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Pénale
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**International
Criminal
Court**

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Date: **31 January 2018**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Public redacted version of 'Decision on Defence request for admission of evidence
from the bar table'**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 69(4) of the Rome Statute and Rule 63(2) of the Rules of Procedure and Evidence ('Rules'), renders the following 'Decision on Defence request for admission of evidence from the bar table'.

I. Background

1. On 23 November 2017, the defence team for Mr Ntaganda ('Defence') filed a request for the admission into evidence of 184 items from the bar table ('Request'),¹ as detailed in confidential Annex A to the Request.² It submits that the documents are *prima facie* reliable and probative of relevant facts, and bear *prima facie* indicia of authenticity.³ The Request and its annex also reflect the position of the Office of the Prosecutor ('Prosecution') regarding the admissibility of the items, which opposes the admission into evidence of 64 of the items.⁴
2. On 1 December 2017, the Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (jointly the 'Legal Representatives', individually 'LRV2' and 'LRV1', respectively) responded to the Request, providing joint submissions on the admissibility of the items tendered therein, and each opposing the admission of a number of items.⁵

¹ Defence Request for the admission of evidence from the bar table, ICC-01/04-02/06-2128.

² ICC-01/04-02/06-2128-Conf-AnxA.

³ Request, ICC-01/04-02/06-2128, para. 1; and ICC-01/04-02/06-2128-Conf-AnxA.

⁴ The Prosecution's initial submissions are contained in the final column of ICC-01/04-02/06-2128-Conf-AnxA.

⁵ Joint Response of the Common Legal Representatives of Victims to the "Defence request for admission of evidence from the bar table", ICC-01/04-02/06-2138-Conf ('Legal Representatives Response').

3. On 4 December 2017, the Prosecution responded to the Request, providing further submissions on the admissibility of some of the items tendered.⁶

II. Applicable Law

4. The Chamber incorporates by reference the applicable law as set out in its previous decisions on the admission of documentary evidence from the ‘bar table’.⁷ In particular, the Chamber recalls that: (i) it considers the admissibility of a document on the basis of its relevance, probative value, and any prejudice that its admission may cause to a fair trial or to the evaluation of the testimony of a witness; (ii) its assessment of both relevance and probative value is conducted on a *prima facie* basis; and (iii) its assessment of material for the purposes of admissibility is distinct from the evidentiary weight which the Chamber may ultimately attach to admitted evidence, based on the entire case record before it.⁸

III. Analysis

5. Before proceeding to the assessment of the individual items tendered from the bar table, the Chamber will address a number of overarching issues.
6. The Chamber first observes that, for most of the items, the Defence does not provide cogent reasons for not having tendered them through a witness, as instructed by the Chamber at the start of the trial.⁹ In this regard, the Chamber recalls that, while the failure to tender an item through a witness does not in and

⁶ Prosecution response to the “Defence request for the admission of evidence from the bar table”, ICC-01/04-02/06-2128-Conf, ICC-01/04-02/06-2140-Conf (‘Prosecution Response’).

⁷ Decision on Prosecution’s first request for the admission of documentary evidence, 19 February 2016, ICC-01/04-02/06-1181 (‘Decision on First Request’), paras 6-7; and Decision on Prosecution’s request for admission of documentary evidence, 28 March 2017, ICC-01/04-02/06-1838 (‘Decision on Second Request’), para. 6.

⁸ Decision on First Request, ICC-01/04-02/06-1181, para. 7.

⁹ Decision on the conduct of proceedings, 2 June 2015, ICC-01/04-02/06-619, para. 52. *See also* Decision on Second Request, ICC-01/04-02/06-1838, para. 13.

of itself prevent it from being admitted from the bar table, it may have an impact upon the Chamber's admissibility assessment.¹⁰

7. The Chamber further recalls that the cross-examining party is required to 'put to the witness any facts or evidence, available at the time and upon which it intends to rely to impeach his or her credibility'.¹¹ Where the Defence has failed to do so, the Chamber has considered whether the witness was provided with a sufficient opportunity to comment on the information contained in these documents and has assessed the potential impact any prejudice would have on the evaluation of the witness's testimony.
8. In the present decision, the Chamber has not ruled on the admissibility of items which have already been admitted into evidence for the truth of their content.¹² Items tendered by the Defence which have previously been admitted in parts, or for the purpose of impeachment, or with additional redactions,¹³ have however been the subject of separate rulings on admissibility. Further, the Chamber has considered for admission only one copy of each duplicate document tendered.¹⁴
9. The Chamber also notes that the Defence identifies specific portions of the material tendered as being the 'most relevant'.¹⁵ In these cases, the Chamber has considered that only the relevant paragraphs were tendered, and has therefore limited admission to those parts, together with any other portions of the document that assist in contextualising the document and assessing its reliability.

¹⁰ Decision on Second Request, ICC-01/04-02/06-1838, para.13.

¹¹ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 28.

¹² Document 29, DRC-OTP-0014-0194; Document 30, DRC-OTP-0014-0253; and Document 48, DRC-OTP-0037-0294 (see Decision on Defence request for admission of prior recorded testimony of Witnesses D-0001, D-0013, D-0123, D-0134, D-0148, D-0150, D-0163, and D-0179 pursuant to Rule 68(2)(b), 4 December 2017, ICC-01/04-02/06-2141-Conf).

¹³ See, e.g., Document 45, DRC-OTP-0037-0271; Document 105, DRC-OTP-2092-0213; Document 107, DRC-OTP-2092-0215; and Document 109, DRC-OTP-2095-0113.

¹⁴ Document 65, DRC-OTP-0014-0152, is a duplicate of Document 31; and Document 66, DRC-OTP-0014-0170, is a duplicate of Document 32.

¹⁵ Sixth column of ICC-01/04-02/06-2128-Conf-AnxA.

10. Finally, while noting that it is not bound by the parties' agreement on matters of evidence or law,¹⁶ the Chamber has taken into consideration the parties' and participants' positions in its admissibility assessment. In the present decision, the Chamber first addresses the uncontested items and then the contested ones, both of which are discussed below using the general categories put forward in the Request: (i) documents provided by the United Nations ('UN'); (ii) UPC/RP documents; (iii) Hema community documents; (iv) media/press documents; (v) documents relating to Intermediary P-0154; (vi) video recordings and related transcripts/translations; and (vii) other documents.

1. Uncontested items

i. Documents provided by the UN

11. **Document 1**, DRC-OTP-0005-0012; **Document 5**, DRC-OTP-2078-0702; **Document 8**, DRC-OTP-0049-0465; **Document 9**, DRC-OTP-0184-0133; **Document 10**, DRC-OTP-0005-0023; **Document 11**, DRC-OTP-0005-0083; **Document 13**, DRC-OTP-0005-0191; **Document 14**, DRC-OTP-0051-0184; **Document 15**, DRC-OTP-0064-0463; **Document 18**, DRC-OTP-2067-1980; **Document 19**, DRC-OTP-2078-0223; and **Document 21**, DRC-OTP-2078-0727, are submitted to be reports originating from the UN while **Document 3**, DRC-OTP-0131-0161, appears to be a UN Security Council resolution. They all bear the UN logo and/or are consistent in terms of layout and other features, including stamps and/or transmission numbers. They all appear to be contemporaneous documents reporting on ongoing or planned events relevant to the charges in the present case, including on the activities of the MONUC and the UPC. In light of the foregoing, the Chamber finds that these documents are *prima facie* relevant and have sufficient probative value, and is satisfied that no

¹⁶ Decision on First Request, ICC-01/04-02/06-1181, para. 9.

undue prejudice arises from their admission. Accordingly, it admits them into evidence.¹⁷

12. **Document 2, DRC-OTP-0004-0047**, seems to reproduce the content of a brief provided to ‘force commanders’ concerning ‘DDR’ processes and operations. **Document 12, DRC-OTP-0005-0106**, is a two-page document describing and assessing the withdrawal of UPC troops from Bunia on 23 June 2003. **Document 16, DRC-OTP-0195-1543**, and **Document 17, DRC-OTP-0195-1570**, are reports relating to the situation in Bunia on 28 May and 24 June 2003, and describe the outcome of meetings held with UPC representatives on these two dates. The Chamber considers that, while these four documents appear to be *prima facie* relevant, they all lack indicia of reliability, such as information on their sources, context, or purpose of their creation, as well as, for Document 2, the relevant date. Furthermore, the Chamber considers that the fact that these documents were disclosed by the Prosecution as originating from the UN is not, in itself, sufficient to establish their source.¹⁸ As the tendering party, it is for the Defence to provide the Chamber with sufficient information to assess the reliability of the items it requests admission of. In the absence of any further information, or authentication, these documents are not sufficiently reliable and probative, and the Chamber therefore denies their admission into evidence.

13. **Document 20, DRC-OTP-2078-0704**, is a report concerning the situation in Bunia on 6 May 2003. As with the four documents discussed above, this report lacks certain indicia of reliability, such as information about its source, context, or effective transmission. Document 20, however, includes the name of its drafter. As the admission of this document is uncontested, and noting that its content and some of its main features render this report comparable with other UN daily situation reports on the case record, the Chamber considers that the

¹⁷ Partial admission for Document 14 (para. 9 only), Document 15 (para. 3 only), and Document 18 (paras 1 and 2 only).

