

**Cour
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**International
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Court**

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TRIAL CHAMBER II

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

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

Public Document

Decision on the Prosecutor's Bar Table Motions

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

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Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court”), acting pursuant to articles 55, 64, 67 and 69 of the Rome Statute (“the Statute”) and rules 63, 64 and 68 of the Rules of Procedure and Evidence (“the Rules”), decides as follows:

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I. PROCEDURAL HISTORY

A. First Motion

1. On 16 July 2010, the Prosecution submitted a motion to the Chamber, requesting it to admit into evidence 112 exhibits, without introducing them by or through a witness (“the First Motion”).¹ In its Motion, the Prosecution includes arguments which it had previously set out in the “Prosecution’s Consolidated Response to ‘Defence Objections to Admissibility in Principal and in Substance’ (ICC-01/04-01/07-1558) and «Requête de la Défense en vue d’obtenir une décision d’irrecevabilité des documents liés aux témoins décédés référencés sous les numéros T-167 et T-258» (ICC-01/04-01/07-1556)” of 16 November 2009, and made particular reference to paragraphs 50-55, 57-61 and 63 et seq.²

2. The exhibits that the Motion seeks to introduce are divided into nine categories:

Category 1 comprises eight United Nations Security Council resolutions:³

DRC-OTP-0131-0144;	DRC-OTP-0131-0410;
DRC-OTP-0131-0149;	DRC-OTP-0131-0413;
DRC-OTP-0131-0153;	DRC-OTP-0154-0671;
DRC-OTP-0131-0167;	DRC-OTP-1013-0304;

Category 2 comprises ten reports from various United Nations (“UN”) agencies:

CAR-OTP-0005-0074;	DRC-OTP-0074-0215;
DRC-OTP-0100-0314;	DRC-OTP-0131-0175;

¹ “Prosecution’s Submission of Material as Evidence from the Bar Table Pursuant to Article 64(9) of the Statute”, 16 July 2010, ICC-01/04-01/07-2290.

² ICC-01/04-01/07-1645.

³ DRC-OTP-0131-0144; DRC-OTP-0131-0149; DRC-OTP-0131-0153; DRC-OTP-0131-0167; DRC-OTP-0131-0410; DRC-OTP-0131-0413; DRC-OTP-0154-0671 and DRC-OTP-1013-0304.

DRC-OTP-0129-0437;
 DRC-OTP-0130-0273;
 DRC-OTP-0130-0409;

DRC-OTP-1013-0296;
 DRC-OTP-0044-0333;
 DRC-OTP-0074-0238;

Category 3 comprises 23 reports from the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUC”):

DRC-OTP-0004-0040;
 DRC-OTP-0004-0085;
 DRC-OTP-0005-0012;
 DRC-OTP-0005-0033;
 DRC-OTP-0005-0100;
 DRC-OTP-0005-0276;
 DRC-OTP-0009-0015;
 DRC-OTP-0009-0372;
 DRC-OTP-0011-0452;
 DRC-OTP-0013-0297;
 DRC-OTP-0026-0179;
 DRC-OTP-0028-0421;

DRC-OTP-0052-0173;
 DRC-OTP-0111-0147;
 DRC-OTP-0111-0163;
 DRC-OTP-0111-0730;
 DRC-OTP-0111-0737;
 DRC-OTP-0111-0808;
 DRC-OTP-0172-0248;
 DRC-OTP-0202-0671;
 DRC-OTP-0202-0785;⁴
 DRC-OTP-0202-0796;
 DRC-OTP-1029-0338;

Category 4 comprises ten reports from various non-governmental organisations (“NGOs”):

DRC-OTP-0019-0153;
 DRC-OTP-0163-0232;
 DRC-OTP-0074-0526;
 DRC-OTP-0074-0797;
 DRC-OTP-0154-1245;

DRC-OTP-0154-1301;
 DRC-OTP-0159-0099;
 DRC-OTP-0163-0357;
 DRC-OTP-1015-0592;
 DRC-OTP-0074-0045;

Category 5 consists of one United States Department of State report:

DRC-OTP-0019-0111;

⁴ This document was withdrawn by the Prosecution on 7 December 2010, ICC-01/04-01/07-T-229-CONF-ENG ET, p. 4, line 11

Category 6 comprises 14 reports from various local and international media outlets:

DRC-OTP-0074-0058;	DRC-OTP-0163-0287;
DRC-OTP-0074-0002;	DRC-OTP-0107-0782;
DRC-OTP-0074-0128;	DRC-OTP-1013-0298;
DRC-OTP-0077-0345;	DRC-OTP-1013-0300;
DRC-OTP-0077-0429;	DRC-OTP-1013-0302;
DRC-OTP-0134-0094;	DRC-OTP-1018-0171;
DRC-OTP-0154-0433;	DRC-OTP-1018-0172;

Category 7 comprises five videos from MONUC, the Congolese Ministry of Human Rights and a private individual:

DRC-OTP-0035-0076; ⁵	DRC-OTP-0124-0008; ⁸
DRC-OTP-0036-0194; ⁶	DRC-OTP-0124-0014; ⁹
DRC-OTP-0116-0002; ⁷	

Category 8 comprises 11 court documents from other jurisdictions, including the International Court of Justice, the courts of the Democratic Republic of the Congo (“the DRC”) and the *Etat-major général du FRPI*:

DRC-OTP-0138-0236;	DRC-OTP-0039-0076;
DRC-OTP-0039-0294;	DRC-OTP-0138-0780;
DRC-OTP-0039-0013;	DRC-OTP-0141-0349;
DRC-OTP-0039-0051;	DRC-OTP-0180-0656;
DRC-OTP-0039-0058;	DRC-OTP-1016-0150;
DRC-OTP-0039-0060;	

⁵ Transcript DRC-OTP-1042-0167 and translation thereof DRC-OTP-1042-0115.

⁶ Transcript DRC-OTP-1043-0583 and translation thereof DRC-OTP-1041-0377.

⁷ Transcript DRC-OTP-0175-0310 and translation thereof DRC-OTP-0173-1369.

⁸ Transcript DRC-OTP-1048-0663 and translation thereof DRC-OTP-1048-0674.

⁹ Transcript DRC-OTP-1050-0633 and translation thereof DRC-OTP-1050-0212.

