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TRIAL CHAMBER I

Before: Judge Adrian Fulford, President
Judge Elizabeth Odio Benito, Judge
Judge René Blattmann, Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

**Public Redacted Version
with Confidential Annexes 1 to 15, Prosecution, Defence and Legal
Representatives Only**

**Public Redacted Version of "Prosecution's Second Application for Admission of
Documents from the Bar Table Pursuant to Article 64(9)" filed 17 July 2009**

Source: Office of the Prosecutor

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I. Introduction

In accordance with Articles 64(9) and 69 (2), (3) and (4) of the Rome Statute (Statute) and Rule 63(2) and (5) of the Rules of Procedure and Evidence (Rules), the Prosecution submits its application for the admission of fourteen documents into evidence from the bar table. The documents consist of one UPC logbook created contemporaneously during the time relevant to the charges against Thomas Lubanga Dyilo (and its corresponding translation), one *curriculum vitae* signed by Thomas Lubanga Dyilo in June 2004, ten United Nations' reports / resolutions related to events in Ituri and containing information relevant to the current charges and one press article dated June 2003.¹

The procedure of tendering documents from the bar table has been accepted by this Trial Chamber² and is a vital tool for streamlining large and complex war crimes cases.³ In an earlier decision, the Trial Chamber determined the parameters for the admissibility of documentary evidence (Admissibility Decision).⁴

The Prosecution seeks to tender these fourteen documents for the truth of their content but is not calling the authors of the documents or the individuals who provided the information contained therein. In the Prosecution's view, the documents are relevant and probative to issues in the proceedings and there are sufficient indicia of reliability to warrant their admission into evidence, in order for the Trial Chamber to assess freely the weight of these documents against the

¹ A description of the documents and an analysis of their relevance to the case are contained in confidential chart attached to this application as Annex 1. The documents that are the subject of the current application are attached in confidential annexes 2-15. A separate filing on the admission of four videos will be filed today, 17 July 2009.

² See "Decision on the admission of material from the 'bar table'", 24 June 2009, ICC-01/04-01/06-1981.

³ *Prosecutor v. Milutinovic* Case No.: IT-05-87-T, "Decision on Prosecution Motion to Admit Documentary Evidence", 10 October 2006, wherein the Trial Chamber stated: "given the depth and breadth of this case, the Trial Chamber is generally sympathetic to parties presenting documents from the bar table. However, if that is to be the case, the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into the case..."

⁴ "Decision on the admissibility of four documents", 13 June 2008, ICC-01/04-01/06-1398-Conf.

entire record of the trial. The documents are pertinent to the "...determination of the truth" as stipulated in Article 69(3).⁵ Accordingly, the Prosecution submits that the admission of the documents satisfy the Trial Chamber's obligation to ensure that the trial is fair and expeditious, under Article 64(2).

II. Overview of the documents

UPC/FPLC Logbook

1. The document is a UPC/FPLC logbook (hereinafter "the logbook")⁶, which is a contemporaneous record of radio communications sent between UPC/FPLC units in the field and the general headquarters of the movement during the period relevant to the charges against Thomas Lubanga Dyilo.
2. The Chamber permitted the Prosecution to show the logbook to witness DRC-OTP-WWWW-0017 for the limited purpose of determining whether the document resembled the type of logbook that the witness had seen radio operators compile in the UPC/FPLC during the relevant period.⁷ Witness DRC-OTP-WWWW-0017 confirmed during his testimony that indeed the logbook conformed to the type of logbook that he had seen used in the UPC/FPLC.⁸

⁵ See Trial Chamber Decision ICC-01/04-01/06-1398-Conf, 13 June 2008, paragraph 20.

⁶ DRC-OTP-0017-0033 with translation at DRC-OTP-0171-0926.

⁷ Transcript ICC-01/04-01/06-T-160-CONF-ENG ET, 1 April 2009, page 23, lines 18 to 20. The logbook received the evidence number EVD-OTP-00409.

⁸ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-160-CONF-ENG ET, 1 April 2009, p 27 lines 21 to page 28 line 20. The Chamber suggested that "it may be that there is a proper basis for this document to be admitted in due course as a hearsay document. If the Prosecution wish to consider making an application of that kind in relation to some or all of the contents of this document, it should be set out in the usual way with an explanation being provided to the Chamber as to why we should admit part or all of the document.": Transcript ICC-01/04-01/06-T-160-CONF-ENG ET, 1 April 2009, page 25, lines 16 to 21.

