

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

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

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

Public

Decision on the admission of material from the “bar table”

Decision/Order/Judgment to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Other

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, delivers the following decision (“Decision”) on the “Prosecution’s Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)”.¹

I. The Issue

1. The prosecution submitted an application on 17 February 2009, entitled the “Prosecution’s Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)”,² regarding various documents, seeking their “admission into evidence from the bar table”. This latter expression – “from the bar table” – in essence describes the situation when documents or other material are submitted directly by counsel, rather than introduced via a witness as a part of his or her testimony. As regards each of the documents that are the subject of this application, it was suggested that they were “contemporaneous” with the events they concern, having been created within the UPC/FPLC during the period covered by the charges against the accused. The prosecution argued that they are relevant and probative of the issues in the instant proceedings, and that they are *prima facie* reliable. Further it was submitted they are pertinent to the “determination of the truth” for the purposes of Article 69(3) of the Rome Statute (“Statute”).

2. Some of these documents were obtained during a search and seizure exercise carried out by the Office of the Prosecutor of the *Tribunal de Grande Instance* of Bunia.³ They were the subject of litigation during the

¹ Prosecution’s Application for Admission of Documents from the Bar Table Pursuant to Article 64(9), 17 February 2009, ICC-01/04-01/06-1703.

² *Ibid.*

³ *Ibid.*, Annexes 31 to 65.

confirmation stage of this case,⁴ and in the decision on the confirmation of charges,⁵ the Pre-Trial Chamber described one of the main procedural issues in the case as the use on the part of the Office of the Prosecutor ("prosecution") of evidence alleged by the defence to have been procured illegally from an individual's home in the Democratic Republic of the Congo ("DRC") while he was detained on the order of the national authorities. The search had been conducted by Congolese officials in the presence of an investigator from the prosecution. According to the statement of the prosecution's investigator, he was present during the search and seizure procedure, after "permission to assist" was granted to him and his assistant by the Congolese authorities. At the confirmation stage of this case, 71 of the documents from the prosecution's list of evidence were among the items seized in this way.⁶

3. The current issue for the Chamber is whether it is permissible for the prosecution to rely on the contested "bar table" documents as part of its trial evidence, howsoever they were obtained by the Prosecutor.

II. The Submissions

4. By way of a more detailed summary, in its filing of 17 February 2009, the prosecution relied particularly on Articles 64(9) and 69(2), (3) and (4) of the Statute and Rules 63(2) and (5) of the Rules of Procedure and Evidence ("Rules"). Further, it submitted that these documents satisfy the criteria outlined by the Trial Chamber in its decision on admissibility,⁷ those

⁴ Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-796-Conf-tEN, and public redacted version ICC-01/04-01/06-803-tEN, paragraphs 62-66.

⁵ *Ibid.*, paragraph 62.

⁶ *Ibid.*

⁷ Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1398-Conf, and public redacted version ICC-01/04-01/06-1399.

being: (i) *prima facie* relevance, (ii) probative value, and (iii) the balance between probative value of the evidence and any prejudicial effect.⁸

5. In support of its submission, the prosecution attached a document as confidential Annex 1, which outlined the nature, content and suggested relevance of the documents, as well as their source. The prosecution highlighted that the documents are contemporaneous with the events under consideration by the Chamber; that they each contain a UPC/FPLC header, stamp and/or signature of the accused or other senior members of the UPC/FPLC; and that their veracity is supported by several prosecution witnesses, thereby reducing any prejudice to the accused.⁹

6. The prosecution addressed separately the discrete category of documents that were obtained through the process of search and seizure in the DRC (described above), and it summarised the way in which the legality of this material was explored in the pre-trial proceedings (*viz.* the “Request to exclude evidence obtained in violation of Article 69(7) of the Statute” of 7 November 2006,¹⁰ the “Prosecution’s further response to the defence ‘Request to exclude evidence obtained in violation of article 69(7) of the Statute’” of 22 November 2006,¹¹ and the ruling of the Pre-Trial Chamber as part of the “Decision on the confirmation of charges” of 29 January 2007¹²). It requests the admission of these documents into evidence at trial, submitting that this is in accordance with Article 69(7) of the Statute, since the conduct of the search affects neither the reliability of the evidence nor the integrity of the proceedings.

⁸ ICC-01/04-01/06-1398-Conf, and public redacted version ICC-01/04-01/06-1399, paragraphs 27-31; ICC-01/04-01/06-1703, paragraph 2 (on page 4).

⁹ ICC-01/04-01/06-1703-Conf-Anx1.

¹⁰ Public Redacted Version of Request to exclude evidence obtained in violation of article 69(7) of the Statute, 7 November 2006, ICC-01/04-01/06-683.

¹¹ Prosecution’s Further Response to the Defence “Request to exclude video evidence obtained in violation of article 69(7) of the Statute”, 22 November 2006, ICC-01/04-01/06-726-Conf.

¹² ICC-01/04-01/06-796-Conf-tEN, and public redacted version ICC-01/04-01/06-803-tEN, paragraph 62.

7. The defence filed its “Réponse de la Défense à la “Prosecution’s Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)”¹³ on 11 March 2009. The accused submitted that the documents do not all emanate from the UPC or the FPLC, and that some of those referred to in Annex 1 do not correspond to the contents of the documents provided. The defence divided the documents into three groups: (i) those whose admission it does not oppose,¹⁴ (ii) those for which there may be later admissibility objections,¹⁵ and (iii) those which it will be argued are inadmissible, on the basis of suggested lack of relevance to the charges or because the prosecution has failed to provide the best means of proof.¹⁶ The defence contended that the application should be dismissed for those in category (iii), and it then sought to reserve its position on the authenticity and evidential value of those in category (ii).¹⁷
8. It is of note that the defence has not suggested that any of the documents are inadmissible on the basis that they were obtained as a result of a (flawed) search and seizure procedure in the DRC. As indicated above, this contrasts with its position at the pre-trial stage of the proceedings, when the accused was represented by other counsel and requested the exclusion of the documents obtained as a result of this process because, it then submitted, this had not occurred in accordance with the Statute and internationally recognised human rights.¹⁸ The Trial Chamber interpolates to observe that since the issue of the potential incompatibility of this process of search and seizure with the Statute was addressed by the Pre-

¹³Réponse de la Défense à la “Prosecution’s Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)”, 11 March 2009, ICC-01/04-01/06-1771.

¹⁴ Annexes 3, 13, 14, 16, 19, 20, 21, 22, 23, 24, 25, 35, 37, 38, 40, 41, 42, 54, 55, 57, 59, 60, 61, 62, 64, 65, 71, 72, 75, 77, 80, 81, 83 and 84.

¹⁵ Annexes 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 17, 18, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 39, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 58, 63, 66, 67, 68, 69, 70, 73, 74, 76, 78, 79, 82, 85 and 86.

¹⁶ Annexes 6, 7, 8, 33, 43, 48, 74 and 82.

¹⁷ ICC-01/04-01/06-1771, pages 6 and 7.

¹⁸ ICC-01/04-01/06-683.

Trial Chamber in its decision on the confirmation of charges, and given the potential significance of this event, the Trial Chamber has addressed the issue in order to ensure that its final decision is based only on admissible evidence.

9. The response of the victims' legal representatives was filed on 10 March 2009,¹⁹ in which they rehearsed what was described as the Chamber's existing approach, namely that the determining factor is not the method used to tender a document, but its underlying admissibility.²⁰ The representatives also argued that a flexible approach to admissibility had been adopted during the drafting history of the Statute framework, which is reflected in Article 69(4), and which has been followed in the criteria laid down by the Chamber in its decision on admissibility. In all the circumstances, the representatives concur with the arguments of the prosecution as to the application of these criteria, and they support the admission into evidence of the documents, observing that they affect the general interests of the victims they represent.²¹

10. On the particular issue of the admissibility of documents obtained during the search and seizure procedure, the representatives join the arguments raised by the prosecution regarding Article 69(7) of the Statute. They note the determination of the Chamber that it would only revisit decisions of the Pre-Trial Chamber where necessary,²² and they highlight a number of points made in the decision on the confirmation of charges, namely (i) the necessity of responding to the expectations of victims and the international

¹⁹ Réponse des représentants légaux des victimes à la demande d'admission de documents comme éléments de preuve présentée par le Bureau du Procureur le 17 février 2009, 10 March 2009, ICC-01/04-01/06-1768.

²⁰ See transcript of the hearing on 20 November 2007, ICC-01/04-01/06-T-61-ENG, pages 5 - 8; and Decision on the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber and the decisions of the Pre-Trial Chamber in trial proceedings, and the manner in which evidence shall be submitted, 13 December 2007, ICC-01/04-01/06-1084, paragraph 7.

²¹ ICC-01/04-01/06-1768, paragraphs 21 to 23.

²² ICC-01/04-01/06-1084, paragraph 44.

community in the interpretation of Article 69(7), (ii) the distinction between the violation of a national rule and the violation of an internationally recognized human right, (iii) the fact that the Chamber is not bound by decisions made in other jurisdictions (Articles 21(1)(c) and 69(8) of the Statute), and (iv) human rights jurisprudence tends to show that a violation of human rights can lead to the exclusion of evidence if it is of a “serious” nature.²³

11. The Chamber held a status conference on 7 May 2009 to ask questions on the documents.²⁴ At the Chamber’s request, the prosecution emailed additional information on some of the documents on 8 May 2009.²⁵ The defence was instructed to file a written submission setting out its objections to certain documents by 16.00 on 11 May 2009.²⁶ The response of the defence was notified on 14 May 2009 due to a technical error.²⁷ The defence submitted that those documents in relation to which it had previously reserved its position as regards their authenticity and evidential value (category (ii), paragraph 7 above)²⁸ did not present sufficient guarantee of authenticity and reliability to be admitted into the proceedings.²⁹

III. Proceedings before the Pre-Trial Chamber

12. It is of assistance to consider briefly the submissions advanced before the Pre-Trial Chamber on these issues. The defence filed its “Request to exclude evidence obtained in violation of article 69(7) of the Statute” on 7

²³ ICC-01/04-01/06-1768, paragraphs 23 to 27.

²⁴ Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-107-ENG.

²⁵ Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 8 May 2009.

²⁶ ICC-01/04-01/06-T-107-ENG, page 29, lines 18 to 23.

²⁷ Réponse de la Défense aux observations formulées par le Procureur lors de l’audience du 7 mai 2009 relatives aux 85 documents, 11 May 2009 (notified on 14 May 2009), ICC-01/04-01/06-1872.

²⁸ See note 15 above.

²⁹ ICC-01/04-01/06-1872, paragraph 10.

