

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-01/04-02/06  
Date: 17 January 2018

**TRIAL CHAMBER VI**

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

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

**Public**

**Public redacted version of 'Decision on Prosecution request for admission of  
evidence related to Agreed Fact 69'**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Ms Nicole Samson

**Counsel for Bosco Ntaganda**

Mr Stéphane Bourgon

Mr Christopher Gosnell

**Legal Representatives of Victims**

Ms Sarah Pellet

Mr Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

*Amicus Curiae*

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**REGISTRY**

**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber VI** ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 69 of the Rome Statute ('Statute'), Rules 68 and 69 of the Rules of Procedure and Evidence ('Rules'), and Regulation 24(5) of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution request for admission of evidence related to Agreed Fact 69'.

## **I. Background**

1. On 22 June 2015, upon receipt of a joint submission by the Office of the Prosecutor ('Prosecution') and the defence team for Mr Ntaganda ('Defence'),<sup>1</sup> the Chamber took note of 82 facts upon which the parties had reached an agreement ('Agreed Facts').<sup>2</sup> The Agreed Facts included, *inter alia*, that 'Rwanda provided weapons and ammunition to the UPC/FPLC beginning in July 2002' ('Agreed Fact 69').<sup>3</sup>
2. On 29 March 2017, the Prosecution completed its presentation of evidence.<sup>4</sup>
3. Between 14 June and 13 September 2017, Mr Ntaganda testified before the Chamber, including on matters related to the source of UPC/FPLC weapons, and the Defence subsequently indicated that Mr Ntaganda had not been consulted in relation to Agreed Fact 69.<sup>5</sup>
4. On 31 August 2017, after having heard submissions on the matter,<sup>6</sup> the Chamber ordered the Defence to consult with and obtain instructions from Mr Ntaganda after the completion of his testimony, and provide, within two

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<sup>1</sup> Joint submission by Prosecution and Defence on agreed facts, 8 June 2015, ICC-01/04-02/06-633, with Annex A, ICC-01/04-02/06-633-AnxA-Red.

<sup>2</sup> Decision on Prosecution and Defence joint submission on agreed facts, 22 June 2015, ICC-01/04-02/06-662.

<sup>3</sup> ICC-01/04-02/06-633-AnxA-Red, page 5.

<sup>4</sup> Prosecution's Notice of the Close of its Case-in-Chief, 29 March 2017, ICC-01/04-02/06-1839.

<sup>5</sup> See Transcript of hearing on 29 August 2017, ICC-01/04-02/06-T-232-CONF-ENG CT, page 53, lines 2-7.

<sup>6</sup> Transcript of hearing on 31 August 2017, ICC-01/04-02/06-T-234-CONF-ENG ET, page 17, line 11 to page 27, line 13.

days, further submissions on its position on Agreed Fact 69 and on any other Agreed Facts upon which Mr Ntaganda may have not been consulted at the relevant time. It further indicated that upon receipt of such submissions, the Chamber would evaluate whether it would require further observations, including ‘whether it shall authorise the Prosecution to adduce additional evidence on this issue or any other issue flowing from the [A]greed [F]acts’.<sup>7</sup>

5. On 9 October 2017, having received the parties’ submissions,<sup>8</sup> the Chamber took note of the parties’ positions with regard to Agreed Fact 69 and directed the Prosecution to file any request to adduce additional evidence in relation thereto by 10 November 2017, and the Defence and the Legal Representatives of Victims to file any responses by 17 November 2017.<sup>9</sup>
6. On 10 November 2017, the Prosecution filed a request seeking the admission of the prior recorded testimony of Witnesses P-0067 and P-0190 (‘Witnesses’) pursuant to Rule 68(2)(b) of the Rules, as well as five additional items from the bar table pursuant to Articles 64(9)(a), 69(3), and 69(4) of the Statute and Rule 63(2) of the Rules, in relation to Agreed Fact 69 (‘Request’).<sup>10</sup> On the same day, the Registry filed declarations pursuant to Rule 68(2)(b) of the Rules, in relation to the Witnesses.<sup>11</sup>
7. On 17 November 2017, the Defence filed its response, opposing the Request (‘Response’). In the alternative, should the Chamber grant the Request, the Defence requests that additional portions of the prior recorded testimony of

<sup>7</sup> Transcript of hearing on 31 August 2017, ICC-01/04-02/06-T-234-CONF-ENG ET, page 28, lines 5 to 25.

