

Confidential

Anx No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
1	Summary of Annexes	N/A	N/A	N/A	N/A
2	ERN: DRC-OTP-0092-0378 The <i>Curriculum vitae</i> of Thomas Lubanga Dyilo, dated 1 June 2004, containing information on his identity, education and professional and political experience until 2002. The document indicates that the UPC was created in 2000 and he is its President.	It contains the signature of Thomas Lubanga Dyilo and a solemn undertaking that the contents are true. Much of the information has been corroborated by witness testimony, some of which has been tested by the defence during its questioning.¹ The prosecution only seeks the admission of the first two pages of the group of documents that were registered together.²	This document provides the best record of the education, employment and political activities of Mr Lubanga Dyilo, as well as his place of birth, signed and verified by the accused himself, which will be of greatest assistance to the Chamber.³	The defence does not oppose the admission of this document.⁴	This document is relevant in that it provides biographical information about the accused and information about the establishment of the UPC. The lack of objection from the defence is relevant as regards its authenticity and low prejudicial effect. This document satisfies the test for admissibility.
3	ERN: DRC-OTP-0017-0033 A handwritten	It bears no official markings or stamps. Many entries are initialled (by various persons, in a manner that is	It shows effective internal communications within the UPC/FPLC,	The defence submits that none of the messages concern matters relevant to the	This document is relevant in that it provides evidence of the organisational structure

¹ ICC-01/04-01/06-2055-Conf-Anx1.

² ICC-01/04-01/06-2055-Conf-Anx1.

³ ICC-01/04-01/06-2055-Conf-Anx1.

⁴ ICC-01/04-01/06-2102, paragraph 2.

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	UPC/FPLC logbook, with entries in French and Swahili, providing a contemporaneous record of radio communications sent on a daily basis between UPC/FPLC units in the field and the main staff headquarters between 19 November 2002 and 22 February 2003.	indecipherable). The use of logbooks by the UPC/FPLC was confirmed by three witnesses at trial, two of whom indicated that the form of this logbook resembles those in use by the UPC/FPLC at the relevant time.⁵ The logbook is internally consistent, and some of its content has been corroborated by other evidence.⁶	knowledge on the part of the accused of the underlying facts constituting the charges and his potential awareness of the crimes through recorded messages transmitted between the FPLC main staff and units on the ground concerning logistical, security, operational and organizational issues, which he, at times, received ⁷ (the accused's 'call sign' was identified by a witness at trial). ⁸	charges, or show that the accused had knowledge of the facts contained in the charges.⁹ It is suggested the document has low probative value as no witness identified it specifically. The fact that some of the events mentioned have been corroborated by witnesses is not sufficient to demonstrate the reliability of the entirety of the contents of the logbook. The	and operational techniques of the UPC, including the system for informing superiors of events in the field. In all the circumstances, the document has probative value, particularly since its contents are corroborated by other evidence. However, given its authenticity remains a matter of debate, the Chamber will particularly review this issue as part of its assessment of the weight and probative

⁵ ICC-01/04-01/06-2055-Conf, paragraphs 2, 3 and 16 – 19; ICC-01/04-01/06-2070, paragraphs 2, 3 and 16 – 19.

⁶ ICC-01/04-01/06-2055-Conf, paragraph 20; ICC-01/04-01/06-2070, paragraph 20.

⁷ ICC-01/04-01/06-2055-Conf, paragraph 15; ICC-01/04-01/06-2070, paragraph 15; ICC-01/04-01/06-2055-Conf-Anx1.

⁸ ICC-01/04-01/06-2055-Conf, paragraph 20; ICC-01/04-01/06-2070, paragraph 20.

⁹ ICC-01/04-01/06-2102, paragraphs 8 – 11.

¹⁰ ICC-01/04-01/06-2102, paragraphs 12 – 21.

