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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***

Confidential

**Prosecution's response to the "Defence request for the admission of
supplementary sentencing evidence", ICC-01/04-02/06-2388-Conf, 30 August 2019**

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution requests the Chamber to partially reject the Defence's request, for the reasons set out below. Specifically, the Prosecution requests the Chamber:
 - (1) to decline to admit the three excerpts of video DRC-OTP-0159-0477, two excerpts of video DRC-D18-0001-0425, nine excerpts of videos DRC-D18-0001-0436 and DRC-OTP-0118-0002, document DRC-OTP-0086-0036, and document DRC-OTP-0004-0047;
 - (2) to reject the Defence's request for 15 additional minutes for the direct examinations of Witnesses D-0305 and D-0306; and
 - (3) in the alternative, should the Chamber nevertheless admit the items listed above, to admit (a) two additional portions of the second excerpt of video DRC-OTP-0159-0477, (b) three additional MONUC documents related to videos DRC-D18-0001-0436 and DRC-OTP-0118-0002, (c) admit two additional portions of video DRC-OTP-0127-0064, and (d) limited excerpts of seven additional MONUC documents related to document DRC-OTP-0004-0047, which are all important for the Chamber's complete evaluation of the evidence and matters raised by the Defence.
2. The Prosecution does not oppose the admission of four excerpts of video DRC-OTP-0127-0064 and reserves its right to make submissions on the admission of redacted item number 15 on the Defence's list of documentary evidence¹ when it has obtained access to this document.

¹ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 7, no. 15.

Level of Confidentiality

3. This filing is classified as "Confidential" pursuant to regulation 23bis(1) and(2) of the Regulations of the Court since it refers to information not yet available to the public and responds to filings bearing the same classification.

Procedural History

4. On 8 July 2019, Trial Chamber VI (the "Chamber") convicted Mr Bosco Ntaganda ("Convicted Person") of 18 counts of war crimes and crimes against humanity.² On the same day, the Chamber issued an order on the sentencing procedure.³ The Parties and Legal Representatives of Victims were directed to file any requests to submit further evidence or to call witnesses by 29 July 2019.
5. On 29 July 2019, the Prosecution and Defence filed their respective requests to submit further evidence and call witnesses.⁴ The Prosecution partially opposed the Defence Request⁵ and requested the admission of five documents and limited excerpts of a further six documents that are important for the Chamber's complete evaluation of matters raised by the Defence.⁶
6. On 20 August 2019, the Chamber granted the Defence's request to hear three witnesses *viva voce* and rejected the Prosecution's request to hear one witness *viva voce*.⁷ On 23 August 2019, the Chamber admitted four documents submitted by the Prosecution, and directed the Parties and the participants to file any requests for admission of documentary evidence other than through witnesses by 30

² ICC-01/02-02/06-2359.

³ ICC-01/04-02/06-2360.

⁴ ICC-01/04-02/06-2368-Conf and ICC-01/04-02/06-2369-Conf-Red.

⁵ ICC-01/04-02/06-2375-Conf-Corr.

⁶ ICC-01/04-02/06-2375-Conf-Corr, paras. 28-33.

⁷ ICC-01/04-02/06-2384-Conf.

August 2019.⁸ On 30 August 2019, the Prosecution and the Defence each filed a request for the admission of documentary evidence on sentencing.⁹

Submissions

7. The Prosecution requests the Chamber to partially reject the Defence's request, for the reasons set out below.

(i) Video of Bosco Ntaganda's daughter's birthday celebration on 29 November 2004

8. The Chamber should reject the Defence's request for the admission of the three excerpts of video DRC-OTP-0159-0477 because they are irrelevant to any mitigating circumstances pursuant to rule 145(2)(a) of the Rules or to the determination of the Convicted Person's sentence and because they lack any probative value.

9. The Defence argues that this video "shows Mr. Ntaganda's family relationship and reflects his views about women and his kindly disposition towards the civilian population in 2004".¹⁰ While the first two of these issues are wholly irrelevant to sentencing, the video also lacks probative value on any of these points. This video does not portray, as the Defence claims, the Convicted Person attending a private birthday celebration with the civilian population of Largu. In fact, it is clear from the circumstances of this event – including the Convicted Person's UPC attire,¹¹ the presence of many UPC commanders, soldiers and members¹² and the very fact that it was filmed – as well as the Convicted Person's speeches, that this was a UPC public relations event meant to garner local support for the movement and for the Convicted Person in Largu, a location that he

⁸ ICC-01/04-02/06-2385-Conf, para. 54.

⁹ ICC-01/04-02/06-2388-Conf and ICC-01/04-02/06-2389.

¹⁰ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 1, nos. 1-3 (last column).

¹¹ See e.g. DRC-OTP-0159-0477, at 01:21:25.

¹² See e.g. DRC-OTP-0159-0477, at 00:47:14, 00:51:29, 00:52:04, or 00:52:27.

conceded was a Hema village.¹³ The Prosecution provides more detailed submissions on each excerpt below.