November 2006.³⁰ It submitted that the prosecution was not entitled to collect evidence “directly” from within the territory of the DRC: this step was not in accordance with the provisions of the Statute, because, first, Article 54(2) authorises the prosecution to conduct investigations on the territory of a State either in accordance with the terms of Part 9, or as authorised by the Pre-Trial Chamber under Article 57(3)(d); second, no such authorisation was granted under Article 57(3)(d), nor would this article be applicable since the DRC authorities were willing and able to execute the request; and, third, Article 99(4) enables the Prosecutor to collect evidence directly on the territory of a State Party only if this is carried out on a voluntary basis. In addition, the defence submitted that the search and seizure exercise was in violation of the right to privacy of the owner of the property due to the fact that the search was carried out without a legal or factual basis, and that all the materials at the residence – rather than a properly identified selection – were seized.³¹

13. The defence submitted to the Pre-Trial Chamber that admitting evidence collected in violation of Article 93 of the Statute had the capacity seriously to damage the integrity of the proceedings, such as to warrant its exclusion under Article 69(7). It noted that Article 54(1)(c) requires the Prosecutor to conduct its duties in a manner which is consistent with the rights of individuals under the Statute, and it highlighted the presence of an investigator from the prosecution during this procedure. Finally, it submitted that whereas Article 69(4) provides for a degree of discretion in the admission of evidence, if the criteria set out in Article 69(7) are met, the Chamber is obliged to exclude the evidence in question from the proceedings.³²

³⁰ ICC-01/04-01/06-683.

³¹ *Ibid.*, paragraphs 22, 23 and 35.

³² *Ibid.*, paragraph 34.

14. In all the circumstances, the defence applied to the Pre-Trial Chamber to exclude all the seized items from the prosecution's list of evidence.³³
15. Thereafter, the prosecution filed the "Prosecution's further response to the defence 'Request to exclude evidence obtained in violation of article 69(7) of the Statute'" on 22 November 2006.³⁴ It submitted that the request of the defence lacked any proper legal basis. In the alternative, it filed a chart detailing materials within the Prosecution's Amended List of Evidence that could serve as alternative evidence, should the Pre-Trial Chamber grant the defence application.³⁵ The prosecution also attached a statement of an investigator who was present during the search and seizure.³⁶
16. In their closing statements at the confirmation hearing, the Legal Representative of victims a/0001/06, a/0002/06 and a/0003/06 resisted the application (to exclude evidence "from the bar table") on the grounds, *inter alia*, that the judgment of the national Court of Appeal had no effect on these proceedings.³⁷
17. As set out above, the Pre-Trial Chamber, in its "Decision on the confirmation of charges" of 29 January 2007, ruled on the suggested reliance by the prosecution on evidence procured in a manner contrary to Congolese rules of procedure (as determined by the national Court of Appeal) and in violation of internationally recognized human rights.³⁸

³³ *Ibid.*, paragraph 38.

³⁴ ICC-01/04-01/06-726-Conf.

³⁵ ICC-01/04-01/06-726-Conf Annex 2.

³⁶ ICC-01/04-01/06-726-Conf Annex 1.

³⁷ ICC-01/01-01/06-T-47-EN, 28 November 2006, page 60, line 12 to page 64, line 15.

³⁸ ICC-01/04-01/06-796-Conf-tEN, and public redacted version ICC-01/04-01/06-803-tEN, paragraphs 62-90.

18. The Pre-Trial Chamber held it was not bound by decisions of national courts on the admissibility of evidence. In particular it observed that while under Article 21(1)(c) of the Statute the Chamber shall apply general principles of law as derived by the Court if Articles 21(1)(a) and (b) are not applicable, Article 69(8) makes clear that the decision of a national Court of Appeal does not bind the Court.³⁹
19. The Pre-Trial Chamber found, however, that the evidence had been obtained in violation of the right to privacy. By reference to the jurisprudence of the European Court of Human Rights ("ECtHR"), the Pre-Trial Chamber addressed the question of whether the search and seizure exercise was proportional (given a breach of this principle is one of the factors to be considered when establishing whether there had been unlawful interference with an individual's privacy). The Pre-Trial Chamber held that this principle had been violated because, first, the interference was not proportionate to the objective sought by the national authorities; and, second, hundreds of items were indiscriminately seized. In all the circumstances, the Pre-Trial Chamber determined that the infringement of the principle of proportionality resulted in a violation of the internationally recognized human right to privacy.⁴⁰
20. The Pre-Trial Chamber concluded, however, that this violation, given the particular facts in this case, did not justify the exclusion of the items seized, pursuant to Article 69(7)(b). In assessing any adverse impact the admission of this evidence may have on the integrity of the proceedings, the Chamber determined that a balance must be achieved between the seriousness of the violation and the fairness of the trial as a whole, and that only serious violations of human rights should lead to the exclusion of evidence. Having taken account of the jurisprudence of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the Pre-Trial

³⁹ *Ibid.*, paragraph 63.

⁴⁰ *Ibid.*, paragraph 81.

Chamber held that minor breaches of procedural rules should not result in exclusion of evidence of high probative value, as this would constitute an obstacle to the administration of justice.⁴¹

IV. Relevant Jurisprudence of other Jurisdictions

21. The right to privacy is afforded to individuals under Article 17 of the International Covenant on Civil Political Rights (“ICCPR”), as well as by regional human rights instruments including the European Convention on Human Rights (Article 8) and the Inter-American Convention on Human Rights (Article 11). However, the right to privacy under each of these instruments is not absolute, and can lawfully be restricted. The range of approach is illustrated by the cases summarised below.

22. In the *Case of Camenzind v. Switzerland*,⁴² the ECtHR acknowledged the necessity of search and seizure, indicating that in each case, “[t]he Court will assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the aforementioned proportionality principle has been adhered to”.⁴³ In *Camenzind*, the interference with the applicant’s right to privacy caused by the search of the applicant’s home and seizure of a telephone (which the authorities believed to have been unlawfully used) was found to be justified.

23. In the *Case of Miailhe v. France*,⁴⁴ the ECtHR concluded that the search and seizure under consideration were disproportionate because “[t]he seizures made on the applicant’s premises were wholesale and, above all,

⁴¹ *Ibid.*, paragraph 88.

⁴² Judgment of 16 December 1997, Application No. 21353/93.

⁴³ *Ibid.*, paragraph 45.

⁴⁴ Judgment of 25 February 1993, Application No. 12661/97, paragraph. 39.

indiscriminate, to such an extent that the customs considered several thousand documents to be of no relevance to their inquiries and returned them to the applicants".⁴⁵

24. In the more recent *Case of Iliya Stefanov v. Bulgaria*,⁴⁶ the ECtHR emphasised the disproportionate scope of the particular search and seizure in finding a breach of Article 8.⁴⁷ However, this case concerned privileged material belonging to a lawyer, a factor that was significant in the finding of the Court.

25. In the case of *Garcia v. Peru*, the Inter-American Commission on Human Rights ("IACHR") found that there had been a violation of the right to privacy under Article 11 of the Convention when the applicant's house was searched and papers seized without warrant by soldiers who did not have authority to conduct such procedures. The violent nature of the search, which included firing guns in the property, were significant factors taken into consideration by the Commission.⁴⁸

26. As to admissibility, the ECtHR, depending on the circumstances, has held that admission of evidence in breach of Article 8 will not necessarily affect the fairness of the trial.⁴⁹ In *Khan v. UK*, the Court stressed that admissibility is in general a matter for national authorities, whilst its own role is an assessment of the fairness of proceedings as a whole.⁵⁰ Although in that case there had been a violation of Article 8 in the use of a

⁴⁵ *Ibid.*, paragraph 39.

⁴⁶ Judgment of 22 May 2008, Application No. 65755/01.

⁴⁷ *Ibid.*, paragraph 42.

⁴⁸ Report No. 1/95, Case 11.0006, IACHR 71 OEA/Ser.L/V/II.88, Doc. 9 rev. (1995).

⁴⁹ *Case of Schenk v. Switzerland*, Judgment of 12 July 1988, Application No. 10862/84, para. 46; *Khan v UK* (2001) 31 EHRR 1016, at paragraph 214, Judgment of 12 May 2000, Application No. 35394/97; *PG v. UK* [2002] Crim LR 308; *Saunders v. UK*, Judgment of 17 December 1996, Application No. 19187/91; and *Van Mechelen and others v. The Netherlands*, Judgment of 23 April 1997, Application No. 21363/93.

⁵⁰ *Case of Khan v. UK* (2000) 31 E.H.R.R. 1016.

surveillance device, there was, in the Court's estimation, no violation of Article 6.⁵¹ Indeed, the Court has tended to find breaches of Article 6 only in cases where the impact on the fairness of proceedings has been substantial.⁵²

27. The IACHR arguably takes a less flexible approach to the use of evidence in court proceedings following violations of this kind. For instance, in *Garcia v. Peru* (referred to in paragraph 25 above), the approach taken by the Commission is more suggestive of an exclusionary rule, one that excludes illegally obtained evidence. However, it is important to note that in that case the only incriminating evidence forming the basis for the prosecution of the petitioner had been unlawfully obtained, and the violation of the petitioner's human rights had been of a serious nature.⁵³

28. Turning to the *ad hoc* tribunals, in the case of *Prosecutor v. Delalić et al.*, a Trial Chamber of the ICTY considered the impact of procedural illegality by the Austrian authorities in their execution of a search request for the house of Zdravko Mučić on the admissibility of evidence before the Tribunal.⁵⁴ In determining whether the evidence is "not antithetical to, and would not seriously damage the proceedings", under Rule 95 of the Rules of Procedure and Evidence, the Chamber determined:

19. It would seem to be consistent with the Rules that where evidence is relevant and has probative value, it is immaterial how it has been obtained. Except that is, if it is obtained by methods which cast doubts on its reliability, or if its admission would be antithetical to, and would

⁵¹ Judge Loucaides dissented, asserting that evidence obtained in violation of article 8 necessarily rendered the trial unfair.

⁵² For example, in cases of physical harm (*Austria v. Italy* (1963) 6 YB 740), forced use of emetics (*Jalloh v. Germany* (54810/00)), compulsion (*Saunders v. UK* (1997) 23 EHRR 313) and incitement to commit crimes (*Teixeira de Castro v. Portugal* (1998) 28 EHRR 101).

⁵³ Report No. 1/95, Case 11.0006, IACHR 71 OEA/Ser.L/V/II.88, Doc. 9 rev. (1995).

⁵⁴ *Prosecutor v. Zejnil Delalić et al.*, IT-96-21-T, "Decision on the Tendering of Prosecution Exhibits 104 – 108", 9 February 1998.

seriously damage the integrity of the proceedings. Mr. Mučić has not disputed that the passports, identity card and Pass belonged to him. He has also not claimed that they were fraudulently obtained from him by methods which are unconscionable.

20. The Trial Chamber is not satisfied that the method by which the evidence was obtained amounts to such conduct as to induce the exercise of our discretion to exclude it. The Trial Chamber is of the opinion that it would constitute a dangerous obstacle to the administration of justice if evidence which is relevant and of probative value could not be admitted merely because of a minor breach of procedural rules which the Trial Chamber is not bound to apply.⁵⁵

29. In the case of *Prosecutor v. Kordić*,⁵⁶ the admission of evidence obtained by intercepting an enemy's telephone conversations during the conflict was held not to have undermined the integrity of the proceedings under Rule 95. In an oral decision delivered on 2 February 2000, the Trial Chamber observed:

[E]ven if the illegality was established [...] [w]e have come to the conclusion that [...] evidence obtained by eavesdropping on an enemy's telephone calls during the course of a war is certainly not within the conduct which is referred to in Rule 95. It's not antithetical to and certainly would not seriously damage the integrity of the proceedings.⁵⁷

30. In the later case of *Prosecutor v. Radoslav Brđanin*,⁵⁸ the Trial Chamber considered the admissibility of intercept evidence gathered by national authorities. The Chamber noted that unlawfully obtained evidence is not automatically excluded under the Rules of Procedure and Evidence;

⁵⁵ *Ibid.*, paragraphs 18-20.

