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No.: **ICC-01/04-01/07**
Date: **21 December 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Redacted Version

**Second decision on documents obtained pursuant to article 54(3)(e) and already
disclosed to the Defence in redacted form**

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

The Office of the Prosecutor

Counsel for Germain Katanga

Counsel for Mathieu Ngudjolo Chui

Legal Representatives of the Victims

Legal Representatives of the Applicants

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to articles 54(3)(e), 64(2), 64(3)(c), 64(6)(c), 64(6)(f), 67 and 68 of the Rome Statute (“the Statute”) and to rules 77 and 82 of the Rules of Procedure and Evidence (“the Rules”), decides as follows.

I. Procedural History

1. At a status conference held on 3 February 2009, the Chamber directed the Prosecutor to submit to it all documents obtained under article 54(3)(e) of the Statute that had already been disclosed to the Defence in redacted form, in order that it might examine the redactions required by the document source.¹

2. On 5 March 2009, the Prosecutor submitted to the Chamber an application together with documents obtained under article 54(3)(e) of the Statute.² The submission included 53 redacted documents already disclosed to the Defence.³

3. Having examined the aforementioned 53 documents, the Chamber put a number of questions to the Prosecutor at an *ex parte* hearing on 16 March 2009.⁴ The Prosecutor replied to the questions in writing on 20 March 2009.⁵

¹ ICC-01/04-01/07-T-56-FRA ET WT 03-02-2009, p. 19, lines 10 to 24. The Chamber repeated this request on 26 February 2009. See *Reasons for the Oral Decision of 3 February 2009 on the Procedure for the Redaction of Documents Obtained by the Prosecutor Under Article 54(3)(e) of the Statute and Order Instructing the Prosecutor to Submit Documents to the Chamber*, 26 February 2009, ICC-01/04-01/07-931-tENG.

² Office of the Prosecutor, “Prosecution’s Submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form”, 5 March 2009, ICC-01/04-01/07-941.

³ ICC-01/04-01/07-941-Conf-Exp.

⁴ ICC-01/04-01/07-T-62-CONF-EXP-ENG WT 16-03-2009, p. 48, lines 19-25, pp. 49-51 and p. 52, lines 6-10.

⁵ Office of the Prosecutor, “Réponse de l’Accusation aux questions additionnelles soulevées par la Chambre en relation de l’écriture de l’Accusation intitulée « Prosecution’s Submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form »”, 20 March 2009, ICC-01/04-01/07-973-Conf-Exp.

4. On 31 March 2009, the Prosecutor again presented the 53 documents at the Chamber's request,⁶ indicating for each one the source as well as the reasons that had led the source to seek their redaction.⁷ Finally, on 22 June 2009, pursuant to an order from the Chamber,⁸ the Prosecutor again filed the documents in question in the format required by the said order.⁹

5. Acting pursuant to regulation 28 of the Regulations of the Court, the Chamber issued further instructions for the provision of additional details relating to 26 of those documents, which had proven necessary for it to render its decision.¹⁰ The Prosecutor responded to some of those instructions on 10 July 2009¹¹ and indicated that the additional information concerning the remaining 21 documents would be provided after he had contacted their sources.¹²

6. On 23 July 2009, the Chamber rendered a decision on 32 of the documents¹³ for which it had full information.

7. Subsequently, following an exchange of e-mails between the Prosecutor¹⁴ and the Legal Adviser to the Trial Division,¹⁵ the Chamber obtained the missing

⁶ ICC-01/04-01/07-T-62-CONF-EXP-ENG WT 16-03-2009, p. 46, lines 18 to 25, p. 47 and p. 48, lines 1 to 2 and 11 to 13.

⁷ Office of the Prosecutor, "Prosecution's Re-submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Communicated to the Defence in Redacted Form", 31 March 2009, ICC-01/04-01/07-1013-Conf-Exp.

⁸ *Ordonnance enjoignant au Procureur de resoumettre des documents obtenus en vertu de l'article 54-3-e et ayant déjà été communiqués à la Défense*, 5 June 2009, ICC-01/04-01/07-1193-Conf-Exp, by which the Chamber instructed the Office of the Prosecutor to submit the documents, highlighting the relevant passages according to whether they were incriminating, exculpatory on the basis of article 67(2) of the Statute, or fell under rule 77 of the Rules.

⁹ Office of the Prosecutor, "Nouvelle soumission de l'Accusation des documents obtenus en vertu de l'article 54-3-e et ayant été communiqués à la Défense", 22 June 2009, ICC-01/04-01/07-1236-Conf-Exp.

¹⁰ E-mails from the Legal Adviser to the Trial Division to the Office of the Prosecutor, 6 and 15 July 2009.

¹¹ E-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division on 10 July 2009.

¹² E-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 10 and 15 July 2009.

¹³ *Decision on Documents Obtained Pursuant to Article 54(3)(e) and Already Disclosed to the Defence in Redacted Form*, 23 July 2009, ICC-01/04-01/07-1330-Conf-Exp-tENG.

additional information. Accordingly, it is now able to rule on the 21 documents obtained by the Prosecutor under article 54(3)(e) of the Statute that have been disclosed to the Defence in redacted form, on which it has not hitherto been able to rule. The present decision thus supplements the decision of 23 July 2009.¹⁶

II. The Chamber's analysis

8. The Chamber recalls, as it did in its decision of 23 July 2009,¹⁷ that reliance on article 54(3)(e) of the Statute must not lead the Prosecutor to act in breach of his obligations towards the accused persons, in particular of their acknowledged right to disclosure of evidence in the Prosecutor's possession or control, and which he believes shows or tends to show their innocence or to mitigate their guilt, or which is material to the preparation of their defence.¹⁸

9. In its Judgment of 21 October 2008, the Appeals Chamber recalled that, whenever the Prosecutor relies on article 54(3)(e) of the Statute, he must apply it in a

¹⁴ E-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division on 13 July 2009 providing information on the following documents: D1, D2, D18, D19, and D14, D16, D17, D26, D29; e-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division on 11 August 2009 providing information on the following documents: B1, B3/B6, B7, B19, D1, D2, D4, D13, D14, D15, D16, D17, D18, D19, D26 and D29; e-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division on 20 October 2009 providing information on document D28; e-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division on 23 September, 9 October, and 11 and 12 November 2009 providing information on the following documents: D7, D8, D9; e-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division on 20 and 22 October 2009 providing information on documents: D28 and DRC-OTP-0021-0034 (version attached to application ICC-01/04-01/07-941).