3. The Prosecution further requested to show the logbook to witness DRC-OTP-WWWW-0055 for purpose of putting specific entries to the witness [REDACTED].⁹ [REDACTED].
4. The Prosecution now seeks to admit the remaining entries in the logbook for which no witness has provided comment.

Curriculum Vitae of Thomas Lubanga Dyilo

5. The document is a two-page *curriculum vitae* signed by Thomas Lubanga Dyilo on 1 June 2004.¹⁰ The *curriculum vitae* provides information related to Mr Lubanga's identity, education, professional and political activities until 2002. In signing the *curriculum vitae*, Mr Lubanga expressly swore that the information is true.

United Nations and Resolutions concerning Ituri

6. These ten documents are comprised of a special report on the events in Ituri, two special reports on the work of MONUC (including its work in Ituri), four Secretary-General reports to the Security Council on the work of MONUC, and three copies of two Security Council resolutions related to events in Ituri. The reports were distributed between September 2002 and July 2004 and they relate to events in Ituri during the period relevant to the charges against Thomas Lubanga Dyilo. The reports provide relevant information on the existence and nature of the armed conflict in Ituri, as well as –in the case of some of the reports– on the UPC/FPLC's control over Ituri and recruitment and use of child soldiers.

⁹ [REDACTED].

¹⁰ DRC-OTP-0092-0378. Although duplicates of the *curriculum vitae* and other documents were registered together, the Prosecution only seeks to rely on the first two pages.

Press article

7. The press article is from “Le Soir” a recognized and reputable Belgian newspaper.¹¹ The article was transmitted on 4 June 2003. The name of the journalist, Colette Braeckman, appears on the first page of the article. Ms Braeckman is part of the editorial board of “Le Soir” and is in charge of the African news section. She was present in Bunia on behalf of “Le Soir” in or about the time the article was transmitted and was present during a press conference given by Thomas Lubanga Dyilo.

III. Prosecution’s Submissions

8. In its Admissibility Decision, the Trial Chamber promulgated three “key considerations” when evidence other than oral testimony is being introduced: i) *prima facie* relevance; ii) probative value and, iii) the balance between probative value of the evidence and any prejudicial effect.¹²
9. The Prosecution submits that the documents sought to be tendered in this application satisfy these three key considerations, as explained in greater detail below.

The documents are relevant and probative of issues to be determined during trial

10. First, the documents sought for admission are relevant to the current proceedings and would be of assistance to the Trial Chamber in determining the truth in this case. Second, in determining the probative value of an item of evidence, the Trial Chamber ruled in its Admissibility Decision that it “must be careful not to impose artificial limits on its ability to consider any piece of

¹¹ DRC-OTP-0172-0134

¹² Paragraphs 27 to 32 inclusive of the Admissibility Decision.

evidence freely, subject to the requirements of fairness”¹³. The Prosecution submits that this consideration applies here. Additionally, the fact that the authors of the documents are not testifying is not fatal to the application to admit the documents.¹⁴ Further, the Prosecution notes that the documents in question possess several indicia of reliability that militate in favour of admission.¹⁵

11. For each document the Prosecution sets out in detail in the attached confidential Annex 1 a brief description of the document and its content, the indicia of reliability for the document, its relevance to the discrete areas in the Prosecution’s case and its source.
12. In the Prosecution’s submission the documents are relevant and probative of issues to be determined at trial. Each document or group of documents will be addressed in turn.

The UPC/FPLC Logbook

13. The logbook is a contemporaneous record of radio communications sent on a daily basis from UPC/FPLC units in the field to the main staff headquarters between 19 November 2002 and 22 February 2003, during the period relevant to the charges against Thomas Lubanga Dyilo.
14. It was created in the normal course of business and internal operation of the UPC/FPLC as a log of radio communications among members. It was not

¹³ Paragraph 29 of the Admissibility Decision.

¹⁴ In this regard, paragraph 36 of the Admissibility Decision is instructive wherein it states that the fact that the authors of the documents were not being called as witnesses is a fact “...although important, is not in itself determinative of admissibility...”