Category 9 comprises 30 documents from various sources:

- A letter signed by a group of detainees including Mr Katanga:
DRC-OTP-0172-0005;
DRC-OTP-0172-0007;
- An invitation signed by Colonel Ngudjolo on behalf of the FRPI:
DRC-OTP-0136-0068;
- As series of letters from representatives of the Hema community:
DRC-OTP-0093-0119;
DRC-OTP-0102-0011;
DRC-OTP-0102-0022;
- Two handwritten letters allegedly from Floribert Ndjabu Ngabu, acting on behalf of the FNI:
DRC-OTP-0102-0132;
DRC-OTP-1012-0134;
- A list of weapons allegedly handed over to the Moroccan MONUC Battalion ("MORBAT") on 31 March 2003:
DRC-OTP-0104-0089;
- Handwritten minutes of an FNI/FRPI extraordinary meeting, allegedly held on 10 August 2003: DRC-OTP-0029-0176;
- A report allegedly by Augustin Lobo Nyinga, the alleged founder of the FNI: DRC-OTP-0126-0478;
- A document allegedly from the Presidency of the FNI/FRPI: DRC-OTP-0138-0239;
- A report allegedly from the Bira community of Andisoma: DRC-OTP-0017-0217;
- A letter allegedly from an FRPI Brigade Commander:
DRC-OTP-0016-0097;

- A number of invitations allegedly from Mr Katanga, signing as President of the FRPI: DRC-OTP-0028-0463;
- A letter allegedly from Mr Katanga, signing as President of the FRPI: DRC-OTP-0029-0356;
- An alleged manifesto of the FRPI: DRC-OTP-0126-0411;¹⁰
- Five unsigned letters, allegedly from PUSIC:
DRC-OTP-0195-0277;
- A letter allegedly from a representative of a religious organisation addressed to Colonel Katanga:
DRC-OTP-0029-0046;
- A letter allegedly from Justin "Cobra" Matata Banaloki:
DRC-OTP-0029-0072;
- A report allegedly from Commander Oudo Mbafele:
DRC-OTP-0029-0075;
- Three documents – two of which are unsigned – allegedly from the Directeur du Cabinet of the Presidency of the FNI:
DRC-OTP-0026-0194;
DRC-OTP-0026-0195;
DRC-OTP-0026-0205;
- A political declaration allegedly from the PUSIC Political Commissioner: DRC-OTP-0041-0104;
- A cessation of hostilities agreement, allegedly signed by Mr Katanga acting as FRPI representative and Mr Ngudjolo acting

¹⁰ This document was in the intervening time admitted into evidence through witness P-12 during cross-examination on 13 October 2010 as EVD-D02-00063. See ICC-01/04-01/07-T-202-CONF-ENG ET p. 10.

as representative of the Lendus of Djugu Territory: DRC-OTP-0043-0201;¹¹

- An unsigned document, allegedly from Floribert Ndjabu Ngabu as President of the FNI: DRC-OTP-0093-0052;
- A joint communiqué, allegedly signed by Mr Ngudjolo as Chief of Staff of the FRPI: DRC-OTP-0132-0245;
- A political agreement between several political and armed groups in Ituri, allegedly signed by a number of FNI/FRPI representatives: DRC-OTP-0136-0171;
- A letter allegedly signed by an unidentified representative of the FRPI: DRC-OTP-0029-0076.

3. On 30 August 2010, both defence teams responded to the Motion. The Defence for Mr Ngudjolo objects to all but two exhibits,¹² whereas the Defence for Mr Katanga has no objection to 35 of the proposed 112 exhibits.¹³

B. Second Motion

4. On 8 December 2010, the Prosecution submitted a second motion to the Chamber, requesting it to admit into evidence five (5) further documents, without introducing them by or through a witness ("the Second Motion").¹⁴ The exhibits that the Motion seeks to introduce are:

- A Presidential Decree nominating Mr. Germain Katanga and others to the rank of 'Général de Brigade', dated 11 December 2004: DRC-OTP-0086-0036;

¹¹This document was in the intervening time admitted into evidence through witness P-12 during cross-examination on 24 September 2010 as EVD-D03-00044. See ICC-01/04-01/07-T192-CONF-ENG ET, p. 59.

¹² "Observations de la Défense de Mathieu Ngudjolo sur l'écriture du Procureur référencé ICC-01/04-01/07-2290 et intitulée «Prosecution's Submission of Material as Evidence from the Bar Table Pursuant to Article 64(9) of the Statute »", 30 August 2010, ICC-01/04-01/07-2347-Conf ("Ngudjolo Objection").

¹³ "Katanga Defence Response to Prosecution Bar Table Motion", 30 August 2010, ICC-01/04-01/07-2348 ("Katanga Objection").

¹⁴ "Prosecution's Second Submission of Material as Evidence from the Bar Table Pursuant to Article 64(9) of the Statute", 8 December 2010, ICC-01/04-01/07-2623-Conf.

- A report by the '*Organe Exécutif Intérimaire à l'Assemblée Spéciale Intérimaire de l'Ituri*', dated November 2003 :

DRC-OTP-0091-0218 ;

- A '*Communiqué Final de la Réunion du Comité de Concertations des Groupes Armés de l'Ituri*', dated 16 August 2003 :

DRC-OTP-0107-0362 ;

- The minutes of the '*Réunion de Coordination d'évaluation de la sécurité en Ituri*', dated 30 September 2003 :

DRC-OTP-0107-0371 ;

- A draft Child Protection Report, dated February 2004 :

DRC-OTP-0152-0256.

5. The Prosecution submits that the testimony of several witnesses who have testified before the Chamber corroborates some of the facts contained in the materials that form part of the First and Second Motion. It is argued that these aspects of the testimony "demonstrate the reliability and probative value of the material submitted in the First and Second Bar Table Submissions."¹⁵

6. On 13 December 2010, the Defence teams responded.¹⁶ No objections are raised against the admissibility of DRC-OTP-0086-0036, but the admissibility of the other four documents is challenged. Both Defence teams expressly include the arguments developed in response to the First Motion also in their submissions on the Second Motion.¹⁷

¹⁵ ICC-01/04-01/07-2623-Conf, para. 11.

¹⁶ "Observations de la Défense de Mathieu Ngudjolo sur l'écriture du Procureur référencée ICC-01/04-01/07-2623-Conf du 08 décembre 2010 intitulée 'Prosecution's Second Submission of Material as Evidence from the Bar Table Pursuant to Article 64(9) of the Statute', 13 December 2010, ICC-01/04-01/07-2625-Conf ; "Defence Response to Prosecution's Second Submission of Material as Evidence from the Bar Table Pursuant to Article 64(9) of the Statute", 13 December 2010, ICC-01/04-01/07-2629-Conf.