10. The **first excerpt** of this video¹⁴ shows a number of men and women standing surrounded by dense vegetation, in Largu. The group includes a woman who is introduced to the camera as "*madame la vice-présidente de l'UPC*" and whom the Defence claims is Witness D-0303.¹⁵ It does not contain any further substantive information. As such, the only potential relevance this excerpt may have at this stage is to provide information regarding Witness D-0303's alleged role in 2004 and presence at the event depicted in this video. It is, however, wholly irrelevant when considered alone. It follows that the appropriate procedural avenue for this excerpt was not to tender it from the bar table, but to submit it as an associated document to Witness D-0303's rule 68(2)(b) statement. Admitting this document now would result in a procedural unfairness for the Prosecution, which does not have the benefit of D-0303's statements regarding this excerpt and is, accordingly, unable to make fully informed submissions in this regard. The Chamber has previously indicated that it deferred its ruling on video DRC-OTP-0159-0477 until after the submission by the Defence of D-0303's statement¹⁶ and the Prosecution reserves its right to make further submissions on this excerpt at that time. In the meantime, it should not be admitted into evidence.

11. The **second excerpt**¹⁷ includes a speech by the Convicted Person, dressed in UPC clothing and surrounded by UPC commanders and soldiers. In his speech, he, *inter alia*, thanks God for having given him two children, introduces his children to the people he invited to his daughter's birthday, and states that he places them

¹³ ICC-01/04-02/06-T-233-CONF-ENG, p. 54, lns. 20-24: "In Barrière and in Fataki as well as in Largu, these areas were mainly occupied by the Hema, that is true".

¹⁴ Excerpt 1: 00:02:46 to 00:03:32 (transcription: DRC-OTP-2061-0651, pp. 0657-0658, lns. 150-190; translation: DRC-OTP-2085-0468, pp. 0475-0476, lns. 153-192).

¹⁵ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 2-3.

¹⁶ ICC-01/04-02/06-2385-Conf, para. 45.

¹⁷ Excerpt 2: 01:11:20 to 01:22:37 (transcription: DRC-OTP-2061-0651, pp. 0667-0670, lns. 499-608; translation: DRC-OTP-2085-0468, pp. 0486-0488, lns. 519-641).

under God's protection. As argued above, the Convicted Person's "family relationships" at the time of the video or the fact that he celebrated his daughter's birthday in November 2004 are wholly irrelevant to any mitigating circumstances or, more generally, any issue relevant to sentencing. Accordingly, the Chamber should decline to admit this excerpt.

12. Should the Chamber nevertheless decide to admit this excerpt, the Prosecution requests that the excerpt be extended to include the entirety of the Convicted Person's speech¹⁸ as well as the speech of a second individual, namely Commander Innocent KAINA ("India Queen"),¹⁹ so the Chamber can properly evaluate the nature of this event in its actual context.

13. Indeed, whilst the Defence may attempt to portray the Convicted Person as a family man attending a simple birthday celebration,²⁰ the passage of his speech immediately following the Defence's excerpt shows that the event was, in fact, a UPC event meant to portray the Convicted Person and his family as the divine protectors of Largu and thus garner the support of the local Hema population of Largu for himself and for the UPC. In the remainder of his speech, the Convicted Person states, for instance, that God had warned him that Floribert KISEMBO would be a traitor or "Judas" and further explains that he was there fighting for the population of Largu, which he refers to as "*mon peuple d'Israël*".²¹ The scene following the Convicted Person's speech further shows Commander Innocent KAINA offering his spear to the Convicted Person's new-born son, stating that he would follow the Convicted Person's example: "*à ce jeune garçon, je vais offrir ma*

¹⁸ DRC-OTP-0159-0477, 01:22:37-01:30:03 (transcription: DRC-OTP-2061-0651, pp. 0671-0672, lns. 609-694; translation: DRC-OTP-2085-0468, pp. 0489-0491, lns. 642-735).

¹⁹ DRC-OTP-0159-0477, 01:43:53-01:48:49 (transcription: DRC-OTP-2061-0651, pp. 0673-0674, lns. 719-781; translation: DRC-OTP-2085-0468, pp. 0492-0493, lns. 768-863. For the identification of this individual as Innocent Kaina ("India Queen"), see ICC-01/04-02/06-T-144, p. 62, lns. 22-23.

²⁰ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 1 nos. 1-3 (last column).

²¹ See DRC-OTP-2085-0468, p. 0490, lns. 690-701.