¹⁵ E-mails from the Legal Adviser to the Trial Division to the Office of the Prosecutor, 13 August 2009, 19 October 2009 and 4 November 2009.

¹⁶ ICC-01/04-01/07-1330.

¹⁷ ICC-01/04-01/07-1330.

¹⁸ Appeals Chamber, *Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008"*, 21 October 2008, ICC-01/04-01/06-1486, para. 42. See also *Decision on the Thirteen Documents Obtained under Article 54(3)(e) of the Statute and Not Yet Disclosed to the Defence*, 19 June 2009, ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 6; *Decision on the Disclosure of a Redacted Version of the Screening Notes concerning Witness 315*, 2 July 2009, ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 5.

manner that will allow the Court to resolve the potential tension between the confidentiality to which he has agreed and the requirements of a fair trial.¹⁹ It is, moreover, the Trial Chamber which is the final arbiter of whether or not evidence in the Prosecutor's possession or control is required to be disclosed pursuant to article 67(2) of the Statute and in accordance with internationally recognised human rights. Accordingly, the material in question has to be submitted to the Chamber, in order that it may rule on it.²⁰

10. The Chamber has also ruled that documents obtained under article 54(3)(e) of the Statute must be reviewed by it before being disclosed to the Defence. This review is necessary in order to enable the Chamber to satisfy itself that the rights of the accused are not affected by any redaction carried out by the source that would render the documents in question incomprehensible or unreadable, or even unusable by the Defence.²¹ The Chamber further considers that such a power of review must be exercised not only over documents falling under article 67(2) of the Statute, but also over incriminating material.²²

11. The Chamber is aware that it cannot compel the Prosecutor to disclose documents to the Defence obtained by him pursuant to agreements under article 54(3)(e) of the Statute without the prior consent of the document sources. Likewise, the Chamber recalls that, where it considers that the material would have had to be disclosed had it not been obtained under that provision and that the redactions required by the source violate the rights of the Defence, it must request the Prosecutor to approach the source with a view to agreeing other solutions that might allow the redactions to be reconsidered or modified. It further recalls that, if the sources persist in opposing disclosure, the Chamber must then determine whether

¹⁹ ICC-01/04-01/06-1486, para. 44.

²⁰ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 7. See also ICC-01/04-01/06-1486, para. 46. ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 6.

²¹ ICC-01/04-01/07-931-tENG, paras. 5 and 7; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 7.

²² ICC-01/04-01/07-931-tENG, para. 6.

counterbalancing measures can be taken in order to ensure that the rights of the accused are protected and the requirements of a fair trial are met.²³

12. The Chamber also observes that the reasons cited for the redactions required by the source are based on the need to protect individuals or organisations who or which, if measures were not taken, would be put at risk. Here again however, the Chamber recalls that it has to verify that no less restrictive measures are available and, where it proves essential to withhold disclosure of names, it has to ensure, as the Appeals Chamber has made clear, that the trial is conducted fairly and with full respect for the rights of the accused.²⁴

13. As the Chamber has already noted, reference to names can indeed prove to be material for the Defence where those persons have information that is useful for its preparation. Thus, the Defence might wish to call them as witnesses, or to contact them beforehand in order to obtain further particulars of the facts or to dispute their veracity.²⁵

14. Accordingly, the Chamber must examine whether the names of individuals or organisations have been redacted in passages containing incriminating information, exculpatory information in the sense of article 67(2) of the Statute, or information falling under rule 77 of the Rules. Where applicable, it must first ascertain whether the individuals whose names have been redacted had themselves been privy to the information in question or whether they were merely reporting it to their organisation.²⁶ In the latter case, it considers that non-disclosure of the name of an employee of an international organisation or non-governmental organisation

²³ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 10. See also ICC-01/04-01/06-1486, para. 48; ICC-01/04-01/07-931-tENG, para. 8; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 8.

²⁴ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 11; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 10.

²⁵ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 12. See also, Trial Chamber I, *Reasons for Oral Decision lifting the stay of proceedings*, 23 January 2009, ICC-01/04-01/06-1644, paras. 48 and 49; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 12.

²⁶ See also similarly, ICC-01/04-01/06-1644, paras. 50 and 51.

("NGO") does not harm the rights of the accused, but that it is responsible for ensuring that the aforementioned information is disclosed in its entirety.²⁷

15. Where the redactions required by the source appear in passages containing no article 67(2) or rule 77 information, the Chamber considers that the Prosecutor's duty of disclosure is less strict. If the redactions of names do not affect the reading and understanding of the document and if they do not prevent the Defence from using its content, then, in the Chamber's view, the rights of the accused are respected.²⁸

16. Where the source requires his or her name, or that of certain of his or her sources, to be redacted in order to avoid reprisals, even where those individuals provide information which might be useful and relevant for the Defence, the disclosure of other sources of information providing similar material to that contained in the documents in question can constitute an adequate counterbalancing measure and enable the rights of the Defence to be respected.

17. Finally, the Chamber considers that, at this stage, it is difficult to assess definitively the usefulness and relevance for the Defence of the information described in these documents. It is in fact up to the Defence to conduct such an assessment, since it is for it alone to decide on the strategy it intends to adopt. It is up to the Defence therefore to assess the usefulness and relevance of the redacted documents (given that all but one of the documents dealt with in this Decision have already been disclosed) and, where appropriate, to file with the Chamber an application for review giving the specific information which, in its view, is necessary for the preparation of its case. In that event, the Chamber will assess, in the light of the Defence's arguments, the practical impact of the redactions required and may thus request the Prosecutor to approach the source with a view to agreeing other

²⁷ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 13.

²⁸ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 13. See also, similarly, ICC-01/04-01/06-1644, paras. 52 and 53.

solutions that might allow the redactions to be reconsidered or modified or, where necessary, to propose counterbalancing measures.²⁹

18. It is thus in light of these various principles that the Chamber will examine the remaining 21 documents and decide on a case-by-case basis whether the redactions imposed by the source are consistent with the right of the accused to a fair trial.