¹⁷ ICC-01/04-01/07-2625-Conf, para. 27 ; ICC-01/04-01/07-2629-Conf, para. 11.

II. ANALYSIS

A. Preliminary remarks

7. First, the Chamber notes that there are no objections to the admission of the following two items as bar table material:

1. The International Court of Justice judgment in the Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) of 19 December 2005 (DRC-OTP-0180-0656);
2. The handwritten report dated 18 June 2007 which does not mention its author but was allegedly signed by Floribert Ndjabu Ngabu (DRC-OTP-1012-0134);
3. The Presidential Decree nominating Mr. Germain Katanga and others to the rank of 'Général de Brigade', dated 11 December 2004 (DRC-OTP-0086-0036).

8. Although the Chamber is not bound to accept exhibits to which there are no objections, it will only decline such exhibits if there are compelling reasons for doing so.

9. Second, in the intervening time since the First Motion was submitted, the Chamber has already admitted two of the documents contained in it:

1. A cessation of hostilities agreement, allegedly signed by Mr Katanga acting as FRPI representative and Mr Ngudjolo acting as representative of the Lendus of Djugu Territory: DRC-OTP-0043-0201. This document was admitted into evidence through witness P-12 during cross-examination on 24 September 2010 as EVD-D03-00044.¹⁸
2. An alleged manifesto of the FRPI: DRC-OTP-0126-0411. This document was admitted into evidence through witness P-12 during cross-examination on 13 October 2010 as EVD-D02-00063.¹⁹

¹⁸ ICC-01/04-01/07-T192-CONF-ENG ET, p. 59.

¹⁹ ICC-01/04-01/07-T-202-CONF-ENG ET p. 10.

10. In addition, on 7 December 2010, the Prosecution withdrew document DRC-OTP-0202-0785²⁰ and on 8 December 2010 it announced that, contrary to what been previously announced, it would not seek the admission of the out-of-court statements of two deceased witnesses.²¹ The Chamber therefore only has to rule on the admissibility of the remaining 111 items.

11. Before turning to the different categories and individual exhibits, the Chamber considers it necessary to first address a number of general legal issues relating to the tendering and admissibility of documentary evidence.

12. First, the Chamber stresses that, although it is permissible to tender documentary evidence directly without producing it by or through a witness under the Statute and the Rules, this does not entail a lower standard of relevance or admissibility. On the contrary, the fact that evidence is being tendered without authentication by a witness may be an important factor in the Chamber's assessment of its admissibility.

13. Second, each item of evidence must be individually assessed for its relevance and probative value at the time it is tendered and before being admitted into evidence. If at the time of tendering an item of evidence, the party is unable to demonstrate its relevance and probative value, including its authenticity, it cannot be admitted. It does not suffice to argue that its content may be corroborated by other evidence or that the Chamber may subsequently determine its proper evidentiary weight. The Chamber wishes to remind the parties that probative value and evidentiary weight are two similar but distinct concepts. Under article 69(4) of the Statute, probative value is a key criterion in any determination on admissibility. It follows that the Chamber must determine

²⁰ ICC-01/04-01/07-T-229-CONF-ENG ET, p. 4, line 11.

²¹ ICC-01/04-01/07-T230-ENG ET, p. 61 These two documents were never part of a bar table motion.

the probative value of an item of evidence *before* it can be admitted into the proceedings. Probative value is determined on the basis of a number of considerations pertaining to the inherent characteristics of the evidence. Evidentiary weight, however, is the relative importance that is attached to an item of evidence in deciding whether a certain issue has been proven or not. It depends on the intrinsic quality and characteristics of the item of evidence, but also on the amount and quality of other available evidence on the same issue. Thus, unlike probative value, evidentiary weight is assessed at the end of a trial, when the Chamber has heard all other evidence admitted in the case. So, in arguing that the Chamber should simply admit the whole of the evidence unredacted and “leave any matters of reliability and probative value until the end of the trial, where the Chamber will be in a position to consider the totality of the evidence presented at trial by all parties and participants, including the Chamber itself”,²² the Prosecution misconceives the Chamber’s various duties and implies that the Chamber should disregard a crucial element of the admissibility test.

14. In evaluating the Motions, the Chamber will follow the three-step approach adopted by Trial Chamber I.²³ Accordingly, the Chamber will first assess the relevance of the material, then determine whether it has probative

²² ICC-01/04-01/07-1645, para. 26.

²³ Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the admissibility of four documents”, 13 June 2008, ICC-01/04-01/06-1399, para. 27-32; “Decision on the admission of material from the ‘bar table’”, 24 June 2009, ICC-01/04-01/06-1981, para. 33; “Decision on the request by the legal representatives of victims a/0001/06, a/0002/06, a/0003/06, a/0049/06, a/0007/08, a/0149/08, a/0155/07, a/0156/07, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0149/07 and a/0162/07 for admission of the final report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo as evidence”, 22 September 2009, ICC-01/04-01/06-2135, para. 21; “Decision on the ‘Prosecution’s Application for Admission of Documents related to Witness 297 Pursuant to Article 64(9)’, 21 October 2010-Conf, para. 10; “Corrigendum of Decision on the ‘Prosecution’s Second Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)’, 25 October 2010, ICC-01/04-01/06-2589-Corr, para. 27; “Decision on the ‘Seconde requête de la Défense aux fins de dépôt de documents’”, 26 October 2010, ICC-01/04-01/06-2596-Conf, para. 25; “Decision on the defence request for the admission of 422 documents”, 26 October 2010, ICC-01/04-01/06-2595-Conf, para. 39.

value and finally weigh its probative value against its potentially prejudicial effect.

15. There are no automatic grounds for exclusion in the Statute or the Rules.²⁴ Instead, the Chamber has the discretion to weigh the probative value of each particular item of evidence against the potentially prejudicial effect of its admission. This is a balancing test which must be carried out on a case-by-case basis. The Chamber emphasises, however, that, although the applicable admissibility test allows the Chamber wide discretion, the Chamber has no discretion in whether or not to apply the test. Before admitting any item of evidence, the Chamber must be satisfied that the admissibility criteria have been met.