*propre lance. Car, il va ... il mettra fin aux tueries, comme le général l'a fait ici au pays ... mais lui, il le fera dans toute l'Afrique".*²²

14. The Chamber has on previous occasions granted requests to admit additional evidence, such as additional excerpts of a statement, an additional witness statement, and additional video excerpts, in order to "better" or "more comprehensively"²³ assess the evidence on a particular issue, to evaluate a witness's evidence,²⁴ or to "assist it in contextualizing"²⁵ specific evidence submitted by a party, including at the sentencing phase where the items were "*prima facie* relevant to [its] assessment of Mr Ntaganda's conduct after the events forming part of the charges, especially as concerns issues the Defence wishes to bring to the attention of the Chamber [...] and [which] may therefore assist the Chamber and thus have probative value".²⁶ The Chamber should likewise admit the limited additional portions of video DRC-OTP-0159-0477 identified by the Prosecution for a complete evaluation of the evidence on this point.

15. The **third excerpt**²⁷ contains several speeches, including a speech by a person whom the Defence alleges is D-0303. In her speech, she expresses her gratitude for being able to meet, as the "*présidente des mamans de l'UPC*", with the high-ranking people gathered at the celebrations. She is also grateful for being able to circulate freely to places such as Centrale and Largu, stating that she is able to do so because of her relationship to the UPC: "*je sais que je suis vraiment une enfant de la maison!*"²⁸ In the following speech, the Convicted Person asks the people present to support the "*mamans de l'UPC*"²⁹ and makes a number of statements

²² See DRC-OTP-2085-0468, p. 0493, lns. 816-821.

²³ See ICC-01/04-02/06-2141-Conf, para. 52 and ICC-01/04-02/06-2184-Conf, paras. 26 and 27.

²⁴ See ICC-01/04-02/06-2238, para. 11.

²⁵ See ICC-01/04-02/06-2240, para. 10.

²⁶ ICC-01/04-02/06-2385-Conf, para. 53.

²⁷ Excerpt 3: 02:45:30 to 02:55:10 (transcription: DRC-OTP-2061-0651, pp. 0691-0696, lns. 1383-1577; translation: DRC-OTP-2085-0468, pp. 0511-0517, lns. 1476-1693).

²⁸ DRC-OTP-2085-0468, p. 0514, lns. 1570-1574.

²⁹ DRC-OTP-2085-0468, pp. 0515-0517, lns. 1612-1614: "Je voudrais vous demander de soutenir ... ces mamans de l'UPC ... je voudrais les encourager et les confier à la garde de Dieu, car, sans ces mamans, nous ne serions pas ici ... n'est-ce pas vrai ?"

about D-0303 and the “*mamans*”,³⁰ amongst others, that women also have value because they can fight on the frontline as PMFs,³¹ that he loves his mother more than his father,³² and that the “*mamans*”, including the woman who spoke earlier (D-0303), should be respected.³³

16. The Chamber should decline to admit this excerpt because it is not relevant and lacks probative value. *First*, the Defence fails to explain how the Convicted Person’s “views about women [...] in 2004”³⁴ is a relevant consideration for the determination of his sentence. However, *second*, even considering that this issue is of any relevance, the excerpt submitted by the Defence should be rejected for its lack of probative value. It neither shows the Convicted Person’s views about “women”, nor does it demonstrate his “kindly disposition towards the civilian population in 2004”, as argued by the Defence.³⁵ Indeed, it is clear from the context in which the Convicted Person made his speech that its aim was to obtain the support of the local population. The event took place in Largu, which the Convicted Person has conceded is a predominantly Hema village,³⁶ and many of the people in attendance at this event were either UPC commanders or women of the “*Association des Mamans de l’UPC*” or AMUPAC, which formally was one of UPC’s three specialised branches at the time.³⁷ As previously argued,³⁸ that the Convicted Person was friendly to the Hema or to UPC members, and occasionally even assisted them, is not disputed by the Prosecution. Accordingly, this excerpt has no probative value and the Chamber should decline to admit it into evidence.

³⁰ DRC-OTP-2085-0468, pp. 0515-0517, lns. 1603-1694.

³¹ DRC-OTP-2085-0468, pp. 0515-0517, lns. 1635-1637: “au sein de l’armée, il y a des militaires que l’on appelle des PEMEF [phon.] ... ces femmes qui vont au combat, car nous en avons sur la ligne de front... mais certains les prennent pour des personnes sans valeur, alors qu’elles ont de la valeur”.

³² DRC-OTP-2085-0468, pp. 0515-0517, lns. 1651-1657: “il faut accorder à la maman la valeur qu’elle mérite [...] Et moi, je donne à la maman beaucoup plus de valeur que personne d’autre ne lui accorde [...] moi, je sais qu’une maman ... au fait, j’aime plus ma maman que mon papa”.

³³ DRC-OTP-2085-0468, pp. 0515-0517, lns. 1662-1691.

³⁴ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 1, nos. 1-3 (last column).

³⁵ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 1, nos. 1-3 (last column).

³⁶ ICC-01/04-02/06-T-233-CONF-ENG, p. 54, lns. 20-24: “In Barrière and in Fataki as well as in Largu, these areas were mainly occupied by the Hema, that is true”.

³⁷ See DRC-OTP-0089-0483.