⁵⁶ *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-T, T. 13670.

⁵⁷ Oral Decision delivered on 2 February 2000 in *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, at T. 13694, referred to in *Prosecutor v. Brđanin*, paragraph 19.

⁵⁸ *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, "Decision on the Defence 'Objection to Intercept Evidence'", 3 October 2003.

rather, it is generally admissible unless obtained by methods which “cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings” (see Rule 95).⁵⁹ Having reviewed the relevant national and international jurisprudence, the Chamber considered it clear that “evidence obtained illegally is not, *a priori*, inadmissible, but rather that the manner and surrounding circumstances in which evidence is obtained, as well as its reliability and effect on the integrity of the proceedings will determine its admissibility”.⁶⁰ Furthermore, the Chamber stressed its focus on the integrity of the proceedings, rather than (in this context) the need to discipline law enforcement agencies, which is frequently a consideration in national proceedings.⁶¹ In admitting the intercept evidence, the Chamber emphasised:

This Tribunal has a mandate to bring to justice persons allegedly responsible for serious violations of international law, to render justice to the victims, to deter further similar crimes and to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia. This mandate imposes on this Tribunal a tremendously heavy burden which it needs to carry in an efficient and successful manner. In the light of this responsibility under the Statute towards the international community and considering the seriousness of the crimes that this Tribunal is entrusted to adjudicate, it would be utterly inappropriate to exclude relevant evidence due to procedural considerations, as long as the fairness of the trial is guaranteed.⁶²

31. Trial Chambers of the ICTY, on occasion, have found that procedural illegality has undermined the integrity of the proceedings, leading to the exclusion of evidence, for instance in the context of the restriction of the right to legal counsel during questioning (because of the breach of the

⁵⁹ *Ibid.*, paragraphs 54, 61.

⁶⁰ *Ibid.*, paragraph 55.

⁶¹ *Ibid.*, paragraph 64.

⁶² *Ibid.*, paragraph 63.

unfettered right to counsel provided for by the ICTY Statute and Rules of Procedure and Evidence).⁶³

V. Relevant Provisions

32. The following provisions are relevant:

Article 64(9) of the Statute

Functions and Powers of the Trial Chamber

The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to:

a) Rule on the admissibility or relevance of evidence

[...]

Article 69 of the Statute

Evidence

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

⁶³*Prosecutor v. Delalić et. al.*, IT-96-21, “Decision on Zdravko Mučić’s Motion for the Exclusion of Evidence”, 2 September 1997.

7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

- (a) The violation casts substantial doubt on the reliability of the evidence; or
- (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

Rule 63 of the Rules

General provisions relating to evidence

2. A Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.
5. The Chambers shall not apply national laws governing evidence, other than in accordance with article 21.

Rule 64 of the Rules

Procedure relating to the relevance or admissibility of evidence

1. An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.
2. A Chamber shall give reasons for any rulings it makes on evidentiary matters. These reasons shall be placed in the record of the proceedings if they have not already been incorporated into the record during the course of the proceedings in accordance with article 64, paragraph 10, and rule 137, sub-rule 1.
3. Evidence ruled irrelevant or inadmissible shall not be considered by the Chamber.

VI. Analysis and Conclusions

33. The Statute and the Rules set out the principles to be applied to the admissibility of evidence, other than witness evidence, in various provisions.⁶⁴ These provided the basis for the Chamber's general approach to the admissibility of documents, as described in its "Decision on the admissibility of four documents on 13 June 2008".⁶⁵ The Chamber ruled that it will focus, *first*, on the **relevance** of the material (*viz.* does it relate to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused and its consideration of the views and concerns of participating victims); *second*, on whether or not it has **probative value** (bearing in mind, for instance, "the indicia of reliability"); and, *third*, on **the probative value of the evidence as against its prejudicial effect**.

34. Both common law and Romano Germanic legal systems usually contain rules setting out specific principles that are to be applied when addressing illegally obtained evidence. Article 69(7) of the Statute expressly regulates the admissibility of evidence obtained by means of a violation of the Statute or internationally recognized human rights. This provision is *lex specialis*, when compared with the general admissibility provisions set out elsewhere in the Statute.⁶⁶ Furthermore, Article 69(7) represents a clear exception to the general approach, set out above.

35. The Statute prescribes that evidence is inadmissible if it was obtained by means of a violation of the Statute or internationally recognized human rights, if particular criteria are met. Notably, the Statute does not "quantify" the violation of the Statute, or the internationally recognized

⁶⁴ See Section V "Relevant provisions" above.

⁶⁵ ICC-01/04-01/06-1399, paragraphs 27 - 31.

⁶⁶ See Kai Ambos, *Die transnationale Verwertung von Folterbeweisen*, StV 3/2009, page 154.

human right, by reference to the degree of “seriousness”. Therefore, even a non-serious violation may lead to evidence being deemed inadmissible, provided that one of the two limbs of the test in Article 69(7) is satisfied (namely: (a) the violation creates doubts about the reliability of the evidence; or (b) the admission is antithetical to or would seriously damage the integrity of proceedings). It is only in the second limb of the test that a requirement of a degree of “seriousness” is introduced, although this is unconnected to the seriousness of the violation.⁶⁷

36. The Statute clearly stipulates that the violation has to impact on international, as opposed to national, standards on human rights. Furthermore, the Court “[...] shall not rule on the application of a State’s national law” (Article 69(8) of the Statute), and the Court is not bound by the decisions of national courts on the admissibility of evidence. Instead, the Court shall apply the sources of law set out in Article 21 of the Statute. Although the Court must take into account, under Article 21(1)(c), “the national laws of the States that would normally exercise jurisdiction over the crime”, these take second (and third) place to “the statute, the Elements of Crimes and its Rules of Procedure and Evidence” and “applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict”. Therefore, evidence obtained in breach of national procedural laws, even though those rules may implement national standards protecting human rights, does not automatically trigger the application of Article 69(7) of the Statute.

⁶⁷ The drafting history of this article confirms this interpretation (see also Article 32 of the Vienna Convention on the Law of Treaties). The 1994 International Law Commission Draft Statute for an International Criminal Court contained a proposed rule that evidence shall not be admissible if obtained “by means of a *serious* violation of this statute or other rules of international law” (emphasis added). This revised an earlier draft in 1993 that provided for an exclusionary rule triggered by obtaining evidence “directly or indirectly by illegal means which constitutes a *serious* violation of internationally recognized human rights” (emphasis added). However, the text adopted by the Rome Conference contains no reference to this requirement within the first limb (Article 69(7)).

37. The fact that a violation involved the right to privacy of a third party is not relevant when deciding whether the first step of the test for inadmissibility of evidence under Article 69(7) is satisfied. The Statute states that “[e]vidence obtained by means of a violation of [...] internationally recognized human rights shall not be admissible if [...]”. Accordingly, the identity of the person whose human rights were infringed is not a material consideration. In other words, evidence does not become admissible simply because the violation did not involve the human rights of the accused. The Statute establishes the benchmark that evidence obtained otherwise than in compliance with internationally recognized human rights standards (or in breach of the Statute) shall be excluded, if it is potentially unreliable or would undermine the proceedings.
38. Turning to the issue of the documents seized in the DRC, the Pre-Trial Chamber decided that the process of search and seizure infringed the right to privacy of the owner of the property and, as set out above, the national Court of Appeal ruled that the search and seizure was conducted in a manner that was contrary to national procedural law. Moreover, the Pre-Trial Chamber found that the conduct was disproportionate to the objective of the national authorities, as hundreds of documents were indiscriminately seized that were unrelated to the purpose of the search. There is no reason for this Chamber to reach a different conclusion on these issues, and in particular that an unjustified violation of the individual’s right to privacy occurred.
39. This violation of the right to privacy may have rendered the evidence inadmissible had the drafting history of the Statute concluded in 1994. The 1994 International Law Commission Draft Statute contained a rule that evidence obtained by means of a violation of rules of this Statute or other

rules international law shall be automatically deemed inadmissible.⁶⁸ However, after the extensive negotiations at the March and April 1998 sessions of the Preparatory Committee, the Rome Conference adopted a different formulation of this rule.⁶⁹ Consensus was reached that evidence obtained by means of a violation of the Statute or internationally recognized human rights shall be inadmissible only *if* the violation casts substantial doubt on the reliability of the evidence *or* its admission would be antithetical to and would seriously damage the integrity of the proceedings (the dual test).

40. As described above, Article 69(7)(a) relates to the impact of the violation on the reliability of the evidence. The Pre-Trial Chamber found that the violation did not affect the reliability of the evidence in this case. If the search and seizure had been conducted in full adherence to the principle of proportionality the content of the items seized would have been the same.⁷⁰

41. Some scholars have suggested that *any* violation of internationally recognized human rights will necessarily damage the integrity of proceedings before the ICC.⁷¹ This argument does not take into account the fact that the Statute provides for a “dual test”, which is to be applied following a finding that there has been a violation. Therefore, should the Chamber conclude that the evidence had been obtained in violation of the Statute or internationally recognized human rights, under Article 69(7) it is always necessary for it to consider the criteria in a) and b), because the

⁶⁸ *Ibid.*

⁶⁹ See the drafting history of this provision as described by Donald K. Piragoff, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2nd ed. 2008, page 1310.

⁷⁰ ICC-01/04-01/06-796-Conf-tEN, and public redacted version ICC-01/04-01/06-803-tEN, paragraph 85.

⁷¹ Salvatore Zappalà, *Human Rights in International Criminal Proceedings*, 2005, “[...] it seems correct to argue that any violation of internationally recognized human rights ipso facto meets the requirement that the integrity of proceedings shall not be impaired”, page 152; Fabricio Guariglia, *Las prohibiciones probatorias en el derecho penal*, page 245.

evidence is not automatically inadmissible. It is important that artificial restrictions are not placed on the Chamber's ability to determine whether or not evidence should be admitted in accordance with this statutory provision.

42. When deciding whether there has been serious damage to the "integrity of proceedings" as provided in Article 69(7)(b), it has been stressed that "the respect for the integrity of proceedings is necessarily made up of respect for the core values which run through the Rome Statute".⁷² It has been suggested that applying this provision involves balancing a number of concerns and values found in the Statute, including "respect for the sovereignty of States, respect for the rights of the person, the protection of victims and witnesses and the effective punishment of those guilty of grave crimes".⁷³ In respect of the latter, the effective punishment of serious crimes has been said to render it "utterly inappropriate to exclude relevant evidence due to procedural considerations, as long as the fairness of the trial is guaranteed".⁷⁴

43. The Chamber considers that the probative value of the evidence in question cannot inform its decision on admissibility, if it has been obtained in violation of internationally recognized human rights or the Statute. This conclusion results, in part, from the aforementioned *lex specialis* nature of Article 69(7) vis-à-vis the general admissibility

⁷² Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2nd ed. 2008, page 1335.

⁷³ *Ibid.*, page 1335.

