92. As regards the Prosecution's request to notify the professional bodies to which Mr Mangenda belongs of his convictions confirmed on appeal and to remove him from the Court's list of assistants to counsel, the Chamber holds that these actions fall squarely within the responsibilities of the Registrar.<sup>141</sup>

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<sup>138</sup> Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, [ICC-01/05-01/13-1-tENG](#) ('Arrest Warrant').

<sup>139</sup> 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 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.

<sup>140</sup> See Arrest Warrant, [ICC-01/05-01/13-1-tENG](#), para. 25(c) (the original freezing order).

<sup>141</sup> See Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 151 (rejecting a similar Prosecution request). It is also noted that Mr Mangenda's name no longer appears on the latest List of Assistants to Counsel (dated 8 August 2018).



## B. Aimé Kilolo Musamba

### 1. Gravity of the offences

93. In the Sentencing Decision, when addressing the gravity of the Article 70(1)(c) offences for which Mr Kilolo was found responsible, the Chamber considered the following:

- (i) Corruptly influencing witnesses has far-reaching consequences, as it undermines the Court's discovery of the truth and impedes justice for victims.<sup>142</sup>
- (ii) The extent of the damage caused. Mr Kilolo's contribution involved a particularly high percentage of witnesses (14 of the 34 Main Case Defence witnesses), characterising the systematic approach of the offence.<sup>143</sup>
- (iii) Following their illicit coaching, the Corrupted Witnesses subsequently testified falsely in the Main Case.<sup>144</sup>
- (iv) The unlawful behaviour was part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.<sup>145</sup>
- (v) The offences were devised, planned and committed by the Three Convicted Persons together. The number of perpetrators involved in the commission of the offences at stake – because of a necessary need of organisation and the potential of a coercive group dynamic – was found to be relevant.<sup>146</sup>
- (vi) The offences were extensive in scope, planning, preparation and execution.<sup>147</sup>
- (vii) The lengthy period over which the offences were committed.<sup>148</sup>

94. Regarding the Article 70(1)(c) offences, the Chamber considers that its previous balancing of all these factors remains accurate. The Chamber considers that

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<sup>142</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 154.

<sup>143</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 155.

<sup>144</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 156.

<sup>145</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 157.

<sup>146</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 157.

<sup>147</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 158.

<sup>148</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 159.

accounting for the original calculation as to the lengthy time frame during which the offences were committed has no impact on the sentence to be imposed.<sup>149</sup>

95. In addressing the gravity of the Article 70(1)(a) offences for which Mr Kilolo was found responsible, the Chamber considered the following:

- (i) Giving false testimony before the Court 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.<sup>150</sup>
- (ii) The extent of the damage caused.<sup>151</sup>
- (iii) The nature of the unlawful behaviour.<sup>152</sup>
- (iv) The nature of the false testimony.<sup>153</sup>

96. Regarding the Article 70(1)(a) offences, the Chamber considers that its previous balancing of factors (i)-(iii) remains accurate. As to the nature of the false testimony, the Chamber revises its assessment as indicated in its joint considerations above.<sup>154</sup> For Mr Kilolo, this means that, all other things being equal, his Article 70(1)(a) sentence would increase. But the effect is relatively small, as the Chamber's original assessment already gave proper weight on this point in most material respects.

97. As regards its considerations in relation to the gravity of the Article 70(1)(b) offences,<sup>155</sup> the Chamber disregards this portion of its assessment.

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<sup>149</sup> Section V.E above.

<sup>150</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 164.

<sup>151</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 165.

<sup>152</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 166.

<sup>153</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 167.

<sup>154</sup> Section V.A above.

<sup>155</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 160-63.