B. Relevance

16. Although under articles 64(9)(a) and 69(4) relevance is a legal precondition to admissibility, it is primarily a logical standard. If the evidence tendered makes the existence of a fact at issue more or less probable, it is relevant. Whether or not this is the case depends on the purpose for which the evidence is adduced. Unless immediately apparent from the exhibit itself, it is the responsibility of the party tendering it to explain: (1) the relevance of a specific factual proposition to a material fact of the case; (2) how the item of evidence tendered makes this factual proposition more probable or less probable. If submissions on these points are not sufficiently clear or precise, or if the Chamber cannot ascertain the relevance of an item of evidence with reasonable precision, it may decide to reject it on those grounds.

²⁴ Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the admissibility of four documents", 13 June 2008, ICC-01/04-01/06-1399, para. 29: "There should be no automatic reasons for either admitting or excluding a piece of evidence but instead the court should consider the position overall."

17. The Chamber notes that the relevance criterion serves two different purposes. First, it is the legal basis for excluding irrelevant evidentiary material from the trial. Second, it defines the purpose of a specific item of evidence in the proceedings. If a party has tendered an item of evidence as proof of a particular proposition, the Chamber will in principle admit it only for that purpose, even if the entire exhibit is admitted into evidence. Accordingly, if the same item of evidence could also prove another proposition than the one(s) for which it was tendered, the Chamber will not consider the evidence in relation to that additional proposition, unless the parties were given an opportunity to address this aspect of the evidence.

18. Finally, the Chamber notes that in a case involving more than one accused, the fact that an item of evidence is only relevant to one of the accused and bears no relation to another co-accused, is not a ground for objection by the latter. Objections based solely on this ground will therefore be dismissed.

19. After careful analysis, the Chamber finds that the following item(s) of evidence must be rejected for lack of relevance:

DRC-OTP-1013-0296
DRC-OTP-1018-0171
DRC-OTP-1018-0172
DRC-OTP-0116-0002²⁵
DRC-OTP-0029-0176

C. Probative value

20. Probative value is determined by two factors: the reliability of the exhibit and the measure by which an item of evidence is likely to influence the determination of a particular issue in the case.

²⁵This includes DRC-OTP-0175-0310 [transcript of the video] and DRC-OTP-0173-1369 [translation of the transcript].

1. *Reliability of the evidence*

21. The first factor which the Chamber must consider when determining probative value, is the inherent reliability of an item of evidence. If an item of evidence does not display sufficient indicia of reliability, it may be excluded.²⁶

a) *Authenticity*

22. The first issue the Chamber must consider, in this respect, is whether the item of evidence is authenticated. In the absence of authentication, there can be no guarantee that a document is what the party tendering it purports it to be. Under no circumstances can the Chamber admit unauthenticated documentary evidence since, by definition, such evidence has no probative value. The Prosecution's assertion that "there is no legal basis in the jurisprudence of the tribunals that proof of authenticity is a threshold requirement for the admissibility of documentary evidence",²⁷ irrespective of its accuracy, is misconceived in the context of proceedings before this Court. To admit unauthenticated evidence would unjustifiably burden the record of the trial with non-probative material and serve no purpose in the determination of the truth.

23. Accordingly, unless an item of evidence is self-authenticating, or the parties agree that it is authentic, it is for the party tendering the item to provide admissible evidence demonstrating its authenticity. Such evidence may be direct or circumstantial but must provide reasonable grounds to believe that the exhibit is authentic, which, although not a particularly high standard, does impose a burden of proof on the party tendering the evidence. If no authenticating evidence is provided whatsoever, the documentary evidence will be found inadmissible. It is insufficient merely to state that "the information provided satisfies the required indicia of reliability and each document presents an

²⁶ Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the admissibility of four documents", 13 June 2008, ICC-01/04-01/06-1399, para. 30.

²⁷ ICC-01/04-01/07-1645, para. 63.

intrinsic coherence and *prima facie* probative value, in light of the whole body of evidence introduced in this case".²⁸ A mere general reference to the record of the trial is unsatisfactory since it is not for the Chamber to start its own investigations into material which may prove a document's authenticity and reliability.

24. In the following paragraphs, the Chamber will make some general observations about certain categories of documentary evidence which present particular characteristics.

- a. *Open-source information.* Generally speaking, material which is publicly available from an open source (e.g. internet or public libraries) will only require the tendering party to provide verifiable information about where the item can be obtained. If the item of evidence is no longer publicly available at the time it is tendered, the party should clearly indicate this and provide the date and location from which it was obtained.
- b. *Official documents.* Official documents that are not publicly available from official sources (e.g. the website of an organisation or official publications) are not self-authenticating and must be certified by the relevant authority. However, when the author of a public document is an identified representative or agent of an official body or organisation, such as a member of the executive, public administration or the judiciary, that document will be presumed authentic if it has been signed by the identified official and the authenticity of that signature is not called into question.

²⁸ ICC-01/04-01/07-2290, para. 21.

Official documents with no identified author but whose origin is immediately apparent from the documents themselves (e.g. from a letterhead or logo) may be accepted by the Chamber without certification, unless their authenticity has been challenged by one of the parties. Generally, documents which do not bear extrinsic indications as to their origin and author must always be authenticated by way of attestation or affidavit from an identified representative of the originating organisation.

The Chamber notes that in the context of this case it is sometimes difficult to discern which bodies qualify as public authorities, given the volatile situation at the time of events. Under these circumstances, the Chamber considers that it can accept as authenticated documents emanating from organisations performing public functions, even though they do not belong to regular state structures.

- c. *Private documents.* Private documents that can readily be authenticated by the party against whom they are tendered will be presumed authentic, unless such party challenges the authenticity and provides evidence to that effect.

Private documents whose authenticity is dependent upon a connection with a third person or organisation must be authenticated by independent evidence. Such evidence must provide proof of authorship or adoption and integrity. If the date of the document cannot be inferred from the document itself, evidence of it should also be provided. Clearly, any form of authentication by the alleged author of the document is preferable.

d. Videos, films, photographs and audio recordings. Before video or audio material can be admitted, the Chamber will require evidence of originality and integrity. However, once this has been established, this type of exhibit may often be admitted as evidence that speaks for itself and may be regarded, in this respect, as real evidence. Since the relevance of audio or video material depends on the date and/or location of recording, evidence must be provided in this regard.