⁷⁴ The complete quotation is as follows: "This Tribunal has a mandate to bring to justice persons allegedly responsible for serious violations of international law, to render justice to the victims, to deter further similar crimes and to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia. This mandate imposes on this Tribunal a tremendously heavy burden which it needs to carry in an efficient and successful manner. In the light of this responsibility under the Statute towards the international community and considering the seriousness of the crimes that this Tribunal is entrusted to adjudicate, it would be utterly inappropriate to exclude relevant evidence due to procedural considerations, as long as the fairness of the trial is guaranteed." *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, "Decision on the Defence 'Objection to Intercept Evidence'", 3 October 2003, paragraph 63.

provisions set out in the Statute. For instance, Article 69(4) enables the “probative value of the evidence” to be weighed along with other considerations, such as the fair evaluation of a witness’s testimony and, more broadly, any prejudice the evidence may cause to the fairness of the trial. However, when addressing the exclusionary criteria of Article 69(7), it is impermissible to introduce this further factor, namely adding the probative value of the evidence as a criterion of admissibility. Therefore, arguments directed at its probative value (even that it alone provides proof of an element of the charges) are irrelevant.

44. Similarly, the seriousness of the alleged crimes committed by the accused is not a factor relevant to the admissibility of evidence under Article 69(7). As set out in the Preamble and Article 1 of the Statute, the Court has jurisdiction over the most serious crimes of international concern. Article 17(1)(d) of the Statute renders cases inadmissible that do not possess sufficient gravity to justify further action by the Court. Therefore, the core crimes and the cases which justify “further action” by the Court will always be of high seriousness, but the public interest in their prosecution and punishment cannot influence a decision on admissibility under this statutory provision. Indeed, there is no basis within the Rome Statute framework generally for an approach that would allow the seriousness of the alleged crimes to inform decisions as to the admissibility of evidence.

45. Particular consideration needs to be given to the presence of a member of the prosecution during the search and seizure exercise conducted by the Congolese authorities. The defence stressed during the Pre-Trial stage (in its filing of 7 November 2006) the significance of the presence of an investigator of the prosecution: “the Prosecution was not merely the ‘fortunate recipient’ of the ‘fruits of the poisoned tree: the Prosecution

investigator was physically present at the scene”.⁷⁵ This submission highlights one possible purpose of exclusionary rules of evidence: they have the effect, *inter alia*, of disciplining or deterring irregular or unlawful conduct by law enforcement officials.⁷⁶ It is to be observed that it may turn out to be the case that this kind of evidence-gathering exercise is not normally carried out by investigators of the prosecution, particularly since the Court is said to be “a giant without arms and legs”.⁷⁷ It has not been endowed with an enforcement apparatus enabling it readily to obtain evidence in this way, but instead it must rely on the assistance of sovereign States. Whatever the future may hold in this regard, it is of note that the ICTY has held that the exclusionary rules contained in the framework of the Tribunal were not intended to deter and punish illegal conduct by domestic law enforcement authorities by excluding illegally obtained evidence in international proceedings. The ICTY Trial Chamber stated:

Domestic exclusionary rules are based, in part, on the principle of discouraging and punishing over-reaching law enforcement. [...] The function of this Tribunal is not to deter and punish illegal conduct by domestic law enforcement authorities by excluding illegally obtained evidence.⁷⁸

46. In the current case, an investigator from the prosecution was in attendance during the search and seizure exercise, as opposed to performing a more active role, but it would seem that at any event mere presence at an event of this kind does not serve to engage this exclusionary rule. Deterrence and discipline, if they are to be given any sustainable meaning and

⁷⁵ ICC-01/04-01/06-683, paragraph 30.

⁷⁶ See references by Guariglia, *Las Prohibiciones Probatorias en el Derecho Penal*, page 46, ff.

⁷⁷ Antonio Cassese, “On the current Trend towards Criminal Prosecution and Punishment of Breaches of International Law”, in 9 *EJIL* (1998) 1/13.

⁷⁸ *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, “Decision on the Defence ‘Objection to Intercept Evidence’”, 3 October 2003, paragraph 63.

purpose within the framework of exclusionary rules,⁷⁹ should be directed at those in authority – the individuals who control the process or who have the power, at least, to prevent improper or illegal activity. In this case, the search was the sole responsibility of the Congolese authorities, and they carried it out; in contrast, the prosecution's investigator was only "permitted to assist". There are no indicators that the investigator controlled or could have avoided the disproportionate gathering of evidence, or that he acted in bad faith. Therefore, even if the purpose of this exclusionary rule is, *inter alia*, to discourage or discipline irregular activity, it would not apply in this instance as regards the prosecution.

47. By Article 69(7)(b) of the Statute, it is for the Chamber to determine the seriousness of the damage (if any) to the integrity of the proceedings that would be caused by admitting the evidence. The Chamber notes particularly the following points as regards these documents: (i) the violation was not of a particularly grave kind; (ii) the impact of the violation on the integrity of the proceedings is lessened because the rights violated related to someone other than the accused; and (iii) the illegal acts were committed by the Congolese authorities, albeit in the presence of an investigator from the prosecution.

48. In all the circumstances, the Chamber has concluded that the breach of privacy in this instance does not affect the reliability of the evidence; nor should the material be excluded because of an argument that the breach was antithetical to, or damaged the integrity of proceedings. Put otherwise, applying Article 69(7), the relevant documents obtained during the search and seizure exercise are admissible, notwithstanding the breach of the fundamental right to privacy.

⁷⁹ See Blackstone's, *Criminal Practice*, 2009, p. 2343.

49. Against that background, as regards the entirety of this material, the Chamber has applied a document-by-document approach. As outlined above, the probative value of the documents obtained during the search and seizure exercise carried out by the Office of the Prosecutor of the *Tribunal de Grande Instance* of Bunia is an irrelevant consideration for the reasons that have been extensively rehearsed.⁸⁰ Otherwise, the Chamber has applied the test established in its Decision on the admissibility of four documents.⁸¹ In the Annex to the present Decision, the Chamber has addressed the admissibility of each of these documents, following the status conference on 7 May 2009,⁸² during which the prosecution supplied further information, at the Chamber's request, on a number of the individual annexes. The Chamber has particularly borne in mind the arguments of the defence, first, that the category (ii) documents (in relation to which it had previously reserved its position as regards their authenticity and evidential value) did not present sufficient guarantee of authenticity and reliability to be admitted into the proceedings; second, that the category (iii) documents are inadmissible, on the basis of suggested lack of relevance to the charges or because the prosecution has failed to provide the best means of proof, together with the argument that the documents do not all emanate from the UPC or the FPLC; and, third, that some of those referred to in Annex 1 to the prosecution's application do not correspond to the contents of the documents provided, as described above.⁸³

50. The Chamber notes that the documents contained in annexes 6, 43, 46 and 74 have been withdrawn, and for the individual reasons set out in the Annex to this Decision decides:

⁸⁰ See above paragraph 43.

⁸¹ ICC-01/04-01/06-1399, paragraphs 27 - 31.

⁸² Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-170-ENG, pages 1-32.

⁸³ See paragraph 7 above.

- a. The document contained in annex 53 does not satisfy the test for admissibility.
- b. All of the remaining documents contained in the Annex satisfy the test for admissibility.

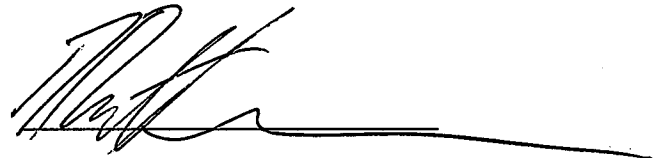
Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 24 June 2009

At The Hague, The Netherlands

**Public Annex to “Decision on the admission of material from
the ‘bar table’”**

**(The Chamber’s Decision on the individual documents annexed to
the prosecution’s application)**

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-0014-0183) This document is entitled “Reunion de L’Executif de L’UPC/RP”, and is dated 11 June 2003. It contains a list of names, functions and signatures of those present at a meeting of the UPC.	There is a UPC handwritten header and there are signatures of those listed, including that of Mr. F. Kisenbo.	The suggested link between the UPC and the FPLC. The document relates to a meeting of the executive, a political meeting in which Mr F. Kisenbo, a suggested member of the military, was present.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, ¹ it later submitted that it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings. ²	The admissibility criteria are satisfied with regard to this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
3	(ERN DRC-OTP-0014-0187) This is a UPC letter dated 23 June 2003, from	There is a UPC header (of the Cabinet of the President); the letter is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo’s authority within the UPC/FPLC and his position as a representative with third parties.	The authenticity of this document is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.

¹ Réponse de la Défense à la “Prosecution’s Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)”, 11 March 2009, ICC-01/04-01/06-1771, paragraph 7. Similar submissions in relation to the following annexes are contained in the same filing.

² Réponse de la Défense aux observations formulées par le Procureur lors de l’audience du 7 mai 2009 relatives aux 85 documents, 11 May 2009 (notified on 14 May 2009), ICC-01/04-01/06-1872, paragraph 10. Similar submissions in relation to the following annexes are contained in the same filing.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Thomas Lubanga Dyilo to the President of Uganda, concerning a political misunderstanding between the UPC/RP and the Ugandan government.				
4	(ERN DRC-OTP-0014-0254) This is a UPC letter dated 5 June 2003, from Mr. F. Kisembo to the FPLC brigade commanders, regarding the demobilisation of individuals under 18 years in the FPLC.	There is a UPC header (of the Cabinet of the Chief of State-Major General); the document is signed by Mr. F. Kisembo.	Thomas Lubanga Dyilo's knowledge of the use of child soldiers and his authority within the UPC/FPLC. The decree referred to in the document, signed by Mr. F. Kisembo, has been tendered by the prosecution as an exhibit, with the number EVD-OTP-00052 (DRC-OTP-0014-0254).	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied with regard to this document, in that it may assist in demonstrating Thomas Lubanga Dyilo's knowledge of the use of child soldiers and his authority within the UPC/FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
5	(ERN DRC-OTP-0014-0270) This is a UPC letter dated 11 August 2003 from the national Defence Secretary to staff of EMG/FPLC regarding reorganisation of	There is a UPC header (of the Cabinet of the President) and a UPC stamp.	The link between the UPC and the FPLC. Witness 17 has given evidence in relation to the posts of G1, G3, G4 and G5. It is said that other witnesses will describe the structure of the UPC military.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient	Despite the absence of a relevant signature, this document satisfies the admissibility criteria, to the extent that it tends to demonstrate the link between the UPC and the FPLC, albeit at a point of time outside of the indictment period.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	troops in several towns in Ituri.			guarantee of authenticity and reliability to be admitted into the proceedings.	It concerns issues and events (or information) that are of sufficient proximity to the charges the accused faces to be, <i>prima facie</i> , of assistance in this trial. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
6	(ERN DRC-OTP-0014-0272) This is a handwritten FPLC letter dated 1 November 2003 from Mr. B. Ntaganda to the President of FEC in Ituri, regarding the payment of a bill.	There is a handwritten FPLC header, and the document is signed by Mr. B. Ntaganda.	The link between the UPC and the FPLC. Upon reflection, the prosecution seeks to withdraw this document.	The defence contests the admissibility of this document, which, it submits, only concerns events after the period of the charges and it generally has no connection with the case against Thomas Lubanga Dyilo.	This document has been withdrawn by the prosecution.
7	(ERN DRC-OTP-0016-0041) This is a UPC letter dated 1 November 2003 from Mr. F. Kisembo to the President of the UPC,	There is a UPC header (of the Cabinet of the Chief of State-Major General); the document is signed by Mr. F. Kisembo.	The structure of the FPLC. Although the date of the document is outside the indictment period, the prosecution submits that it demonstrates the continuation of	The defence submits that it is in a position to contest this document, stating that it only concerns events after the period of the charges	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the FPLC, albeit at a point of time outside of the indictment period. It concerns issues and