## 2. *Culpable conduct*

98. In the Sentencing Decision, in addressing culpable conduct, the Chamber considered Mr Kilolo's:

- (i) Degree of participation.<sup>156</sup>
- (ii) Degree of intent.<sup>157</sup>
- (iii) Abuse of trust *vis-à-vis* the Court.<sup>158</sup>
- (iv) Abuse of the lawyer-client privilege and attendant rights.<sup>159</sup>
- (v) Role in the attempt to obstruct the Article 70 investigation.<sup>160</sup>

99. As for Mr Kilolo's degree of participation and intent, the Chamber revises its assessment to reflect its new considerations on principal versus accessorial liability in the present case.<sup>161</sup> This re-assessment, combined with the new considerations on the nature of the false testimony, justifies increasing Mr Kilolo's Article 70(1)(a) sentence to match his Article 70(1)(c) sentence. The Chamber also revises its assessment to the extent it considered Mr Kilolo's participation and intent in relation to the reversed Article 70(1)(b) offences.<sup>162</sup>

100. For the remaining factors, the Chamber considers that its previous balancing of them remains accurate.

## 3. *Individual circumstances*

101. In the Sentencing Decision, when addressing Mr Kilolo's individual circumstances, the Chamber considered:

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<sup>156</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 169-74.

<sup>157</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 175.

<sup>158</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 177.

<sup>159</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 179.

<sup>160</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 181.

<sup>161</sup> Section V.B above.

<sup>162</sup> Section V.D above.

- (i) His efforts to promote the legal profession in Belgium and the Democratic Republic of the Congo.<sup>163</sup>
- (ii) His involvement in an NGO.<sup>164</sup>
- (iii) His cooperation with the Court and constructive attitude during trial.<sup>165</sup>
- (iv) The absence of a criminal record and disciplinary record with the Brussels bar.<sup>166</sup>

102. As to Mr Kilolo's good behaviour and cooperation with the Court, the Chamber revises its assessment to include how Mr Kilolo has abided by the conditions of his suspended sentence.<sup>167</sup>

103. For the remaining factors, the Chamber considers that its previous balancing of them remains accurate. The Chamber notes the Prosecution's reference to Mr Kilolo's recent interview in which he described the Main Case acquittal as 'the feeling of a duty accomplished' and called for the Prosecutor of this Court to resign.<sup>168</sup> The Chamber certainly agrees that these words reveal no hint of an apology or acknowledgment of wrongdoing. This said, the Chamber never made a finding in the Sentencing Decision that Mr Kilolo had apologised and the absence of mitigating circumstances does not constitute an aggravating circumstance.

#### 4. *Determination of sentence*

104. Mindful of the time already spent in detention, the Chamber has weighed and balanced all these factors for purposes of re-sentencing, revising its earlier assessments as necessary. In particular, it is recalled for Mr Kilolo that: (i) his abidance for such a long time with the conditions of his suspended sentence,

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<sup>163</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 186.

<sup>164</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 186.

<sup>165</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 186.

<sup>166</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 184.

<sup>167</sup> Section V.C above.

<sup>168</sup> Re-sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 18, lines 16-21; page 32, lines 14-25, *referencing* Congo Independent Article, 11 June 2018, CAR-OTP-0095-0050.

despite its reversal, warrants refashioning his sentence commensurate with the non-custodial penalty originally imposed,<sup>169</sup> (ii) the reversed Article 70(1)(b) convictions should lead to some reduction in his joint sentence,<sup>170</sup> and (iii) he has no prior criminal record.

105. The Chamber is again called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Kilolo's culpability. In 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 11 months' imprisonment.
- (ii) 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 11 months' imprisonment.

106. 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 11 months' imprisonment.

107. 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<sup>171</sup> - until his release on 22 October 2014.<sup>172</sup> Since the imposed sentence is equal to the credit to be applied for the period of time Mr Kilolo has been in custody, the Chamber considers the sentence of imprisonment as served.

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<sup>169</sup> Section V.C above.

<sup>170</sup> Section V.D above.

<sup>171</sup> Arrest Warrant, [ICC-01/05-01/13-1-tENG](#).

<sup>172</sup> [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.