25. The Chamber is mindful that in certain circumstances it will be difficult to obtain official certification of public documents or authentication of private documents. In such cases, the Chamber may accept other evidence of the provenance of an item from a source other than a public authority or author of the document, provided that the source might reasonably be supposed to have had custody or knowledge of the exhibit. The party tendering such an item must explain the reasons for the lack of proper certification and explain how the alternative evidence proves authenticity. If a party is unable to produce any admissible evidence but submits evidence of its efforts in respect of authentication and of the obstacles encountered, the Chamber may exercise its discretion to allow the unauthenticated document if there are other indicia of reliability.

b) Other criteria of reliability

26. Once the authenticity of a document has been established, the Chamber must ascertain whether the evidence displays such qualities that, when considered alone, it could reasonably be believed. The Chamber notes in this respect, that Trial Chamber I has held that “if [...] it is impossible for the Chamber to conduct any independent evaluation of the evidence – if there are no adequate and available means of testing its reliability – then the court will need

to consider carefully whether the party seeking to introduce it has met the test of demonstrating, *prima facie*, its probative value.”²⁹

27. The Chamber concurs with Trial Chamber I that there is no finite list of possible criteria that are to be applied in determining reliability.³⁰ However, the following key factors will normally be considered:

- a. Source: whether the source of the information has an allegiance towards one of the parties in the case or has a personal interest in the outcome of the case, or whether there are other indicators of bias.
- b. Nature and characteristics of the item of evidence: for example, whether the evidence is an audio or video recording, automatically generated, or testimonial in nature. Other factors may include the public or private character of the information.
- c. Contemporaneousness: whether the information was obtained and recorded simultaneously or shortly after the events to which it pertains or whether the record was created at a later stage.
- d. Purpose: whether the document was created for the specific purpose of these criminal proceedings or for some other reason.
- e. Adequate means of evaluation: whether the information and the way in which it was gathered can be independently verified or tested. Although there is no prohibition on hearsay before the Court, the Chamber is conscious of the inherent risks in this type of evidence. It may therefore take such risks into consideration when attributing the

²⁹ *Idem*.

³⁰ *Ibid.*, para. 29.

appropriate probative value to items of evidence consisting mainly or exclusively of hearsay.

28. If an item of evidence is deemed insufficiently reliable, it can hardly be considered to prove anything. This is something which must be assessed on a case by case basis. Although it is thus not possible to lay down strict criteria in this respect, the Chamber is of the view that by their very nature, certain types of documentary evidence are generally more likely to have sufficient probative value to be admitted, whereas other types of evidence will generally lack such probative value.

(1) Reports by UN agencies

29. Insofar as such reports emanate from independent observers who were direct observers of the facts being reported, the Chamber considers them to be *prima facie reliable*. However, if the author's identity and the sources of the information provided are not revealed with sufficient detail, the Chamber is unable to determine whether the contents of the report have been imparted by an eyewitness or some other reliable source. If such particulars are not available, either from the reports themselves or from their author(s), the Chamber cannot assess the reliability of the content of the reports; it is therefore unable to qualify those documents as sufficiently reliable to be admitted into evidence. Moreover, where such reports are based, for the most part, on hearsay information, especially if that information is twice or further removed from its source, the reliability of their content is seriously impugned.

(2) Reports from independent NGOs and third States

30. Similarly, reports emanating from independent private organisations or governmental bodies of third States can be considered *prima facie* reliable if they provide sufficient guarantees of non-partisanship and impartiality. They should

further include sufficient information on their sources and the methodology used to compile and analyze the evidence upon which the factual assertions are based. If such particulars are not available, either from the reports themselves or from their author(s), the Chamber cannot assess the reliability of the content of the reports; it is therefore unable to qualify those documents as sufficiently reliable to be admitted into evidence. Moreover, where such reports are based, for the most part, on hearsay information, especially if that information is twice or further removed from its source, the reliability of their content is seriously impugned.

(3) Press reports and newspaper articles

31. Media reports often contain opinion evidence about events said to have occurred and rarely provide detailed information about their sources. Opinion evidence is, in principle, only admissible if it is provided by an expert. In the case of the newspaper accounts proffered by the Prosecution, the latter has failed to inform the Chamber either of the background and qualifications of the journalists or of their sources, in order to satisfy the Chamber as to their objectivity and professionalism. Under these circumstances, the Chamber is unable to attach sufficient probative value to the opinions of even informed bystanders such as journalists in relation to specific contested facts.

(4) Letters, manifestos, political statements and other documents emanating from persons or entities involved in the events

32. Many of these documents contain opinion evidence without qualifying their authors as experts. Where they make specific factual assertions about relevant political or military events, they can only be admitted if it can be shown that the authors have made reliable and objective reports. This is not the case for

many of them. Therefore, even though some of the documents may contain information that is directly relevant to contentious issues in the case, the fact that they are assertions made by interested persons severely diminishes their probative value.

33. The situation may be different when documents emanating from persons involved in the events provide circumstantial information about the status or position of certain individuals within a particular organisation. Although such evidence will normally not be conclusive in this regard, it may be probative to the extent that it indicates that the author of the document believed that the person in question held a particular title or position. Similar considerations may apply to admissions of facts unfavourable to the person making the assertion. However, even in such cases, doubts about the author's objectivity or uncertainty about his or her sincerity may deprive the document of much of its potential probative value.

2. Significance of the evidence

34. In order to be admissible, evidence must, to some significant degree, advance the Chamber's inquiries. There are two ways in which an item of evidence can influence the Chamber's decision: (a) the item of evidence may significantly help the Chamber in reaching a conclusion about the existence or non-existence of a material fact; or (b) the item of evidence may significantly help the Chamber in assessing the reliability of other evidence in the case.

35. Unlike relevance, there are degrees of significance, depending on the measure by which an item of evidence is likely to influence the determination of a particular issue in the case. Although some evidence may be relevant, it may not be sufficiently material to persuade or dissuade the Chamber of anything. The Chamber will thus consider what impact the admission of the evidence would have on the issues before it. If the potential impact is "little to none", then

the Chamber will be unlikely to admit it as it will not advance its enquiry. If, on the other hand, the impact ranges from “some to considerable”, the evidence will probably be sufficiently significant for admission.