¹⁸ See Decision on Second Request, ICC-01/04-02/06-1838, para. 43.

document is sufficiently reliable, and does not consider any potential prejudice to outweigh its probative value. Accordingly, it admits this document into evidence.¹⁹

14. With regard to **Document 6, DRC-OTP-2078-0709**, the Chamber notes that it seems to be comprised of two letters dated 6 May 2003 addressed by UPDF Brigadier Kale Kayihura to the MONUC Force Commander, General Diallo. It concerns, *inter alia*, the withdrawal of UPDF forces from Ituri in May 2003. In light of the foregoing, and particularly noting that it is signed and dated, the Chamber finds that this document is *prima facie* relevant and has sufficient probative value, has identified no undue prejudice which would arise from its admission, and admits it into evidence.

ii. UPC/RP documents

15. **Document 51, DRC-OTP-0089-0318**, appears to be a decree issued by the Ministry of the Interior of the Democratic Republic of the Congo ('DRC') in July 2004, registering the UPC as a political party. In light of its content, the Chamber considers it relevant. Noting that the document is dated and bears a letterhead and a signature, the Chamber also finds that it is *prima facie* reliable. The Chamber is also satisfied that no undue prejudice arises from the admission of this item, which is hereby admitted into evidence.
16. In relation to **Document 27, DRC-OTP-0093-0123; Document 41, DRC-OTP-0093-0319; and Document 59, DRC-OTP-0094-0298**, the Chamber considers that they do not bear sufficient indicia of reliability, nor has the Chamber been provided with other information that allow it to conclude that they are *prima facie* reliable. Documents 27 and 41 do not bear stamps, signatures, or dates. Regarding Document 59, the Chamber notes the Defence's

¹⁹ Noting the Defence's submissions on the relevance of Document 20 (ICC-01/04-02/06-2128-Conf-AnxA, page 12), the Chamber has considered it for partial admission (pages 0704 to 0706 only). In this regard, it is noted that there is no indication that the declaration contained at pages 0707 to 0708 forms an integral part of the report tendered, as it is not explicitly mentioned therein.

submission that it is the text of a speech delivered publicly by Mr Thomas Lubanga on or about 1 January 2004,²⁰ without providing any basis to authenticate the speech. In the absence of further information on the source or context of creation of the aforementioned items, the Chamber finds that they are not *prima facie* reliable and therefore denies their admission into evidence.

17. **Document 43, DRC-OTP-0122-0037**, is a letter which appears to have been signed by a UPC/RP spokesperson on 8 June 2003, discussing an attack on Bunia conducted the previous day. **Document 61, DRC-OTP-0113-0060**, is a detailed programme which was purportedly adopted on behalf of the UPC in Bunia on 15 September 2000. **Document 67, DRC-OTP-0164-0444**; and **Document 68, DRC-OTP-0132-0252**, are documents relating to the alliance reached in Goma between the UPC/RP and the RCD. The aforementioned four documents are all dated and appear to have been signed by UPC representatives. The Chamber further notes that their admission is uncontested and, having considered their respective form and content, is satisfied that they are *prima facie* relevant and have sufficient probative value. Having found that no undue prejudice arises from their admission, the Chamber admits them into evidence.

18. **Document 71, DRC-OTP-0193-0243**, appears to be a press release issued by the UPC/RP on 19 February 2003, concerning the pacification process in Ituri. In light of its content, the Chamber finds the document to be *prima facie* relevant. The Chamber further notes that the document is unsigned, but considers this to be consistent with the nature of such a document. It bears the UPC logo and appears to have been retrieved from a website. Recalling that its admission is uncontested, the Chamber is satisfied that its probative value has been sufficiently established. Having found that no undue prejudice arises from its admission, the Chamber admits it into evidence.

²⁰ ICC-01/04-02/06-2128-Conf-AnxA, page 38.

19. The remaining 28 uncontested items in this category concern UPC activities and/or operational and structural matters within the UPC/RP,²¹ and one also relates to exhibits already admitted into evidence.²² Furthermore, they all relate to or bear dates falling within, or sufficiently close, to the time period of the charges. They contain UPC letterhead and/or stamps and/or signatures, and present consistent language and layout. The Chamber notes in particular that, while **Document 28, DRC-OTP-0014-0179; Document 31, DRC-OTP-0014-0152; Document 34, DRC-OTP-0029-0280; and Document 38, DRC-OTP-0093-0134**, do not contain signatures, they are dated, presented on UPC letterhead, and their authors are identified. In relation to **Document 49, DRC-OTP-0138-0724**, while the document appears to be in draft form as it bears no signature and no date and contains handwritten amendments, its author is identified as Mr Lubanga, and the document is presented on UPC Presidency letterhead. In light of the foregoing, the Chamber is satisfied that these 28 documents are *prima facie* reliable, relevant and probative and that no undue prejudice arises from their admission, and accordingly admits them into evidence.²³

iii. Hema community documents

20. The Chamber considers that each of the 25 uncontested items contained in the ‘Hema community documents’ category are *prima facie* relevant as they all concern events or circumstances related to the charges in the present case,

²¹ Document 24, DRC-OTP-0093-0004; Document 28, DRC-OTP-0014-0179; Document 31, DRC-OTP-0014-0152; Document 32, DRC-OTP-0014-0170; Document 33, DRC-OTP-0093-0237; Document 34, DRC-OTP-0029-0280; Document 35, DRC-OTP-0029-0282; Document 36, DRC-OTP-0029-0286; Document 37, DRC-OTP-0016-0042; Document 38, DRC-OTP-0093-0134; Document 39, DRC-OTP-0029-0288; Document 40, DRC-OTP-0029-0302; Document 42, DRC-OTP-0029-0308; Document 44, DRC-OTP-0037-0268; Document 45, DRC-OTP-0037-0271; Document 46, DRC-OTP-0037-0280; Document 47, DRC-OTP-0037-0281; Document 49, DRC-OTP-0138-0724; Document 50, DRC-OTP-0037-0337; Document 52, DRC-OTP-0091-0665; Document 53, DRC-OTP-0092-0466; Document 54, DRC-OTP-0164-0447; Document 58, DRC-OTP-0093-0260; Document 60, DRC-OTP-0112-0674; Document 62, DRC-OTP-0113-0124; Document 63, DRC-OTP-0132-0324; Document 64, DRC-OTP-0151-0111; and Document 70, DRC-OTP-0165-0242.

²² Document 50 relates to DRC-OTP-0132-0237.

²³ Document 70 is only partially admitted, as it is not readily apparent that the last page of the document (at 0244) constitutes a part of the main document.

including the security situation in and around Bunia and suffering endured by the Hema community.

21. **Document 73, DRC-OTP-0033-0038; Document 74, DRC-OTP-0033-0041; Document 75, DRC-OTP-0033-0044; Document 76, DRC-OTP-0033-0058; and Document 77, DRC-OTP-0033-0086,** appear to be email communications circulated by a spokesperson of the Hema community in Bunia. **Document 80, DRC-OTP-0037-0541,** is a communication from this same spokesperson, on behalf of Ituri's Hema community, which includes what seems to be a copy of the 3 August 2002 declaration also contained in **Document 88, DRC-OTP-0214-0152. Document 95, DRC-OTP-0037-0536; and Document 96, DRC-OTP-0037-0545,** are two other communications sent in July and September 2002, respectively, by this same spokesperson on behalf of Ituri's Hema community. **Document 82, DRC-OTP-0197-0219,** is a petition formulating a request on behalf of Ituri's Hema community. **Document 85, DRC-OTP-0197-0238; and Document 93, DRC-OTP-0107-0510,** are letters signed by certain individuals on behalf of Ituri's Hema community. **Document 86, DRC-OTP-0214-0058,** appears to be a document prepared after a meeting held between Ituri's Hema community and the then-Prosecutor of the Court in July 2009. **Document 72, DRC-OTP-0037-0086; Document 79, DRC-OTP-0037-0512; and Document 94, DRC-OTP-0037-0088,** are press releases or open letters issued on behalf of the Hema community of Kinshasa. **Document 89, DRC-OTP-0214-0176; and Document 90, DRC-OTP-0214-0177,** are letters signed by representatives of the Hema community addressed to the UN Secretary-General in July 2003. **Document 92, DRC-OTP-0107-0506,** is a memorandum signed by 20 individuals on behalf of the Hema community and addressed, amongst others, to the UN Secretary-General. The Chamber notes that the 19 aforementioned items are dated, except for Document 92 – for which one can however deduce from its content and the dates or events referred to

therein that it was prepared sometime after April 2003 –, and that they all clearly identify their authors, senders, and/or signatories. In addition, the material annexed to the communications contained in Documents 75, 77, and 80 appears to form an integral part of the transmission, as the material is explicitly mentioned therein. Recalling that the admission of the aforementioned documents is uncontested, the Chamber finds that they all have *prima facie* probative value and that no undue prejudice arises from their admission, and accordingly admits them into evidence.