³⁸ ICC-01/04-02/06-2375-Conf, para. 23.

(ii) **Video of a press conference following the signing of the *cessez le feu* agreement between UPC and RCD Goma in February 2003**

17. The Chamber should reject the admission of the two excerpts of video DRC-D18-0001-0425 submitted by the Defence. The Defence merely states that these excerpts are “a speech by Thomas Lubanga while Mr Ntaganda was present, which demonstrates UPC and FPLC’s efforts towards peace and reconciliation with all communities”, without providing any further, concrete explanation as to its potential relevance at this stage.³⁹ However, the press conference depicted on this video, which took place in early February 2003,⁴⁰ has already extensively been dealt with during the Convicted Person’s testimony as well as in the Defence’s Closing Brief. Moreover, the Defence has already presented extensive evidence⁴¹ – and the Chamber made factual findings⁴² – on the issues of the UPC’s policy with respect to ethnic reconciliation and peace at trial. In its preliminary ruling, the Chamber rejected the evidence of D-0304, whom the Defence had put forward as a witness who could provide evidence about this video, including because, in the Judgment, it had already “dismissed arguments concerning the alleged genuineness of the message of peace and ethnic reconciliation of the UPC”.⁴³ The same reasoning applies to the video excerpts. Moreover, the Defence fails to articulate how the evidence of the Convicted Person’s presence at a press conference just weeks before his troops would commit the Second Attack crimes

³⁹ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 3.

⁴⁰ See ICC-01/04-02/06-T-215-ENG, p. 46, lns. 12-16.

⁴¹ See Defence’s Closing Brief, ICC-01/04-02/06-2298-Conf, paras. 2, 53, 157-162, 172-175, 226, 235-236, 570, 685, 703, 763, 781, 796, 810-811, 814, 1062-1063 (for discipline); and paras. 2, 44, 60-61, 65, 68, 71, 80-94, 152, 225, 227, 229, 237-238 (for the UPC’s policies).

⁴² See Judgment, ICC-01/04-02/06-2359, paras. 260-261, 331-332, 371, 376-377, 639, 846 and 855 (for discipline); and para. 686 (for the UPC’s policies): “The Defence submits that the UPC, as a political movement, had the objective to ‘restore good governance; promote reconciliation; establish peace; [and] protect all civilians without discrimination’ and that the mutineers organised and set up a training camp ‘to defend themselves’. While recognising that some of the documents produced by the UPC/FPLC indeed promoted peace, or denounced the crimes committed against the local population of Ituri, the Chamber finds that the internal communications and documents as well as military actions undertaken by the UPC/FPLC show that in parallel its goal was to actively chase away the RCD-K/ML, and those who were perceived as non-Iturians”.

⁴³ ICC-01/04-02/06-2385-Conf, para. 49.

for which he has been convicted is in any way relevant to the determination of his sentence. Accordingly, the Chamber should decline to admit this video excerpt.

(iii) Two videos of a “collation des grades” or “rank giving” ceremony and related events in Langu (17 July 2003)

18. The Chamber should reject the Defence’s request to admit nine excerpts of videos DRC-D18-0001-0436 and DRC-OTP-0118-0002 as documentary evidence from the bar table, as well as its alternative request for 15 additional minutes for the direct examinations of Witnesses D-0305 and D-0306. The Chamber has already ruled that the Defence should tender these video excerpts through Witnesses D-0305 and/or D-0306 during their testimony and that it would have one hour per witness to do so.⁴⁴ When deciding to hear these witnesses entirely *viva voce* as opposed to pursuant to rule 68(3), the Chamber held that “any admission of [these videos] or excerpts thereof, as well as any related transcription and translation, must be done during the witness’s examination-in-chief”.⁴⁵ The Chamber issued its ruling fully aware of the number and length of the video excerpts proposed for admission by the Defence⁴⁶ as well as the standard practice of tendering video excerpts through witnesses, and nothing new has arisen since then. Accordingly, the Defence’s request for the admission of these video excerpts effectively is a belated challenge to the Chamber’s ruling. The Defence did not seek reconsideration and/or leave to appeal this decision, nor is the Defence’s request presented as such a request. Those remedies are no longer available and the Defence’s request should be rejected *in limine*.

19. In substance, the nine excerpts should be rejected for their lack of relevance and/or probative value. The Defence claims, with no further explanation, how the event depicted on this video “demonstrates Mr. Ntaganda’s efforts towards

⁴⁴ ICC-01/04-02/06-2384-Conf, paras. 28 and 39.

⁴⁵ *Ibid.*

⁴⁶ See ICC-01/04-02/06-2369-Conf-AnxB-Red and ICC-01/04-02/06-2384-Conf, paras. 28 and 39, fns. 56-57 and 88-89.

integration of FPLC members in the national army of Congo”.⁴⁷ In fact, this issue is not mentioned on a single occasion in any portion of the two videos. Furthermore, the mere presence at this event of FNI and Lendu leaders is not probative of the Convicted Person’s efforts towards ethnic reconciliation.⁴⁸ In fact, as further demonstrated below,⁴⁹ it is actually illustrative of the UPC’s political and military alliance in 2004 with the FNI and *against* other armed groups in the region, including the Lendu *Forces de Résistance Patriotique en Ituri* (FRPI).