Document B1 (DRC-OTP-0202-0006)³⁰

19. This document is a letter which the United Nations Mission in the Democratic Republic of the Congo (“MONUC”) sent on 27 May 2003 to General Floribert Kisembo. The letter concerns the order that General Kisembo allegedly gave, on the same day, to the displaced persons at MONUC headquarters to return to their homes otherwise they would be considered as enemies and would be compelled by force, to obey that order. The letter in question officially challenges the threats issued by General Kisembo and reminds him that both the United Nations Security Council’s Resolutions and generally accepted practice give MONUC a general mandate to protect displaced populations.

20. According to the Prosecutor, the references in this document to the fact that Mathieu Ngudjolo allegedly also encouraged displaced populations to return to their homes when security conditions so permitted fall within the ambit of article 67(2) of the Statute. The United Nations (“UN” or “United Nations”) requires the redaction of the name, signature and title of the letter’s author³¹ in order to avoid jeopardising the safety of that person, who still works in eastern Congo.³²

²⁹ *Decision on Three Prosecutor’s Applications to Maintain Redactions or Reinstate Redacted Passages* (ICC-01/04-01/07-859, ICC-01/04-01/07-860 and ICC-01/04-01/07-852), 25 March 2009, ICC-01/04-01/07-987-Conf-Exp-tENG; ICC-01/04-01/07-1033-Conf-Exp-tENG, and ICC-01/04-01/07-1034-tENG, paras. 30 and 31.

³⁰ This document is the redacted version of DRC-OTP-0003-0030.

³¹ In the Prosecutor’s initial application, the document also contained a redaction of the reference to “Bunia” which was later corrected, see Office of the Prosecutor, “Corrigendum to ‘Prosecution’s Re-

21. The Chamber notes that it is useful and relevant for the Defence to know the source of a document. It notes, however, that the report is a letter sent in an official capacity by a MONUC employee, and that the author's action consists solely in passing on a series of petitions on behalf of that organisation. The Defence benefits from that information without the identity of the letter's author having to be indicated. Given that the redaction measures are very limited, that the Defence has obtained all the relevant information, and that the document is perfectly legible and usable, the Chamber considers that the accused's right to a fair trial is respected.

Document B3 (DRC-OTP-1029-0331)³³

22. This three-page document dated 26 January 2004 is a daily report prepared by MONUC. The report concerns "sectors" 1, 2, 5 and 6 and describes the prevailing security situation there. The document contains information which, according to the Prosecutor, falls within the ambit of article 67(2) of the Statute and refers to an attack on boats by the FNI; these acts were allegedly committed by uncontrolled groups of the FNI.

23. The reference to the [REDACTED], a direct witness of the FNI attack, has been redacted. Whilst this redaction does not concern the identity of the source of the information described by the Prosecutor as exculpatory, MONUC, being unaware of the current whereabouts of that person, requests that the person's identity be concealed in order to avoid jeopardising his or her safety.³⁴

submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Communicated in Redacted Form", 2 April 2009, ICC-01/04-01/07-1013-Conf-Exp-Corr, para. 2.

³² E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

³³ DRC-OTP-1029-0331 to DRC-OTP-1029-0333. This document is the redacted version of DRC-OTP-0004-0175 to DRC-OTP-0004-0177.

³⁴ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

24. The Chamber recalls that, according to the Prosecutor, certain parts of the document contain exculpatory information. However, no redactions appear in the parts concerned. The name of the source of exculpatory information relating to the massacre described is disclosed to the Defence. In the Chamber's view, the redactions sought do not hamper understanding of the document or its use by the Defence, since the redactions are very limited. The Defence has access to the passages falling under article 67(2) of the Statute. Accordingly, the Chamber concludes that the redactions requested by the source do not affect the accused's right to a fair trial.

Document B6 (DRC-OTP-0204-0185)³⁵

25. This MONUC document, dated 23 January 2004, reports on the most important military events in Ituri. It describes, *inter alia*, the recovery of weapons by MONUC, certain activities conducted by military groups in Boya, and a fact-finding mission carried out in Tchomia and Mokambo. The document contains passages which, according to the Prosecutor, fall under article 67(2) of the Statute and refer to the same information as that contained in document B3.

26. The source of this report requires only one redaction, that of the name of a person [REDACTED]. The same event is described in document B3, of which redaction was also sought. Thus, in the UN's view, the redaction is justified on the identical grounds of protection of the safety of that person, whose whereabouts are unknown.

27. The Defence is able to access the information described by the Prosecutor as relevant, as well as the name of the source that transmitted the information. Accordingly, the Chamber considers that the accused's right to a fair trial have not been affected.

³⁵ DRC-OTP-0204-0185- DRC-OTP-0204-0188. This document is the redacted version of DRC-OTP-0007-0145-DRC-OTP-0007-0148.

Document B7 (DRC-OTP-1029-0413)³⁶

28. This MONUC document is a collection of daily reports prepared in January 2004, describing the situation from a military standpoint. The report contains much information relating to events some of which, in the Prosecutor's view, fall under article 67(2) of the Statute or rule 77 of the Rules. The aforementioned article 67(2) information concerns the following facts: the Lendu members of the FNI had assured the local people that no atrocities would be committed in the future by the FNI in Dala; in the Lakwa region, MONUC observed that the FNI militia were taking drugs and, as a consequence, were not following the chain of command rigorously; a local leader of an FNI militia in Ramigi condemned the massacre in Gobu and MONUC noted that the attack could have been perpetrated by certain uncontrolled FNI groups; lastly, around the Loga region, the FNI had given an undertaking to lay down their weapons at the next visit by United Nations troops.

29. The source of this document has redacted various references in this 51-page report.³⁷ In the part concerning the day of 3 January 2004, the United Nations requires the redaction of the name of one of the victims of an abduction in December 2003 who is reported to have provided MONUC with information about the abduction and about their subsequent release. The name of that person is redacted, since the source does not know the person's current whereabouts and fears that the person might suffer reprisals.³⁸

30. The source of the report also requires, for security reasons, the redaction in the passage concerning the day of 7 January 2004 of the name of the person who

³⁶ DRC-OTP-1029-0413 to DRC-OTP-1029-0464. This document is the redacted version of DRC-OTP-0007-0185 to DRC-OTP-0007-0236.