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	regarding “délimitation des axes de commandement”.		a policy that was in existence during the indictment period.	and has no connection to the case against Thomas Lubanga Dyilo.	events (or information) that are of sufficient proximity to the charges the accused faces to be of potential assistance in this trial.
8	(ERN DRC-OTP-0016-0043) This is a UPC letter dated 1 November 2003, from Mr. F. Kisembo to the President of the UPC, with the subject heading “réorganisation”.	There is a UPC header (of the Cabinet of the Chief of State-Major General), and a UPC stamp. The document is signed by Mr. F. Kisembo.	The link between the UPC and FPLC. Although the date of the document is outside the indictment period, the prosecution submits that it demonstrates the continuation of a policy that was in existence during the indictment period.	The defence contests the admissibility of this document, which, it submits only concerns events after the period of the charges and has no connection to the case against Thomas Lubanga Dyilo.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the FPLC, albeit at a point of time outside of the indictment period. It concerns issues and events (or information) that are of sufficient proximity to the charges the accused faces to be, <i>prima facie</i> , of potential assistance in this trial.
9	(ERN DRC-OTP-0016-0131)	There is a typed FPLC header, and also a stamp. It is signed by Mr. B.	Thomas Lubanga Dyilo’s authority within the UPC/FPLC.	Whilst the defence initially sought to reserve the right to	The admissibility criteria are satisfied in respect of this document, to the extent that it

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
10	<p>This is an FPLC declaration, dated 6 December 2003, from Mr. B. Ntaganda detailing the names of leaders and their positions.</p>	<p>Ntaganda, the Chef D'Etat and Mr. J. M. Linganga Dhena.</p>	<p>The inclusion of Thomas Lubanga Dyilo as the President of "notre armée FPLC", and the signature of Mr. B. Ntaganda, demonstrate the link between the military and the political wings of the UPC and the fact that Thomas Lubanga Dyilo was in charge of the military.</p> <p>Although the date of the document is outside the indictment period, the prosecution submits that it demonstrates the continuation of a policy that had been in existence during the indictment period.</p>	<p>Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and</p>	<p>The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate, <i>prima facie</i>, Thomas Lubanga Dyilo's authority within the UPC/FPLC. However, a final decision on its weight is, at least in part, dependent on an assessment of the testimony of witness 55.</p>

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
11	(ERN DRC-OTP-0017-0023) This is a handwritten FPLC security services report, dated 17 February 2003.	There is a handwritten header (FPLC security service). The document is signed although the author's identity is unclear.	The FPLC structure. The prosecution submits that Witness 55, who was part of the relevant department of the UPC, will be in a position to give corroborative testimony.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the FPLC. However, a final decision on its weight is, at least in part, dependent on an assessment of the testimony of Witness 55. Therefore, matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
12	(ERN DRC-OTP-0017-0025)	There is a handwritten header (FPLC), and the	The FPLC structure and communication. The link	Whilst the defence initially sought to	The admissibility criteria are satisfied in respect of this

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	This is a handwritten FPLC situation report, dated 10 October 2002; the author is Mr. J. Ahebwa.	document is signed by Mr. J. Ahebwa.	between the UPC and the FPLC (it is addressed to the UPC National Secretary). The prosecution submits that Witness 55 will be able to comment on the form of these documents and whether they have been routinely prepared. The prosecution also notes that the date of the document is outside the indictment period.	reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	document, to the extent that it tends to demonstrate the structure of the FPLC. However, a final decision on its weight is, at least in part, dependent on an assessment of the testimony of Witness 55. It concerns issues and events (or information) that are of sufficient proximity to the charges the accused faces to be of potential assistance in this trial. Therefore, matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
13	(ERN DRC-OTP-0017-0026) This is a UPC letter dated 29 November 2002, from Thomas Lubanga Dyilo to the Chief of the Bedu/Ezekere. It reveals the political direction of the UPC/RP regarding the disaster of Bedu/Ezekere, which was caused by the	There is an official UPC header, (of the Cabinet of the President), and a UPC stamp; the document is signed by Thomas Lubanga Dyilo.	The link between the UPC and the FPLC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Hema.				
14	(ERN DRC-OTP-0017-0288) This is a UPC letter dated 18 May 2003 from Thomas Lubanga Dyilo to the UN Secretary General, describing the position of the UPC/RP since the last meeting in Dar Es Saalam.	There is an official UPC header and stamp (of the Cabinet of the President); the document is signed by Thomas Lubanga.	Thomas Lubanga Dyilo acting as the UPC's representative with third parties; the link between the UPC and the FPPLC (reference to the "UPC's soldiers").	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
15	(ERN DRC-OTP-0018-0113) This document is dated 2 March 2003; it is entitled "Agreement between the UPC/RP and the UPDF"; it contains the conclusions reached in the meeting between the UPC/RP, UPDF and MONUC.	It bears the signatures of the representatives of the UPDF, UPC/RP (FPPLC) (Comdt. Kismeho Bahemuka), and MONUC.	The link between the UPC and the FPPLC (it is signed on behalf of the UPC and refers to the movement as the "UPC/RC (FPPLC)". The prosecution has emphasised the significance of the signature of Mr. F. Kismeho.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the FPPLC and the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
16	(ERN DRC-OTP-0018-0158)	There is an official UPC header (of the Cabinet of	Thomas Lubanga Dyilo's authority within the UPC/FPPLC.	Its authenticity is accepted, and no	This document satisfies each element of the test for

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
17	(ERN DRC-OTP-0018-0159) This is a UPC letter dated 12 July 2003, addressed to General Thonier, signed on behalf of Thomas Lubanga Dyilo, requesting restitution of weapons seized on 11 July 2003.	The document bears an official UPC header (of the Cabinet of the President) and a UPC stamp; the document is also signed by the representative of the National Secretary for Military Matters.	Thomas Lubanga Dyilo's authority within the UPC/FPLC; the link between the UPC/FPLC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	At the Status Conference on 7 May 2009, ³ the prosecution sought leave to revert to the Chamber with evidence of the relationship between Thomas Lubanga Dyilo and the individual who signed on his behalf. The prosecution responded on 8 May 2009, ⁴ submitting that it had no further information to present to the Chamber. The admissibility criteria are satisfied with regard to this document, to the extent that it tends to demonstrate Thomas

³ Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-170-Conf-Eng, page 8 lines 13 – 25.

⁴ Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
18	(ERN DRC-OTP-0024-0773) This is a letter from Mr. R. Lonema to the President of the UPC, dated 4 October 2002, responding to a request for information; the request for information is attached in a separate annex. The prosecution has described this document as a "Document transmitting the Activities Report of National Secretary for Culture, Arts and Tourism	There is a typed UPC header and a UPC stamp; the document is signed by Mr. R. Lonema. The prosecution has suggested the author is Mr. A. Bebetu. This may be so for the annex but, the letter is signed by Mr. R. Lonema.	Thomas Lubanga Dyilo's role within the UPC/FPLC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	Lubanga Dyilo's authority within the UPC/FPLC and the link to the UPC/FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. At the Status Conference on 7 May 2009, ⁵ the prosecution sought leave to revert to the Chamber with evidence of the relationship between Thomas Lubanga Dyilo and the individual who signed on his behalf. The prosecution responded on 8 May 2009, ⁶ explaining that information relating to the author and title of the document had been incorrect in its earlier submission. It confirmed that the author of the document is Mr. R. Lonema and that the annex mentioned in the document is not in its possession. ⁷

⁵ Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-170-Conf-Eng, page 9 lines 2 – 11.

⁶ Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

⁷ *Ibid.*

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	covering the period 3 September to 10 November 2002". This description appears to correspond with the contents of the annex.				The admissibility criteria are satisfied with regard to this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo's role within the UPC/FPLC.
19	(ERN DRC-OTP-0024-0788) This is a UPC letter dated 15 May 2003 from Thomas Lubanga Dyilo to Mr. J. Tinanzabo, regarding a mission in Dar Es Salaam.	A UPC header (of the Cabinet of the President) and a UPC stamp; the signature of Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC/FPLC and control over the movement.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
20	(ERN DRC-OTP-0029-0274) This is a UPC letter dated 21 October 2002 from Thomas Lubanga Dyilo to FPLC Chief of Staff regarding recruitment of child soldiers.	A UPC header (of the Cabinet of the President) and UPC stamp; the document also bears the signature of Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's knowledge of the use of child soldiers in the UPC/FPLC ranks.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
21	(ERN DRC-OTP-0029-0275) This is a UPC letter dated 27 January 2003 from Thomas Lubanga Dyilo to the Chief of the FPLC requesting an immediate report on the enlistment of children less than 18yrs old into the FPLC army, following his letter banning their enrolment into the FPLC army.	A UPC header and stamp; the document also bears the signature of Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's knowledge of the use of child soldiers in the UPC/FPLC ranks.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
22	(ERN DRC-OTP-0029-0294) This is a UPC letter, dated 22 July 2003 from Thomas Lubanga Dyilo to the Belgian government, requesting the Belgian government to act as an intermediary between the UPC/RP, the RDC transitional government and the Multinational	There is a UPC header (of the Cabinet of the President) and a UPC stamp; the document is also signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC/FPLC and his position as the UPC representative with third parties.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Force.				
23	(ERN DRC-OTP-0029-0306) This is a UPC letter, dated 30 March 2003, from Thomas Lubanga Dyilo to the Special Representative of the UN Secretary General (Mr. Amos Nangana Ngongi) concerning the ceasefire between the FPLC, UPC and UPDF.	There is a UPC header (of the Cabinet of the President), a UPC stamp and the document is signed by Thomas Lubanga Dyilo.	The link between the UPC and the FPLC (it refers to the FPLC as the UPC army).	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
24	(ERN DRC-OTP-0037-0264) This is a UPC official declaration outlining the UPC objectives, dated 14 September 2002.	There is a UPC header (of the Cabinet of the President) and the document bears the signature of Thomas Lubanga Dyilo.	The UPC's objectives.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
25	(ERN DRC-OTP-0037-0266) This is a UPC official declaration, dated 14	There is a UPC header (of the Cabinet of the President) and the document bears the signature of Thomas	The UPC's objectives.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
26	(ERN DRC-OTP-0041-00098) This is a UPC letter dated 20 December 2002, from the Director of the Cabinet to Mr. M. Kimanda, regarding his appointment.	There is a UPC header (of the Cabinet of the President) and a UPC stamp; the document also bears the signature of the Director of the Cabinet (Mr. D. M. Gombi).	The UPC structure. The prosecution submits that this document is a notification of appointment for someone who was to be employed in the UPC, which was relayed to the President of the UPC, (at that time Thomas Lubanga Dyilo). It submits that the document demonstrates a system of appointments and promotions within the UPC and therefore an efficient structure and organisation.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate (contemporaneously) Thomas Lubanga Dyilo's involvement in recruiting child soldiers. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
27	(ERN DRC-OTP-0055-0472) This is an RCDD/KIS/ML letter dated 6 June 2002 from Mr. J. Lompondo (Commander of Operations) to the President of the RCDD/KIS/ML, indicating that Thomas Lubanga	There is an RCDD/KIS/ML header and stamp, and the document is signed by Mr. J. Lompondo.	Thomas Lubanga Dyilo's involvement in recruiting child soldiers. The prosecution submits that the author, at the time of the production of the document, was the governor of Ituri and was in control of Bunia, and that evidence indicating that Mr. J. Lopondo was exiled when the	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate (contemporaneously) Thomas Lubanga Dyilo's involvement in recruiting child soldiers. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Dyilo was creating a Gegere militia in Mandro, recruiting child soldiers.		UPC came to Bunia in August 2002 has already been introduced. The prosecution further submits that the content of the document relating to the existence of child soldiers, or the attempt to recruit child soldiers by Mr Lubanga, is corroborated by similar evidence that has been elicited in this trial, namely, that there were child soldiers within the UPC, or within the movement that became the UPC, at that time.	admitted into the proceedings.	
28	(ERN DRC-OTP-0055-0474) This is an RCDD/KIS/ML letter dated 14 May 2002 from Mr. J. Lompondo (Commander of Operations) to Mr. P. Kamaragi, regarding ethnic conflicts and specific attacks in Irunu and Djugu.	There is an RCDD/KIS/ML header and stamp, and the document is signed by Mr. J. Lompondo.	Thomas Lubanga Dyilo's involvement in armed groups prior to the UPC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate (contemporaneously) Thomas Lubanga Dyilo's involvement in armed groups prior to the UPC; this forms part of the relevant background to the case. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
29	(ERN DRC-OTP-0055-0476) This is an RCD/KIS/ML letter dated 22 May 2002 from Mr. J. Lompondo (Commander of Operations) to the Commandant of the UPDF in Bunia concerning the return of soldiers to the residence of Thomas Lubanga Dyilo.	There is an RCD/KIS/ML header and stamp, and the document is signed by Mr. J. Lompondo.	Thomas Lubanga Dyilo's involvement in armed groups prior to the UPC. It connects Thomas Lubanga Dyilo to the mutineers' movement and identifies him as the RCD-ML Minister of Defence.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate (contemporaneously) Thomas Lubanga Dyilo's involvement in armed groups prior to the UPC: this forms part of the relevant background to the case. It links him to "Hema militias" which, in light of other documents by the
30	(ERN DRC-OTP-0055-0484) This is a report on the renewed outbreak of hostilities in Bunia and the intentions of the President of the RCD-KIS/ML, signed by Mr. J. Lompondo (Commander of Operations), dated 1 June	There is an RCD/KIS/ML header and stamp, and the document is signed by Mr. J. Lompondo.	Thomas Lubanga Dyilo's involvement in armed groups prior to the UPC. It links Thomas Lubanga Dyilo to "Hema militias" which, in light of other documents by the same author, could be interpreted as the mutineers' movement.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate (contemporaneously) Thomas Lubanga Dyilo's involvement in armed groups prior to the UPC: this forms part of the relevant background to the case. It links him to "Hema militias" which, in light of other documents by the