20. Should the Chamber nevertheless be inclined to admit all or some of these video excerpts as documentary evidence from the bar table, the Prosecution requests the admission of discrete portions of three additional MONUC documents which are important for the Chamber’s complete evaluation of the matters raised by the Defence.

21. Indeed, the Defence may attempt to portray the events depicted on this video as evidence of “the reconciliation between the Hema community, FPLC, Lendu community and FNI” and the Convicted Person’s “successful efforts to reach out to the Lendu community and FNI and to promote reconciliation”.⁵⁰ However, these MONUC reports show that the reality of the coalition, in July 2004, between the UPC-Lubanga and the *Front des Nationalistes et des Intégrationnistes* (FNI) was not one of ethnic and community reconciliation, but one of an opportunistic political and military alliance between the UPC-Lubanga, the FNI, and the *Forces Armées Patriotiques Congolaises* (FAPC), against other armed groups in Ituri, namely the UPC’s split faction led by Floribert KISEMBO (UPC-K), the FRPI and the *Parti pour l’Unité et la Sauvegarde de l’Intégrité du Congo* (PUSIC). The Prosecution therefore requests the admission of: (1) two portions of two weekly reports of the G2 branch of MONUC’s Ituri Brigade for the weeks of 13 to 20

⁴⁷ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 2-3, nos. 6-8 (last column).

⁴⁸ *Ibid.*

⁴⁹ See para. 20.

⁵⁰ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 2-3, nos. 6-8 (last column).

March 2004 and 11 to 17 April 2004, which refer to the “UPC/L, FNI and FAPC coalition”;⁵¹ and (2) a table emanating from MONUC’s G2 branch⁵² and dated 8 May 2004, which describes the political, military, ethnic and international alliances between the Ituri-based armed groups at that time.⁵³ All three MONUC documents were provided to the Prosecution by MONUC and bear sufficient indicia of reliability, namely a MONUSCO letterhead, title, date, author, and/or restriction level. Should the Chamber decide to admit any of the video excerpts submitted by the Defence from the bar table, it should also admit these three documents to assist it in contextualising and evaluating the Defence’s evidence.

(iv) Video of a “collation des grades” or “rank giving” ceremony and related events in Katoto (31 July 2004)

22. The Prosecution does not oppose the admission of the excerpts of video DRC-OTP-0127-0064⁵⁴ identified by the Defence. However, should the Chamber decide to grant the Defence’s request, the Prosecution requests that two of the proposed excerpts be slightly extended⁵⁵ so the Chamber can properly evaluate the nature of this event and the Defence’s submissions in its actual context. The Defence argues that the presence at this event of the “*Chef de groupement Loga*” is “illustrative of Mr. Ntaganda’s successful efforts to reach out to the Lendu

⁵¹ DRC-OTP-0009-0227, p. 0232, para. 5(c) and DRC-OTP-0009-0271, p. 0275, para. 19.

⁵² The document refers to “Mil Info”, an abbreviation for “Military Information” and for MONUC’s G2 branch.

⁵³ DRC-OTP-0195-2012.

⁵⁴ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 5, nos. 12-14. The Prosecution notes that the timestamps provided by the Defence for the second and the fourth excerpts do not correspond to the transcript and translation references for the same excerpts. In light of the Defence’s submissions regarding the content of the excerpts, in particular the presence of the “*Chef de groupement Loga*” at this event, the Prosecution assumes that the Defence meant to include the two speeches of this individual in its request and that, therefore, the transcript and translation references are correct. Accordingly, the relevant video excerpts of DRC-OTP-0127-0064 considered by the Prosecution in this response are: (1) 00:40:15 to 00:41:17, (2) 00:57:47 to 01:07:01, (3) 02:14:30 to 02:16:17, and (4) 02:17:41 to 02:19:33.

⁵⁵ The Prosecution requests the extension of the first excerpt by 50 seconds from 00:40:15 to 00:42:07 (instead of 00:41:17). It also requests the extension of the third excerpt by 1 minute and 23 seconds, effectively bridging the gap between the third and the fourth excerpt, which would run from 02:14:30 to 02:19:33 (instead of 02:14:30 to 02:16:17 and 02:17:41 to 02:19:33). The three remaining excerpts are the following: (1) 00:40:15 to 00:42:07 (transcript: DRC-OTP-0165-0276, p. 0297, ln. 0459 to p. 0298, ln. 0491; translation: DRC-OTP-0165-0349, p. 0371, ln. 481 to p. 0372, ln. 514); (2) 00:57:47 to 01:07:01 (transcript: DRC-OTP-0165-0276, p. 0304, ln. 666 to p. 0308, ln. 767; translation: p. 0379, ln. 710 to p. 0383, ln. 821); (3) 02:14:30 to 02:19:33 (transcript: DRC-OTP-0165-0276, p. 0336, ln. 1473 to p. 0339, ln. 1541; translation, DRC-OTP-0165-0349, p. 0413, ln. 1556 to p. 0416, ln. 1634).