¹⁵ It is noted that in the Admissibility Decision, the Trial Chamber ruled that although “indicia of reliability” is a “helpful tool”,...the Chamber must be careful not to impose artificial limits on its ability to consider any piece of evidence freely, subject to the requirements of fairness” – paragraph 29.

created for judicial purposes and no suggestion has been made that there was a motive to fabricate or distort the record.¹⁶

15. The logbook tends to show effective internal communication within the UPC/FPLC, knowledge of the Accused of the underlying facts constituting the charges and his ability to know of the crimes through recorded messages transmitted between the FPLC main staff and units on the ground on logistic, security, operational and organisational issues. The Prosecution submits that the Accused is at times the recipient of or is copied on recorded messages.¹⁷
16. The existence of such logbooks of radio communication in the UPC/FPLC has been acknowledged by three witnesses at trial.¹⁸ Two witnesses acknowledged that the form of the logbook is similar to logbooks in use in the UPC/FPLC at the relevant time.¹⁹ In the Prosecution's submission these characteristics of the form of the document demonstrate its authenticity, at a minimum, as set out below.²⁰
17. The logbook contains handwritten entries in French and Swahili of radio messages between UPC/FPLC units in the field and the headquarters made

¹⁶ See paragraph 37 of Admissibility Decision.

¹⁷ See for example, DRC-OTP-0017-0033 at page 0017-0046 (Translation DRC-OTP-0171-0926 at page DRC-OTP-0171-0940); DRC-OTP-0017-0033 at page DRC-OTP-0017-0175 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1069); DRC-OTP-0017-0033 at page DRC-OTP-0017-0195 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1089); DRC-OTP-0017-0033 at page DRC-OTP-0017-0060 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-0954); DRC-OTP-0017-0033 at page DRC-OTP-0017-0070 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-0971); DRC-OTP-0017-0033 at page DRC-OTP-0017-0154 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1048); DRC-OTP-0017-0033 at page DRC-OTP-0017-0123 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1017); DRC-OTP-0017-0033 at page DRC-OTP-0017-0163 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1057); DRC-OTP-0017-0033 at page DRC-OTP-0017-0164 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1058); DRC-OTP-0017-0033 at page DRC-OTP-0017-0165 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1059); DRC-OTP-0017-0033 at page DRC-OTP-0017-0176 (Translation is DRC-OTP-0171-0926 at page DRC-OTP-0171-1070).

¹⁸ DRC-OTP-WWWW-0017, DRC-OTP-WWWW-0055, DRC-OTP-WWWW-0016 (ICC-01/04-01/06-T-190-CONF-ENG-ET, at pages 23-25).

¹⁹ DRC-OTP-WWWW-0017, DRC-OTP-WWWW-0055.

²⁰ Paragraph 39 of the Admissibility Decision is instructive and is invoked.

by trained radio operators.²¹ Witness DRC-OTP-WWWW-0017 identified a radio operator [REDACTED] whom he confirmed would record messages contemporaneously as they came in during specific hours the day.²² The fact that messages in the logbook were recorded at the time of transmission, in the Prosecution's submission enhances the accuracy and reliability of the entries.²³

18. Second, as to its form, the logbook consists of slightly under 200 pages with a blue cardboard hardcover. According to witness DRC-OTP-WWWW-0017 the logbook he saw while he was in the UPC/FPLC was roughly 15 centimetres wide and up to 25 centimetres and had over 200 pages. It had a blue cardboard hardcover.²⁴ Whilst this logbook is not printed on official paper and does not bear a stamp, it has been confirmed by witness DRC-OTP-WWWW-0017 to be of a similar nature to the logbook he saw in Kilo.²⁵
19. Witness DRC-OTP-WWWW-0017 confirmed that the form of the entries were of a similar type to the ones he saw in the Kilo logbook.²⁶ Similarly, witness DRC-OTP-WWWW-0055 testified as to the [REDACTED] and the [REDACTED].²⁷ He explained how a certain type of radio, a "manpack", was handled by radio operators called "Signora", who would [REDACTED] and [REDACTED] that would be noted in a logbook.²⁸

²¹ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, page 72, line 11 to page 75 line 17.

²² Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, [REDACTED] and page 74 line 11 to 16.

²³ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, [REDACTED] and page 74 line 11 to 16.

²⁴ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, page 73, line 9 to 17, page 74 line 17 to 20.

²⁵ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-160-CONF-ENG ET, 1 April 2009, p 27 lines 21 to page 28 line 20.