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	2002.			admitted into the proceedings.	same author, could be interpreted as the mutineers' movement. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
31	(ERN DRC-OTP-0089-0039) This is a UPC letter dated 4 February 2003, from Mr. C. Ondia (National Secretary of Finances) to the Chief of the financial branch of ARU, concerning "Frais de fonctionnement services spécialisés/ARU".	There is a UPC header and stamp; the document is signed by Mr. C. Ondia.	The link between the UPC and the FPLC. The prosecution submits the fact that the document was marked to be copied to the Chief of Staff of the UPC demonstrates the alliance between the UPC and the FPLC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
32	(ERN DRC-OTP-0089-0040) This is a UPC letter dated 4 February 2003, from Mr. C. Ondia to the Chief of the financial branch of the ARU, permitting the use of	There is a UPC header and stamp; the document is signed by Mr. C. Ondia.	The link between the UPC and the FPLC (both President of the UPC and the Chef d'Etat Major are copied).	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC. Matters of weight, authenticity and reliability can be the subject

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	5000 US dollars quarterly for the rehabilitation of the military pavilion.			guarantee of authenticity and reliability to be admitted into the proceedings.	of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
33	(ERN DRC-OTP-0089-0041) This is a letter of complaint, dated 15 February 2003, to the President of the UPC/RP in Bunia by Mr. R. Pimbu against suspension from his functions.	There is a typed header (DRC Secretary General, Department of Mobilisation and Propaganda of the UPC/RP), and the document is signed by Mr. Robert Pimbu.	The structure of the UPC.	The defence contests the admissibility of this document, which, it submits, only concerns events unconnected to the charges.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the UPC. It concerns issues and events (or information) that are of sufficient proximity to the charges the accused faces to be of potential assistance in this trial. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
34	(ERN DRC-OTP-0089-0060) This is a UPC letter from Mr. J. Uwek-Nyinga Djalum (National Secretary of the Interior and	There is a UPC header and stamp, and the document is signed by Mr. J. Uwek-Nyinga Djalum.	Thomas Lubanga Dyilo's authority within the UPC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo's authority within the UPC.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Customary Affairs) to the President of the UPC/RP in Bunia, dated 14 January 2003, concerning changes within the UPC/RP executive.			present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
35	(ERN DRC-OTP-0089-0069) This is a UPC letter dated 30 November 2002 from Thomas Lubanga Dyilo to the national secretaries of the UPC/RP, asserting that the executive of the movement should have access to all important correspondence concerning the movement.	There is a UPC header (of the Cabinet of the President) and a UPC stamp, and the document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's role within the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
36	(ERN DRC-OTP-0089-0073) This is a UPC political declaration, dated 3 December 2003, stating that Thomas Lubanga Dyilo remains President of	The document is signed by Mr. J. T. Zeremani, Secretary General of the UPC.	Thomas Lubanga Dyilo's authority within the UPC/FPLC. The prosecution submits that the context of this document is the departure of Mr. F. Kisembo at the end of 2003 and his attempts to become president of the UPC,	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo's authority within the UPC/FPLC, albeit at a point of time outside of the indictment period. It concerns issues and

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	the UPC.		in relation to which evidence has already been introduced in this trial. The prosecution further submits that whilst the date of this document is outside the indictment period, it demonstrates a continuation of circumstances that were in existence during the indictment period.	guarantee of authenticity and reliability to be admitted into the proceedings.	events (or information) that are of sufficient proximity to the charges the accused faces to be of potential assistance in this trial. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
37	(ERN DRC-OTP-0089-0090) This is a UPC document dated 9 June 2003, transmitting a presidential decree to the national secretaries and the UPC secretary general.	There is a UPC header (of the Cabinet of the President) and a UPC stamp: the document is signed by Thomas Lubanga Dyilo.	The structure of the UPC and communication to lower levels.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
38	(ERN DRC-OTP-0089-0093) This is a presidential decree dated 2 June 2003 appointing Mr. J.	There is a UPC header (of the Cabinet of the President) and a UPC stamp, and the document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Tinanzabo as the UPC Secretary General and spokesperson, as well as 7 other appointments.				
39	(ERN DRC-OTP-0089-0146) This is a UPC letter dated 17 December 2002 from the President and the Secretary of the “Comite de paix centre de liaison Lopa” to the General Secretary and Coordinator of the “Comite de paix”, concerning instability in the areas of Loga, Bili, Theru and Mbau.	There is a UPC/RP typed header and an RDC stamp and the document is signed by the President (Mr. G. Ndjabu) and the Secretary (Mr. N. Djombu).	Thomas Lubanga Dyilo’s authority within the UPC. The prosecution highlights that the document is marked to be copied to his Excellency, the President of the UPC (in charge of defence), demonstrating Thomas Lubanga Dyilo’s authority within the UPC. The prosecution notes that the date of the document is outside the indictment period, but submits that similar arguments as above apply in respect of its relevance.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo’s role within the UPC, albeit at a point of time outside of the indictment period. It concerns issues and events (or information) that are of sufficient proximity to the charges the accused faces to be of potential assistance in this trial.
40	(ERN DRC-OTP-0098-0483) This is a UPC Statute,	There is a UPC header and stamp and the document is signed by Thomas Lubanga Dyilo and others.	Thomas Lubanga Dyilo’s role in the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility.
					[SEARCH AND SEIZURE DOCUMENT]

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
41	(ERN DRC-OTP-0091-0016) This is a UPC Presidential Decree dated 11 December 2002, appointing several persons to the position of national secretaries.	There is a UPC header and stamp. The document is signed by Thomas Lubanga Dyilo.	The prosecution has not stated the relevance to the charges.	Its authenticity is accepted, and no admissibility issues are raised.	Notwithstanding the absence of an explanation from the prosecution as to the relevance of this document to the charges (bearing in mind the stance of the defence), it tends to demonstrate Thomas Lubanga Dyilo's role within the UPC, and accordingly it satisfies each relevant element of the test for admissibility. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
42	(ERN DRC-OTP-0091-0039) This is a UPC Statute, dated 15 September 2000.	There is a UPC typed header and the document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's role in the formation of the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
43	(ERN DRC-OTP-0091-	There is a UPC header;	Thomas Lubanga Dyilo's role in	The defence contests	This document has been

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
44	(ERN DRC-OTP-0091-0705) This is a UPC letter dated 8 January 2003 from the National Secretary of Finance to the President of the UPC, acknowledging receipt of a letter dated 17 December,, headed “accusé de réception”.	There is a UPC typed header and a UPC stamp. The document is signed by Mr. C. Ondia (National Secretary for Finance).	Thomas Lubanga Dyilo’s authority within the UPC. The prosecution submits that the evidential value of this document is founded in its demonstration of the authority of Thomas Lubanga Dyilo rather than in its specific content.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo’s authority within the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. The Chamber notes the prosecution sought leave to revert to the Chamber on whether the letter of 17 th December 2002 is in their possession. ⁸ The prosecution
	0182) This is a UPC Statute, dated 15 September 2000.	however, the document is unsigned.	the formation of the UPC. Upon reflection, the prosecution seeks to withdraw this document.	the admissibility of this document, which, it submits, does not constitute the best available evidence since it is unsigned and signed versions of the same document are available.	withdrawn by the prosecution. [RESEARCH AND SEIZURE DOCUMENT]

⁸ Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-170-Conf-Eng, page 14 lines 11 – 19.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
45	(ERN DRC-OTP-0091-0709) This is a UPC letter dated 24 December 2002 from a representative of the UPC/RP to the President of the UPC, confirming the position of four coordinators in Mongwalu town.	There is a UPC typed header. The document is signed by Mr. P. Matadi, Chief of the department of mobilisation and propaganda, and Commander N. Salongo, Comd Oper. South East Sector.	The link between the UPC and the FPLC (it is written by a member of the UPC and a member of the FPLC). The prosecution submits that the signatory at the bottom left of the document is a political representative, and the signatory at the bottom right of the document is a sector commander of the UPC/FPLC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
46	(ERN DRC-OTP-0091-0712) This is a UPC letter dated	There is a UPC typed header. The document is signed by Mr. P. Matadi, Chief of the Department of	Thomas Lubanga Dyilo's role in the UPC.	Whilst the defence initially sought to reserve the right to challenge the	This document is identical to that contained in annex 45 and, as such, is to be withdrawn.