³⁷ The Prosecutor indicated that in his filing of 31 March 2009, two redactions were made in error in document DRC-OTP-0007-0185. The redactions concern the names "Mambo" and "Fani", which were not redacted in the version provided by the United Nations and disclosed to the Defence. The Prosecutor corrected that error in his filing of 22 June 2009 (see ICC-01/04-01/07-1236-Conf-Exp, para. 13).

³⁸ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

provided MONUC with rule 77 information, namely information about the presence of armed Ugandan soldiers to the east of Boga.

31. On 19 January, MONUC spoke with a person, whose name is redacted, who is reported to have participated in a peace rally in Bunia. That person provided information on the transfer from Uganda to Ituri of weapons which were then allegedly sold to Lendu groups. In the Prosecutor's submission, this is rule 77 information. According to the United Nations, this redaction is justified, since the UN is unable to establish the current whereabouts of this source.³⁹

32. In the part of the report concerning the day of 23 January, the name [REDACTED], previously described in documents B3 and B6, has been redacted. The redactions are identical to those in the last two documents and concern the identity of a person who was both a witness to and victim of the attack.

33. Also redacted are the names of individuals [REDACTED] in other parts of the reports which, in the Prosecutor's submission, do not include any relevant passages, in particular the names of individuals who met with members of a MONUC mission to Mwanga,⁴⁰ the name of a person who indicated that an attack had taken place in Mahagi, the name [REDACTED] that indicated that the *Union des patriotes Congolais* ("UPC") had taken hostages, and the name of a boy belonging to the *Parti pour l'unité et la sauvegarde de l'unité du Congo* ("PUSIC") who was allegedly abducted by the UPC. The Chamber has already recognized that where the redacted material appears in passages that do not contain any useful information, there is no harm caused to the Defence, since the document remains legible and comprehensible.

34. Furthermore, two references enabling identification of individuals are redacted in passages that contain certain information falling under article 67(2) of the

³⁹ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

⁴⁰ See also ICC-01/04-01/07-1013-Conf-Exp-Corr, para. 5.

Statute. The Chamber notes, however, that these individuals were not the source of the information, and further notes that the information is disclosed in its entirety to the Defence. In the Chamber's view, therefore, the accused's right to a fair trial has not been affected.

35. It appears that only the names of two sources that provided two pieces of rule 77 information were not disclosed to the Defence. The Chamber notes, however, that the information concerns Uganda's participation in the conflict in Ituri at the time when the MONUC report was written, that is, in January 2004. Since similar information has been disclosed in other documents and since this information relates only very indirectly to the Bogoro attack, which took place over a year earlier, the non-disclosure of the sources' names to the accused does not, in the Chamber's view, affect the rights of the accused.

Document B19 (DRC-OTP-1029-1356)⁴¹

36. This MONUC document entitled "Comprehensive Report on the Special CCGA meeting in Kinshasa (16-17 August)" concerns a meeting that was held between MONUC and the transitional government on the one hand, and representatives of armed groups in Bunia on the other. The report contains four passages that, in the Prosecutor's submission, fall under article 67(2) of the Statute and describe the consolidation efforts of the FNI/FRPI and the participation of leaders of those groups in the meeting.

37. The reference to the name of one [REDACTED] is redacted twice, in the body of the text and as [REDACTED]. The United Nations requires this redaction, since the person in question [REDACTED].⁴²

⁴¹ DRC-OTP-1029-0634 to DRC-OTP-0198-0637. This document is the redacted version of DRC-OTP-0152-1356 to DRC-OTP-0152-1359.

⁴² E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

38. The Chamber notes that the Defence has had access to all the article 67(2) information. It further notes that [REDACTED]. The Chamber further considers that the report is comprehensible and that the information contained therein can be used by the Defence. It concludes therefore that the redactions required do not affect the accused's right to a fair trial.

Document D1 (DRC-OTP-0202-0647)⁴³

39. This MONUC document entitled "Arms Embargo in Sector-6" concerns information relating to arms trafficking in the Ituri region from September 2003 to May 2004. In the Prosecutor's view, almost all of this eight-page report contains rule 77 information.

40. In the passages described as relevant, the names of two individuals who transported weapons in canoes from [REDACTED] in Uganda to Ituri, crossing Lake Kasenye, have been redacted. One of those individuals – the one who provided MONUC with the information – was [REDACTED] at that time, hence the requested redaction of all references allowing that person to be identified. Information that could enable identification of the person who informed MONUC that the UPC was keeping weapons in houses located near the Ngizi and Nyamukau rivers is also redacted. The source does not know the current whereabouts of those individuals and accordingly is seeking the redactions as a precautionary measure for their safety.⁴⁴

41. Two of the individuals whose names have been redacted are the sources of the information that might fall under rule 77 of the Rules. Although that information may be of interest to the Defence, the Chamber considers, however, that the lack of

⁴³ DRC-OTP-0202-0647 to DRC-OTP-0202-0654. This document is the redacted version of DRC-OTP-0002-0254 to DRC-OTP-0002-0261. See also *Decision issuing Annex accompanying Decision lifting the stay of proceeding of 23 January 2009*, 23 March 2009, ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 3.

⁴⁴ E-mails from the Prosecutor to the Legal Adviser to the Trial Division, 13 July and 11 August 2008.

disclosure is not in any way prejudicial to the Defence. Firstly, the reliability of the information concerning transportation of munitions from Uganda is, in effect, disputed, since it appears in the section of the report entitled “unconfirmed violations”. Secondly, the report explains that a military officer carried out a mission in connection with this issue, and the mission’s findings are set out in paragraph 2 of the report. Thus, the Defence is able to draw on alternative sources. The Chamber considers, therefore, that revealing this source, who was then [REDACTED] and whose whereabouts are unknown, constitutes an unnecessary risk since adequate counterbalancing measures are available to avoid causing prejudice to the accused.

42. The same considerations apply to the information provided by the second MONUC source, which appears in a paragraph entitled “unconfirmed violations” and concerns the concealment of weapons by the UPC. The report also indicates, however, that other local sources had notified MONUC of the existence of a number of places around Bunia where the UPC had purportedly concealed weapons. The Chamber considers that this information is only of very indirect interest to the Defence and that there are adequate counterbalancing measures to compensate for the lack of disclosure. The document remains legible and its content can be used by the Defence. Accordingly, the Chamber notes that no prejudice has been caused to the Defence.