22. Document 84, DRC-OTP-0214-0091; and Document 87, DRC-OTP-0214-0116, are memoranda prepared on behalf of Ituri’s Hema community. One is dated March 2001 and addressed to Mr Garretón (Expert Witness P-0931), and the other is dated July 2002 and addressed to the DRC Minister for Human Rights and the DRC Government delegation assigned to Bunia in July 2002. The Chamber observes that, contrary to the documents discussed above, the drafters are not specifically identified in these documents. Noting, however, that they are tendered together with other documents also prepared on behalf of ‘Ituri’s Hema community’, and recalling that the admission of these documents is not contested, the Chamber finds that no undue prejudice arises from their admission, and considers that these two documents have sufficient probative value to be admitted into evidence.

23. Document 78, DRC-OTP-0037-0092; and Document 81, DRC-OTP-0041-0107, are memoranda prepared on behalf of the students of Ituri’s Hema community. They are dated April and March 2003, respectively. Named representatives are clearly identified at the end of Document 78, but are not specified in Document 81. Considering the similarities between the two documents, which appear to come from the same source, the Chamber finds that they are *prima facie* probative and, having found that no undue prejudice arises from their admission, admits them into evidence.

24. **Document 91, DRC-OTP-0037-0206-R03**, is a four-page report dated March 2004, providing information about crimes committed against the Hema population in Ituri.²⁴ **Document 97, DRC-OTP-0126-0030**, is a hand-written report listing deaths which occurred during the course of June 2002 in a number of Hema villages. These two documents specify their respective dates of creation as well as the identity of their drafters; in addition, Document 97 is signed. In light of the above, and noting that the admission of these documents is uncontested, the Chamber finds that they are *prima facie* probative, that no undue prejudice arises from their admission, and admits them into evidence.

iv. Media/press documents

25. The only uncontested document categorised under this heading is **Document 104, DRC-OTP-2103-0390**. This document is a UNICEF press release referring to a mission conducted in February 2001 by UNICEF in Kyankwanzi, Uganda, during which 163 Congolese 'child soldiers' were identified. The document is dated and clearly identifies its sources of information, as well as the contact details of the relevant UNICEF personnel based in Kampala at the time. Unlike other media/press documents tendered, the source and whether the news item was in fact published, can be verified without additional information, or a witness testifying to its authenticity. The Chamber therefore considers that this document is *prima facie* relevant and has sufficient probative value, and finds that no undue prejudice arises from its admission. Accordingly, the Chamber admits it into evidence.

v. Documents relating to Intermediary P-0154

26. The only uncontested document relating to Intermediary P-0154, **Document 108, DRC-OTP-2095-0089**, is a monthly report dated May 2006 and purportedly

²⁴ A lesser redacted version of the document was disclosed on 11 December 2017, pursuant to the Chamber's Decision on Prosecution request for variation of protective measures, 7 December 2017, ICC-01/04-02/06-2145, para. 13, notified on 8 December 2017.

prepared by P-0154, referring to, *inter alia*, his contact with victims in accordance with a 'Liste de Présence'. The Chamber considers that this document is *prima facie* relevant and probative, that no undue prejudice arises from its admission, and therefore admits it into evidence. The Prosecution's observations that the Defence has not accurately summarised the document will be assessed at a later stage, together with other relevant evidence on the record.

vi. Video recordings and related transcripts/translations

27. The uncontested video recording excerpt, **Document 131, DRC-OTP-0123-0009**,²⁵ is submitted together with the corresponding excerpts of its transcript, **Document 132, DRC-OTP-2082-1097**,²⁶ and translation, **Document 133, DRC-OTP-2082-1122**.²⁷ On the basis of the video excerpt's content, as well as Witness P-0057's statement that he provided the recording to the Prosecution,²⁸ the Chamber considers the video excerpt, together with the corresponding transcript and translation, to be *prima facie* relevant and to have sufficient probative value. The Chamber finds that no undue prejudice arises from their admission and admits the relevant excerpts of the aforementioned three items into evidence.

vii. Other documents

28. **Document 139, DRC-OTP-2066-0532**, is a letter addressed to a Mongbwalu parish priest concerning the exhumation and re-burial of 'Abbé Boniface Buanalongba'. It bears the detailed letterhead of the sender, the author's name and signature, and the date and location of its creation. **Document 140, DRC-OTP-2066-0537**, is submitted to be a list of people who assisted in the aforementioned exhumation. It is dated March 2013, bears the stamp of the Mongbwalu parish, and appears to have been prepared by the same priest who

²⁵ From time stamp 30:37 to 35:34.

²⁶ Page 1114, line 602 to page 1116, line 678.

²⁷ Page 1140, line 607 to page 1142, line 688.

²⁸ **P-0057**: DRC-OTP-0150-0354, page 0391, para. 155; and Document 131, page 0010.

signed Document 139. The Chamber is satisfied that these documents are relevant and have *prima facie* probative value. Furthermore, for both documents, the Chamber finds that their probative value is not outweighed by any potential prejudice arising from their admission, and therefore admits them into evidence.

29. Concerning **Document 141, DRC-OTP-2066-0545;** and **Document 142, DRC-OTP-2066-0536**, purportedly photographs of *Abbé* Boniface Buanalongba's funeral and of the discovery of his remains, the Chamber considers that, in the absence of any reliable information regarding the date, location, or specific events depicted, their *prima facie* relevance and probative value has not been sufficiently established, and denies their admission into evidence.

30. In addition to Document 6, discussed above, the Defence also seeks the admission into evidence of other letters from UPDF Brigadier Kale Kanyihura to MONUC representatives: **Document 144, DRC-OTP-2078-0434;** **Document 145, DRC-OTP-2078-0582;** **Document 146, DRC-OTP-2078-0687;** **Document 147, DRC-OTP-2078-0689;** and **Document 152, DRC-OTP-0003-0352.** They are all dated between March and May 2003 and signed. With the exception of Document 146, these letters also bear the letterhead of the Republic of Uganda. In light of their content and indicia of reliability, the Chamber finds these documents sufficiently relevant and probative and considers that no undue prejudice arises from their admission. It accordingly admits them into evidence.

31. **Document 153, DRC-OTP-0037-0451,** appears to contain contemporaneous written exchanges reporting on a number of incidents from April to July 2002, including attacks against the Hema community.²⁹ **Document 170, DRC-OTP-0037-0204,** dated 20 January 2004, and made in Bunia, is a report listing various incidents during which international forces allegedly committed

²⁹ An unredacted version of the document was disclosed on 11 December 2017, pursuant to the Chamber's Decision on Prosecution request for variation of protective measures, 7 December 2017, ICC-01/04-02/06-2145, para. 13, notified on 8 December 2017.

human rights violations.³⁰ **Document 179, DRC-OTP-0126-0031**, appears to be a certified translation of a report by the President of the Peace Committee of Katoto regarding the consequences of a number of assaults launched by Lendu attackers. **Document 181, DRC-OTP-0126-0073**, is a report dated 5 April 2003, describing attacks against Largu and its surroundings. **Document 184, DRC-OTP-0021-0795**, is a report purportedly signed by the chief of the Djukoth *collectivité* denouncing violent acts committed by FNI/FRPI members. The Chamber notes that these documents specify the relevant date of most of the incidents described, as well as the identity of their authors and, where applicable, recipients and translators. In light of the foregoing and recalling that the admission of these five documents is uncontested, the Chamber is satisfied that they are *prima facie* relevant and probative, finds that their probative value is not outweighed by any potential prejudice arising from their admission, and therefore admits them into evidence.

32. **Document 155, DRC-OTP-0037-0011**, is a report on Uganda's involvement in Ituri, prepared by [REDACTED]. **Document 171, DRC-OTP-0037-0521**, is a document from a local organisation concerning the security situation in Ituri and suffering endured by the Hema community. These two documents are dated and specify the relevant personnel in charge of the coordination within these organisations, who either authored or sent these documents. Under these circumstances and recalling that their admission is uncontested, the Chamber is satisfied that the documents are *prima facie* relevant and probative, considers that no undue prejudice arises from their admission, and admits them into evidence.

33. **Document 156, DRC-OTP-0014-0263**, is a handwritten security report dated 15 July 2003 and addressed to a UPC national secretary by an inspector of the

³⁰ An unredacted version of the document was disclosed on 11 December 2017, pursuant to the Chamber's Decision on Prosecution request for variation of protective measures, 7 December 2017, ICC-01/04-02/06-2145, para. 13, notified on 8 December 2017.

Congolese national police force in Bunia. This document is stamped and appears to have been signed by its stated author. **Document 165, DRC-OTP-0137-0034**, appears to be a decree of 13 October 2001, signed by the President of the RCD/K and nominating members of its executive branch. It bears relevant RCD/K stamp and letterhead. In light of their form and content, the Chamber finds that they are *prima facie* relevant. It is further satisfied that these two documents have sufficient probative value. The Chamber also finds that their probative value is not outweighed by any potential prejudice arising from their admission and admits them into evidence. For the same reasons, the Chamber admits **Document 174, DRC-OTP-0086-0038**, into evidence, noting that it is a decree of 11 December 2004, signed by President Kabila and bearing the presidential stamp and letterhead, which appoints senior officers in the FARDC, including former FPLC members.