36. Based on the foregoing considerations and after thoroughly analysing the documents in question, the Chamber finds that it must reject the following items of evidence:

1. For lack of authentication:

DRC-OTP-0004-0040	DRC-OTP-0074-0002
DRC-OTP-0004-0085	DRC-OTP-0074-0128
DRC-OTP-0013-0297	DRC-OTP-0102-0011
DRC-OTP-0026-0179	DRC-OTP-0102-0022
DRC-OTP-0028-0421	DRC-OTP-0104-0089
DRC-OTP-0111-0147	DRC-OTP-0195-0277
DRC-OTP-0111-0730	DRC-OTP-0029-0075
DRC-OTP-0111-0737	DRC-OTP-0026-0194
DRC-OTP-0111-0808	DRC-OTP-0026-0195
DRC-OTP-0172-0248	DRC-OTP-0026-0205
DRC-OTP-0202-0671	DRC-OTP-0093-0052
DRC-OTP-0202-0796	DRC-OTP-0029-0076
DRC-OTP-1029-0338	DRC-OTP-0107-0362

2. For insufficient probative value

DRC-OTP-0129-0437	DRC-OTP-0077-0345
DRC-OTP-0130-0273	DRC-OTP-0077-0429
DRC-OTP-0130-0409	DRC-OTP-0134-0094
DRC-OTP-0074-0215	DRC-OTP-0154-0433
DRC-OTP-0131-0175	DRC-OTP-0163-0287
DRC-OTP-0044-0333	DRC-OTP-0107-0782
DRC-OTP-0074-0238	DRC-OTP-1013-0298
DRC-OTP-0005-0100	DRC-OTP-1013-0300
DRC-OTP-0052-0173	DRC-OTP-1013-0302
DRC-OTP-0111-0163	DRC-OTP-0039-0294
DRC-OTP-0019-0153	DRC-OTP-0039-0060
DRC-OTP-0163-0232	DRC-OTP-0093-0119
DRC-OTP-0074-0526	DRC-OTP-0126-0478
DRC-OTP-0074-0797	DRC-OTP-0017-0217
DRC-OTP-0154-1245	DRC-OTP-0016-0097
DRC-OTP-0154-1301	DRC-OTP-0100-0314

DRC-OTP-0159-0099
 DRC-OTP-1015-0592
 DRC-OTP-0074-0045
 DRC-OTP-0019-0111
 DRC-OTP-0074-0058

DRC-OTP-0035-0076³¹
 DRC-OTP-0036-0194³²
 DRC-OTP-0124-0014³³
 DRC-OTP-0107-0371
 DRC-OTP-0152-0256

D. Prejudice

37. Once the probative value of a particular item of evidence has been determined, the Chamber must weigh this against the potential prejudice, if any, that its admission might cause. As Trial Chamber I observed, “[w]ilst it is trite to observe that all evidence that tends to incriminate the accused is also “prejudicial” to him, the Chamber must be careful to ensure that it is not unfair to admit the disputed material [...] this will always be a fact-sensitive decision, and the court is free to assess any evidence that is relevant to, and probative of, the issues in the case, so long as it is fair for the evidence to be introduced.”³⁴

38. As with probative value, it is not possible to define the meaning of prejudice exhaustively. However, when addressing issues of prejudice, the Chamber will consider two questions: (a) what causes the prejudice; and (b) what suffers the prejudice.

39. In relation to the second question, article 69(4) mentions prejudice caused to the fairness of the trial and prejudice to the “fair evaluation of the testimony of a witness”. Article 69(7), which deals specifically with evidence obtained in violation of the Statute or of internationally recognized human rights, protects similar, but not identical, values. They are the “reliability of evidence” and the

³¹This includes DRC-OTP-1042-0167 [transcript of video] and DRC-OTP-1042-0115 [translation of the transcript].

³² This includes DRC-OTP-1043-0583 [transcript of video] +DRC-OTP-1041-0377 [translation of the transcript].

³³ This includes DRC-OTP-1050-0633 [transcript of video] +DRC-OTP-1050-0212 [translation of the transcript].

³⁴ Trial Chamber I, “Decision on the admissibility of four documents”, 13 June 2008, ICC-01/04-01/06-1399, paras. 31 and 32.

“integrity of the proceedings”. Although article 69(7) is *lex specialis* in respect of the general admissibility test contained in article 69(4),³⁵ which is broader in scope with regard to the possible forms of prejudice, the Chamber is of the view that both paragraphs, for the most part, protect the same two key values: firstly, the Statute protects the accuracy and reliability of the Court’s fact-finding by requiring that evidence of questionable credibility be excluded; secondly, the Statute safeguards the moral integrity and the legitimacy of the proceedings by requiring that the process of collecting and presenting evidence is fair towards the accused and respects the procedural and human rights of all those who are involved in the trial.

40. The existence and extent of prejudice must be ascertained on a case-by-case basis, taking into consideration the specific characteristics of the item of evidence and the nature of the alleged prejudice. It would therefore serve little purpose for the Chamber to discuss all possible forms of prejudice in general terms. However, a number of specific forms of prejudice do warrant further analysis because they have a systematic impact on the Chamber’s decisions on admissibility.

1. *The right to be tried without undue delay (article 67(1)(c))*

41. The right to be tried without undue delay is protected by article 67(1)(c). This right afforded the accused imposes a duty of care on all parties and participants as well as on the Chamber. In relation to the admissibility test for evidence, this provision requires that the Chamber exclude evidence if the time anticipated for its presentation – or subsequent evaluation by the Chamber - is disproportionate to its potential probative value. Thus, even when an item of evidence is not devoid of probative value, the Chamber may still decide to

³⁵ Trial Chamber I, *Prosecutor v. Thomas Lubanga*, “Decision on the admission of material from the ‘bar table’”, 24 June 2009, ICC-01/04-01/06-1981, para. 34.

exclude it in order to avoid the trial proceedings being burdened by unlimited amounts of repetitive or unduly time-consuming evidence.

2. *The right to examine, or have examined, adverse witnesses (article 67(1)(e))*

42. The right of the accused to examine, or have examined, adverse witnesses is of fundamental importance to the fairness of the proceedings. No judgment can be rendered safely if it is based on evidence prepared on behalf of one party which the opponent has not been able to test or verify. This is particularly true for testimonial evidence.

43. In particular, article 69(2) provides that, in principle, “[t]he 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”. A number of alternative means of obtaining witness testimony, including prior recorded testimony, are mentioned in that paragraph, but it is clearly stated that such measures are only allowed if they are not prejudicial to or inconsistent with the rights of the accused. The crucial right of the defence referred to here is the right mentioned in article 67(1)(e) of the Statute “to examine, or have examined, the witnesses against him or her”. Therefore, if any exceptions are made to the principle that witnesses shall give their testimony in person at trial, this must be done with full respect of the accused’s right to be afforded an opportunity to examine (or have examined) those witnesses.