community and FNI and to promote reconciliation".⁵⁶ However, two portions of video immediately following the excerpts selected by the Defence also refer to the "*commandant de bataillon [...] qui ... dirige les militaires dans la region de Loga*" who was invited by the UPC and came to salute the Convicted Person in the name of "*chef d'état-major [...] Ngudjolo*", which illustrates the true reason for the Lendu leaders' presence at this event. As for the two previous videos showing a similar event in Largu just days before the event in Katoto, this video should be seen in the context of the UPC-Lubanga's political and military alliance with the FNI against other armed groups in 2004. Accordingly, these limited additional portions of video should be admitted for the Chamber's complete evaluation of the evidence on this point.

- (v) **Document entitled "Decret No 04/094 portant nomination dans la catégorie des officiers généraux des forces armées de la République Démocratique du Congo" of 11 December 2004**

23. The Prosecution opposes the admission of document DRC-OTP-0086-0036, which indicates that the DRC President appointed the Convicted Person as a General in the FARDC, because the Defence has not demonstrated its relevance for sentencing. Contrary to the Defence's claim, this document, without any further evidence regarding the context in which it was made and about the Convicted Person's nomination within the FARDC, is not "indicative of Mr. Ntaganda's contribution to the integration of FPLC members in the FARDC".⁵⁷ The Defence fails to explain how the Convicted Person's nomination as "*Général de Brigade*" within the FARDC – a position he did not take up – or that of the military commanders of other groups – who did take up the position – in any way supports its claim that he contributed to the reintegration process.

⁵⁶ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 5, no. 12 (last column).

⁵⁷ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 6, no. 16 (last column).

24. Moreover, should this document be in any way related to the testimony of D-0020 and D-0047, as claimed by the Defence,⁵⁸ then the appropriate procedural avenue for the submission of this document by the Defence is not a bar table motion. The Defence should either submit this document as an associated document together with D-0020's prior recorded testimony under rule 68(2)(b) or tender the document through D-0047 during his testimony.

25. Lastly, the Prosecution refers to its request for the admission of six excerpts of United Nations Group of Experts on the Democratic Republic of the Congo reports and one related Reuters news article.⁵⁹ Contrary to the Defence's assertion that these documents were aimed at "tarnish[ing] Mr. Ntaganda with unsubstantiated allegations of "serious human rights abuses and international crimes""",⁶⁰ these documents simply clarify the Convicted Person's ambiguous testimony regarding his integration into the FARDC and provides relevant information about his post-crime conduct.⁶¹ The Chamber should admit these documents for a complete evaluation of the Defence's evidence on this point.

(vi) Document entitled "Brief of force commander on DDR and CCGA"

26. The Prosecution opposes the admission of document DRC-OTP-0004-0047 into evidence. The Chamber has previously refused to admit this document from the bar table and it should do so again as it lacks any indicia of reliability or probative value.⁶²

⁵⁸ ICC-01/04-02/06-2388-Conf, para. 8 and ICC-01/04-02/06-2388-Conf-Anx-Red, p. 6, no. 16 (last column).

⁵⁹ ICC-01/04-02/06-2389 and ICC-01/04-02/06-2389-Conf-AnxA, nos. 1-7: DRC-OTP-2102-1032, p. 1044, para. 54; DRC-OTP-2102-1093, p. 1097, para. 19 and p. 1139, para. 191; DRC-OTP-2102-1220, p. 1228, para. 35 and p. 1239, paras. 98-99; DRC-OTP-2102-1247, p. 1292, para. 183 and p. 1432, annex 62; DRC-OTP-2102-1535, pp. 1542-1543, para. 34; DRC-OTP-2102-1560, p. 1601, para. 153; DRC-OTP-2102-1004 (entire document).

⁶⁰ ICC-01/04-02/06-2388-Conf, paras. 9-10.

⁶¹ See ICC-01/04-02/06-2389-Conf-AnxA, pp. 1-2 (last column).