⁹ Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	24 December 2002 from a representative of the UPC/RP to the President of the UPC, confirming the position of four coordinators in Mongwalu town.	Mobilisation and Propaganda, and Commander N. Salongo, Comd Oper. South East Sector.		authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	[SEARCH AND SEIZURE DOCUMENT]
47	(ERN DRC-OTP-0091-0716) This is a UPC letter dated 8 January 2003, addressed to the President of the UPC, written and signed by 26 agents of the Djugu territory, concerning placing antennas for Radio Candip/ISP Bumia.	There is a UPC typed header and a UPC stamp. The document is signed by 26 agents of the Djugu territory.	Thomas Lubanga Dyilo's authority within the UPC. The prosecution submits that the evidential value of this document is in the fact that it was addressed to the accused, rather than its content.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo's authority within the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
48	(ERN DRC-OTP-0091-0728) This is a UPC letter dated 16 December 2002 from the National Secretary of	There is a UPC header and stamp. The document is signed by Mr. T. Lufulabantu, National Secretary of the UPC.	The link between the UPC and the FPPLC. The document refers to the theft of a motorbike by someone from the FPPLC. The prosecution	The defence contests the admissibility of this document, which, it submits, makes reference to events which have	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPPLC, and Thomas Lubanga Dyilo's

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
49	Justice to Mr. M. Mbanda, concerning a motorbike which had been seized by the FPLC.	There is a UPC typed header. The document is signed by Colonel Prince Mugabo.	The link between the UPC and the FPLC. submits that the document demonstrates that even trivial matters would be sent to the President, therefore demonstrating the overall authority of the accused.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
50	(ERN DRC-OTP-0091-0769) This is an FPLC letter [the prosecution has referred to this as a UPC letter] dated 30 November 2002 from Mr. Kisembo addressed to the Director of the UPC's Presidential Cabinet assuring him that necessary measures will be taken in respect of the military interests cited in the letter from the Director.	There is an FPLC typed header and stamp. The document is signed by Mr. Kisembo.	The link between the UPC and the FPLC. The prosecution submits that the document was signed by Mr. Kisembo, Chef d'Etat-Major Général/FPLC, and copies have been transmitted to secretaries within the UPC, thereby demonstrating the link between the military and the political wing of the UPC. The prosecution further notes that the request for provisions went "all the way up to the President".	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC and the structure of the FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
51	(ERN DRC-OTP-0091-0778) This is an FPLC letter dated 21 November 2003 from Mr. Kisembo to the President of the UPC, transmitting an attachment with a list of requirements.	There is an FPLC header and stamp and the document bears the signature of Mr. Kisembo.	The FPLC structure; the link between the UPC and the FPLC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	[RESEARCH AND SEIZURE DOCUMENT]

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
52	(ERN DRC-OTP-0092-0436) This is a document entitled "Pacification of Ituri, Programme, Budget, Calendar", dated 26 September 2002.	There is a UPC header. The document is signed by Mr. Jean de Dieu Tinanzabo Zeremani	The UPC's objectives, structure and organisation. It gives a date to the moment the UPC took control of Bunia. The prosecution submits that the document provides contextual and background evidence to the charges, about which evidence has already been elicited in this trial.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC and the structure of the FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
53	(ERN DRC-OTP-0092-0704) This is a handwritten exam paper dated 9 December 2002 of Mr. Faislin Mwelwa for the UPC/RP entry test.	The document is possibly signed by Mr. Faislin Mwelwa.	The link between the UPC and the FPLC. The prosecution accepts that there is no evidence of the context in which this document came into existence, but submits that it was obtained from a high ranking member of the UPC as a result of the search and seizure exercise in the DRC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	This document does not satisfy the test for admissibility, since as an exam paper it has insufficient evidential reliability or significance, wherever it was found. [SEARCH AND SEIZURE DOCUMENT]

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
54	(ERN DRC-OTP-0093-0111) This is a UPC letter dated 17 July 2004 from Thomas Lubanga Dyilo to the Defence minister informing him of the transformation of the UPC/RP as of 2 July 2004.	The document bears a UPC header and it is signed by Thomas Lubanga Dyilo.	The structure of the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
55	(ERN DRC-OTP-0093-0121) This is a UPC letter dated 10 December 2002 from Thomas Lubanga Dyilo to the "Chef d'Etats Major General des FPLC" regarding the fact that illicit weapons were being spread within the population and that this might have dangerous consequences.	There is a UPC header (of the Cabinet of the President) and a UPC stamp. The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC; the link between the UPC and the FPLC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
56	(ERN DRC-OTP-0093-0136) This is a speech by Mr. Jean de Dieu Tinanzabo, National Secretary for Pacification, at the setting up for the Committee of Truth, Peace and Reconciliation.	There is a UPC stamp and the document is signed by Mr. Jean de Dieu Tinanzabo.	The link between the UPC and the FPLC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	At the Status Conference on 7 May 2009, ¹⁰ the prosecution sought leave to revert to the Chamber with further information in relation to this document. The prosecution responded on 8 May 2009, ¹¹ submitting that this document goes to the structure of the UPC and not to the link between the UPC and the FPLC. The relevant admissibility criteria are satisfied with regard to this document, to the extent that it tends to demonstrate the structure of the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
57	(ERN DRC-OTP-0093-	There is a UPC header and	Thomas Lubanga Dyilo's role in	Its authenticity is	This document satisfies each

¹⁰ Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-170-Conf-Eng, page 20 lines 2 – 7.

¹¹ Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	0202) This is a UPC Statute, dated 12 November 2003.	the document is signed by Thomas Lubanga Dyilo.	the UPC.	accepted, and no admissibility issues are raised.	relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
58	(ERN DRC-OTP-0093-0248) This is a UPC letter dated 13 December 2003 from Mr. D. Lambi Longa to Mr. D. Lisha, Mr. V. Ngona, Gen. Kisenbo, Col. Lobho and Col. Busha, transmitting the decree which notified the recipients of their suspension from the UPC/RP.	There is a UPC header (of the Cabinet of the President) and a UPC stamp. The document is signed by Mr. Djokaba Lambi Longa.	Thomas Lubanga Dyilo's authority within the UPC. The prosecution submits that both the header and the stamp at the bottom of the document indicate that it was for the attention of the President.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The relevant admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the authority of Thomas Lubanga Dyilo within the UPC Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. [SEARCH AND SEIZURE DOCUMENT]
59	(ERN DRC-OTP-0093-0359) This is a UPC Statute, dated 15 September 2000.	There is a typed UPC header and the document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's role in the formation of the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
60	(ERN DRC-OTP-0094-0155)	There is a UPC header and stamp, and the document is	The structure of the UPC.	Its authenticity is accepted, and no	This document satisfies each relevant element of the test for

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	This is a UPC letter dated 18 December 2004 from Thomas Lubanga Dyilo to the presidents of the political/military groups of Ituri in Bunia, regarding the absorption of the Ituri armed groups into the DRC military forces.	signed by Thomas Lubanga Dyilo.		admissibility issues are raised.	admissibility. [SEARCH AND SEIZURE DOCUMENT]
61	(ERN DRC-OTP-0094-0160) This is a UPC letter dated 24 June 2003 from Thomas Lubanga Dyilo to the president of Uganda, trying to open a new basis for cooperation with Uganda.	There is a UPC header (of the Cabinet of the President) and a UPC stamp. The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC/FPLC; it shows Thomas Lubanga Dyilo's role as a representative of the UPC with third parties.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
62	(ERN DRC-OTP-0094-0307) This is a UPC Statute dated 12 November 2003.	There is a UPC header. The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's role in the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
63	(ERN DRC-OTP-0102-	There is a UPC header (of	The prosecution submits that this	Whilst the defence	The relevant admissibility criteria

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	<p>(0071)</p> <p>This is a UPC report by Thomas Lubanga Dyilo responding to a report published in June 2003 accusing the UPC/RP of serious human rights violations in Ituri since June 1998.</p>	<p>the Cabinet of the President).</p>	<p>document demonstrates that there was a mechanism by which Thomas Lubanga Dyilo became aware of crimes committed within the area of responsibility of the UPC; that Thomas Lubanga Dyilo was the first point of call for complainants; and, in that respect, it demonstrates the control, authority and activities of the accused, as well as his ability to operate. The prosecution attaches significance to the fact that the document demonstrates Thomas Lubanga Dyilo's involvement in addressing issues relating to human rights violations.</p>	<p>initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.</p>	<p>are satisfied in respect of this document, to the extent that it tends to demonstrate the authority of Thomas Lubanga Dyilo within the UPC and his involvement in addressing human rights issues. The issue of the absence of his signature is a matter of evidential weight, as opposed to admissibility.</p> <p>Therefore, matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.</p>
64	<p>(ERN DRC-OTP-0106-0187)</p> <p>This is an agreement, dated 15 November 2002, entitled "The Kampala understanding between the CD-ML and the UPC" in which both movements agree to cease hostilities.</p>	<p>This document is signed by Thomas Lubanga Dyilo (UPC), Mr. M. Nyamwisi (RCD/ML) and Mr. J. Wapakabulo (Uganda).</p>	<p>The link between the UPC and the FPLC.</p>	<p>Its authenticity is accepted, and no admissibility issues are raised.</p>	<p>This document satisfies each relevant element of the test for admissibility.</p> <p>[SEARCH AND SEIZURE DOCUMENT]</p>

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
65	(ERN DRC-OTP-0107-0324) This is a document entitled “Acte d’Engagement pour la Relance du Processus de Pacification de l’Ituri”, dated 16 May 2003.	The document is signed by Thomas Lubanga Dyilo (UPC), Mr. J. K. Bukande (FAPC), Mr. T. Unencan Ukeha (FPDC), Mr. N. Ngabu (FND), Mr. K. Bitamara and Mr. C. Bahunde (PUSIC), Mr. D. Maruka, Mr. E. Leku and Mr. P. Yaweke (L’administration speciale interimaire).	Thomas Lubanga Dyilo’s authority within the UPC/FPLC, and his involvement in military issues.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each relevant element of the test for admissibility. [SEARCH AND SEIZURE DOCUMENT]
66	(ERN DRC-OTP-0109-0100) This is a UPC letter dated 24 October 2002 from Mr. Saba Musanganya, addressed to Mr. Nembe Ngoni, informing him that he will be the General Administrator of the Security during her absence.	There is a UPC header and a UPC stamp. The document is signed by Mr. Saba Musanganya.	The structure of the UPC. It establishes Mr. Rafiki’s official position; the UPC communication; and links between the UPC and the FPLC. The document has been copied to the President of the UPC and the Chef d’Etat-Major Général/FPLC. The signature is said to be made in an alternate name that is used for Mr. Rafiki, a fact to be addressed in evidence.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC and the structure of the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. In this regard, the Chamber observes the suggested evidential value of the document in respect of the authority and involvement of Mr. Rafiki will be dependent

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
67	(ERN DRC-OTP-0109-0101) This is a UPC declaration dated 11 December 2002, signed by Mr. Saba Musanganya concerning the appointment of members of the UPC/RP's Administrative Office.	There is a UPC header (of the President) and a UPC stamp. The document is signed by Mr. Saba Musanganya.	The structure of the UPC; it establishes Mr. Rafiki's official position.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be	on an assessment of any evidence purportedly establishing that the signature of Mr. Saba Musanganya is an alternate name for Mr. Rafiki. On the 8 May 2009, ¹² the prosecution indicated that to date evidence has been submitted listing Mr. Rafiki's name as "RAFIKI SABA". ¹³ It was further submitted that witnesses 55, 14 and 16 may provide evidence on this issue. ¹⁴
					The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. In this regard, the Chamber

¹² Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

¹³ The prosecution refers to DRC-OTP-0147 0320, tendered as EVD-OTP-00250, a UPC statute listing Rafiki as RAFIKI SABA and also to Annex 42 to application ICC-01/04-01/06-1730, document DRC-OTP-0091-0047, which contains the handwritten name and signature of RAFIKI SABA at page DRC-OTP-0091-0047.