<sup>8</sup> Submission on agreed facts, 22 September 2017, ICC-01/04-02/06-2043-Conf (‘Defence Submissions’), and Prosecution’s response to the Defence submission on agreed fact, 28 September 2017, ICC-01/04-02/06-2046-Conf.

<sup>9</sup> Decision on parties’ submissions concerning Agreed Fact 69, ICC-01/04-02/06-2058.

<sup>10</sup> Prosecution request to admit evidence related to Agreed Fact 69, 10 November 2017, ICC-01/04-02/06-2108-Conf, with confidential Annexes A-G.

<sup>11</sup> Registry Transmission of Witnesses P-0067’s and P-0190’s Declarations, pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence, 10 November 2017, ICC-01/04-02/06-2110-Conf, with confidential *ex parte* Annexes I and II only available to the Prosecution and the Registry.

the Witnesses, as well as a recent statement of P-0067 taken by the Defence in October 2017 ('P-0067's 2017 Statement'), also be admitted into evidence ('Defence Request'). The Defence further submits that certain extracts be excluded as they are going beyond the scope of Agreed Fact 69, and that only limited parts of the five items tendered from the bar table be admitted.<sup>12</sup>

8. On 21 November 2017, the Prosecution requested leave to reply to six issues arising from the Response ('Request for Leave to Reply'), and responded to the Defence Request ('Response to Defence Request').<sup>13</sup>
9. On 28 November 2017, pursuant to Regulation 24(5) of the Regulations, the Chamber granted leave to reply on four of the identified issues, considering that it would not be assisted by further submissions on the other issues identified.<sup>14</sup>
10. On 1 December 2017, in line with Chamber's direction,<sup>15</sup> the Prosecution filed its reply ('Reply').<sup>16</sup>

## **II. Submissions and Analysis**

11. The Chamber recalls that on 22 June 2015, before the start of the presentation of evidence by the Prosecution, it took note of the Agreed Facts, including Agreed Fact 69, and stated that, at that stage, it did 'not consider there to be reason for a more complete presentation of evidence on those matters'.<sup>17</sup> During his

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<sup>12</sup> Response on behalf of Mr Ntaganda to the "Prosecution request to admit evidence related to Agreed Fact 69" and Defence associated request to admit related witness statement, 17 November 2017, ICC-01/04-02/06-2119-Conf, with confidential Annex I and public Annex II.

<sup>13</sup> Prosecution request for leave to reply to the "Response on behalf of Mr Ntaganda to the 'Prosecution request to admit evidence related to Agreed Fact 69'", ICC-01/04-02/06-2119-Conf and Prosecution response to new Defence requests, ICC-01/04-02/06-2122-Conf.

<sup>14</sup> Email communication from the Chamber to the parties and the participants on 28 November 2017, at 09:41.

<sup>15</sup> Email communication from the Chamber to the parties and the participants on 28 November 2017, at 09:41.

<sup>16</sup> Prosecution reply to the "Response on behalf of Mr Ntaganda to the 'Prosecution request to admit evidence related to Agreed Fact 69' and Defence associated request to admit related witness statement", ICC-01/04-02/06-2119-Conf, ICC-01/04-02/06-2137-Conf.