34. **Document 157, DRC-OTP-0058-0587**, appears to consist of notes of a meeting held on 7 March 2002 between two 'Expert Panel' members and a UNICEF representative in Kampala. The Chamber first observes that this document does not bear certain indicia of reliability present on other UN documents and does not contain a clear indication as to who drafted the document. In the absence of any authentication, the Chamber finds that this document is not sufficiently reliable and probative, and denies its admission into evidence.
35. **Document 159, DRC-OTP-0107-0013; Document 160, DRC-OTP-0107-0362; Document 161, DRC-OTP-0107-0470; Document 162, DRC-OTP-0136-0072; Document 163, DRC-OTP-0136-0171; Document 164, DRC-OTP-0136-0176; Document 172, DRC-OTP-0041-0070; and Document 180, DRC-OTP-0018-0108**, all appear to be political or legislative efforts relating to the pacification process in Ituri during the relevant time period. With the exception of Document 161 – which can nonetheless be placed in time when considered in light of the evidentiary record as a whole –, all these documents are dated. They also all

contain signatures or initials of the various actors mentioned as having been involved in these efforts, apart from Document 160 – which appears to be in draft format. In light of the foregoing, and recalling that their admission is unopposed, the Chamber is satisfied that these documents are all *prima facie* relevant and probative. The Chamber further finds that their probative value is not outweighed by any undue prejudice arising from their admission and admits these documents into evidence.

36. **Document 176, DRC-OTP-P-0815**, is a photograph of Witness P-0815 taken in the courtroom during his testimony. Noting the circumstances of its creation and the Defence's submission that the document is necessary to compare the witness's physical features with the images of a person appearing in a video admitted in this case,³¹ the Chamber is satisfied that this document is *prima facie* relevant and has sufficient probative value. Having found that no undue prejudice arises from its admission, the Chamber admits this photograph into evidence.

37. **Document 178, DRC-OTP-0093-0091**, is a document which appears to have been authored by the Bishop of Buta concerning the situation in Ituri. It is not dated, does not contain a signature, and appears to be in draft form, since the document specifies that three modifications were made by someone other than the author 'upon reading the document'. The Chamber considers that this document lacks *prima facie* probative value and therefore denies its admission into evidence.

2. Contested items

i. Documents provided by the UN

38. **Document 4, DRC-OTP-0193-0158; Document 22, DRC-OTP-0005-0305; and Document 23, DRC-OTP-0014-0198**, are submitted as MONUC reports. The

³¹ ICC-01/04-02/06-2128-Conf-AnxA, pages 102 to 103.

Chamber considers that these reports, while relevant, lack important indicia of reliability, such as information on their sources, context, or purpose of their creation, and/or the relevant dates. The Chamber recalls that the fact that those documents were disclosed by the Prosecution as originating from the UN is not, in itself, sufficient to establish their source.³² In addition, the layout and format of the documents does not clearly correspond to other documents that allegedly originate from the same source. In light of the above, and in the absence of any authentication, the Chamber finds that these three documents are not sufficiently reliable and denies their admission into evidence.

39. The Prosecution objects to the admission of **Document 7, DRC-OTP-2078-0736**, a MONUC code cable dated 9 May 2003, on the basis that the Defence fails to identify the document's relevance and misrepresents its content.³³ The Chamber however finds that the situation in Bunia at the time, notably the presence and activities of armed groups, the related security and humanitarian situation, as well as ongoing looting and attacking of civilians referred to in the document, is of relevance to the present case. Furthermore, the Chamber notes that the document contains sufficient indicia of reliability as it is dated, is presented in a format similar to other MONUC code cables, and bears a transmission number. In light of the foregoing, the Chamber is satisfied that the document's relevance and probative value have been sufficiently established and that its admission will not cause undue prejudice, and therefore admits it into evidence.

ii. UPC/RP documents

40. **Document 25, DRC-D03-0001-0352**, is submitted to be a press release authored by the UPC's national secretary for press and information. It seems to have been drafted on 23 January 2003, and relates to the visit of UPDF General Salim Saleh to Bunia. The Chamber notes that it is unsigned, but finds this to be consistent

³² See Decision on Second Request, ICC-01/04-02/06-1838, para. 43.

³³ Prosecution Response, ICC-01/04-02/06-2140-Conf, para. 19.

with the nature of such a document. In light of the foregoing, the Chamber finds that its relevance and probative value have been sufficiently established, and is of the view that no prejudice would arise from its admission. Accordingly, this document is admitted into evidence.

41. **Document 26, DRC-D01-0003-5896**, is a UPC report signed on behalf of Mr Ntaganda in his official capacity and dated February 2003. The Chamber notes that it contains a stamp from the UPC General Staff and that its layout and format is generally consistent with other UPC documents on the record. In addition, Document 26 appears to refer to two other related exhibits already admitted into evidence,³⁴ and Mr Ntaganda testified about the creation of the document, including the signature which appears on this document on his behalf (or 'P.O.').³⁵ The Chamber considers the document to be *prima facie* relevant and, in light of the foregoing, finds that it is *prima facie* reliable and probative. The Chamber does not require additional information on purpose and the context surrounding this document's creation or 'storage' and, consistently with other material admitted in court or *via* the bar table, does not consider authentication by the author or provider of this document to be necessary. Accordingly, as no prejudice would arise from its admission, Document 26 is hereby admitted into evidence. The Prosecution's submissions contesting the authenticity of Document 26³⁶ will be considered further by the Chamber when assessing the weight to be attributed to this exhibit.

42. **Document 55, DRC-OTP-0092-0592**; and **Document 56, DRC-OTP-0092-0655**, appear to be answers provided by two individuals to an examination on UPC ideology for which the corresponding questions appear to be contained in **Document 57, DRC-OTP-0092-0680**. The questionnaire is dated and signed,

³⁴ DRC-OTP-0029-0274 and DRC-OTP-0029-0275.

³⁵ See **D-0300**: T-223, page 46, line 22 to page 50, line 5; and T-239 CT, page 25, line 2 to page 26, line 2. On this occasion, Document 26 was 'marked for identification'.

³⁶ ICC-01/04-02/06-2128-Conf-AnxA, pages 16 to 19.

while the two answer sheets bear the names of their authors. Furthermore, one of them also specifies the date on which the responses were given, which is consistent with the date provided on the questionnaire. In light of the above, the Chamber finds that these three interrelated hand-written documents are *prima facie* relevant and probative. The Prosecution appears to challenge their admission on the basis of reliability but the Chamber considers that its arguments in that respect go to weight rather than the documents' reliability for the purposes of admissibility. Having found that their probative value is not outweighed by any undue prejudice, the Chamber admits these documents into evidence.

43. **Document 69, DRC-OTP-0195-0210**, is submitted to be a draft letter from the UPC President addressed to MONUC representatives. As noted by the Prosecution, the letter is not presented on letterhead, there are no stamps or seals, and it is unsigned. In the absence of any authentication, the Chamber considers that it lacks relevant indicia of reliability and denies its admission into evidence.

iii. **Hema community documents**

44. **Document 83, DRC-OTP-0214-0087**, is a handwritten document entitled 'List of Hema people to be exterminated before July-August 2002'. It is signed and dated, and purports to support the existence of a plan from RCD leadership to eliminate Hema families and leaders in 2002. Given its date and content, the Chamber considers the document to be relevant. The Chamber notes the Defence's submissions that 'the existence of such a list was referenced in Mr Ntaganda's testimony',³⁷ but observes that the references provided to that effect do not support such statement. While Mr Ntaganda indeed testified that 'APC troops mistreated Hema commanders and killed members of Hema

³⁷ ICC-01/04-02/06-2128-Conf-AnxA, page 50, referring to **D-0300**: T-213, page 33, line 6 to page 34, line 5; and also to T-224, page 45, line 25 to page 46, line 7.

families',³⁸ the Chamber does not consider that his evidence supports the authentication of the list tendered. As noted by the Prosecution,³⁹ and in comparison with other documents emanating from the RCD leadership,⁴⁰ this document does not bear the relevant letterhead or stamp. The Chamber therefore finds that it lacks indicia of reliability, such as information on the context or purpose of its creation and, in the absence of authentication, finds that *prima facie* probative value has not been established. The Chamber accordingly denies its admission into evidence.

iv. Media/press documents

45. The Chamber recalls its decision of 28 March 20017, in which it considered that media and press articles, absent any witnesses testifying to the accuracy of the information contained therein, have 'limited probative value' where they lack information on: the news outlets the articles are supposed to have appeared in; the background and qualifications of their authors; and the sources relied upon.⁴¹ The Chamber therefore denies the admission into evidence of the following documents: **Document 98, DRC-OTP-2099-1737; Document 99, DRC-D03-0001-0355; Document 100, DRC-OTP-0019-0150; Document 101, DRC-OTP-0037-0290; Document 102, DRC-OTP-0037-0590; and Document 103, DRC-OTP-0168-0049.**

v. Documents relating to Intermediary P-0154

46. **Document 105, DRC-OTP-2092-0213-R03; Document 106, DRC-D18-0001-2414; Document 107, DRC-OTP-2092-0215-R02; Document 109, DRC-OTP-2095-0113; Document 110, DRC-OTP-2095-0206; Document 111, DRC-OTP-2095-0217; Document 112, DRC-OTP-2096-0566; Document 113, DRC-OTP-2096-0641; and**

³⁸ **D-0300:** T-213, page 33, line 6 to page 34, line 5.

³⁹ ICC-01/04-02/06-2128-Conf-AnxA, page 50 to 51.