¹⁴ Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
68	(ERN DRC-OTP-0109-0122) This is an FPLC letter [the prosecution refers to this as a UPC letter] dated December 2002 from Mr. I. R. Bobale to the President of the UPC, seeking to reopen the training centre for intelligence and military security.	There is an FPLC typed header.	The link between the UPC and the FPLC. The prosecution submits that this is a letter from the FPLC to the UPC and, as such, demonstrates the link between the two bodies.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the link between the UPC and the FPLC, notwithstanding the absence of a signature. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
69	(ERN DRC-OTP-0109-0136) This is the monthly report of Bureau 5 (FPLC), dated 6 November 2002, from	There is an FPLC typed header. The document is signed by Mr. E. Mbabazi.	The structure of the FPLC. The prosecution submits that the document is signed by a person who was within the main staff of the UPC/FPLC (testimony to this	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the FPLC and the level of knowledge of the accused.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	Mr. E. Mbabazi to the Chief of the EMG/FPLC concerning the state of mind of the troops, staff and the population.		effect has been given by Witness 17). The prosecution submits that this comprehensive reporting of matters within the FPLC demonstrates an efficient military hierarchy/structure, which is also relevant to the knowledge of the accused.	submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
70	(ERN DRC-OTP-0113-0014) This is an AGS document, dated 13 February 2003, ordering the eviction of the Reverend Marc Denecker from territory under the UPC/RP control and declaring him persona non grata.	There is a UPC header (of the President) and a UPC stamp. The document is signed by Mr. Saba Amable, Officer of the Judicial Police.	The structure of the UPC; it establishes Mr. Rafiki's official position in the movement.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. In this regard, the Chamber observes the suggested evidential value of the document in respect of Mr. Rafiki will be dependent on an assessment of any evidence purportedly establishing that the signature of Mr. Saba Musanganya is an alternate name for Mr. Rafiki.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
71	(ERN DRC-OTP-0113-0052) This is the UPC's Act Constitutif, dated 15 September 2000.	There is a UPC header and stamp. The document is signed by Thomas Lubanga Dyilo and others.	Thomas Lubanga Dyilo's role in the formation of the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
72	(ERN DRC-OTP-0113-0055) This is a UPC presidential decree making several appointments, dated 3 September 2002.	There is a UPC header (of the Cabinet of the President) and a UPC stamp. The document is signed by Thomas Lubanga.	Thomas Lubanga's authority within the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
73	(ERN DRC-OTP-0013-0070) This is a UPC letter dated 12 February 2003 from Mr. A. Biri to the commander of the FPLC regarding the nomination of 13 training officers for the DDRRR programme.	There is a UPC header and stamp. The document is signed by Mr. A. Biri.	Thomas Lubanga Dyilo's knowledge of the use of child soldiers in the UPC/FPLC ranks. The prosecution submits that this document was generated by the political department of the UPC, headed by the accused. The third, fourth and fifth lines of the first paragraph contain information about child soldiers in the UPC between the ages of 10 to 15/16. The prosecution therefore	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo's knowledge of the use of child soldiers in the UPC/FPLC ranks. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. The prosecution is to submit a

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
74	(ERN DRC-OTP-013-0127) This is a UPC letter dated 6 January 2004 from Mr. S. U. Wele to a group of mine workers requesting a pacific settlement of the dispute that occurred at the gold mining site of Pathy Doku.	There is a UPC header and stamp. The document is signed by A. Biri.	The link between the UPC and the FPLC. Upon reflection, the prosecution seeks to withdraw this document.	The defence contests the admissibility of this document, which, it asserts, makes reference to events which have no connection to the charges.	This document has been withdrawn by the prosecution.
75	(ERN DRC-OTP-0133-0133) This is a political declaration of the Front Pour La Reconciliation et La Paix (FRP), dated 11 August 2002.	The document is signed by Thomas Lubanga Dyilo and others.	Thomas Lubanga Dyilo's knowledge of the use of child soldiers in the UPC/FPLC ranks.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
76	(ERN DRC-OTP-0113-0161)	There is a UPC header (of the Cabinet of the	The link between the UPC and the FPLC (the FPLC	Whilst the defence initially sought to	The admissibility criteria are satisfied in respect of this

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	This is a memorandum addressed to General Mountaga Diallo of MONUC stating that the UPC is a political-military movement created to fight the values implemented by the RCD/ML. It is dated 8 January 2003. Its author is Thomas Lubanga Dyilo.	President).	implementing the UPC's objectives).	reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	document, to the extent that it tends to demonstrate the link between the UPC and the FPLC (with the FPLC implementing the UPC's objectives). Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.
77	(ERN DRC-OTP-0132-0237) This is a UPC declaration, dated 8 December 2003, ordering the suspension of several political and military officials.	There is a UPC header and stamp. The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC/FPLC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
78	(ERN DRC-OTP-0136-0173) This is an AGS document ordering the eviction of the Reverend Lean Mottoul from the territory under the control of the UPC/CP and	There is a UPC header, of the Cabinet of the President, and a UPC stamp. The document is signed by Mr. Saba Amiable, Officer of the Judicial Police.	The structure of the UPC, it establishes Mr. Rafiki's official position in the movement.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the UPC. Matters of weight, authenticity and reliability can be the subject

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	<p>declaring him persona non grata. It is dated 13 February 2003.</p>			<p>guarantee of authenticity and reliability to be admitted into the proceedings.</p>	<p>of later submissions, if relevant. In this regard, the Chamber observes the suggested evidential value of the document in respect of the authority and involvement of Mr. Ratfki will be dependent on an assessment of any evidence purportedly establishing that the signature of Mr. Saba Musanganya is an alternate name for Mr. Ratfki.</p>
79	<p>(ERN DRC-OTP-0136-0181) This is a letter signed by 46 individuals on behalf of “Libaru”, dated 3 October 2002, addressed to the President of the UPC regarding pillaging and destruction of houses.</p>	<p>The document is signed by the 46 individuals.</p>	<p>Thomas Lubanga Dyilo’s role within the UPC. The prosecution submits that the document, produced and signed by members of a community within Ituri, was transmitted to the President of the UPC, thereby demonstrating that Thomas Lubanga Dyilo was the person considered to be responsible for events within his zone of responsibility. Furthermore, the prosecution submits that evidence that Thomas Lubanga Dyilo was considered to be the</p>	<p>Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.</p>	<p>The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate Thomas Lubanga Dyilo’s role within the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.</p>

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
80	(ERN DRC-OTP-0136-0188) This is a UPC letter dated 17 July 2004 from Thomas Lubanga Dyilo to the Defence minister, informing him of the transformation of the UPC/RP as per the decree dated 2 July 2004.	There is a UPC header and the document is signed by Thomas Lubanga Dyilo.	The structure of the UPC. person who would safeguard the interests of the community has already been introduced.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
81	(ERN DRC-OTP-0148-0363) This is a UPC declaration dated 3 June 2003, signed by Thomas Lubanga Dyilo, giving details of the management of the UPC/RP's executive.	There is a UPC header of the President, and a UPC stamp. The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC/FPLC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
82	(ERN DRC-OTP-0148-0377)	There is a UPC header and a (faint) stamp. The document is signed by Mr.	The link between the UPC and the FPLC.	The defence contests the admissibility of this document,	The admissibility criteria are satisfied in respect of this document, to the extent that it

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
	This is a letter dated 23 October 2003 from Mr. F. Kisenbo to all Brigade Commanders of FPLC, concerning the recovery of 60% of public reports.	F. Kisenbo.	The submissions of the prosecution are identical to those concerning other documents signed by Mr. F. Kisenbo.	which it submits makes reference to events which have no connection to the charges.	tends to demonstrate the link between the UPC and the FPLC, albeit at a point of time outside of the indictment period. It concerns issues and events (or information) that are of sufficient proximity to the charges the accused faces to be of potential assistance in this trial). Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. The prosecution sought leave to revert to the Chamber on whether this is a duplicate document. ¹⁵ The prosecution responded on 8 May 2009, ¹⁶ submitting that this document is not a duplicate, but does mirror other letters signed by Mr. F. Kisenbo as the FPLC chief of staff on the UPC letter head.

¹⁵ Transcript of hearing on 7 May 2009, ICC-01/04-01/06-T-170-Conf-Eng, page 20 lines 19 – 25 and page 21 lines 2 - 11.

¹⁶ Email communication from the prosecution to the Trial Chamber through the Legal Advisor to the Trial Division on 8 May 2009.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
83	(ERN DRC-OTP-0151-0111) This is a UPC Presidential Decree making an appointment.	There is a UPC header (of the Cabinet of the President). The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's authority within the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
84	(ERN DRC-OTP-0164-0452) This is an official UPC/RP Declaration stating that the UPC is a political-military movement.	There is a UPC header (of the Cabinet of the President). The document is signed by Thomas Lubanga Dyilo.	Thomas Lubanga Dyilo's role within the UPC; the objectives of the UPC.	Its authenticity is accepted, and no admissibility issues are raised.	This document satisfies each element of the test for admissibility.
85	(ERN DRC-OTP-0165-0254) This is a UPC letter dated 6 December 2003, signed by Mr. B. Ntaganda, containing the military declaration of FPLC and UPC/RP.	There is a UPC typed header and a UPC stamp. The document contains two signatures which are unclear.	Thomas Lubanga Dyilo's authority within the UPC/FPLC. The prosecution highlights that the letter is addressed to "son excellence monsieur le president de l'UPC", and it submits it has therefore been transmitted to the accused.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the authority of Thomas Lubanga Dyilo within the UPC/FPLC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant.

Anx. No.	Description	Particular Evidential Factors	Relevance to the Charges (Submitted by OTP)	Observations of the Defence	Assessment of Reliability/Relevance
86	(ERN DRC-OTP-0165-0255) This is a UPC letter dated 18 October 2002 from Mr. S. Musanganya, addressed to the Secretary General in the Ministry of Transport, informing him that, from 19 October 2002, only companies based in Bunia will be authorised to land with cargo on the territory of the UPC/RP.	There is a UPC header. The document is signed by Mr. S. Musanganya, General Administrator of Security.	The structure of the UPC.	Whilst the defence initially sought to reserve the right to challenge the authenticity of this document, it later submitted it did not present a sufficient guarantee of authenticity and reliability to be admitted into the proceedings.	The admissibility criteria are satisfied in respect of this document, to the extent that it tends to demonstrate the structure of the UPC. Matters of weight, authenticity and reliability can be the subject of later submissions, if relevant. In this regard, the Chamber observes the suggested evidential value of the document in respect of Mr. Rafiki will be dependent on an assessment of any evidence purportedly establishing that the signature of Mr. Saba Musanganya is an alternate name for Mr. Rafiki.