44. The Chamber emphasises that the right to examine, or to have examined, adverse witnesses only applies to testimony. Not every communication of information by an individual is testimony in this sense. Only when a person acts as a witness against the accused does the latter obtain the right to examine, or have examined, that person. Clearly, statements made out of court can equally qualify as testimony. This is apparent from the wording of article 56(1)(a), which refers to a “unique opportunity to take testimony” and of article 93(1)(b), which

expressly mentions the taking of evidence, “including testimony under oath” in the context of assistance provided by States Parties “in relation to investigations or prosecutions”. Moreover, a narrow interpretation of the word “testimony” in article 67(1)(e) would entirely undermine the very right protected by this article and deprive rule 68 of any meaning.

45. At the same time, the Chamber considers that not every communication of information by an individual outside of the courtroom is testimony in this sense. It is only when a person acts as a witness against the accused that the accused obtains the right to examine, or have examined, that person, and only then can rule 68 be applied. Conversely, if an out-of-court statement does not qualify as testimony in this sense it can be admitted without the guarantees of rule 68. It is important, therefore, to distinguish between out-of-court statements that qualify as prior recorded testimony under rule 68 and those that do not.

46. The Chamber is of the view that it is not possible to provide an exhaustive definition of what types of out-of-court statements qualify as testimony. Such a determination must be made on a case-by-case basis, taking into consideration the precise circumstances under which the out-of-court statement was given. The following criteria can, therefore, only serve as guidelines and are not intended to create fixed categories.

47. The first key factor is whether the out-of-court statement was given to a person or body authorised to collect evidence for use in judicial proceedings. The most common example is when a person gives a statement to a representative of the Office of the Prosecutor. However, statements given to other entities acting at the behest of the Court can also qualify as witness testimony. As articles 54(2) and 93(1)(b) make clear, the Prosecutor may rely on international cooperation in conducting his investigations, including for the taking of pre-trial testimony. Statements given in the context of purely domestic proceedings can also be

considered as testimony for the purposes of article 67(1)(e) and rule 68 when they are later transmitted to the Court.

48. Thus, in principle, statements given to private persons or entities will not be considered as testimony unless there are exceptional reasons for doing so. By contrast, a statement given to representatives of an intergovernmental organisation with a specific fact-finding mandate may be considered as testimony if the manner in which the statement was obtained left no doubt that the information might be used in future legal proceedings. The Chamber observes, in this regard, that, generally speaking, analytical reports based on the personal stories of several individuals are not to be considered as testimony. In the Chamber's view, even if the factual allegations contained in the report are based exclusively on a combined analysis of statements made by identified individuals, the allegations contained in the report are not those of the individual persons but the conclusions drawn from their statements by the author of the report.

49. The second key factor in determining whether an out-of-court statement qualifies as testimony in the sense of article 67(1)(e) and rule 68 is that the person making the statement understands, when making the statement, that he or she is providing information which may be relied upon in the context of legal proceedings. It is not necessary for the witness to know against whom his or her testimony may be used, or even for the witness to know which particular crime is being investigated or prosecuted., It is important, however, that the statement is formalised in some manner and that the person making the statement asserts that it is truthful and based on personal knowledge. A unilaterally prepared affidavit may thus also qualify as testimony if the person making it clearly had the intention of making factual assertions for the purpose of future or ongoing legal proceedings.

50. Once the Chamber has determined that an out-of-court statement is testimonial, that statement can only be allowed into evidence under the conditions provided in rule 68. Therefore, unless the accused persons have either waived their right to examine the witness or had the opportunity to do so when the testimony was recorded, the statement will not be admitted unless the witness is available for examination at trial.

51. The Chamber finds that the following items of evidence must be rejected for being unduly prejudicial to the right of the accused to examine, or have examined, adverse witnesses:

DRC-OTP-0039-0051

DRC-OTP-0039-0076

3. Testimonial statements of co-accused

52. The Prosecution wishes to tender into evidence two documents containing statements which the two accused persons allegedly made before the judicial authorities of the DRC. These comprise two statements made by Mr Ngudjolo, both hand-written documents in question-and-answer format, dated 17 June 2004 (DRC-OTP-0039-0058) and 21 June 2004 (DRC-OTP-0039-0013) respectively, and Mr Katanga's statement, in a similar format, dated 20 January 2006 (DRC-OTP-1016-0150). These three documents are unmistakably testimonial.

53. To the extent that these statements implicate only the person making the statement, no issue under article 67(1)(e) and rule 68 arises. However, Mr Ngudjolo's statement contains accusations against Mr Katanga, thus creating an overwhelming legal obstacle against its admission, as Mr Ngudjolo cannot be compelled to submit to examination by, or on behalf of, Mr Katanga. The Chamber cannot, therefore, allow DRC-OTP-0039-0058 into evidence as proof of

any fact involving Mr Katanga. However, this does not exclude the possibility of admitting the statement for other purposes.

54. The Chamber finds that the following items of evidence must be rejected on this basis in whole or in part:

DRC-OTP-0039-0013

DRC-OTP-0039-0058 must be rejected for its allegations against Mr Katanga, but may be admitted for the admissions made by Mr Ngudjolo.

4. *The right to remain silent and assistance of counsel during interrogation*

55. The Defence for Mr Katanga argues that his statement of 20 January 2006 (DRC-OTP-1016-0150) was taken in violation of his right to remain silent, insofar as it is alleged that Mr Katanga was not informed of his right to have counsel present during the interrogation. It is alleged that Mr Katanga had such a right under the Statute, under existing norms of internationally recognized human rights and under the Constitution of the DRC.³⁶

56. According to the Defence, Mr Katanga “had wished to be represented by counsel during the interrogation but [...] his wishes were ignored.”³⁷ It is further argued that the burden rests upon the Prosecution to prove beyond a reasonable doubt that Mr Katanga has voluntarily waived his right to be represented.³⁸ As this was not the case, the Defence claims that “the admission of the *procès-verbal* would be antithetical to, and would seriously damage, the integrity of the proceedings.”³⁹

³⁶ ICC-01/04-010/7-2348, para. 59.

³⁷ ICC-01/04-01/07-1558, para. 59.

³⁸ ICC-01/04-01/07-1558, paras. 71-73.