Document D2 (DRC-OTP-0204-0285)⁴⁵

43. This five-page MONUC document entitled “Arms embargo in Sector 6” concerns the influence that the supply of weapons by Uganda, Rwanda and Sudan purportedly had on the prolongation of the conflict in Ituri. The Prosecutor considers that the part relating to the said supply of weapons to Ituri falls under rule 77 of the

⁴⁵ DRC-OTP-0204-0285 to DRC-OTP-0204-0289. This document is the redacted version of DRC-OTP-0002-0298 to DRC-OTP-0002-0302. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 4.

Rules, in particular in that, in October 2003, light weapons from Uganda were allegedly delivered in Ituri via Lake Albert.

44. The name and information enabling identification of the person who informed MONUC are redacted in the document. In MONUC's view, this measure is necessary in order to avoid putting that individual's safety at risk, all the more so as MONUC is unaware of his or her current whereabouts.⁴⁶

45. In the Chamber's view, paragraph 8 of the report contains alternative information relating to the illegal supply of weapons to Ituri by Uganda and Rwanda. Accordingly, the Chamber considers that adequate counterbalancing measures are available, that the Defence can make effective use of the information in the report, and that the accused's right to a fair trial, in this instance, is safeguarded.

Document D4 (DRC-OTP-0204-0181)⁴⁷

46. This document is a MONUC daily report dated 19 January 2004 and describes military events. The Prosecutor notes that the report contains a passage which, in his submission, falls under rule 77 of the Rules and concerns the illegal provision of light weapons by Uganda to Ituri via Lake Albert. The weapons were allegedly sold to Lendu groups.

47. The information was transmitted by an individual, whose name and particulars have been redacted, since MONUC is unaware of that person's current place of residence.⁴⁸ This material was also redacted in document B7.

⁴⁶ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

⁴⁷ DRC-OTP-0204-0181 to DRC-OTP-0198-0184. This document is the redacted version of DRC-OTP-0007-0126 to DRC-OTP-0007-0129.

⁴⁸ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

48. The Chamber notes that the information concerns Uganda's participation in the conflict in Ituri at the time when the report was drafted, namely in January 2004. As similar information has been disclosed to the Defence in other documents and as this information, moreover, is not directly related to the Bogoro attack of one year earlier, the Chamber considers that non-disclosure of the name of that individual does not affect the accused's right to a fair trial.

Document D7 (redacted version of document DRC-OTP-0021-0632)⁴⁹

49. This document is a two-page hand-written letter addressed to MONUC and provided to the Prosecutor by [REDACTED]. In the Prosecutor's submission, the document contains only one rule 77 passage, which alleges that the Uganda People Defence Force (UPDF) was providing protection for the Hema militia.

50. Initially, the Prosecutor had informed the Chamber that [REDACTED] was seeking the redaction of only the signature at the bottom of the letter in order to prevent any reprisals against its author.⁵⁰ Following the Chamber's requests for clarification,⁵¹ the Prosecutor subsequently indicated that, according to the source, the signature was not that of an individual, but spelled out the words "Lendu community". Accordingly, [REDACTED] concerned agrees to the redaction being lifted and to the document being disclosed in its entirety.⁵²

⁴⁹ DRC-OTP-0021-0632 to DRC-OTP-0021-0633 with one redaction. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 61.

⁵⁰ ICC-01/04-01/07-1013-Conf-Exp-AnxA.

⁵¹ E-mail from the Legal Adviser to the Trial Division, 6 July 2009.

⁵² E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 9 October and 11 November 2009.

Document D8 (redacted version of document DRC-OTP-0021-0656)⁵³

51. This document is comprised of three letters sent on behalf of [REDACTED], which was attacked and destroyed [REDACTED] by UPDF soldiers led by Thomas Lubanga. These letters contain information which, in the Prosecutor's submission, falls under rule 77 of the Rules, particularly the detail that, according to the letters' author, the UPDF soldiers attacked [REDACTED] because RDC/ML soldiers [REDACTED].

52. In these letters, the author seeks compensation for the damage caused [REDACTED], as well as emergency humanitarian aid. The author's name and signature have been redacted. The Prosecutor had initially informed the Chamber that those redactions were, in the source's view, necessary in order to prevent him from being identified and his safety being put at risk.⁵⁴

53. However, following the Chamber's requests for clarification, the source later admitted that anyone who knew about the events that took place in Bunia at that time could easily deduce the identity of the author of those letters, and that, accordingly, the source agreed to the author's identity being disclosed to the Defence.⁵⁵

54. The source also required the redaction of the names of [REDACTED] that were notified of these letters, since [REDACTED] security [REDACTED].⁵⁶ In the Chamber's view, the redactions are extremely limited and do not concern information that is

⁵³ DRC-OTP-0021-0656 to DRC-OTP-0021-0661 with redactions. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 62.

⁵⁴ ICC-01/04-01/07-1013-Conf-Exp-AnxA.

⁵⁵ E-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 9 October and 12 November 2009.

⁵⁶ ICC-01/04-01/07-1013-Conf-Exp-AnxA.

material to the preparation of the Defence case. Accordingly, no prejudice is caused to the Defence.

Document D9 (redacted version of document DRC-OTP-0022-0856)⁵⁷

55. This one-page document is comprised of a diagram showing the main countries and groups involved in the conflict in the DRC. The name of the diagram's author has been redacted. In the Prosecutor's submission, the entire diagram falls under rule 77 of the Rules.

56. Following a request for clarification from the Chamber,⁵⁸ the Prosecutor informed the Chamber that [REDACTED] claimed not to have transmitted this document. The Prosecutor is not opposed, therefore, to the document being disclosed in its entirety.⁵⁹

Document D13 (DRC-OTP-0198-0364)⁶⁰

57. This document, dated 31 May 2003 and prepared by the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC, concerns a meeting with [REDACTED]. The report contains information which, in the Prosecutor's submission, falls under rule 77 of the Rules, and deals with political developments in Ituri, the supply of weapons to armed groups in that region, and the various alliances between the armed groups and national political forces.

⁵⁷ DRC-OTP-0021-0856 with redactions. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 69.