108. In addition, the Chamber again finds that a fine is a suitable part of the sentence. The Chamber recalls 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.<sup>173</sup> Recognising Mr Kilolo's enhanced culpability on the Chamber's revised assessment (in comparison to Mr Mangenda) and considering his solvency,<sup>174</sup> the Chamber is of the view that he must be fined the same amount as before: EUR 30,000.
109. The Chamber applies the same conditions on this fine as it did in the Sentencing Decision. Specifically: (i) the fine must be transferred ultimately to the TFV; (ii) the amount must be paid to the Court within three months of this decision and may be paid in instalments; (iii) Mr Kilolo may use his frozen bank account to pay his fine, but this account must remain frozen until the fine is paid in full.<sup>175</sup> Once this fine is paid, the asset freezing order issued in this case ceases to have effect with respect to him.
110. As regards the Prosecution's request to notify the professional bodies to which Mr Kilolo belongs of his convictions confirmed on appeal and to remove him from the Court's list of counsel, the Chamber holds that these actions fall squarely within the responsibilities of the Registrar.<sup>176</sup>

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<sup>173</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 198.

<sup>174</sup> Rule 166(3) of the Rules; ICC-01/05-01/13-2295-Conf-Exp-AnxI; ICC-01/05-01/13-2278-Conf-Exp-AnxII; First Kilolo Defence Submission, [ICC-01/05-01/13-2282-Corr-Red](#), paras 47-49, 51. The Kilolo Defence requests a fine of this amount in its relief sought, confirming that his financial needs and those of his dependents – which Rule 166(3) requires to be taken into account when imposing fines – will still be met.

<sup>175</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 199-200. *See also* Arrest Warrant, [ICC-01/05-01/13-1-ENG](#), para. 25(c) (the original freezing order).

<sup>176</sup> *See* Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 201 (rejecting a similar Prosecution request). It is also noted that Mr Kilolo's name no longer appears on the latest List of Counsel (dated 8 August 2018).

## C. Jean-Pierre Bemba Gombo

### 1. Gravity of the offences

111. In the Sentencing Decision, when addressing the gravity of the Article 70(1)(c) offences for which Mr Bemba was found responsible, the Chamber considered the following:

- (i) Corruptly influencing witnesses has far-reaching consequences, as it undermines the Court's discovery of the truth and impedes justice for victims.<sup>177</sup>
- (ii) The extent of the damage caused. Mr Bemba's contribution involved a particularly high percentage of witnesses (14 of the 34 Main Case Defence witnesses), characterising the systematic approach of the offence.<sup>178</sup>
- (iii) Following their illicit coaching, the Corrupted Witnesses subsequently testified falsely in the Main Case.<sup>179</sup>
- (iv) The unlawful behaviour was part of a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba's favour.<sup>180</sup>
- (v) The offences were devised, planned and committed by the Three Convicted Persons together. The number of perpetrators involved in the commission of the offences at stake – because of a necessary need of organisation and the potential of a coercive group dynamic – was found to be relevant.<sup>181</sup>
- (vi) The offences were extensive in scope, planning, preparation and execution.<sup>182</sup>
- (vii) The lengthy period over which the offences were committed.<sup>183</sup>

112. Regarding the Article 70(1)(c) offences, the Chamber considers that its previous balancing of all these factors remains accurate. The Chamber considers that

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<sup>177</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 204.

<sup>178</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 205.

<sup>179</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 206.

<sup>180</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 207.

<sup>181</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 207.

<sup>182</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 208.

<sup>183</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 209.

accounting for the original calculation as to the lengthy time frame during which the offences were committed has no impact on the sentence to be imposed.<sup>184</sup>

113. When addressing the gravity of the Article 70(1)(a) offences for which Mr Bemba was found responsible, the Chamber considered the following:

- (i) Giving false testimony before the Court 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.<sup>185</sup>
- (ii) The extent of the damage caused.<sup>186</sup>
- (iii) The nature of the unlawful behaviour.<sup>187</sup>
- (iv) The nature of the false testimony.<sup>188</sup>

114. Regarding the Article 70(1)(a) offences, the Chamber considers that its previous balancing of factors (i)-(iii) remains accurate. As to the nature of the false testimony, the Chamber revises its assessment as indicated in its joint considerations above.<sup>189</sup> For Mr Bemba, this means that, all other things being equal, his Article 70(1)(a) sentence would increase. But the effect is relatively small, as the Chamber's original assessment already gave proper weight on this point in most material respects.