⁴⁰ DRC-OTP-0055-0472; and DRC-OTP-0055-0484.

⁴¹ Decision on Second Request, ICC-01/04-02/06-1838, paras 60-61.

Document 183, DRC-OTP-2096-0557,⁴² all relate to the activities of Intermediary P-0154, notably his contact with stated individuals, including various Prosecution witnesses. As such, in line with the Chamber's ruling above for uncontested Document 108, these documents are considered to be *prima facie* relevant. The Chamber is also satisfied that these documents have sufficient probative value. They contain the same recognisable letterhead and/or an indication of authorship, and/or a date of creation, with the exception of Documents 106 and 183. These two documents, however, seem to have been created and disclosed by the Prosecution itself.⁴³ The Chamber underscores that the above nine documents concern the Prosecution's activities in the field, and that they contain Rule 77 information which had to be disclosed to the Defence. Accordingly, in ruling on admissibility, the Chamber has taken into consideration the principle of fairness, and considered that the Defence ought not to be prevented from having this information admitted on the record simply because these internal Prosecution documents are insufficiently clear or detailed, lack specificity, or that their content is otherwise insufficient of its own to understand the context or purpose of their creation. The Chamber observes that, while these items were not all used in court, the issue of contact between certain Prosecution witnesses, and related role of Intermediary P-0154, was discussed in substance with various witnesses during the course of the hearings,⁴⁴ thereby limiting any prejudice which could arise from the documents' admission.

⁴² The Chamber has assessed the admissibility of Document 183 together with the above eight documents related to P-0154.

⁴³ The Prosecution does not challenge this for Document 106 (ICC-01/04-02/06-2128-Conf-AnxA, page 64). It is further noted that the information contained in this document appears to reproduce, in part, information contained in other documents disclosed by the Prosecution (DRC-OTP-2097-0517). On the other hand, Document 183 was disclosed by the Prosecution under Rule 77 of the Rules and the chain of custody information contained in the metadata indicates that it was obtained directly from Intermediary P-0154.

⁴⁴ See, *inter alia*, **P-0018**: T-111, page 45, line 9 to page 50, line 8; T-112, page 12, line 2 to page 25, line 12; **P-0019**: T-116, page 54, line 16 to page 58, line 21; T-117, page 4, line 3 to page 19, line 19; **P-0113**: T-119, page 31, line 24 to page 39, line 2; page 55, line 17 to page 57, line 6; **P-0100**: T-131, page 59, line 18 to page 60, line 1; T-132, page 10, line 13 to page 11, line 15; page 47, line 17 to page 52, line 24; **P-0127**: T-141, page 11, line 6 to page 12, line 9; **P-0300**: T-167, page 41, line 3 to page 64, line 25; and **P-0105**: T-134, page 36, line 7 to page 51, line 5.

Notably, the alleged ‘collective meetings’ and the existence and use of the ‘*Liste de présence*’ by Intermediary P-0154 was discussed with Witnesses P-0018, P-0019, P-0113, P-0100 and P-0300.⁴⁵ Having found that the probative value of these documents is not outweighed by any potential prejudice, the Chamber admits all of them into evidence.

vi. Video recordings and related transcripts/translations

47. Three excerpts of **Document 114, DRC-OTP-0080-0002**,⁴⁶ are tendered by the Defence, together with the corresponding excerpts of its transcript, **Document 116, DRC-OTP-0165-0734**,⁴⁷ and translation, **Document 115, DRC-OTP-0165-0012**.⁴⁸ They seem to be recordings of parts of a speech given by the FPLC’s G5 on 26 February 2003.⁴⁹ The two excerpts of **Document 119, DRC-OTP-0081-0006**,⁵⁰ submitted together with the corresponding excerpts of its transcript, **Document 121, DRC-OTP-0180-0764**,⁵¹ and translation, **Document 120, DRC-OTP-0180-0434**,⁵² seem to show an interview with Chief Kahwa purportedly recorded on 12 March 2003. Tendered excerpt of **Document 122, DRC-OTP-0081-0002**,⁵³ submitted together with the corresponding excerpts of its transcript, **Document 124, DRC-OTP-0181-0253**,⁵⁴ and translation, **Document 123, DRC-OTP-0181-0110**,⁵⁵ appears to show parts of

⁴⁵ See, *inter alia*, **P-0018**: T-112, page 18, line 1 to page 25, line 4; **P-0019**: T-116, page 56, lines 5 to 8; page 57, lines 3 to 5; T-117, page 7, line 18 to page 19, line 19; **P-0113**: T-119, page 32, line 15 to page 33, line 10; page 33, line 23 to page 34, line 24; page 36, line 16 to page 39, line 2; **P-0100**: T-132, page 47, line 17 to page 52, line 24; page 51, line 21 to page 52, line 24; and **P-0300**: T-167, page 52, line 7 to page 62, line 9.

⁴⁶ From time stamps 39:14 to 39:55, 42:39 to 44:06, and 51:46 to 52:05.

⁴⁷ Page 0756, line 578 to page 0757, line 588; page 0758, line 629 to page 0759, line 648; and page 0763, line 767 to page 0764, line 776.

⁴⁸ Page 0037, line 636 to page 0038, line 648; page 0039, line 695 to page 0040, line 720; and page 0045, lines 851 to 861.

⁴⁹ **P-0002**: DRC-OTP-0080-0002, at 13:04.

⁵⁰ From time stamps 02:05 to 03:35 and 06:08 to 06:51.

⁵¹ Page 0765, lines 26 to 42; and page 0766, line 76 to page 0767, line 86.

⁵² Page 0436, lines 26 to 42; and page 0437, line 76 to page 0438, line 86.

⁵³ From time stamps 01:14:03 to 01:15:04.

⁵⁴ The Chamber notes that the Defence tenders excerpts of Document 124, DRC-OTP-0181-0253, as the corresponding transcript but that, in fact, it is another item, DRC-OTP-0181-0236, which contains the relevant excerpts. Accordingly, the Chamber has considered the latter document for admission, from page 0246, lines 319 to 332.

⁵⁵ Page 0121, lines 317 to 330.

a speech by Kale Kayihura dated 25 April 2003.⁵⁶ The Chamber previously admitted parts of these three videos as Prosecution exhibits pursuant to Rule 68(3) of the Rules.⁵⁷ Relying on Witness P-0002's authentication of these videos,⁵⁸ considering their content, and taking into consideration the directives provided in court in relation to, *inter alia*, these recordings,⁵⁹ the Chamber is satisfied that these items are *prima facie* relevant and probative, and finds that no undue prejudice would arise from their admission. In relation to Document 114, the Chamber recalls that an individual who can be seen in this video was initially scheduled to appear as a Defence witness,⁶⁰ and could have further authenticated the relevant excerpts, but did not ultimately testify. The Chamber admits these video excerpts, with their corresponding transcripts and translations, into evidence.

48. The two excerpts of **Document 117, DRC-D18-0001-0433**,⁶¹ submitted together with the corresponding excerpts of its transcript, **Document 118, DRC-D18-0001-5620**,⁶² purportedly show the opening ceremony of the *Comité de Vérité, Paix et Réconciliation*, and were allegedly recorded in Cine Azanga on 13 January 2003 in Bunia. During his testimony, Mr Ntaganda discussed this event and stated that he was present during this meeting.⁶³ The Chamber further notes that part of the video excerpt tendered was shown to him, and

⁵⁶ The Chamber has noted the Defence's submissions with regard to the date of this video (ICC-01/04-02/06-2128-Conf-AnxA, page 71), but recalls Witness P-0002's testimony in relation to this event (**P-0002**: DRC-OTP-2055-1037, page 1099, lines 15 to 17).

⁵⁷ T-167, page 2, line 9 to page 10, line 10; and T-170, page 47, line 9 to page 48, line 2.

⁵⁸ **P-0002**: DRC-OTP-2055-1037, page 1098, lines 12 to 13; page 1115, lines 5 to 8; page 1087, line 21 to 22; and page 1089, lines 5 to 15.

⁵⁹ See T-172, page 44, line 8 to page 46, line 8.

⁶⁰ D-0070 (see Annex A to Defence Final Lists of Witnesses and Evidence, 26 April 2017, ICC-01/04-02/06-1881-Conf-AnxA, notified on 28 April 2017).

⁶¹ From time stamps 00:21:13 to 00:55:00 and 00:58:10 to 01:03:22.

⁶² As the Defence submissions do not specify the relevant portions of Document 118, the Chamber identified the following excerpt as corresponding to the video recording excerpts tendered: page 5621, line 4 to page 5630, line 276.

⁶³ **D-0300**: *inter alia* T-218, page 86, line 13 to page 87, line 9; T-219, page 3, lines 15 to 19; page 4, line 16 to page 5, line 3.

subsequently admitted into evidence.⁶⁴ In light of these circumstances, the Chamber finds that these items be *prima facie* relevant and probative. Considering that no undue prejudice arises from this complementary ruling on admission, the Chamber admits these video excerpts, together with their corresponding transcripts, into evidence.