<sup>17</sup> Decision on Prosecution and Defence joint submission on agreed facts, 22 June 2015, ICC-01/04-02/06-662.

testimony in the context of the Defence's presentation of evidence, Mr Ntaganda provided evidence on matters related to the source of UPC/FPLC weapons, and the Defence subsequently indicated that Agreed Fact 69 'does not accord with Mr Ntaganda's knowledge', and that the Defence had misunderstood Mr Ntaganda's observations regarding proposed Agreed Fact 69.<sup>18</sup>

12. The Chamber further notes the Prosecution's submissions underlying its Request to adduce new evidence and the Defence's acknowledgment that, in light of its changed position, the Prosecution ought to be permitted to lead evidence on facts underlying Agreed Fact 69. In these circumstances, the Chamber considers that the Prosecution could not have anticipated the need to present evidence on this fact during the presentation of its case-in-chief, and finds that Mr Ntaganda's testimony in relation to the source of weapons for the UPC/FPLC and the Defence's subsequent indication of its changed position with regard to Agreed Fact 69 justifies allowing the Prosecution to adduce further evidence on matters related to Agreed Fact 69.

**a) Request for admission of the Witnesses' prior recorded testimony pursuant to Rule 68(2)(b)**

*(i) Request*

13. The Prosecution seeks to admit as prior recorded testimony for each witness a two-page statement, in which each witness confirms the accuracy of excerpts

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<sup>18</sup> See in particular, Defence Submissions, ICC-01/04-02/06-2043-Conf, paras 3-5.

from previous statements to the Prosecution relevant to Agreed Fact 69, as well as the excerpts themselves' ('Statements' and 'Excerpts', respectively).<sup>19</sup>

14. Although Witness P-0190 testified in the present proceedings, the Prosecution submits that it did not specifically seek to elicit the information provided by the witness during his interviews regarding Rwanda providing weapons and ammunition to the UPC/FPLC as of July 2002 since there was no need to do so in view of Agreed Fact 69.<sup>20</sup>

15. The Prosecution submits that the Witnesses' prior recorded testimony is relevant and of probative value and satisfies the criteria for admission pursuant to Rule 68(2)(b), as it: (i) relates to background information and not to the acts and conduct of the accused; (ii) is of a cumulative or corroborative nature; and (iii) bears sufficient indicia of reliability. The Prosecution argues that although the Witnesses' prior recorded testimony relates to issues that are now materially in dispute, it should nevertheless be admitted in light of the specific circumstances of the Request 'which has been necessitated by the Defence's recent denial of a previously agreed fact'. According to the Prosecution, its introduction pursuant to Rule 68(2)(b) would best serve the interests of justice and not be prejudicial to or inconsistent with the rights of the accused.<sup>21</sup>

(ii) *Response*

16. The Defence argues that the Witnesses' prior recorded testimony does not meet the minimum threshold for admission pursuant to Rule 68(2)(b) of the Rules, noting that the portions tendered by the Prosecution: (i) are internally

<sup>19</sup> Request, ICC-01/04-02/06-2108-Conf, paras 21-22. See also, ICC-01/04-02/06-2108-Conf-AnxA (DRC-OTP-2105-8187) for the prior recorded testimony of Witness P-0067, and ICC-01/04-02/06-2108-Conf-AnxB (DRC-OTP-2105-8228) for the prior recorded testimony of Witness P-0190.

<sup>20</sup> Request, ICC-01/04-02/06-2108-Conf, para. 25.

<sup>21</sup> Request, ICC-01/04-02/06-2108-Conf, paras 26-31.

inconsistent; (ii) are inconsistent with other statements of the Witnesses, including, with respect to Witness P-0190, with the witness's *viva voce* testimony before the Chamber; (iii) are inconsistent with one another; and (iv) omit other relevant statements.<sup>22</sup>

17. Further, with respect to Witness P-0067, the Defence requests that if the Chamber admits any portion of the witness's prior recorded testimony, further passages from the witness's 2006 and 2015 interviews also be admitted, in order to allow the Chamber to assess the reliability of all pertinent excerpts.<sup>23</sup> It also requests that Annex I to the Response, containing P-0067's 2017 Statement be admitted pursuant to Rule 68(2)(b).<sup>24</sup>