115. As regards its considerations in relation to the gravity of the Article 70(1)(b) offences,<sup>190</sup> the Chamber disregards this portion of its assessment.

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<sup>184</sup> Section V.E above.

<sup>185</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 214.

<sup>186</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 215.

<sup>187</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 216.

<sup>188</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 217.

<sup>189</sup> Section V.A above.

<sup>190</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 210-13.



## 2. *Culpable conduct*

116. In the Sentencing Decision, when addressing culpable conduct, the Chamber considered Mr Bemba's:

- (i) Degree of participation, including his varying degree of participation in the execution of the offences.<sup>191</sup>
- (ii) Degree of intent.<sup>192</sup>
- (iii) Abuse of the lawyer-client privilege and attendant rights.<sup>193</sup>
- (iv) Role in the attempt to obstruct the Article 70 investigation.<sup>194</sup>
- (v) Taking advantage of his position as long-time and current MLC President.<sup>195</sup>

117. As for Mr Bemba's degree of participation and intent, the Chamber revises its assessment to reflect its new considerations on principal versus accessorial liability in the present case.<sup>196</sup> This re-assessment, combined with the new considerations on the nature of the false testimony, justifies increasing Mr Bemba's Article 70(1)(a) sentence to match his Article 70(1)(c) sentence. The Chamber also revises its assessment to the extent it considered Mr Bemba's participation and intent in relation to the reversed Article 70(1)(b) offences.<sup>197</sup>

118. For the remaining factors, the Chamber considers that its previous balancing of them remains accurate.

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<sup>191</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 219-23.

<sup>192</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 224-26.

<sup>193</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 236.

<sup>194</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 238.

<sup>195</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 234.

<sup>196</sup> Section V.B above.

<sup>197</sup> Section V.D above.

### 3. *Individual circumstances*

119. In the Sentencing Decision, when addressing Mr Bemba's individual circumstances, the Chamber considered Mr Bemba's family situation.<sup>198</sup> The Chamber considers that its previous balancing of this remains accurate. As to the Bemba Defence arguments that this case has affected his professional life,<sup>199</sup> the Chamber will only give minimal weight to this for purposes of re-sentencing. The fact that Mr Bemba's conviction had a negative impact on his professional life is a natural consequence of the circumstances Mr Bemba found himself as a result of the criminal behaviour that he has been convicted for.<sup>200</sup>

### 4. *Determination of sentence*

120. Mindful of the time already spent in detention, the Chamber has weighed and balanced all these factors for purposes of re-sentencing, revising its earlier assessments as necessary. In particular, it is recalled for Mr Bemba that the reversed Article 70(1)(b) convictions should lead to some reduction in his joint sentence.<sup>201</sup>

121. The Chamber is again called upon to determine a sentence that is proportionate to the offences committed and which reflects Mr Bemba's culpability. Following Mr Bemba's Main Case acquittal, the Chamber understands the Bemba Defence as requesting that the Chamber only impose a reasonable fine with no imprisonment term.<sup>202</sup> The Chamber recalls its finding that the Main Case acquittal has no impact on the sentences to be imposed,<sup>203</sup> and considers that it would not adequately

<sup>198</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 244.

<sup>199</sup> See Annex A to the Urgent request, 10 September 2018, [ICC-01/05-01/13-2307-AnxA](#).

<sup>200</sup> *In this regard, compare* Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), paras 141, 188-89 (total prohibition from working in country of residence considered as an individual circumstance, whereas mere harm to one's career does not constitute a mitigating factor).

<sup>201</sup> Section V.D above.

<sup>202</sup> Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 42, line 5, to page 43, line 15, page 68, line 1, to page 75, line 24.