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				lack of official markings means there is no proof that it is a genuine FPLC document. ¹⁰	value of the document in the final decision, to the extent necessary. At present, the probative value of this document outweighs any prejudicial effect it may have, and it is admissible.
4	ERN: DRC-OTP-0171-0926 A French (typed) translation of the handwritten logbook (DRC-OTP-0017-0033)	See the comments in relation to DRC-OTP-0017-0033.	See the comments in relation to DRC-OTP-0017-0033.	See the observations in relation to DRC-OTP-0017-0033.	See conclusions in relation to DRC-OTP-0017-0033. This document is admissible.
5	ERN: DRC-OTP-0074-0422 A MONUC "Special report on the events in Ituri, January 2002 - December 2003", dated	The report is printed on official United Nations letterhead; it identifies the UN officials who received it (the UN Secretary General and the President of the Security Council) and the	The existence and the nature of the armed conflict, including the role of Uganda and Rwanda and the UPC/FPLC control over Ituri.	The defence does not question the authenticity of the UN reports but objects to their admission into evidence. ¹³	This document provides relevant and probative background information on the armed conflict and situation in Ituri at the time relevant to the charges, as well as

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	16 July 2004. The report details human rights abuses reportedly committed in Ituri in 2002 and 2003 and the role of Uganda and Rwanda in Ituri.	UN agency that wrote the report (MONUC); it is identified with standard UN numbering on every page and the distribution date is indicated on the first page. Chapter V(D), entitled "Children associated with armed groups" is the final version of a document already in evidence (DRC-OTP-0152-0256) which was commented upon by witness DRC-OTPWWW-0046 during her testimony.¹¹ This version of the report is currently available on MONUC's official website.		It is argued that the reliability of the reports cannot be established because the sources are not identified.¹⁴ Finally, it is suggested that the reports contain allegations concerning the acts and conduct of the accused, and as a result it is argued that the disproportionately low probative value of the material is outweighed by its high prejudicial effect.¹⁵	general information on the use of child soldiers. It contains elements that are broadly similar to other evidence before the Chamber, such as the activities of the UPC and the role of the accused as its leader. As such, it is not unusually or particularly prejudicial. This document satisfies the test for admissibility, in that it is probative and its prejudicial effect does not outweigh its probative value.

¹¹ ICC-01/04-01/06-2055-Conf-Anx1.

¹² ICC-01/04-01/06-2055-Conf-Anx1.

¹³ ICC-01/04-01/06-2102, paragraph 22.

¹⁴ ICC-01/04-01/06-2102, paragraphs 25 - 30.

¹⁵ ICC-01/04-01/06-2102, paragraphs 31 - 35.

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		The report is based on nine MONUC investigations carried out in Ituri, in the course of which over 1,600 (<i>sic</i>) individuals were interviewed, written testimonies were received, reports from national and international NGOs and other UN agencies were reviewed, and over 20 localities were visited by MONUC staff in 2002 and 2003. ¹²			
6	ERN: DRC-OTP-0180-0643 The “Special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo”, dated 10 September 2002. This document provides	The report is printed on official UN letterhead; it identifies the UN official under whose authority it was prepared (the UN Secretary-General) and the UN organ at whose request it was prepared (UN Security Council); it is identified with the standard UN numbering on every page and indicates the distribution date on the	The existence and nature of the armed conflict.	See the observations in relation to DRC-OTP-0074-0422. The defence submits that this report is irrelevant as it covers a period previous to that relevant to the charges.¹⁶	The information provided in this document is notably general in nature rather than relating specifically to the charges – indeed it concerns a different period. The prosecution is seeking to introduce this material after the relevant

¹⁶ ICC-01/04-01/06-2102, paragraph 23.

Anx No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	analysis and recommendations on the implementation of the Pretoria and Luanda agreements (of July and September 2002) by the DRC, Rwanda and Uganda, including withdrawing foreign troops from DRC territory.	first page. This report is currently available on the United Nations' official website.			witnesses have testified. Accordingly, although it may have some general significance as regards the existence and nature of the armed conflict, its probative value is low and its prejudicial effect is significant, given the late stage of its proposed introduction The document therefore fails to satisfy the admissibility test.
7	ERN: DRC-OTP-0074-0167 The "Second special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of	See the comments in relation to DRC-OTP-0180-0643.	The existence and nature of the armed conflict.	See the observations in relation to DRC-OTP-0074-0422.	Although this document contains a small amount of relevant and probative information on the armed conflict in Ituri, the prosecution is seeking to introduce it after the material witnesses have testified. In all the

Anx No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	the Congo", dated 27 May 2003.¹⁷ This document provides analysis of political developments in the DRC since the previous report (including the adoption of the Final Act of the inter-Congolese political negotiations), the situation in Ituri from January to May 2003 and MONUC's role and foreseen, and enhanced, presence in Ituri.				circumstances, its low probative value is outweighed by its potential prejudicial effect. The document therefore fails to satisfy the admissibility test.
8	ERN: DRC-OTP-0131-0389 The "Twelfth report of the Secretary-General on the United Nations	See the comments in relation to DRC-OTP-0180-0643. The report was shown to witness DRC-OTP-WWW-0046 during her	The existence and nature of the armed conflict; the UPC/FPLC control over Ituri; and the recruitment and use of child soldiers by the	See the observations in relation to DRC-OTP-0074-0422.	This document provides relevant and probative background information on the armed conflict and situation in Ituri at the time relevant to the