18. In relation to Witness P-0190, the Defence further submits that if the Chamber determines that any portion of the witness's testimony should be admitted, certain additional passages also be also admitted.<sup>25</sup>

19. The Defence further argues that the tendered statements and documents include, to a large extent, information going beyond the scope of Agreed Fact 69. In this respect, the Defence requests that, should the Witnesses' prior recorded testimony be admitted, certain extracts be excluded.<sup>26</sup> The Defence finally argues that the proposed evidence is irrelevant.<sup>27</sup>

(iii) *Prosecution further submissions*

20. In its Response to Defence Request, the Prosecution submits that, should the Chamber admit the portions of the prior recorded testimony identified by the Prosecution, it has no objection to the admission of additional passages as

<sup>22</sup> Response, ICC-01/04-02/06-2119-Conf, paras 16-22.

<sup>23</sup> Response, ICC-01/04-02/06-2119-Conf, paras 11-12.

<sup>24</sup> Response, ICC-01/04-02/06-2119-Conf, para. 13.

<sup>25</sup> Response, ICC-01/04-02/06-2119-Conf, para. 22.

<sup>26</sup> Response, ICC-01/04-02/06-2119-Conf, paras 41-44.

<sup>27</sup> Response, ICC-01/04-02/06-2119-Conf, paras 45-51.

requested by the Defence.<sup>28</sup> The Prosecution opposes the admission pursuant to Rule 68(2)(b) of P-0067's 2017 Statement, on the basis that it lacks probative value and contains no accompanying declaration certifying to the accuracy and authenticity of the statement as required under Rule 68(2)(b).<sup>29</sup>

21. In its Reply, the Prosecution submits, *inter alia*, that the Response fails to accurately cite the transcript of Witness P-0190's testimony, as, in its submission, [REDACTED].<sup>30</sup> It also argues that the Defence fails to support its assertion that the excerpts of the Witnesses' Prosecution interviews sought for admission are internally inconsistent and contradictory of other statements made by the each witness.<sup>31</sup>

(iv) *Analysis*

22. At the outset, the Chamber notes that in the Rule 68(2)(b)(iii) declaration,<sup>32</sup> Witness P-0067 made a clarification that was already included in the two-page statement tendered by the Prosecution. The Chamber further observes that Witness P-0190 made a limited number of amendments to his prior recorded testimony. The Chamber is of the view that these amendments do not amount to 'new information' within the meaning of Rule 68(2)(b)(ii), as they are merely rectifying information with regard to non-substantive matters, and will therefore consider them in assessing the prior recorded testimony itself.<sup>33</sup>

<sup>28</sup> Response to Defence Request, ICC-01/04-02/06-2122-Conf, paras 9-11.

<sup>29</sup> Response to Defence Request, ICC-01/04-02/06-2122-Conf, paras 12-14.

<sup>30</sup> Reply, ICC-01/04-02/06-2137-Conf, paras 2, 10-11

<sup>31</sup> Reply, ICC-01/04-02/06-2137-Conf, paras 3, 12-20.

<sup>32</sup> Registry Transmission of Witnesses P-0067's and P-0190's Declarations, pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence, 10 November 2017, ICC-01/04-02/06-2110-Conf, with confidential *ex parte* Annexes I and II only available to the Prosecution and the Registry.

<sup>33</sup> See also, in this sense, Decision on Defence request for admission of prior recorded testimony of Witnesses D-0001, D-0013, D-0123, D-0134, D-0148, D-0150, D-0163, and D-0179 pursuant to Rule 68(2)(b), 4 December 2017, ICC-01/04-02/06-2141-Red, e.g. para. 20.