<sup>203</sup> Paragraphs 19-25 above, especially paragraph 23.

reflect Mr Bemba's culpability for him to have no term of imprisonment declared against him.

122. In 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 12 months' imprisonment.
- (ii) 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 12 months' imprisonment.

123. 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 12 months' imprisonment.<sup>204</sup> As Mr Bemba no longer has a Main Case sentence to serve, it is no longer necessary to consider imposing a concurrent or consecutive sentence.

124. Pursuant to Article 78(2) of the Statute, Mr Bemba is entitled to have deducted from his sentence the time previously spent in detention in accordance with an order of the Court. The Bemba Defence presents an array of arguments that Mr Bemba's credit already exceeds the maximum sentence which can be imposed,<sup>205</sup> but the Chamber has already expressly found to the contrary.<sup>206</sup> The Chamber considers that the appropriate credit to be given is a straightforward calculation of how many days Mr Bemba was detained in accordance with the arrest warrant issued in the present case.<sup>207</sup>

125. In the context of the present proceedings, this is to be calculated from 23 November 2013, the day Mr Bemba, while in detention in the context of the Main Case, received the warrant of arrest.<sup>208</sup> Following an Article 60(2)

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<sup>204</sup> See footnote 214 below.

<sup>205</sup> Re-Sentencing Hearing, [ICC-01/05-01/13-T-59-ENG](#), page 57, line 21, to page 67, line 25.

<sup>206</sup> Bemba Release Decision, [ICC-01/05-01/13-2291](#), para. 6.

<sup>207</sup> Article 78(2) of the Statute (first sentence).

<sup>208</sup> Arrest Warrant, [ICC-01/05-01/13-1-tENG](#).

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 2015<sup>209</sup> which was, however, reversed upon appeal.<sup>210</sup> Since Mr Bemba was detained in the context of the Main Case, he was never in fact provisionally released.<sup>211</sup> 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.<sup>212</sup> Mr Bemba was not finally released for purposes of this case until 12 June 2018.<sup>213</sup>

126. Therefore, by the Chamber’s calculation, Mr Bemba has been detained for purposes of this case for four years and two months. This counts all the time Mr Bemba was detained in the present case from 23 November 2013 to 12 June 2018, minus the four-month period in 2015 when Mr Bemba was technically released and then re-detained. Since the imposed sentence is far less than the credit to be applied for the period of time Mr Bemba has been in custody, the Chamber considers the sentence of imprisonment as served.<sup>214</sup>

127. In addition, the Chamber again finds that a fine is a suitable part of the sentence. The Chamber recalls that there is a need to discourage this type of behaviour and

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<sup>209</sup> Pre-Trial Chamber II, Decision on “Mr Bemba’s Request for provisional release”, 23 January 2015, [ICC-01/05-01/13-798](#).

<sup>210</sup> 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](#), OA10.

<sup>211</sup> 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’. [ICC-01/05-01/13-798](#), page 4.

<sup>212</sup> Defence Observations on continued detention or release, 19 June 2015, [ICC-01/05-01/13-1016](#).

<sup>213</sup> Bemba Release Decision, [ICC-01/05-01/13-2291](#).

<sup>214</sup> In Judge Pangalangan’s separate opinion, it was (and is) his view that Mr Bemba should receive something closer to a four year sentence for his offences. Separate Opinion of Judge Pangalangan, [ICC-01/05-01/13-2123-Anx](#), para. 18. However, he held that Mr Bemba was entitled to sentencing credits for the three years that he was detained under an arrest warrant issued in this case (as opposed to the Majority, who in the Sentencing Decision gave no credit because of Mr Bemba’s Main Case detention). This is why he concurred in the result that Mr Bemba was to serve one year of additional imprisonment following the 22 March 2017 Sentencing Decision. Since Mr Bemba has now served more than four years in detention in this case, he has accrued enough sentencing credits to cover the four-year sentence proposed by Judge Pangalangan, who accordingly concurs that a time-served sentence for Mr Bemba is now appropriate.

to ensure that the repetition of such conduct on the part of Mr Bemba or any other person is dissuaded.<sup>215</sup> Recognising Mr Bemba's enhanced culpability, and considering his solvency,<sup>216</sup> the Chamber is of the view that he must be fined the same amount as before: EUR 300,000.