²⁶ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-160-CONF-ENG ET, 1 April 2009, page 28 line 9 to 20.

²⁷ [REDACTED].

²⁸ [REDACTED].

20. Third, the logbook is internally consistent and its content is corroborated by other evidence. In respect of the content of the messages, witness DRC-OTP-WWWW-0055 explained by way of example that commanders needed to be informed of changes, such as the creation of a new sector or the promotion of a commander to sector commander. Responsibility for such decisions lay with the [REDACTED].²⁹ The logbook provides examples of the deputy chief of staff informing about the appointment or promotion of commanders.³⁰ In addition, witness DRC-OTP-WWWW-0017 further identified the terminology used as specific to radio operations; in particular he identified specific terms and code names used for the transmission of radio messages.³¹ By way of example, witness DRC-OTP-WWWW-0017 identified the [REDACTED], mentioned in the logbook,³² to refer to [REDACTED].³³ This was also corroborated by witness DRC-OTP-WWWW-0055.³⁴ Other [REDACTED] contained in the logbook, such as [REDACTED],³⁵ [REDACTED]³⁶ and [REDACTED], have also been independently confirmed by witnesses. Witness DRC-OTP-WWWW-0055 identified [REDACTED],³⁷ [REDACTED],³⁸ and [REDACTED].³⁹ Likewise, witness DRC-OTP-WWWW-0017 identified [REDACTED] and explained that [REDACTED].⁴⁰ Witness DRC-OTP-WWWW-0017 further explained the term “Standby Class 0” used in the logbook⁴¹, to be a term specifically used within the UPC, which means that

²⁹ [REDACTED].

³⁰ See logbook page DRC-OTP-0017-0196 third message and translation page DRC-OTP-0171-1090 third message as well as logbook page DRC-OTP-0017-0195 third message translation page DRC-OTP-0171-1089 third message.

³¹ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-154-CONF-ENG ET, 25 March 2009, page 30 line 22 to page 32 line 9.

³² [REDACTED].

³³ [REDACTED].

³⁴ Transcript ICC-01/04-01/06-T-175-CONF-ENG ET, 15 May 2009, page 35, lines 8 -12.

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ See the logbook, page DRC-OTP-0017-0190, last message.

soldiers were to stand on hold, prepared for battle “with [their] weapons ready to obey orders, ready to move”.⁴² [REDACTED].⁴³

21. Finally, witness DRC-OTP-WWWW-0017 testified about incidents which are also recorded in the logbook. For instance he describes an incident that occurred sometime before February 2003 in which a commander refused to obey an order and to advance on Kobu.⁴⁴ The logbook contains an entry dated February 2003 referring to an incident in which a commander refused an order to advance.⁴⁵ The recorded message further specified that this had never before occurred in the army and that no commander has the right to refuse orders coming from the top.⁴⁶ A second incident described by witness DRC-OTP-WWWW-0017 relates to the execution of a soldier who had been sentenced for murdering a civilian in a drunken state.⁴⁷ This corroborates entries in the logbook relating to the same incident.⁴⁸ Other incidents mentioned in the logbook corroborated by witnesses’ testimony regard battles. For instance, the UPC troops taking position before the battles of Lipri, Bambu and Kobu in February 2003 is recorded in separate messages in the logbook.⁴⁹ This is corroborated by witness DRC-OTP-WWWW-0038, who mentions the planning of the battle of Kobu in February 2003 to drive out all the men from Kobu and Bambu in order to open the route to Mongbwalu.⁵⁰

⁴² Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-160-CONF-ENG ET, 1 April 2009, page 3 line 25 to page 4 line 10; see also Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, page 17 line 15 to page 18 line 2.

⁴³ [REDACTED].

⁴⁴ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, page 71 line 1 to line 15.

⁴⁵ [REDACTED].

⁴⁶ Ibid.

⁴⁷ Testimony of witness DRC-OTP-WWWW-0017, Transcript ICC-01/04-01/06-T-158-CONF-ENG ET, 31 March 2009, page 67 line 14 to page 68 line 19.

⁴⁸ See the logbook, pages DRC-OTP-0017-0097 to DRC-OTP-0017-0098.

⁴⁹ See logbook page DRC-OTP-0017-0171 first message (which is page DRC-OTP-0171-1065 of the translation) and DRC-OTP-0017-0176 last message (which is page DRC-OTP-0171-1070 of the translation).