23. The Chamber notes that despite summary references in the tendered excerpts to Mr Ntaganda's actions at the relevant time,<sup>34</sup> the Defence does not submit, and the Chamber does not consider, that the prior recorded testimony of the Witnesses relates to the 'acts and conduct of the accused'. The Chamber further considers that the Witnesses' prior recorded testimony is relevant as it concerns a specific issue, which was previously addressed by Agreed Fact 69, namely the provision of weapons from Rwanda to the UPC during the period relevant to the charges, including the Witnesses' personal knowledge of the context in which this occurred. With regard to the Defence's request to exclude certain extracts going beyond the scope of Agreed Fact 69, the Chamber considers those passages are relevant to contextualise passages directly related to the issue at stake.
24. To the extent that the prior recorded testimony addresses issues which are potentially materially in dispute, the Chamber notes the specific circumstances in which the Request was filed, the limited scope of the issues addressed by the prior recorded testimony of the Witnesses, and the degree to which they potentially impact on matters contested in the proceedings.<sup>35</sup> Against this background, the Chamber will assess, and, if considered suitable for admission, rely on the Witnesses' tendered prior recorded testimony only to the extent that it is relevant, or necessary to contextualise passages directly related, to the information previously before it as Agreed Fact 69.
25. With regard to reliability, the Chamber notes that the Witnesses' prior recorded testimony consists, for each witness, of (i) a two-page statement, drafted in French, a language the Witnesses understand, and signed by them, in which the Witnesses confirm the accuracy of the excerpts from previous

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<sup>34</sup> See, e.g., DRC-OTP-2105-8187 (Annex A), at 8209; DRC-OTP-2105-8228 (Annex B), at 0235 and 8238.

<sup>35</sup> See also in this sense Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, ICC-02/04-01/15-596-Red, para. 15.

statements provided to the Prosecution, as well as (ii) the excerpts themselves. Accordingly, the Chamber considers that the Statements and the Excerpts themselves bear sufficient indicia of reliability for admission pursuant to Rule 68(2)(b) of the Rules.

26. In light of the foregoing, the Chamber considers that the interests of justice are best served by the admission into evidence under Rule 68(2)(b) of the Rules of the Witnesses' prior recorded testimony, as specified below, noting that such admission is without prejudice to the weight that will be attached to it in the Chamber's assessment of the evidence as a whole. Accordingly, the Chamber finds that the admission of the Witnesses' prior recorded testimony under Rule 68(2)(b) is appropriate. Further, in order to more comprehensively assess the Witnesses' evidence on this issue, and noting that the Prosecution does not object to it, the Chamber considers it appropriate to admit, in addition to the excerpts identified in the Request, the additional relevant excerpts identified by the Defence.<sup>36</sup>

27. With regard to Witness P-0067's 2017 Statement, the Chamber notes that it is signed by the witness, is declared to have been given voluntarily, with the awareness it may be used in legal proceedings before the Court, and to accurately reflect the content of the interview, and was given in French, a language which the witness indicates that he understands. In order to better assess the witness's evidence on the issues related to Agreed Fact 69, and while emphasising that this is without prejudice to the weight to be attached to this evidence, the Chamber considers it would be appropriate to also admit Witness P-0067's 2017 Statement. The Chamber notes however that it was not provided with the relevant Registry declaration. In order for the prior recorded

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<sup>36</sup> See Defence Response, ICC-01/04-02/06-2119-Conf, para. 11-12 (see in particular footnotes 20-25), and para. 22.

testimony to be admitted, a declaration fulfilling the requirements of Rule 68(2)(b)(ii) and (iii) will need to be submitted not later than 23 February 2018.