128. The Chamber applies the same conditions on this fine as it did in the Sentencing Decision. Specifically: (i) the fine must be transferred ultimately to the TFV and (ii) the amount must be paid to the Court within three months of this decision and may be paid in instalments.<sup>217</sup> Mr Bemba may use his frozen assets to pay his fine, and once it is paid the asset freezing order issued in this case ceases to have effect with respect to him.<sup>218</sup>

#### **D. Final conclusions**

129. As demonstrated in the course of its re-sentencing, the Chamber concluded that the Three Convicted Persons': (i) Article 70(1)(a) sentences have been revised upwards, albeit marginally, after re-assessing the nature of the unlawful testimony; (ii) Article 70(1)(a) sentences have been revised upwards after re-assessing their degree of participation and intent (for Bemba and Kilolo only); (iii) individual and joint sentences have been adjusted to reflect the loss of the Chamber's power to suspend sentences (for Kilolo and Mangenda only); and (iv) joint sentences have been revised downwards following the reversal of the Article 70(1)(b) convictions.

130. The Chamber considers that the combined effect of these considerations is that: (i) Mr Bemba and Mr Kilolo have been given the same term of imprisonment under

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<sup>215</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 261.

<sup>216</sup> Rule 166(3) of the Rules; ICC-01/05-01/13-2295-Conf-Exp-AnxII; ICC-01/05-01/13-2278-Conf-Exp-AnxI; ICC-01/05-01/13-2281-Conf-Exp, paras 50, 62-75 (especially paragraph 50); ICC-01/05-01/13-2281-Conf-AnxC. The Bemba Defence at one point requested that a substantial fine 'should be maintained', confirming that the financial needs of Mr Bemba and his dependents – which Rule 166(3) requires to be taken into account when imposing fines – will still be met by imposing an identical fine to the one specified in the Sentencing Decision.

<sup>217</sup> Sentencing Decision, [ICC-01/05-01/13-2123-Corr](#), para. 262.

<sup>218</sup> See Arrest Warrant, [ICC-01/05-01/13-1-tENG](#), para. 25(c) (the original freezing order).

Article 70(1)(a) and (c); (ii) Mr Mangenda's Article 70(1)(a) sentence remains proportionately lower than his Article 70(1)(c) sentence; (iii) Mr Kilolo and Mr Mangenda have been given non-custodial penalties; and (iv) the individual sentences under Article 70(1)(b) have been discarded entirely.

1. *Joint sentences*

131. As seen above, the Chamber is not convinced that its original imprisonment sentences, properly understood (i.e. with the understanding that Mr Kilolo and Mr Mangenda were given non-custodial penalties), require substantial change following the Appeals Chamber judgments in this case. Many of the Chamber's new considerations cut in opposing directions and, to an extent, cancel each other out. This leads to a result akin to what was pronounced in the original Sentencing Decision.
132. As regards the new assessment on degree of participation/intent in particular, the Chamber again recalls that it is essentially the same acts and conduct underlying Mr Bemba and Mr Kilolo's Article 70(1)(a) and (c) convictions. This fact supports the notion that it would be fair in this case to set joint imprisonment terms for them no higher than the highest individual imprisonment term.<sup>219</sup> The loss of the Article 70(1)(b) convictions further bolsters this conclusion.
133. For Mr Bemba and Mr Kilolo, the Chamber has concluded that the most appropriate way to reflect that they have been convicted for two distinct offences is through the use of fines. The Chamber disagrees with the Prosecution that such a course is some sort of use of financial means for escaping appropriate punishment. The statutory scheme sets very few limits on imposing fines – so long as the fine falls within the statutory maximum,<sup>220</sup> the Chamber may impose

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<sup>219</sup> *As permitted by Article 78(3) of the Statute.*

<sup>220</sup> Rule 166(3) of the Rules ('Under no circumstances may the total amount exceed 50 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.').

them whenever it considers them to be an appropriate penalty. Fines are of course, all things being equal, a less restrictive penalty on a convicted person than imprisonment. This said, if the Chamber maintains the same fines as those set in the Sentencing Decision despite the loss of the Article 70(1)(b) convictions, this actually constitutes a relatively higher penalty than the fines imposed in the Sentencing Decision.