⁶² ICC-01/04-02/06-2201-Red, para. 12: "while these four documents appear to be prima facie relevant, they all lack indicia of reliability, such as information on their sources, context, or purpose of their creation, as well as, for [DRC-OTP-0004-0047], the relevant date. Furthermore, the Chamber considers that the fact that these documents were disclosed by the Prosecution as originating from the UN is not, in itself, sufficient to establish their source. As the tendering party, it is for the Defence to provide the Chamber with sufficient information to

27. *First*, the Defence claims that this document “is similar to other MONUC documents”,⁶³ but fails to refer to any such similar MONUC document. In fact, the only document in a similar format is a document entitled “BRIEF FOR SRSG ON DDR”,⁶⁴ which, like DRC-OTP-0004-0047, is undated and lacks any indicia of reliability. The Defence also claims that document DRC-OTP-0004-0047 “possesses all indicia of reliability”⁶⁵ – but fails to refer to any – and argues that it “was not admitted from the Bar Table as a trial exhibit due to the fact that it is not dated”.⁶⁶ In fact, however, the Chamber had based its decision on the absence of several other indicia of reliability, such as information on its source, context, or purpose of its creation,⁶⁷ in addition to the lack of date. At the time of its ruling, the Chamber also noted “[a]s the tendering party, it is for the Defence to provide the Chamber with sufficient information to assess the reliability of the items it requests admission of”.⁶⁸ Since the Defence has not provided any new information, this document should not be admitted into evidence.

28. *Second*, document DRC-OTP-0004-0047 should be rejected for its lack of probative value. The Defence argues that it is “probative of the involvement of the UPC/FPLC in the DDR and CCGA programs and is illustrative of the good record of the UPC in this regard”.⁶⁹ However, the only reference to the UPC contained in this document, apart from a reference of it being involved in armed clashes,⁷⁰ is a general reference to the “UPC being the most cooperative group [having] deposited the highest number of weapons”.⁷¹ This reference simply has no evidentiary value without any further information about the date and context in

assess the reliability of the items it requests admission of. In the absence of any further information, or authentication, these documents are not sufficiently reliable and probative, and the Chamber therefore denies their admission into evidence.”

⁶³ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 6-7, no. 17 (“authenticity” column).

⁶⁴ DRC-OTP-0004-0040.

⁶⁵ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 6-7, no. 17 (“authenticity” column).

⁶⁶ *Ibid.*

⁶⁷ ICC-01/04-02/06-2201-Red, para. 12.

⁶⁸ *Ibid.*

⁶⁹ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 6-7, no. 17 (last column).

⁷⁰ See DRC-OTP-0004-0047, p. 0047, para. 2(b).

⁷¹ DRC-OTP-0004-0047, p. 0050, para. 5(a).

which this brief was made. The Prosecution further notes that, throughout the brief, its author refers to the DDR program as a program to be implemented in the future,⁷² and that documents DRC-OTP-0004-0040 and DRC-OTP-0004-0047 appear to have been prepared in November 2003.⁷³ This calls into question the very capacity of the UPC having any record in the context of a DDR program, let alone a “good” one, at a time when this program was yet to be launched.

29. In fact, however, numerous reliable MONUC documents, ranging from August 2003 to February 2004, show the exact opposite of what the Defence is attempting to argue with respect to the UPC’s attitude towards demobilisation. These documents paint the picture of an uncooperative UPC that constituted a threat to MONUC and its DDR program. Therefore, should the Chamber be inclined to admit document DRC-OTP-0004-0047, the Prosecution requests the admission of specific excerpts of seven additional documents, for a complete evaluation of the Defence’s evidence on this point, namely:

- (1) DRC-OTP-0004-0040, an undated document entitled “BRIEF FOR SRSG ON DDR” in the same format as DRC-OTP-0004-0047: this document provides concrete information on the state of the UPC’s state of progress, which, at the time of this brief, like the other armed groups, had “submitted the strength of the combatants of 14 proposed assembly sites”, but had not submitted “the list of combatants, child and/or woman soldiers and details of their weapons”.⁷⁴ The document also indicates that “UPC initially responded positively to the initiatives of CCGA”, but “for the last two weeks [they] were absent from the meeting”;⁷⁵

⁷² See e.g. DRC-OTP-0004-0047, p. 0047, para. 3(a): “The whole of activities as Planned for the Ituri DDR Process *will be implemented...*” (emphasis added); p. 0048, para. 3(f)-(i): “[t]he Ituri DDR process *should be* [...] and this process will be developed [...]”, “[t]he Ituri DDR process *will be based* on [...]”, “[t]he Ituri DDR operations *will be implemented* in a progressive and simultaneous way [...]” (emphases added).

⁷³ DRC-OTP-0004-0047 refers to Bunia having been declared a “weapons free zone since 15 Sep[tember] 2003” (p. 0050, para. 5(a)). DRC-OTP-0004-0040 refers to 11 November 2003 as a date in the past (p. 0045, para. 7(b)) and to December 2003 as well as February to September 2004 as months in the future (p. 0040, para. 2(a-h)).

⁷⁴ DRC-OTP-0004-0040, p. 0042, para. 2.

⁷⁵ DRC-OTP-0004-0040, p. 0045, para. 9.