¹⁷ The Prosecution notes that the UN has published a corrigendum of this report which is not in evidence. The corrigendum substitutes the reference to "North Korea" with a reference to "North Kivu" at paragraph 55 of the report (DRC-OTP-0074-0181). The Prosecution submits that this corrigendum is immaterial to the facts of the case and does not diminish the reliability of the copy being tendered as evidence, ICC-01/04-01/06-2055-Conf-Anx1, page 4.

Anx No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Organization Mission in the Democratic Republic of the Congo”, dated 18 October 2002. This document provides analysis of the political and military developments between June and October 2002, including the situation in the North-East of the DRC, and an update on child protection matters.	evidence before the Trial Chamber; ¹⁸ although it was not tendered into evidence.	UPC/FPLC.		charges, as well as general information on the use of child soldiers. It contains elements that are broadly similar to other evidence before the Chamber, such as the activities of the UPC and the role of the accused as its leader. As such, it is not unusually or particularly prejudicial. This document satisfies the test for admissibility, in that it is probative and its prejudicial effect does not outweigh its probative value.
9	ERN: DRC-OTP-0131-0045 The “Thirteenth report of	See the comments in relation to DRC-OTP-0180-0643.	The existence and nature of the armed conflict; the UPC/FPLC control	See the observations in relation to DRC-OTP-0074-0422.	This document provides relevant and probative background information on the armed conflict and

¹⁸ Shown by the defence. See transcript of hearing on 13 July 2009, ICC-01/04-01/06-T-208-ENG WT, page 29, line 23 to page 30, line 3.

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	the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo”, dated 21 February 2003. This document provides analysis of the political and military developments between October 2002 and February 2003, including the situation in Ituri, and an update on child protection matters.		over Ituri.		situation in Ituri at the time relevant to the charges. The Chamber does not consider that the probative value of this document is outweighed by its prejudicial effect. This document satisfies the test for admissibility.
10	ERN: DRC-OTP-0074-0215 The “Fourteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo”, dated 17 November 2003.	See the comments in relation to DRC-OTP-0180-0643.	The existence and nature of the armed conflict; the UPC/FPLC control over Ituri.	See the observations in relation to DRC-OTP-0074-0422.	As for DRC-OTP-0131-0045. For the reasons given above in relation to similar documents, this item satisfies the test for admissibility.

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	This document provides analysis of the advances in peace and security between May and November 2003, including in Ituri, and updates on issues affecting children associated with armed groups and the situation in Ituri.				
11	ERN: DRC-OTP-0130-0434 The “Fifteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo”, dated 25 March 2004. This document provides an analysis of the	See the comments in relation to DRC-OTP-0180-0643. There are minor differences between this document and the version currently on MONUC’s website, but this does not appear to diminish its reliability.¹⁹	The existence and nature of the armed conflict. Although this report deals with facts that occurred after the period relevant to the charges, it is relevant to the overall context in which the alleged crimes were committed and to MONUC’s	See the observations in relation to DRC-OTP-0074-0422. The defence submits that this report is irrelevant as it covers a period after that which is relevant to the charges.²¹	This document does not concern the time-frame relevant to the charges and it does not otherwise contain sufficient information relevant to the charges. It therefore lacks any real probative value. Accordingly, this document does not satisfy the admissibility

¹⁹ ICC-01/04-01/06-2055-Conf-Anx1.

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	advances in peace and security, as well as political developments, between November 2003 and March 2004, including in Ituri; update on issues affecting children associated with armed groups and child protection needs.		continued support for UNICEF and other organisations involved with child protection, by facilitating the separation of children from armed groups, including the establishment of new transit care centres. ²⁰		test.
12	ERN: DRC-OTP-0154-0671 "Resolution 1484 (2003)" adopted by the Security Council on 30 May 2003. This Resolution sets out that the situation in the Ituri region, and in Bunia in particular, constitutes a threat to the peace	Although it does not bear the usual markings of official UN documents, the version currently available on the official website bears the relevant marking, as does the French version of the document, attached as Annex 13.	The existence and nature of the armed conflict.	The defence does not oppose the admission of this document. ²²	This document provides relevant and probative evidence relating to the armed conflict in Ituri. The absence of objection from the defence tends to demonstrate that this document is not prejudicial to the accused. This document satisfies

²⁰ ICC-01/04-01/06-2055-Conf, footnote 59.