49. The Defence tenders an excerpt of **Document 125, DRC-OTP-0124-0002**,⁶⁵ which was provided by Witness P-0057 to the Prosecution.⁶⁶ Another excerpt of this recording was authenticated by Witness P-0002 during his prior recorded testimony.⁶⁷ Given the poor quality of the images of the excerpt, as well as the fact that the Defence did not indicate where Mr Ntaganda is supposed to appear on this video, the Chamber is unable to assess if the recording actually depicts the events as described by the Defence in its submissions on relevance.⁶⁸ In the circumstances, the Chamber cannot conclude that the excerpt is *prima facie* relevant. Accordingly, the Chamber denies the admission of this video recording excerpt.

50. The excerpt of **Document 126, DRC-OTP-0127-0058**,⁶⁹ submitted together with the corresponding excerpts of its transcript, **Document 128, DRC-OTP-2102-3646**,⁷⁰ and translation, **Document 127, DRC-OTP-0164-0750**,⁷¹ seems to show various scenes recorded on 14 January 2003, including a meeting purportedly held in Ngongo. Other excerpts of this video have already been admitted into evidence as Prosecution exhibits after being discussed with and authenticated by Witnesses P-0105 and P-0055.⁷² The Chamber notes that while

⁶⁴ From 00:49:37 to 00:51:25 (T-219, page 3, line 20 to page 12, line 3).

⁶⁵ From time stamps 09:35 to 10:55.

⁶⁶ ICC-01/04-02/06-2128-Conf-AnxA, page 72. *See also* **P-0057**: DRC-OTP-0150-0354, page 0391, para. 155.

⁶⁷ **P-0002**: DRC-OTP-2055-1037, page 1116, lines 5 to 17. *See also*, page 1117, lines 14 to 17.

⁶⁸ ICC-01/04-02/06-2128-Conf-AnxA, page 72.

⁶⁹ From time stamps 00:10:06 to 00:27:15.

⁷⁰ Page 3654, line 168 to page 3671, line 597.

⁷¹ Page 0760, line 195 to page 778, line 663.

⁷² **P-0105**: T-133, page 60, line 1 to page 68, line 17; **P-0055**: T-72, page 17, line 12 to page 21, line 15; and page 23, line 17 to page 24, line 24.

the excerpt tendered is relatively long, it contains numerous embedded timestamps consistent with the Defence submission that all relevant excerpts from this video were recorded on 14 January 2003.⁷³ The embedded timestamps also attest to the fact that the entirety of the excerpt depicts images recorded *successively* on the same day.⁷⁴ In light of the information already on the record, and having reviewed the content of the relevant excerpt, the Chamber finds that *prima facie* relevance and probative value have been established. Finally, although the Chamber considers that it would have been more appropriate for the Defence to seek authentication of this recording from *viva voce* witnesses, it also considers that the probative value of these items is not outweighed by the potential prejudice which could arise from their admission *via* the bar table. Consequently, the Chamber admits this video excerpt, together with the corresponding transcript and translation, into evidence.

51. A video excerpt of **Document 129, DRC-OTP-0036-0006**,⁷⁵ is tendered by the Defence together with the corresponding excerpts of its transcript, **Document 130, DRC-OTP-0180-0363**.⁷⁶ They purport to relate to the consequences of an attack on Nyankunde. The Chamber finds that, absent further information on the date and circumstances of the creation of this video, or any other form of authentication, it cannot assess relevance and probative value of the video and corresponding transcript, and therefore denies their admission into evidence.

52. For the same reasons, the Chamber declines to admit the excerpt of **Document 134, DRC-D18-0001-0440**,⁷⁷ into evidence. As the Defence notes, the video seems to be recorded on 8 June 2003, but in the absence of further

⁷³ See, e.g., DRC-OTP-0127-0058, at 00:10:06, 00:15:05, 00:19:10, 00:20:00, 00:21:05, 00:22:55, 00:23:40, 00:24:50, and 00:25:03.

⁷⁴ The time of the day also appears on a number of occasions as part of the embedded time stamps.

⁷⁵ From time stamps 35:14 to 36:10.

⁷⁶ Page 0371, lines 295 to 316.

⁷⁷ From time stamps 31:45 to 36:30.

information on its creation, or any other form of authentication, and what is depicted, the Chamber finds that it is not *prima facie* relevant or probative, and therefore denies its admission into evidence.

vii. Other documents

53. **Document 135, DRC-D18-0001-5887**, is submitted to be a document providing responses to questions raised by the Defence in relation to the work of the Court's Victims Participation and Reparations Section ('VPRS'). According to the Defence, the document was received from the VPRS.⁷⁸ However, while the content of the document supports the Defence's submissions, as noted by the Prosecution⁷⁹ and the Legal Representatives,⁸⁰ the document itself does not contain any indication of its author or source. The Chamber considers that, without any indication of authorship or proof of transmission, the document's probative value has not been sufficiently established. The Chamber therefore denies the admission of this document into evidence.

54. **Document 136, DRC-D18-0001-0414**, is a list identifying individuals and entities that facilitated initial contact with certain Prosecution witnesses. The document was created and disclosed by the Prosecution.⁸¹ Under these circumstances, the Chamber is satisfied that the document is *prima facie* relevant and probative. It further notes that, although this specific document has not been put to the witnesses concerned, some witnesses were questioned about their contacts with individuals listed therein, notably Prosecution intermediaries.⁸² Accordingly, the Chamber considers that the document's probative value is not outweighed by any potential prejudice arising from its admission, and admits it into evidence.

⁷⁸ ICC-01/04-02/06-2128-Conf-AnxA, page 76.

⁷⁹ ICC-01/04-02/06-2128-Conf-AnxA, page 76.

⁸⁰ Legal Representatives Response, ICC-01/04-02/06-2138-Conf, paras 13 and 29.

⁸¹ ICC-01/04-02/06-2128-Conf-AnxA, page 77. The Chamber notes that Prosecution does not challenge this fact.

⁸² See, *inter alia*, **P-0018**: T-111, page 45, line 9 to page 50, line 8; T-112, page 12, line 2 to page 25, line 12; **P-0019**: T-116, page 54, line 16 to page 58, line 21; T-117, page 4, line 3 to page 19, line 19; **P-0792**: T-151, page 16, line 11 to page 22, line 15; **P-0127**: T-141, page 11, line 14 to page 12, line 9; and **P-0105**: T-134, page 36, line 7 to page 51, line 5.

55. **Document 137, DRC-D18-0001-2473**, is a list of ‘non-routine expenses’ incurred by the Prosecution in relation to Witness P-0031. It appears to have been provided to the Defence by the Prosecution on 6 December 2016,⁸³ that is two days prior to the start of the witness’s testimony, although formal disclosure took place on 13 December 2016 pursuant to Rule 77 of the Rules.⁸⁴ The Chamber notes that, during the witness’s cross-examination, the Defence briefly questioned Witness P-0031 on his motivation for testifying, referring to, *inter alia*, the amount of money he received during the period between January 2007 and March 2010.⁸⁵ This topic was not addressed further with the witness and the Defence did not put the document now sought to be tendered to Witness P-0031. The Chamber considers that this document is *prima facie* relevant and, to the extent that it substantiates part of the Defence’s suggestion put to P-0031, finds that it has sufficient probative value. Noting that the information contained in Document 137 was, at least in part, put to the witness, the Chamber considers that its probative value is not outweighed by any potential prejudice which could result from its admission and admits this document into evidence.

56. **Document 138, DRC-OTP-0231-0257-R04**, is an internal email communication from Intermediary P-0316 concerning, *inter alia*, his contact with certain Prosecution witnesses. As noted by the Prosecution, some of the information contained in this document was confirmed by witnesses who testified in Court.⁸⁶ The Chamber, however, does not find this to be a reason, in and of itself, to reject the request for admission of the document. Accordingly, and notwithstanding the fact that some of the information contained therein appears to be consistent with information already on the record, the Chamber finds that, in the circumstances, evidence of Intermediary P-0316’s communication with

⁸³ Chain of custody metadata of DRC-D18-0001-2473, as indicated in eCourt.

⁸⁴ Prosecution’s Communication of the Disclosure of Evidence, 19 December 2016, ICC-01/04-02/06-1693, para. 5, referring to another version of this same document, DRC-OTP-2099-0417.

⁸⁵ **P-0031**: T-177, page 32, line 25 to page 34, line 7.

⁸⁶ Prosecution Response, ICC-01/04-02/06-2140-Conf, para. 44.

witnesses is *prima facie* relevant. The Chamber is also satisfied that the document, which is dated and specifies the names of both sender and recipients, has *prima facie* probative value. Further considering that no undue prejudice would arise from its admission, the Chamber admits this document into evidence.

57. **Document 143, DRC-OTP-0165-0880**, contains a number of emails apparently sent by Jean-Pierre Molondo Loponde in July and August 2002. While the details concerning the dates and recipients contained in the emails' headers, as well as the document's format, seem to indicate that the text was extracted from the inbox of a Yahoo email account, the Chamber notes that, as highlighted by the Prosecution, the provider of this document, Witness P-0014, reported that these emails were fabricated and that they were not actually written by Jean-Pierre Molondo Loponde.⁸⁷ Noting that this document was not put to Witness P-0014 by the Defence during its cross-examination, and absent any further information as to authenticity, the Chamber finds that its probative value is outweighed by the potential prejudice arising from its admission, and denies its admission into evidence.