⁵⁰ Transcript ICC-01/04-01/06-T-114-CONF-ENG ET, 3 February 2009, page 7 to 13.

This fact is equally addressed by witness DRC-OTP-WWWW-0089.⁵¹ Finally, witness DRC-OTP-WWWW-0055 in his evidence explained abbreviations, which are also used throughout the logbook.⁵²

22. The Prosecution submits that the corroboration of these portions of the logbook provides a further criterion of the reliability of this document in its entirety.

Curriculum Vitae

23. The *curriculum vitae* is signed by the Accused, with a solemn undertaking as to the truth of its content, and contains relevant biographical details that have been discussed through the evidence of witnesses.⁵³ This document is the best evidence of the biographical information related to the Accused up to 2002, including confirmation of the date of creation of the UPC and his title as President since 2000.⁵⁴
24. The document was obtained through the search and seizure exercise carried out by the Office of the Prosecutor of the Tribunal de Grande Instance of Bunia in relation to domestic proceedings in the Democratic Republic of Congo. The Prosecution submits that the document in question is admissible for the purposes of the trial and that Article 69(7) is not applicable for several reasons.

⁵¹ Transcript ICC-01/04-01/06-T-196-CONF-ENG ET, 23 June 2009, page 39 line 20 to page 40 line 2.

⁵² [REDACTED].

⁵³ See for example, ICC-01/04-01/06-T-184-CONF-ENG ET, 2 June 2009, page 14, lines 10-17 on the place of birth of the Accused; see also ICC-01/04-01/06-T-209-CONF-ENG ET, 14 July 2009, pages 73-75 on the education of the Accused; see also ICC-01/04-01/06-T-168-CONF-ENG ET, 5 May 2009, page 23, lines 16-25 and page 24, lines 1-19.

⁵⁴ Although three signed copies of the *curriculum vitae* were registered together (identical duplicates), along with the Accused's birth certificate, certificate of health and certificate of residence under DRC-OTP-0092-0378, the Prosecution seeks to admit only one copy of the signed *curriculum vitae* which correspond to the first two pages of the group of documents (DRC-OTP-0092-0378 and 0379).

25. First, Article 69(7) is not absolute. A bar to admission is not the automatic result, so long as the evidence is reliable and its admission into evidence would not damage the integrity of the proceedings.⁵⁵
26. Second, the evidence was not obtained through coercion or torture which would seriously cast doubt on its reliability; the procedural violation by the DRC authorities ⁵⁶ did not affect the authenticity of the document. Accordingly, the Prosecution submits that Article 69(7) (a) is inapplicable in this instance.
27. Third, the Prosecution submits that the admission of the document would not be antithetical to and would not seriously damage the integrity of the proceedings.
28. The Trial Chamber has ruled on the admissibility of documents obtained through this search and seizure operation.⁵⁷ The Chamber concluded that notwithstanding a breach of the right to privacy, the breach did not affect the reliability of the evidence and the admission of the material would not damage the integrity of the proceedings.⁵⁸

United Nations reports and resolutions

29. The United Nations reports and resolutions are dated September 2002, October 2002, February 2003, May 2003, July 2003, November 2003, March 2004 and July 2004. The reports are contemporaneous records documenting the conflict in Ituri, in particular reporting on the existence and nature of the armed conflict and human rights violations during the period relevant to the

⁵⁵ Paragraph 84 of the Confirmation Decision.

⁵⁶ Article 33 of the Congolese Criminal Procedure Code.

⁵⁷ Decision on the admission of material from the 'bar table', ICC-01/04-01/06-1981, 24 June 2009.

⁵⁸ *Ibid.*, paragraph 48.

charges against the Accused, with the exception of one report that documents to events in Ituri from November 2003.⁵⁹ The United Nations as the source of the reports is reliable and reputable, and as it was discharging a mandate from the international community to monitor the armed conflict in the DRC and in Ituri. Given its mandate, the United Nations reports document the situation neutrally and observantly with a view to providing accurate reports which allow the international community and local actors to decide on the necessary steps to be taken in light of all the relevant interests, in particular the interest of re-establishing peace and security.