**b) Request for admission of five items from the bar table**

*(i) Prosecution*

28. The Prosecution seeks the admission of five items from the bar table pursuant to Articles 64(9)(a), 69(3), and 69(4) of the Statute and Rule 63(2) of the Rules.<sup>37</sup>

29. According to the Prosecution, the five items: (i) are relevant to Agreed Fact 69, as well as to the nature of the armed conflict, the credibility of the accused, and the mode of liability of indirect co-perpetration, with which the accused has been charged;<sup>38</sup> (ii) have *prima facie* probative value;<sup>39</sup> and (iii) would not be unfairly prejudicial to the accused if admitted.<sup>40</sup>

*(ii) Defence*

30. The Defence opposes the admission into evidence of the five items submitted by the Prosecution, arguing that they do not meet the criteria of *prima facie* relevance and probative value.<sup>41</sup> It further submits that the material sought to be tendered includes information going beyond the scope of Agreed Fact 69,<sup>42</sup> as well as information that is irrelevant.<sup>43</sup> In the alternative, if the Chamber is minded to admit the items in question, the Defence submits that, with respect to Document DRC-OTP-0208-0272, admission be limited to the extract used during the cross-examination of Mr Ntaganda, for the limited purpose of

<sup>37</sup> Request, ICC-01/04-02/06-2108-Conf, paras 36-48.

<sup>38</sup> Request, ICC-01/04-02/06-2108-Conf, paras 49-50.

<sup>39</sup> Request, ICC-01/04-02/06-2108-Conf, paras 51-54.

<sup>40</sup> Request, ICC-01/04-02/06-2108-Conf, paras 55-56.

<sup>41</sup> Response, ICC-01/04-02/06-2119-Conf, paras 23-40.

<sup>42</sup> Response, ICC-01/04-02/06-2119-Conf, paras 41-44, 52.

<sup>43</sup> Response, ICC-01/04-02/06-2119-Conf, paras 45-52.

impeachment, while with respect to the other four documents, admission be limited to the relevant paragraphs referred to in the Request.<sup>44</sup>

(iii) *Analysis*

31. **Document DRC-OTP-0208-0272** is a four-page daily report dated 19 September 2002 and relating, in paragraph 12, *inter alia*, to a Rwandan aircraft dropping ammunitions and uniforms in Mandro on 18 September 2002. The Chamber therefore considers that it is *prima facie* relevant.
32. The Prosecution used this document during Mr Ntaganda's cross-examination and noted that it would seek its admission, in particular in relation to paragraph 12, depending on the Defence's final position in relation to Agreed Fact 69.<sup>45</sup>
33. While the document does not bear any official [REDACTED], the Chamber notes the Prosecution's submission that it [REDACTED]. In this regard, the Chamber considers that the document contains sufficient indicia of reliability as it is dated, the sender is sufficiently identified in the header, it bears the transmission date and number, and the document's layout and other features are consistent with other similar reports that have been admitted into evidence.
34. In light of the above, the Chamber finds that paragraph 12 of this document has *prima facie* relevance and probative value, and that any potential prejudice arising from its admission is not such that it would outweigh the probative value. Accordingly, the Chamber finds it appropriate to admit the relevant part of this document, together with the cover page. The Chamber is not convinced that admission of this extract for the limited purpose of impeachment, as requested by the Defence, is appropriate, and it will admit it without this limitation.

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<sup>44</sup> Response, ICC-01/04-02/06-2119-Conf, paras 24-40 and page 21.

<sup>45</sup> Transcript of hearing of 31 August 2017, ICC-01/04-02/06-T-234-CONF-ENG-ET, page 29.

35. **Document DRC-OTP-0044-0333** is a 28-page draft report, dated 28 July 2003 (and amended on 30 July 2003). The Prosecution identifies what it considers to be the most relevant portions, namely pages 0344 and 0345, which refer to, *inter alia*, the training of UPC soldiers in Rwanda and the supply of ammunition and weapons. The Chamber therefore considers that this portion of the document is relevant as it relates to the issue previously covered by Agreed Fact 69. The Chamber further notes that although it is dated and its author is identified on the cover page, the document appears to be a draft, some of its sections are incomplete. Also, the Chamber considers that the Prosecution's mere submission that this document [REDACTED], without any further information, is in the circumstances not sufficient to establish its source or authenticity. The Chamber therefore considers that this document is not sufficiently reliable.