⁵⁸ E-mails from the Legal Adviser to the Trial Division to the Prosecutor, 6 July, 13 August and 19 October 2009.

⁵⁹ E-mails from the Prosecutor to the Legal Adviser to the Trial Division, 9 October and 11 November 2009.

⁶⁰ DRC-OTP-0198-0364 to DRC-OTP-0198-0365. This document is the redacted version of DRC-OTP-0043-0127 to DRC-OTP-0043-0128.

58. The names of two individuals working [REDACTED] in Kisangani, whom the Expert Panel met, have been redacted from this two-page report. In order to guarantee the safety of those individuals, it is necessary, according to the source, to redact their names,⁶¹ especially as MONUC is unaware of their current whereabouts.⁶²

59. The Chamber considers that, although the redactions concern the names of individuals having disclosed information that is, in the Prosecutor's submission, material to the Defence case, no prejudice has been caused to the Defence. Firstly, the Defence is able to identify the name of the representative of the Expert Panel who represented the panel at the meeting. Secondly, the Defence has received all the rule 77 information relating to the general context of the Ituri conflict and, in particular, to the weapons and ammunition received by the UPF and PUSIC from the UPDF, to the support that Rwanda allegedly provided to the UPC, and lastly, to the aid provided to the Lendu groups by the DRC government. The Chamber notes that similar information has furthermore been provided in other documents already disclosed to the Defence. As the content of the report is fully usable and as there are adequate measures available moreover to counterbalance the redactions required by the document source, the Chamber considers that the Defence's rights have not been affected in any way.

Document D14 (DRC-OTP-0210-0302)⁶³

60. This document, prepared on 17 June 2003 by the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC, concerns a meeting in Bunia held on 31 May 2003 with an employee from the MONUC headquarters in Bunia. The report of the meeting includes information that, in the

⁶¹ ICC-01/04-01/07-1013-Conf-Exp-AnxA.

⁶² E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

⁶³ This document is the redacted version of DRC-OTP-0043-0129. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 17.

Prosecutor's submission, falls under rule 77 of the Rules and concerns the prevailing political and military situation in the Ituri region at the time of that meeting.

61. A first version of this one-page report containing a larger number of redactions (DRC-OTP-0202-0821) had been disclosed to the Defence on 24 October 2008.⁶⁴ The Prosecutor indicated that he had later obtained, on 29 April 2009, another version of the document (DRC-OTP-0210-0302) containing fewer redactions; that version has yet to be disclosed to the Defence.⁶⁵

62. In this latest version of the report, the e-mail address of the MONUC contact person is redacted for security reasons, since the person is still working for the United Nations.⁶⁶ The Chamber notes that the source of the document and the name of the person who transmitted the information to it are disclosed to the Defence, as are all the passages described as relevant. The redaction is extremely limited and the Defence is perfectly able to use the document. Accordingly, the Chamber considers that the accused's right to a fair trial is not affected, and it authorises the disclosure of document D14 to the Defence in the version received by the Prosecutor on 29 April 2009.

Document D15 (DRC-OTP-0198-0366)⁶⁷

63. This two-page report, dated 1 June 2003 and drafted by the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC, concerns a meeting that the Expert Panel had with the local representatives of [REDACTED] *collectivité*. This document contains information that, in the Prosecutor's submission, falls under rule 77 of the Rules, in particular information relating to the

⁶⁴ ICC-01/04-01/07-1236-Conf-Exp-AnxA.

⁶⁵ ICC-01/04-01/07-1236-Conf-Exp-AnxA.

⁶⁶ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

⁶⁷ DRC-OTP-0198-0366 to DRC-OTP-0198-0367. This document is the redacted version of DRC-OTP-0043-0130 to DRC-OTP-0043-0131.

support provided by the UPDF to Hema groups, such as PUSIC, as well as information relating to the intervention of Uganda and Rwanda in the region.

64. The source requires the redaction of the name of the representative of the [REDACTED] *collectivité* with whom the Expert Panel met, on the ground that if the redaction were not made, the representative, and potentially the entire community, could be put at risk.

65. Although the name of the source with whom the experts met and who transmitted the said information to them has not been disclosed, the report gives the names of the individuals who received that information, namely [REDACTED]. The rule 77 information is, moreover, disclosed in its entirety, and the document is perfectly legible and comprehensible. Therefore, the Chamber is of the view that the redaction required is not prejudicial to the Defence.

Document D16 (DRC-OTP-0199-0110)⁶⁹

66. This report by the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC describes a meeting held on 1 June 2003 with [REDACTED], [REDACTED] in the region. In the Prosecutor's submission, this report contains rule 77 information, in particular concerning the intervention of Rwanda and Uganda in the conflict, the links between these two countries and the Hema military groups, such as the UPC, and the region's fiscal and economic resources.

67. The source requires the redaction of the names and any information allowing the identification [REDACTED] who provided the information collected in the report.

⁶⁸ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

⁶⁹ DRC-OTP-0199-0110 to DRC-OTP-0199-0112. This document is the redacted version of DRC-OTP-0043-0132 to DRC-OTP-0043-0133.

The contact details of two other individuals are also redacted on the ground that MONUC is unaware of their current whereabouts.⁷⁰

68. Just as with document B15, and although the name of the individual at the source of the information is not disclosed, the Chamber notes that the report mentions the names of [REDACTED], the individuals who noted down what was said in the meeting. Moreover, the rule 77 information appears in its entirety and the document is perfectly legible and comprehensible. Thus, the Chamber is of the view that the redaction required is not prejudicial to the Defence.

Document D17 (DRC-OTP-0202-0822)⁷¹

69. This two-page report concerns two meetings held on 1 June 2003, the first between the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC and MONUC's Political Affairs Division, and the second between the Expert Panel and five or six unidentified members of the UPC. This document contains some information which, in the Prosecutor's submission, falls under rule 77 of the Rules, in particular concerning the intervention of Uganda and Rwanda in the conflict in Ituri, and the support provided to the UPC military forces and to Lendu groups.

70. For security reasons, the source requires the redaction of the names of two of the MONUC employees who participated in the first meeting and who are still posted to the region.⁷² The name of the [REDACTED] who was present at the meeting is, however, disclosed. These three individuals are the sources of the information reported in the document. The Chamber notes that the Defence has access to the name of one of the three individuals as well as to the names of the two UN experts.