134. After considering all its new considerations holistically, the Chamber remains of the view that this is a case where fines would be well-suited. Fines for Mr Bemba and Mr Kilolo create some additional penalty for the violation of two provisions under Article 70 of the Statute while balancing the fact that the same conduct underlies each conviction. Given that Mr Bemba has considerably more means than Mr Kilolo, Mr Bemba's fine would need to be substantially higher in order to have an equivalent deterrent effect.
135. For Mr Mangenda, his conduct overlaps across his convictions in the same way as Mr Bemba and Mr Kilolo. The Chamber also recalls the additional considerations unique to him which justify a lower sentence.<sup>221</sup> Considering the combined effect of all these considerations warrants setting joint imprisonment only as high as his highest individual imprisonment term, with no further penalty.

## *2. Proportionality*

136. As a final consideration, the Chamber will address the Prosecution's submissions that, above and beyond the errors found by the Appeals Chamber, the sentences previously imposed – and now effectively reimposed – are manifestly disproportionate.
137. Determining sentences is not a natural science. For all the guidance provided by the statutory framework, it inevitably falls to the judges to make a personal

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<sup>221</sup> Paragraphs 42-43 above.

decision on what is a fair penalty.<sup>222</sup> This explains why trial chambers have ‘broad discretion’ in determining a sentence.<sup>223</sup> In its newly determined sentences, the Chamber considers it immaterial that its conclusions result in certain terms of imprisonment being reduced following the Prosecution’s successful appeal. What matters is setting appropriate and proportionate sentences under the circumstances – the Appeals Chamber remanded the sentences for a new determination, and not to set a higher sentence *per se*. Comparing the new sentences to the previous ones is also, to an extent, a question of interpretation.<sup>224</sup>

138. The Chamber places special emphasis on the fact that the Three Convicted Persons have been imprisoned for significant periods of time in the present case (Mr Bemba for over four years, and Mr Kilolo and Mr Mangenda for just under one year each). The case has had significant effects on their professional reputations, financial circumstances (irrespective of any fines) and family circumstances. The Chamber sees a large deterrent effect in the very notion that persons working on an ICC defence team could be arrested, put in detention for a significant period of time, and convicted for criminal conduct in the course of their work. Future accused persons can look at Mr Bemba’s conviction as a cautionary example as to what consequences obstructing the course of justice can have. Mr Bemba’s acquittal in the Main Case should have been the end to his

<sup>222</sup> Transcript of hearing, 22 March 2017, [ICC-01/05-01/13-T-56-ENG](#), page 6, lines 21-23.

<sup>223</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute”, 1 December 2014, [ICC-01/04-01/06-3122](#), A4 A6, para. 40.

<sup>224</sup> For instance, in its appeal brief, the Prosecution analysed the Three Convicted Persons’ original sentences by calculating imprisonment days per offence. So, on the Prosecution’s calculations: (i) Bemba received 8.6 days per offence (365 day [1 year] imprisonment divided by 42 offences); (ii) Kilolo received 21.4 days per offence (912 day [2.5 year] imprisonment divided by 42 offences); and (iii) Mangenda received 19.5 days per offence (730 day [2 year] imprisonment divided by 37 offences). Prosecution Appeal Brief, [ICC-01/05-01/13-2168-Red](#), para. 25. But the Prosecution’s calculations are problematic because Kilolo and Mangenda’s days per offence are calculated off their full, non-suspended imprisonment terms. If their sentences are reduced to 335 days [11 months] each (i.e. in line with the Chamber’s original non-custodial penalty), then Kilolo receives about 8 days per offence while Mangenda receives about 9 days per offence. Once the original days per offence are properly calculated, in order to maintain the Three Convicted Persons’ joint imprisonment sentences following the loss of the 14 Article 70(1)(b) convictions, then the days per offence numbers would have to increase as follows: (i) Bemba receives about 13 days per offence (1 year imprisonment divided by 28 offences, for a 50% increase); (ii) Kilolo receives about 12 days per offence (11 months imprisonment divided by 28 offences, for a 50% increase) and (iii) Mangenda receives about 14.5 days per offence (11 months imprisonment divided by 23 offences, for about a 60% increase).