36. **Document DRC-OTP-0043-0063** is tendered by the Prosecution as a report titled [REDACTED]. The Prosecution identifies the relevant portions, namely pages 0064 and 0065, which appear to relate to the issue previously covered by Agreed Fact 69 and are therefore relevant. However, the Chamber notes that the document is not dated or signed, and the author does not appear to be clearly identified. The Chamber further notes that the document includes several acronyms and references that are not further explained in the document, several questions, uncomplete sentences, and a number of handwritten annotations from an unknown author, which affect the readability of the document. As above, the Prosecution's mere submission that this document was provided by [REDACTED], without any further information, is in the circumstances not sufficient to establish its source or authenticity. In light of this, the Chamber considers that the document does not have sufficient probative value, and therefore declines to admit it.

37. **Document DRC-OTP-0072-0315** contains satellite telephone records for the period from 23 December 2001 to 8 October 2002, while **document DRC-OTP-0014-0295** contains a list of names and telephone numbers associated with those names. According to the Prosecution, the two items are linked as they both relate to phone calls from a number allegedly attributed to [REDACTED]. While the mobile company's name and contact are detailed in the footer of **document DRC-OTP-0072-0315**, the source and origin of **document DRC-OTP-0014-0295** are only provided by the Prosecution in its submissions. With respect to the latter document, the Chamber recalls that this document was shown to a witness who was not able to connect the name of a close family member to the phone number listed in the report.<sup>46</sup> In these circumstances, without further information as to the reliability of its content, the Chamber does not consider it appropriate to admit **document DRC-OTP-0014-0295**. As the relevance and probative value of the two documents are closely connected, the Chamber's rejection to admit **document DRC-OTP-0014-0295**, affects the ability to attribute phone numbers contained in **document DRC-OTP-0072-0315** to the persons the Prosecution alleged they belonged to at the relevant time. Therefore, the latter document is not sufficiently relevant and lacks probative value when considered on its own. For these reasons, the Chamber declines to admit both documents.

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<sup>46</sup> Transcript of hearing of 30 May 2017, ICC-01/04-02/06-T-207-CONF-ENG, page 30, lines 2-22.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request in relation to Witnesses P-0067 and P-0190, as specified in paragraph 26 above;

**ADMITS** the following items into evidence:

DRC-OTP-2105-8187 (ICC-01/04-02/06-2108-Conf-AnxA), as specified in paragraph 26 above;

DRC-OTP-2105-8228 (ICC-01/04-02/06-2108-Conf-AnxB), as specified in paragraph 26 above;

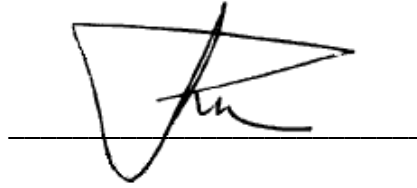
DRC-OTP-0208-0272, page 0272 and page 0275, paragraph 12;

**ADMITS INTO EVIDENCE** Witness P-0067's 2017 Statement (ICC-01/04-02/06-2119-Conf-AnXI), only upon receipt of a satisfactory declaration conforming to the requirements of Rule 68(2)(b)(ii) and (iii) by 23 February 2018;

**DIRECTS** the Registry to modify the metadata of the exhibits admitted pursuant to the present decision, including by indicating their status as evidence admitted, as well as noting that they have been admitted by way of the present decision; and

**REJECTS** all other requests.

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

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**Judge Robert Fremr, Presiding Judge**

A handwritten signature in black ink, appearing to be 'K. Ozaki', written over a horizontal line.

**Judge Kuniko Ozaki**

A handwritten signature in black ink, consisting of three distinct, stylized characters, written over a horizontal line.

**Judge Chang-ho Chung**

Dated this 17 January 2018  
At The Hague, The Netherlands