⁷⁰ E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2008.

⁷¹ DRC-OTP-0202-0822 to DRC-OTP-0198-0823. This document is the redacted version of DRC-OTP-0043-0134 to DRC-OTP-0043-0135. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 17.

⁷² E-mail from the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2009.

Accordingly, it considers that, since the relevant information is disclosed to the Defence in its entirety and the redaction is very limited, the Defence is perfectly able to use this document. The Chamber therefore considers that the accused's right to a fair trial is not affected.

Document D18 (DRC-OTP-0202-0211)⁷³

71. This memorandum by the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC concerns developments in the Ituri region and north-eastern DRC between 24 and 26 June 2003. The document, which was provided to the Prosecutor by the United Nations, contains passages describing the cooperation between the UPDF and the Lendus, and a meeting that had been due to take place between the DRC Government and FAPC officers. In the Prosecutor's submission, this is rule 77 information.

72. The identity and signature of the author of the memorandum are redacted, as is the reference to the person who transmitted the information to the experts. According to the source, these redactions are necessary in order to protect the safety of the member of the Expert Panel who wrote the document [REDACTED], as well as the safety of the information source, whose current whereabouts are unknown.⁷⁴

73. Given the limited nature of the redaction measures, the Chamber is of the view that the information considered relevant in this document has been disclosed. Moreover, the report is legible, comprehensible and usable by the Defence. Accordingly, the rights of the accused have not been affected.

⁷³ DRC-OTP-0202-0211 to DRC-OTP-0202-0212. This document is the redacted version of DRC-OTP-0043-0154 to DRC-OTP-0043-0155. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 20.

⁷⁴ E-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 11 and 13 August 2009.

Document D19 (DRC-OTP-0202-0213)⁷⁵

74. This eleven-page memorandum, prepared by the UN Panel of Experts on the Exploitation of Natural Resources and Other Forms of Wealth of the DRC, is a report on a mission that took place in Kampala between 1 and 5 July 2003. In the Prosecutor's submission, several passages fall under rule 77 of the Rules, in particular those referring to the intervention of Uganda and Rwanda in the ongoing conflict in Ituri, to the commercial interests of foreign powers in that region, and to the relations between those powers and Congolese military and political groups.

75. MONUC requires the redaction of the names or information enabling identification of six of the respondents with whom the Expert Panel met. Four of those individuals provided information which is allegedly relevant in the instant case. The Prosecutor notes that, according to the source, the disclosure of further details about the source's intermediaries would enable them to be identified and would jeopardise their safety as well as the safety of the UN employees. It is noted in particular that the disclosure of the names of [REDACTED] who provided the information would significantly affect their ability to pursue their activities *in situ*.⁷⁶

76. The Chamber notes that the Expert Panel met with other individuals and organisations who or which also informed it of rule 77 facts, and whose names are not redacted. Thus, the Defence has at its disposal the names of the panel members who gathered that data. Accordingly, the Chamber considers that whilst these redactions deny the Defence the possibility of contacting the information sources, they are necessary, and it is not possible to implement less restrictive measures. Moreover, this document is legible and comprehensible and the Defence has access

⁷⁵ DRC-OTP-0202-0213 to DRC-OTP-0202-0223. This document is the redacted version of DRC-OTP-0043-0344 to DRC-OTP-0043-0354. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 21.

⁷⁶ E-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 11 and 13 August 2009.

to all the useful information. Consequently, the accused's right to a fair trial is safeguarded.

Document D26 (DRC-OTP-0202-0856)⁷⁷

77. This 15-page UN document, dated 10 and 11 July 2002, contains a large quantity of information which, according to the Prosecutor, falls under rule 77 of the Rules and was obtained during meetings with various people working or present in Ituri at that time. It describes the relations between Lendu and Hema groups, the intervention by Rwandan forces and the support they provide to Hema groups, the links between the UPDF and the Hima and Hema groups, and Uganda's role in the conflict.

78. The source requires the redaction of a handwritten telephone number and of the references to each of the individuals who provided information that was useful in preparing the report; if the redaction is not made, the safety of those individuals will allegedly be put at significant risk.⁷⁸

79. The Chamber notes that the report was drafted in the form of interview notes, apparently made by the same person, and that it is not signed. Apart from the indication that this is a UN report, no information is provided about the originating department or section. However, the passages that the Prosecutor identifies as containing relevant information deal mainly with the intervention of foreign forces in the ongoing conflict in Ituri.

80. Noting that the redactions sought do not affect the reading or comprehension of the document, that all of the information of use to the Defence is disclosed to it, and that there do not appear to be any less restrictive measures available, the

⁷⁷ DRC-OTP-0202-0856 to DRC-OTP-0198-0870. This document is the redacted version of DRC-OTP-0055-0488 to DRC-OTP-0055-0502. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 28.

⁷⁸ E-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2009.

Chamber considers, as matters stand, that the redactions do not affect the rights of the accused. However, if the Defence considers that the undisclosed information is indispensable to its case, it should file an application with the Chamber providing all the necessary particulars, as indicated at paragraph 17.

Document D28 (redacted version of document DRC-OTP-0171-1992)⁷⁹

81. This document, [REDACTED], is [REDACTED] containing [REDACTED] in Ituri [REDACTED]. [REDACTED] describes [REDACTED] and [REDACTED], contains information which, according to the Prosecutor, falls under rule 77 of the Rules.

82. The content of the entire document, with the exception of a few short passages, is redacted as required by the source, [REDACTED]. The extent of those redactions impelled the Chamber to request further clarification. The Prosecutor therefore informed the Chamber that most of the redacted information was contained in documents already disclosed to the Defence.⁸⁰ The Chamber then contacted the Prosecutor again, instructing him to indicate precisely what were the alternative sources to the redacted rule 77 passages.⁸¹

83. The Prosecutor accordingly explained to the Chamber that certain documents already disclosed to the Defence provided the following information:

- [REDACTED];⁸²
- [REDACTED];⁸³
- [REDACTED];⁸⁴

⁷⁹ DRC-OTP-0171-1992 to DRC-OTP-0171-2006. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 47.