exposure to the Court, yet he continues to have the spectre of this institution hanging over him because of his obstruction of the administration of justice. Maximum prison sentences are not necessary for this case to matter.<sup>225</sup>

139. The Chamber considers that the penalties it imposes during re-sentencing are proportionate relative to the seriousness of the offences in this case and reflect all relevant factors set out previously, especially as regards mitigating factors. More broadly, the Chamber considers that the Prosecution fails to appreciate the full retributive and deterrent effect of what has already been done.

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<sup>225</sup> As noted by the Mangenda Defence: ‘The five-year sentence sought by the Prosecution would mean the imposition of a sentence equal to or greater than that imposed on a participant in the execution of more than 1000 prisoners; one of the persons responsible for the notorious Omarska Camp; a guard at the Keraterm Camp; a General who facilitated the Srebrenica genocide; a General who commanded troops involved in war crimes; and a municipal official who oversaw expulsions and killings.’ First Mangenda Defence Submission, [ICC-01/05-01/13-2280-Red-Corr](#), para. 56, referring to ICTY, Trial Chamber, *Prosecutor v. Dražen Erdemović*, Sentencing Judgement, 5 March 1998, [IT-96-22-Tbis](#), para. 23; ICTY, Appeals Chamber, *Prosecutor v. Miroslav Kvočka et al.*, Judgement, 28 February 2005, [IT-98-30/1-A](#), paras 724-725 (in respect of Prać); ICTY, Trial Chamber, *Prosecutor v. Duško Sikirica et al.*, Sentencing Judgement, 13 November 2001, [IT-95-8-S](#), para. 239 (in respect of Došen); ICTY, Trial Chamber, *Prosecutor v. Vujadin Popović et al.*, Judgement, 10 June 2010, [IT-05-88-T](#), page 837 (in respect of Gvero, whose sentence was not disturbed on appeal following his death during appellate proceedings); ICTY, Appeals Chamber, *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Judgement, 22 April 2008, [IT-01-47-A](#), page 133; ICTY, Trial Chamber, *Prosecutor v. Milan Simić*, Sentencing Judgment, 17 October 2002, [IT-95-9/2-S](#), para. 122.

## VII. Operative provisions

For the foregoing reasons, the Chamber hereby

### **Mr Jean-Jacques Mangenda Kabongo**

**SENTENCES** Mr Jean-Jacques Mangenda Kabongo to a total of 11 months 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; and, accordingly,

**CONSIDERS** the sentence of imprisonment as served.

### **Mr Aimé Kilolo Musamba**

**SENTENCES** Mr Aimé Kilolo Musamba to a total of 11 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; and, accordingly,

**CONSIDERS** the sentence of imprisonment as served;

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

**ORDERS** Mr Aimé Kilolo Musamba to pay the full amount of EUR 30,000 to the Court within three months of this decision.

### **Mr Jean-Pierre Bemba Gombo**

**SENTENCES** Mr Jean-Pierre Bemba Gombo to a total of one year of imprisonment;<sup>226</sup>

**ORDERS** the deduction from Mr Jean-Pierre Bemba Gombo's sentence of the time he has spent in detention, pursuant to an order of the Court; and, accordingly,

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<sup>226</sup> See footnote 214 above.

**CONSIDERS** the sentence of imprisonment as served;

**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 months of 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 17 September 2018

At The Hague, The Netherlands