58. **Document 148, DRC-D18-0001-2932; Document 149, DRC-D18-0001-2933; Document 150, DRC-D18-0001-2934; and Document 151, DRC-D18-0001-2935**, appear to be death and burial certificates issued by the '*État Civil*' in Bunia. They attest to the date and location of the death of two individuals included in Witness P-0005's testimony about UPC killings during and after the takeover of Bunia in August 2002. Having considered Witness P-0005's evidence on the circumstances of these deaths,⁸⁸ the Chamber finds that *prima facie* relevance has been established. Noting that these four documents share the same template, are dated, signed, and bear the stamp of the relevant authorities, the Chamber

⁸⁷ **P-0014**: DRC-OTP-0165-0999, at pages 1093 to 1094, paras 416-419.

⁸⁸ **P-0005**: T-183, page 30, line 4 to page 31, line 16; and T-189, page 24, line 4 to page 25, line 24.

considers them to have *prima facie* probative value. Finally, in light of the nature of these documents, and the questions already put to Witness P-0005, the Chamber does not consider that the tendering of these documents through this or another witness was necessary, and finds that their probative value outweighs any prejudice which may arise from their admission from the bar table. The Chamber therefore admits these four items into evidence.

59. **Document 154, DRC-OTP-0037-0239**, is a report describing a specific incident as well as the general situation in Mongbwalu in June 2002. The Chamber notes that it is dated and signed, and that the name of its author is indicated. However, it is unclear who the intended audience is and whether it is in draft form. Additionally, there is a manuscript supplement to the document which appears to have been added after the document's creation. Furthermore, the document contains abbreviations that are unclear and it is not presented on letterhead. Without authentication, the Chamber is not satisfied that the document is sufficiently probative. The Chamber therefore denies admission of this document into evidence.

60. **Document 158, DRC-OTP-0106-0289**, is a letter of December 2003 from the PUSIC Presidency to Ugandan Brigadier Kale Kayihura, seeking financial support. Considering the document's form and content, the Chamber is satisfied that it is *prima facie* relevant and bears sufficient indicia of reliability. With regards to the Prosecution's objections to its admission,⁸⁹ the Chamber recalls that failure by a party to tender a document through a witness does not, in and of itself, serve as a barrier to admission of the item from the bar table.⁹⁰ In light of the foregoing, the Chamber finds that the document's probative value is not outweighed by any potential prejudice arising from its admission and therefore admits it into evidence.

⁸⁹ Prosecution Response, ICC-01/04-02/06-2140-Conf, para. 45; and ICC-01/04-02/06-2128-Conf-AnxA, page 92.

⁹⁰ Decision on Second Request, ICC-01/04-02/06-1838, para. 13.

61. **Document 166, DRC-OTP-2099-0547; Document 167, DRC-OTP-2099-0548; Document 168, DRC-OTP-2099-0550; and Document 169, DRC-OTP-2099-0551,** contain emails from May 2011 between staff members of the Court concerning Witness P-0005. They relate to contacts between the Victims and Witnesses Unit ('VWU') and Witness P-0005 and refer to, *inter alia*, the witness's request to be compensated for his testimony. With the exception of one question on alleged discussions concerning 'financial matters' between the witness and a Prosecution intermediary, which Witness P-0005 dismissed,⁹¹ the documents tendered, although available to the Defence at the time,⁹² were not put to the witness during his cross-examination. Therefore, the topic of compensation was not as such covered during his testimony. In line with its practice in this respect,⁹³ and since the witness was not provided with an opportunity to comment on the information contained in these documents, the Chamber finds that the potential prejudice arising from their admission outweighs their probative value and therefore denies admission of these documents into evidence.

62. **Document 173, DRC-OTP-0072-0175,** is a document dated November 2004 concerning the trip of a FNI-FRPI delegation from Bunia to Loga. The Defence submits that the document is relevant because it 'shows that [REDACTED] was part of the FNI-FRPI'.⁹⁴ In this regard, the Chamber recalls that, when the Prosecution questioned this witness on his role within the FNI, the witness confirmed that he had been a 'Lendu representative',⁹⁵ represented the FNI [REDACTED],⁹⁶ acted as the FNI [REDACTED],⁹⁷ and operated as [REDACTED]

⁹¹ **P-0005:** T-189, page 33, line 21 to page 34, line 4.

⁹² The cross-examination started two weeks after these four documents were disclosed pursuant to Rule 77 to the Defence, on 9 January 2017 (Prosecution's Communication of the Disclosure of Evidence, 12 January 2017, ICC-01/04-02/06-1712).

⁹³ See, *inter alia*, Decision on admission of certain documents used during the testimony of Witness P-0005, 20 February 2017, ICC-01/04-02/06-1796-Conf.

⁹⁴ ICC-01/04-02/06-2128-Conf-AnxA, page 101.

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

of the FNI.⁹⁸ In these circumstances, the Chamber considers that the *prima facie* relevance of this specific document to assess the credibility and reliability of [REDACTED]'s evidence has not been established. The Chamber therefore denies admission of Document 173 into evidence.

63. **Document 175, DRC-OTP-2092-0342-R01**, is a photograph of a police report stating that Witness P-0190 made a false declaration to [REDACTED] authorities in 2015. While the Chamber is satisfied that, on the basis of its form and content, the document is *prima facie* relevant and probative, it finds that the document's probative value is outweighed by the potential prejudice arising from its admission. In order for information of this nature to be considered by the Chamber in its evaluation of the witness's credibility, such information ought to have been put to Witness P-0190 during his testimony in order to provide the witness with an opportunity to respond to the allegations contained therein. The Chamber therefore denies the admission of the document into evidence.

64. **Document 177, DRC-OTP-0037-0489**, is a letter of January 2002 describing attacks on Nyali citizens. The Chamber notes that the letter is dated and that the identity of its author is specified. Notwithstanding the absence of a signature and other additional indicia of reliability, the Chamber is satisfied that, in line with the approach followed above in assessing documents originating from the Hema community, the document is *prima facie* relevant and probative. The Chamber further finds that its probative value is not outweighed by any potential prejudice arising from its admission and therefore admits it into evidence.

65. **Document 182, DRC-OTP-0148-0365-R01**, appears to be a draft UPC/RP report, dated 28 January 2004, addressing a number of problems and recommendations to the Vice-President of the DRC in the context of his visit to Bunia. The

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

document bears no signature – although it includes a placeholder, where the stated author, date, and place are mentioned – and contains several handwritten editorial amendments. In line with the approach followed above for similar UPC/RP documents, the Chamber is nevertheless satisfied that the document is *prima facie* relevant and probative, and finds that its probative value is not outweighed by any potential prejudice arising from its admission. The Chamber therefore admits this document into evidence.

3. Classification of items admitted into evidence

66. The Chamber notes that, in its Request, the Defence does not make any specific submissions on the appropriate level of confidentiality for each of the items tendered. In the interest of the proceedings being accessible to the public, parties and participants are directed to coordinate with each other and the Registry, as appropriate, and indicate, by 29 March 2018, whether any of the items admitted pursuant to the present decision can be reclassified as ‘public’, with or without redactions, as well as to provide reasons for any items to remain confidential.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ADMITS the following items into evidence:

- Document 1, DRC-OTP-0005-0012;
- Document 3, DRC-OTP-0131-0161;
- Document 5, DRC-OTP-2078-0702;
- Document 6, DRC-OTP-2078-0709;
- Document 7, DRC-OTP-2078-0736;
- Document 8, DRC-OTP-0049-0465;
- Document 9, DRC-OTP-0184-0133;
- Document 10, DRC-OTP-0005-0023;
- Document 11, DRC-OTP-0005-0083;
- Document 13, DRC-OTP-0005-0191;
- Document 14, DRC-OTP-0051-0184 (para. 9 only);
- Document 15, DRC-OTP-0064-0463 (para. 3 only);
- Document 18, DRC-OTP-2067-1980 (paras 1 and 2 only);
- Document 19, DRC-OTP-2078-0223;
- Document 20, DRC-OTP-2078-0704 (pages 0704 to 0706 only);
- Document 21, DRC-OTP-2078-0727;
- Document 24, DRC-OTP-0093-0004;
- Document 25, DRC-D03-0001-0352;
- Document 26, DRC-D01-0003-5896;
- Document 28, DRC-OTP-0014-0179;
- Document 31, DRC-OTP-0014-0152;
- Document 32, DRC-OTP-0014-0170;
- Document 33, DRC-OTP-0093-0237;
- Document 34, DRC-OTP-0029-0280;
- Document 35, DRC-OTP-0029-0282;
- Document 36, DRC-OTP-0029-0286;
- Document 37, DRC-OTP-0016-0042;
- Document 38, DRC-OTP-0093-0134;
- Document 39, DRC-OTP-0029-0288;
- Document 40, DRC-OTP-0029-0302;
- Document 42, DRC-OTP-0029-0308;
- Document 43, DRC-OTP-0122-0037;
- Document 44, DRC-OTP-0037-0268;
- Document 45, DRC-OTP-0037-0271;
- Document 46, DRC-OTP-0037-0280;
- Document 47, DRC-OTP-0037-0281;