Press article

30. The press article was transmitted on 4 June 2003 and is relevant and probative of the authority that Thomas Lubanga Dyilo exercised within the UPC/FPLC in June 2003. The press article purports to report on a press conference held with Thomas Lubanga Dyilo on behalf of the UPC/FPLC in which Thomas Lubanga Dyilo sets out the conditions under which he would agree to the arrival of the multinational force sent to establish peace in the region, including shared control of the airport in Bunia and no disarming of UPC soldiers. Thomas Lubanga Dyilo is reported to denounce the massacres of the Hema population and ask for peace. The journalist makes reference to the conspicuous absence of child soldiers and worrisome military during the press conference, whom she notes even the day before had been in oversized trench coats and were arresting people.

⁵⁹ This is the report dated 25 March 2004 (DRC-OTP-0130-0434). The Prosecution submits that this report, which deals with facts occurred after the period relevant to the charges, is relevant to the overall context in which the alleged crimes were committed and to MONUC's continued support of UNICEF and other child protection partners in facilitating the separation of children from armed groups, including the establishment of new transit care centres (CTO = transit *and* orientation centres).

31. The Prosecution submits that the press article was created on or before June 2003. The press article was not created for judicial purposes. The journalist is an independent, neutral observer of the events in Ituri. The author and the sources of information are named in the article. The Prosecution submits that the article should be admitted for the Chamber to attribute appropriate weight and evaluate with the totality of evidence admitted during the trial.

Probative value of the evidence against its prejudicial effect

32. The Prosecution submits that the potential probative value of the evidence outweighs the prejudicial effect, if any, of their admission. As stated, the documents are reliable and provide a contemporaneous record of events. They are, therefore, relevant to the issues in this case and they ought to be admitted, in order to be considered with the totality of the evidence at the end of the trial.
33. The Prosecution submits that fair trial interests will not be affected by the admission of these documents. One factor that is often considered when making an assessment on the admissibility of documents is the ability of the Defence to challenge the veracity of the evidence. In the case of the logbook, three witnesses have provided information on the recording of radio communications in logbooks, one of these witnesses has commented on certain entries, and the evidence of these and other witnesses have corroborated information recorded in the logbook which enhance its consistency and accuracy.
34. In the case of the *curriculum vitae*, it is a document that is signed by the Accused with a solemn undertaking as to its veracity. In the case of the United Nations reports, two staff members from the United Nations have testified in Court on the events in Ituri and on different aspects of the

methodologies used by the United Nations in the compilation of reports.⁶⁰ As for the press article, the author and sources of information are named and the journalist is reporting on specific events in a limited time period.

35. Although the authors of these reports have not testified,⁶¹ the Prosecution submits that the relevance of the documents to the nature of the armed conflict, the UPC/FPLC's control over Ituri and the recruitment and use of child soldiers by the UPC/FPLC, as well as their inherent reliability favour admission of the documents into evidence, with appropriate attributions to the weight of the evidence when viewed against the totality of evidence adduced in the trial.

IV. Conclusion

36. The Chamber is vested with a broad discretion to admit relevant evidence. The Prosecution submits that the fourteen documents upon which it seeks to rely should be determined as admissible. In the Prosecution's view, they are relevant and probative to the charges and they are *prima facie* reliable. As a result of the foregoing, the Prosecution submits that these documents should be admitted into evidence, and taken into consideration with all other relevant evidence at the end of the trial.

V. Confidential Filing

37. The Prosecution submits that the filing should be classified as Confidential and distributed only to the parties and participants. The documents and

⁶⁰ A further United Nations staff member is scheduled to testify once the hearings in the case resume.

⁶¹ The Prosecution notes that witness DRC-OTP-WWWW-0046 testified about her involvement in the preparation of a draft report (DRC-OTP-0152-0256 / EVD-OTP-00022) which served as a basis for section V(D) of DRC-OTP-0074-0422. ICC-01/04-01/06-T-37, pages 116-117.

corresponding witness evidence, including the function/ title of one witness, elicited during trial in relation to the logbook was discussed at times in closed session and could reveal the identity of the witnesses who testified.

VI. Relief Requested

38. In light of the foregoing, pursuant to Articles 64(9) and 69 (2),(3) and (4) of Statute and Rule 63(2) and (5) of the Rules the Prosecution seeks the admission of documents listed in confidential annex 1 and attached in confidential annexes 2 to 15 into evidence from the bar table.



Luis Moreno-Ocampo
Prosecutor

Dated this 31st day of July 2009
At The Hague, The Netherlands