²¹ ICC-01/04-01/06-2102, paragraph 24.

²² ICC-01/04-01/06-2102, paragraph 2.

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	process in the DRC and to peace and security in the Great Lakes region, and it authorises deployment of an interim emergency multinational force in Bunia in close coordination with MONUC.				the test for admissibility.
13	ERN: DRC-OTP-0154-0668 "Résolution 1484" (2003) (French version of DRC-OTP-0154-0671)	See the comments in relation to DRC-OTP-0154-0671.	The existence and nature of the armed conflict.	The defence does not oppose the admission of this document. ²³	See conclusions in relation to DRC-OTP-0154-0671. This document satisfies the test for admissibility.
14	ERN: DRC-OTP-0131-0167 "Resolution 1493 (2003)", adopted by the Security Council on 28 July 2003.	The Resolution is printed on official UN letterhead; it identifies the UN organ which issued the resolution (UN Security Council); it is identified with the standard UN numbering on every page and the distribution date	The existence and nature of the armed conflict.	The defence does not oppose the admission of this document. ²⁵	See conclusions in relation to DRC-OTP-0154-0671. This document satisfies the test for admissibility.

²³ ICC-01/04-01/06-2102, paragraph 2.

²⁴ ICC-01/04-01/06-2055-Conf-Anx1.

²⁵ ICC-01/04-01/06-2102, paragraph 2.

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	In this Resolution the UN Security Council finds, <i>inter alia</i> , that the situation in the DRC continues to constitute a threat to international peace and security in the region, and condemns the continued recruitment and use of children in hostilities in the DRC, especially in Ituri.	is indicated on the first page. This version of the resolution was taken from MONUC's official website. ²⁴			
15	ERN: DRC-OTP-0172-0134 A Press Article from "Le Soir" transmitted by email on 4 June 2003. The article purports to report on a press conference held with	The prosecution submits that the journalist is an independent, neutral observer of the events in Ituri. The author and the sources of information are named in the article. ²⁶	The authority of the accused over military and political matters in June 2003; an indication that child soldiers were in the UPC/FPLC in or about June 2003.	The defence does not question the authenticity of this document; however it objects to its admission into evidence. ²⁷ It is submitted that the article is not factual – instead, it is merely an	The information contained in the article is <i>prima facie</i> relevant to the charges. However, the Chamber is persuaded by the arguments of the defence as regards the reliability of this information. Put generally, newspaper

²⁶ ICC-01/04-01/06-2055-Conf-Anx1.

²⁷ ICC-01/04-01/06-2102, paragraphs 37 - 38.

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	Thomas Lubanga Dyilo on behalf of the UPC/FPLC in which he sets out his conditions for the arrival of the multinational force sent to establish peace in the region, including shared control of the Bunia airport and not disarming the UPC soldiers. Thomas Lubanga Dyilo is reported to denounce the massacres of the Hema population and he asks for peace. The journalist makes reference to the conspicuous absence of children during the press conference.			expression of the opinions of the reporter. As such the reliability of the content can only be established if the reporter appears before the Court as a witness.²⁸ It is suggested that it is impossible to distinguish between direct observations and personal opinions. The journalist does not indicate whether she personally witnessed the events she recounts, and if not, her sources.²⁹	articles cannot usually be relied on to report with sufficient reliability the events they purport to address. If the author is not called as a witness, this article has low probative value which is outweighed by its prejudicial effect. This document fails to satisfy the test for admissibility.

²⁸ ICC-01/04-01/06-2102, paragraphs 38 - 40.

²⁹ ICC-01/04-01/06-2102, paragraph 41.

³⁰ ICC-01/04-01/06-2102, paragraph 42.

³¹ ICC-01/04-01/06-2102, paragraph 43.

³² ICC-01/04-01/06-2102, paragraphs 44 - 46.

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				The article itself is undated. Thus it is argued that it cannot be proven that the article refers to the period relevant to the charges.³⁰ It is contended that the jurisprudence of international criminal tribunals shows that, generally, newspaper and other media articles are considered insufficiently reliable to be admitted as evidence.³¹ Finally, it is submitted that there is an imbalance between the low probative value of the article and its high prejudicial effect.³²	