- Document 49, DRC-OTP-0138-0724;
- Document 50, DRC-OTP-0037-0337;
- Document 51, DRC-OTP-0089-0318;
- Document 52, DRC-OTP-0091-0665;
- Document 53, DRC-OTP-0092-0466;
- Document 54, DRC-OTP-0164-0447;
- Document 55, DRC-OTP-0092-0592;
- Document 56, DRC-OTP-0092-0655;
- Document 57, DRC-OTP-0092-0680;
- Document 58, DRC-OTP-0093-0260;
- Document 60, DRC-OTP-0112-0674;
- Document 61, DRC-OTP-0113-0060;
- Document 62, DRC-OTP-0113-0124;
- Document 63, DRC-OTP-0132-0324;
- Document 64, DRC-OTP-0151-0111;
- Document 67, DRC-OTP-0164-0444;
- Document 68, DRC-OTP-0132-0252;
- Document 70, DRC-OTP-0165-0242 (pages 0242 and 0243 only);
- Document 71, DRC-OTP-0193-0243;
- Document 72, DRC-OTP-0037-0086;
- Document 73, DRC-OTP-0033-0038;
- Document 74, DRC-OTP-0033-0041;
- Document 75, DRC-OTP-0033-0044;
- Document 76, DRC-OTP-0033-0058;
- Document 77, DRC-OTP-0033-0086;
- Document 78, DRC-OTP-0037-0092;
- Document 79, DRC-OTP-0037-0512;
- Document 80, DRC-OTP-0037-0541;
- Document 81, DRC-OTP-0041-0107;
- Document 82, DRC-OTP-0197-0219;
- Document 84, DRC-OTP-0214-0091;
- Document 85, DRC-OTP-0197-0238;
- Document 86, DRC-OTP-0214-0058;
- Document 87, DRC-OTP-0214-0116;
- Document 88, DRC-OTP-0214-0152;
- Document 89, DRC-OTP-0214-0176;
- Document 90, DRC-OTP-0214-0177;
- Document 91, DRC-OTP-0037-0206-R03;
- Document 92, DRC-OTP-0107-0506;
- Document 93, DRC-OTP-0107-0510;
- Document 94, DRC-OTP-0037-0088;
- Document 95, DRC-OTP-0037-0536;
- Document 96, DRC-OTP-0037-0545;

- Document 97, DRC-OTP-0126-0030;
- Document 104, DRC-OTP-2103-0390;
- Document 105, DRC-OTP-2092-0213-R03;
- Document 106, DRC-D18-0001-2414;
- Document 107, DRC-OTP-2092-0215-R02;
- Document 108, DRC-OTP-2095-0089;
- Document 109, DRC-OTP-2095-0113;
- Document 110, DRC-OTP-2095-0206;
- Document 111, DRC-OTP-2095-0217;
- Document 112, DRC-OTP-2096-0566;
- Document 113, DRC-OTP-2096-0641;
- Document 114, DRC-OTP-0080-0002 (39:14 to 39:55, 42:39 to 44:06, and 51:46 to 52:05 only);
- Document 115, DRC-OTP-0165-0012 (page 0037, line 636 to page 0038, line 648; page 0039, line 695 to page 0040, line 720; and page 0045, lines 851 to 861 only);
- Document 116, DRC-OTP-0165-0734 (page 0756, line 578 to page 0757, line 588; page 0758, line 629 to page 0759, line 648; and page 0763, line 767 to page 0764, line 776 only);
- Document 117, DRC-D18-0001-0433 (00:21:13 to 00:55:00 and 00:58:10 to 01:03:22 only);
- Document 118, DRC-D18-0001-5620 (page 5621, line 4 to page 5630, line 276 only);
- Document 119, DRC-OTP-0081-0006 (02:05 to 03:35 and 06:08 to 06:51 only);
- Document 120, DRC-OTP-0180-0434 (page 0436, lines 26 to 42; and page 0437, line 76 to page 0438, line 86 only);
- Document 121, DRC-OTP-0180-0764 (page 0765, lines 26 to 42; and page 0766, line 76 to page 0767, line 86 only);
- Document 122, DRC-OTP-0081-0002 (01:14:03 to 01:15:04 only);
- Document 123, DRC-OTP-0181-0110 (page 0121, lines 317 to 330 only);
- DRC-OTP-0181-0236 (page 0246, lines 319 to 332 only);
- Document 126, DRC-OTP-0127-0058 (00:10:06 to 00:27:15 only);
- Document 127, DRC-OTP-0164-0750 (page 0760, line 195 to page 778, line 663 only);
- Document 128, DRC-OTP-2102-3646 (page 3654, line 168 to page 3671, line 597 only);
- Document 131, DRC-OTP-0123-0009 (30:37 to 35:34 only);
- Document 132, DRC-OTP-2082-1097 (page 1114, line 602 to page 1116, line 678 only);
- Document 133, DRC-OTP-2082-1122 (page 1140, line 607 to page 1142, line 688 only);

- Document 136, DRC-D18-0001-0414;
- Document 137, DRC-D18-0001-2473;
- Document 138, DRC-OTP-0231-0257-R04;
- Document 139, DRC-OTP-2066-0532;
- Document 140, DRC-OTP-2066-0537;
- Document 144, DRC-OTP-2078-0434;
- Document 145, DRC-OTP-2078-0582;
- Document 146, DRC-OTP-2078-0687;
- Document 147, DRC-OTP-2078-0689;
- Document 148, DRC-D18-0001-2932;
- Document 149, DRC-D18-0001-2933;
- Document 150, DRC-D18-0001-2934;
- Document 151, DRC-D18-0001-2935;
- Document 152, DRC-OTP-0003-0352;
- Document 153, DRC-OTP-0037-0451;
- Document 155, DRC-OTP-0037-0011;
- Document 156, DRC-OTP-0014-0263;
- Document 158, DRC-OTP-0106-0289;
- Document 159, DRC-OTP-0107-0013;
- Document 160, DRC-OTP-0107-0362;
- Document 161, DRC-OTP-0107-0470;
- Document 162, DRC-OTP-0136-0072;
- Document 163, DRC-OTP-0136-0171;
- Document 164, DRC-OTP-0136-0176;
- Document 165, DRC-OTP-0137-0034;
- Document 170, DRC-OTP-0037-0204;
- Document 171, DRC-OTP-0037-0521;
- Document 172, DRC-OTP-0041-0070;
- Document 174, DRC-OTP-0086-0038;
- Document 176, DRC-OTP-P-0815;
- Document 177, DRC-OTP-0037-0489;
- Document 179, DRC-OTP-0126-0031;
- Document 180, DRC-OTP-0018-0108;
- Document 181, DRC-OTP-0126-0073;
- Document 182, DRC-OTP-0148-0365-R01;
- Document 183, DRC-OTP-2096-0557; and
- Document 184, DRC-OTP-0021-0795

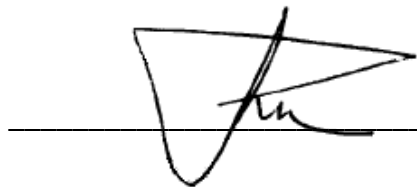
DIRECTS the Registry to update the eCourt metadata of the aforementioned items so as to reflect their admission status and the fact that they were admitted pursuant to the present decision;

REJECTS the remainder of the Request and therefore denies the admission of:

- Document 2, DRC-OTP-0004-0047;
- Document 4, DRC-OTP-0193-0158;
- Document 12, DRC-OTP-0005-0106;
- Document 16, DRC-OTP-0195-1543;
- Document 17, DRC-OTP-0195-1570;
- Document 22, DRC-OTP-0005-0305;
- Document 23, DRC-OTP-0014-0198;
- Document 27, DRC-OTP-0093-0123;
- Document 41, DRC-OTP-0093-0319;
- Document 59, DRC-OTP-0094-0298;
- Document 69, DRC-OTP-0195-0210;
- Document 83, DRC-OTP-0214-0087;
- Document 98, DRC-OTP-2099-1737;
- Document 99, DRC-D03-0001-0355;
- Document 100, DRC-OTP-0019-0150;
- Document 101, DRC-OTP-0037-0290;
- Document 102, DRC-OTP-0037-0590;
- Document 103, DRC-OTP-0168-0049;
- Document 125, DRC-OTP-0124-0002;
- Document 129, DRC-OTP-0036-0006;
- Document 130, DRC-OTP-0180-0363;
- Document 134, DRC-D18-0001-0440;
- Document 135, DRC-D18-0001-5887;
- Document 141, DRC-OTP-2066-0545;
- Document 142, DRC-OTP-2066-0536;
- Document 143, DRC-OTP-0165-0880;
- Document 154, DRC-OTP-0037-0239;
- Document 157, DRC-OTP-0058-0587;
- Document 166, DRC-OTP-2099-0547;
- Document 167, DRC-OTP-2099-0548;
- Document 168, DRC-OTP-2099-0550;
- Document 169, DRC-OTP-2099-0551;
- Document 173, DRC-OTP-0072-0175;
- Document 175, DRC-OTP-2092-0342-R01; and
- Document 178, DRC-OTP-0093-0091

DIRECTS the parties and participants to file, by 29 March 2018, submissions on the appropriate confidentiality level for each of the items admitted by way of the present decision.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a horizontal line and a small flourish.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, consisting of a series of loops and a final horizontal stroke.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct, stylized characters.

Judge Chang-ho Chung

Dated this 31 January 2018

At The Hague, The Netherlands