- (2) DRC-OTP-0061-0191, a daily report for 12 August 2003 sent by the Special Representative of the Secretary General of the United Nations with MONUC to the United Nations' headquarters: this document shows that the UPC threatened to withdraw from the CCGA if its conditions, including the increase of its delegation from 5 to 7 members, were not met;⁷⁶
- (3) DRC-OTP-0006-0323, a daily report from MONUC's Ituri Brigade for 18 November 2003: this document indicates that, on 17 November 2003, a CCGA meeting was held in Bunia with "rep[resentatives] of all armed groups except UPC";⁷⁷
- (4) DRC-OTP-1029-0568, a weekly report of the G2 branch of MONUC's Ituri Brigade for the week of 16 to 22 November 2003: this document indicates that the UPC attended a CCGA meeting on 21 November 2003 "after three weeks of their absence" and "demanded that [the] whole program of DDR [...] be unfolded and explained before the combatants move to the assembly sites";⁷⁸
- (5) DRC-OTP-0009-0035, a weekly report of the G2 branch of MONUC's Ituri Brigade for the week of 27 December 2003 to 2 January 2004: this document refers to a CCGA meeting attended by representatives of the armed groups "except FAPC and UPC-pro-Lubanga";⁷⁹
- (6) DRC-OTP-1029-0579, a weekly report of the G2 branch of MONUC's Ituri Brigade for the week of 24 to 30 January 2004: this document, under the header "threat assessment", indicates that the "UPC/L is still threatening MONUC personnel" and "[i]t [...] clearly shows that this group does not seem happy with peace

⁷⁶ DRC-OTP-0061-0191, p. 0192, para. 3.

⁷⁷ DRC-OTP-0006-0323, p. 0324, para. 2(e).

⁷⁸ DRC-OTP-1029-0568, p. 0571, paras. 25-26.

⁷⁹ DRC-OTP-0009-0035, p. 0038, para. 10.

process, DDR process and strengthening of Bunia Administration. It could continue to be a source of threat”;⁸⁰ and

- (7) DRC-OTP-0009-0146, a weekly report of the G2 branch of MONUC’s Ituri Brigade for the weeks of 14 to 20 February 2004: this document refers to a CCGA meeting held on 17 February 2004 where the “FNI, UPC-Kisembo, PUSIC and FAPC were represented” (not the UPC-Lubanga) and where “MONUC made it clear to the armed groups that the Disarmament and Community Reintegration process would not be derailed by the provocations of Bosco’s group and that the program would continue as planned”.⁸¹ The document further indicates under the header “threat assessment” that the UPC-Lubanga had ambushed a MONUC convoy in Katoto, resulting in the killing of a military observer and that the group was “threatening to attack MONUC in Bunia and elsewhere in Ituri in areas under their domination”. Lastly, the document indicates that the UPC-Lubanga “[had] not showed up in CCGA mission and [had] disengaged themselves from talks with MONUC”, concluding that “[t]his group remains source of threat to MONUC in the future”.⁸²

30. With the exception of the first document, namely DRC-OTP-0004-0040, all six MONUC documents bear sufficient indicia of reliability, namely a MONUSCO letterhead, title, date, author, and/or restriction level. Accordingly, the Chamber should admit all six documents to assist it in contextualising and evaluating the Defence’s proposed evidence. Document DRC-OTP-0004-0040 should only be admitted to provide further context on document DRC-OTP-0004-0047.

31. Lastly, should document DRC-OTP-0004-0047 be in any way related to the testimony of D-0020 and D-0047, as claimed by the Defence,⁸³ then the appropriate procedural avenue for the submission of this document by the

⁸⁰ DRC-OTP-1029-0579, p. 0584, para. 13.

⁸¹ DRC-OTP-0009-0146, p. 0155, para. 12.

⁸² DRC-OTP-0009-0146, p. 0155, para. 15.

⁸³ ICC-01/04-02/06-2388-Conf-Anx-Red, pp. 6-7, no. 17 (last column).

Defence is not a bar table motion. The Defence should either submit this document as an associated document together with D-0020's prior recorded testimony under rule 68(2)(b) or tender the document through D-0047 during his testimony.

(vii) Redacted document

32. Item 15 on the Defence's list of documentary evidence requested for admission from the bar table is entirely redacted.⁸⁴ The Prosecution assumes that this document is related to the Registry's information regarding the Convicted Person's conduct while at the ICC Detention Centre and requests access to the document or a redacted version thereof, so it can make meaningful submissions on this issue. The Prosecution further reserves its right to make submissions on this document's admission into evidence when it receives access to it.

Conclusion

33. Based on the foregoing, the Prosecution requests the Chamber (1) to partially reject the Defence's request for the admission of documentary evidence and its request for additional time for its examination of Witnesses D-0305 and D-0306, or (2), in the alternative, to admit the limited additional evidence, as set out above, for a complete evaluation of the evidence and matters raised by the Defence.



Fatou Bensouda
Prosecutor

Dated this 6th day of September 2019
At The Hague, The Netherlands

⁸⁴ ICC-01/04-02/06-2388-Conf-Anx-Red, p. 7, no. 15.