⁸⁰ The alternative sources of information indicated by the Prosecutor are as follows: DRC-OTP-0129-0267, DRC-OTP-0074-0797, DRC-OTP-0163-0357, DRC-OTP-0165-0541, DRC-OTP-0172-0007, DRC-OTP-0105-0085, DRC-OTP-0131-0321, DRC-OTP-0154-1301. See ICC-01/04-01/07-973-Conf-Exp, para. 8.

⁸¹ See the e-mail exchange between the Office of the Prosecutor and the Legal Adviser to the Trial Division, 6 and 10 July 2009, and 19 and 20 October 2009.

⁸² [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁸³ [REDACTED]; [REDACTED].

- [REDACTED];⁸⁵
- [REDACTED];⁸⁶
- [REDACTED];⁸⁷
- [REDACTED];⁸⁸
- [REDACTED];⁸⁹
- [REDACTED];⁹⁰
- [REDACTED];⁹¹
- [REDACTED];⁹²
- [REDACTED];⁹³
- [REDACTED];⁹⁴
- [REDACTED].⁹⁵

84. Having assessed the proposed alternative sources of information, the Chamber considers that, although major redactions have been made to extracts that are, in the Prosecutor's submission, material to the Defence, those alternative sources constitute adequate and satisfactory counterbalancing measures allowing it to conclude that the accused's right to a fair trial is safeguarded.

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

⁸⁶ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁸⁷ [REDACTED]; [REDACTED].

⁸⁸ [REDACTED]; [REDACTED].

⁸⁹ [REDACTED]; [REDACTED].

⁹⁰ [REDACTED]; [REDACTED]; [REDACTED].

⁹¹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁹² [REDACTED]; [REDACTED]; [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED]; [REDACTED].

⁹⁵ [REDACTED].

Document D29 (DRC-OTP-0202-0792)⁹⁶

85. This MONUC document entitled “*Entretien avec Chef Kahwa Panga Mandro*” [“Interview with Chief Kahwa Panga Mandro”], dated 11 March 2004, contains only one passage that, in the Prosecutor’s submission, falls under rule 77 of the Rules, and concerns the alliances between PUSIC and the Rwandan and Ugandan governments.

86. In this four-page report, only the name of the report’s author is redacted. The source claims [REDACTED] risks [REDACTED].⁹⁷

87. The Chamber notes that all the relevant information is disclosed to the Defence and that the document’s author merely reports the information on behalf of MONUC. The redaction is very limited and the Defence is perfectly able to use this document. The Chamber is of the view therefore that disclosure of the redacted version of the document does not affect the rights of the Defence.

Document DRC-OTP-0204-0371⁹⁸

88. This document is a summary of a four-page report, [REDACTED].⁹⁹ It was included in error by the Prosecutor in the list of documents obtained pursuant to article 54(3)(e) and submitted to the Chamber.¹⁰⁰ This summary was disclosed to the Defence on 9 January 2009.¹⁰¹ The Chamber has a duty nevertheless to assess whether its disclosure, by means of a summary, has been prejudicial to the Defence, and accordingly instructed the Prosecutor to provide further particulars to this end.¹⁰²

89. The report gives [REDACTED] and reports in chronological order on the violent events [REDACTED]. According to the Prosecutor, the original document contains rule

⁹⁶ DRC-OTP0202-0792 to DRC-OTP0202-0795. This document is the redacted version of DRC-OTP-0098-0078 to DRC-OTP-0098-0081. See also ICC-01/04-01/06-1803-Conf-Exp-Anx1, Annex 36.

⁹⁷ E-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 11 August 2009.

77 information in that it concerns the support provided by Uganda and the DRC government to the Lendu militias.

90. The Chamber notes that the summary disclosed to the Defence quotes an unabridged excerpt of the original report which mentions the involvement of the Congolese government alongside Lendu combatants. The summary also makes reference to the Ugandan army's intervention in the events of April 2003 in Bunia. Moreover, the Prosecutor informed the Chamber that alternative sources of information already disclosed to the Defence also mention Uganda's role in the conflict in Ituri.¹⁰³ Regarding information on the violent acts committed by Lendu militias, the Prosecutor stated that the Defence was already privy to this information from previously disclosed material.¹⁰⁴ The Chamber notes nonetheless that the information that a strategy for occupying [REDACTED], described by the Prosecutor as rule 77 material, does not appear in the summary, and notes that the Prosecutor has not offered any valid alternative information in this regard.

91. The Chamber notes, however, that the Prosecutor's source, whilst opposing disclosure of the document to the Defence, consented to disclosure by means of a summary. It further notes that the Prosecutor did not have any less restrictive measure at his disposal. Lastly, it emphasises that, whilst not knowing the source of the document or having access to the document in its entirety, by means of various counterbalancing measures the Defence is privy to almost all of the information contained therein that is considered relevant. Accordingly, the Chamber is satisfied that the disclosure to the Defence of the document in summary form does not affect

⁹⁸ Document submitted in the Office of the Prosecutor's first application relating to documents obtained pursuant to 54(3)(e), ICC-01/04-01/07-941-AnxC.

⁹⁹ DRC-OTP-00021-034 to DRC-OTP-037.

¹⁰⁰ ICC-01/04-01/07-941.

¹⁰¹ ICC-01/04-01/07-973-Conf-Exp.

¹⁰² See e-mails from the Legal Adviser to the Trial Division to the Office of the Prosecutor, 6 July and 19 October 2009.

¹⁰³ DRC-OTP-0074-0797 and DRC-OTP-0154-1301. See e-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 10 July and 22 October 2009.

¹⁰⁴ See for example DRC-OTP-0107-0874, at 0882.

the accused's right to a fair trial.

FOR THESE REASONS, THE CHAMBER

1) GRANTS the Prosecutor's Application relating to the redactions required by the source concerning the following documents: B1, B3, B6, B7, B19, D1, D2, D4, D13, D15, D16, D17, D18, D19, D26, D28, D29 and document DRC-OTP-0204-0371.

2) AUTHORISES the disclosure of document D14 in its new redacted version;

3) ORDERS the Prosecutor to disclose documents D7 and D9 in their entirety, as well as document D8 in its new redacted version.

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

[signed]

Judge Bruno Cotte

Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Christine Van den Wyngaert

Dated this 21 December 2009

At The Hague, the Netherlands