³⁹ ICC-01/04-01/07-1558, para. 73.

57. In raising this objection, the Defence invokes Articles 18 and 19 of the Constitution of the DRC, which, it is claimed, guarantee the right of any person to be assisted by counsel of his choice at any stage of the proceedings including the police investigations and the pre-judicial stage.⁴⁰ The Defence also invokes article 55(2) of the Statute, although it acknowledges that “[s]trictly speaking, the Article does not apply to the situation of Mr Katanga because he was not questioned by, or on behalf of the ICC Prosecutor.”⁴¹ It is nevertheless argued that article 55(2) is “an indicator of the kind of standards expected from the ICC”⁴² and that therefore all evidence “should be collected in compliance with the ICC legal standards.”⁴³

58. The Chamber finds that the provisions of the DRC Constitution cannot apply in the context of admissibility decisions. As Trial Chamber I has pointed out, “[t]he Statute clearly stipulates that the violation has to impact on international, as opposed to national, standards on human rights. [...] 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.”⁴⁴

59. The Chamber also finds that evidence collected in non-compliance with the requirements of article 55(2) of the Statute, by a state not acting at the request of the Court, cannot be said to have been obtained “by means of a violation” of the Statute, as is required by article 69(7). As the Defence has rightly remarked, “the drafters of the Rome Statute agreed to adopt a provision explicitly requiring that suspects be questioned in the presence of counsel *even though, domestically,*

⁴⁰ ICC-01/04-01/07-1558, para. 56.

⁴¹ ICC-01/04-01/07-1558, para. 66.

⁴² ICC-01/04-01/07-1558, para. 66.

⁴³ ICC-01/04-01/07-1558, para. 67.

⁴⁴ ICC-01/04-01/06-1981, para. 36.

this right is not always guaranteed."⁴⁵ It cannot be concluded from this that the States Parties have agreed to comply with the procedural standards of the Statute in their domestic criminal proceedings. Article 55(2) does not impose procedural obligations on states acting independently of the Court.

60. The last remaining question is therefore whether there is a discrepancy between the protections offered by article 55(2) and the applicable norms of 'internationally recognized human rights.' The Chamber notes, in this regard, that in a recent decision, the European Court of Human Rights held that:

in order for the right to a fair trial to remain sufficiently "practical and effective" [...] Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 [...]. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.⁴⁶

61. The Chamber notes that the European Court of Human Rights speaks about *access* to a lawyer. This does not necessarily mean that a lawyer must be physically present during every interrogation.

62. The Chamber is of the view that the main importance of the right to counsel in the context of pre-trial interrogations is to protect the essence of the accused's right, which is to be presumed innocent, to remain silent and not to be forced to self-incriminate.⁴⁷ Even if counsel is not physically present, these rights may, under certain conditions, be sufficiently protected if the accused obtained adequate legal advice prior to the interrogation. One important such condition is

⁴⁵ ICC-01/04-01/07-1558, para. 66, emphasis added.

⁴⁶ European Court of Human Rights, Grand Chamber, *Case of Salduz v. Turkey*, "Judgment", 27 November 2008, Application no. 36391/02, para. 55.

⁴⁷ European Court of Human Rights, Grand Chamber, *Case of Bykov v. Russia*, "Judgment", 10 March 2009, Application no. 4378/02, para. 93.

that there are other guarantees that no coercion was used against the accused during the interrogation.

63. The accused does not allege that he was coerced to make the statements he made on 20 January 2006. The accused further acknowledges that he already had the assistance of counsel at that time. However, as this was the accused's first interview after he was detained and as he was unaware of the reasons for his detention, it is highly improbable that he would have obtained adequate legal advice from his lawyer prior to the interrogation. Indeed, even if he had been able to consult with his lawyer shortly before the interrogation, this advice would necessarily have been based on incomplete information. The Chamber considers, therefore, that, insofar as Mr Katanga made self-incriminating statements on 20 January 2006, there are serious concerns that those statements were obtained from him in violation of his right to remain silent and of the privilege against self-incrimination.

64. As Trial Chamber I has pointed out: "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. [...] [W]hen addressing the exclusionary criteria of Article 69(7), it is impermissible to introduce [...] 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."⁴⁸

65. Accordingly, the statement of 20 January 2006 (DRC-OTP-1016-0150) cannot be admitted into evidence.

⁴⁸ ICC-01/04-01/06-1981, para. 43.

FOR THESE REASONS,

THE CHAMBER,

GRANTS the First and Second Motion in respect of the following items of evidence:

DRC-OTP-0131-0144	DRC-OTP-0009-0372	DRC-OTP-0136-0068
DRC-OTP-0131-0149	DRC-OTP-0011-0452	DRC-OTP-1012-0132
DRC-OTP-0131-0153	DRC-OTP-0163-0357	DRC-OTP-1012-0134
DRC-OTP-0131-0167	DRC-OTP-0124-0008	DRC-OTP-0138-0239
DRC-OTP-0131-0410	- DRC-OTP-1048-0663	DRC-OTP-0028-0463
DRC-OTP-0131-0413	- DRC-OTP-1048-0674	DRC-OTP-0028-0356
DRC-OTP-0154-0671	(transcript and translation)	DRC-OTP-0029-0046
DRC-OTP-1013-0304	DRC-OTP-0138-0236	DRC-OTP-0029-0072
CAR-OTP-0005-0074	DRC-OTP-0138-0780	DRC-OTP-0041-0104
DRC-OTP-0005-0012	DRC-OTP-0141-0349	DRC-OTP-0132-0245
DRC-OTP-0005-0033	DRC-OTP-0180-0656	DRC-OTP-0086-0036
DRC-OTP-0005-0276	DRC-OTP-0172-0007	DRC-OTP-0091-0218
DRC-OTP-0009-0015	DRC-OTP-0172-0005	DRC-OTP-0136-0171

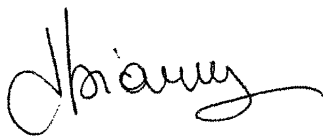
ORDERS the Registry to attribute EVD numbers to each of the above items; **AND**

REJECTS the remainder of the Motion.

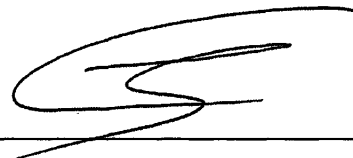
Done in both English and French, the English version being authoritative.



Judge Bruno Cotte
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 17 December

At The Hague, the Netherlands